

Crisis of the Rule of Law –
Dimensions of Political Discourse Between the European Commission and Hungary

Eero Tuominen
Master's Seminar and Thesis
English
Languages and Literature
Faculty of Humanities
University of Oulu
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Abstract

The European Union has experienced a rule of law crisis for the past several years. As a result, the Union attached a rule of law clause into its multiannual budget of 2021–2027 that would enable suspension of funds from Member States that violate the principles of the rule of law. Hungary has been a target for rule of law related proceedings by the union, and it cast a veto on the multiannual budget because of the rule of law clause attached to it. This thesis will explore the discourse surrounding the Hungarian veto, and rule of law in general.

Using the Discourse-Historical Approach (DHA) of Critical Discourse Analysis, this thesis will explore the different dimensions of discourse surrounding the rule of law crisis in the European Union. As materials, this study will use the 2020 Rule of Law Report by the European Commission, as well as two texts by Hungarian ministers associated with it; a statement by the Hungarian Prime Minister Viktor Orbán, and an opinion piece by the Hungarian Minister of Justice Judit Varga.

The aim of this paper is to explore discursive strategies used by the European Commission, Viktor Orbán and Judit Varga as well as how they construct rule of law as a term in the materials. Additionally, this paper will examine how their discursive strategies have evolved over time. Ultimately, this thesis attempts to describe the discourse about rule of law in the discursive spaces of the European Commission and the Hungarian Government.

Abstrakti

Euroopan Unioni on ollut keskellä oikeusvaltioperiaatteen kriisiä jo monen vuoden ajan. Tämän seurauksena EU liitti oikeusvaltioperiaatetta koskevan ehdollisuusasetuksen vuosien 2021–2027 budjettiesitykseen. Ehdollisuusasetus mahdollistaa rahoituksen jäädyttämisen jäsenmaalta, jonka katsotaan toimivan oikeusvaltioperiaatetta vastaan. Unkari on ollut oikeusvaltioperiaatetta koskevien käsittelyiden kohteena, ja se käytti veto-oikeutensa budjettiesityksestä äänestettäessä kyseisen ehdollisuusasetuksen takia. Tämä pro gradu -tutkielma tutkii Unkarin vetoääntä ja laajemmin oikeusvaltioperiaatetta ympäröivää diskurssia.

Käyttäen tutkimusmetodinä kriittiseen diskurssianalyysiin perustuvaa diskurssihistoriallista lähestymistapaa (DHA), tämä opinnäytetyö tarkastelee Euroopan unionin oikeusvaltioperiaatetta koskevan diskurssin eri ulottuvuuksia. Materiaalina työssä käytetään Euroopan komission julkaisemaa vuoden 2020 oikeusvaltiokertomusta sekä kahta unkarilaisten ministerien tekstiä; Unkarin pääministeri Viktor Orbánin lausuntoa liittyen budjettiesityksen vetoääneen, sekä Unkarin oikeusministeri Judit Vargan kirjoittamaa mielipidekirjoitusta.

Tutkimuksen tarkoituksena on tarkastella Euroopan komission, Viktor Orbánin sekä Judit Vargan käyttämiä diskursiivisia strategioita sekä sitä, miten oikeusvaltioperiaate rakentuu terminä heidän teksteissään. Lisäksi tämä tutkimus tarkastelee, miten kyseisten toimijoiden diskursiiviset strategiat ovat muotoutuneet ajan myötä. Tämän pro gradu -tutkielman tarkoituksena on lopulta pyrkiä kuvailemaan Euroopan komission sekä Unkarin luomaa diskursiivista tilaa oikeusvaltioperiaatteeseen liittyen.

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1. Introduction

In November of 2020 both Hungary and Poland used their right to veto the European Union's new long-term budget, which included a temporary recovery instrument of €750 billion. The long-term budget, which would cover years 2021 through 2027 would, in total, have been €1074.3 billion combined with the €750 billion recovery package. President of the European Council, Charles Michel, called the negotiated budget deal "a strong deal" and further commented that "this agreement sends a concrete signal that the EU is a force for action." (European Council, 2020) A budget deal that was supposed to showcase the European Union's ability to create a recovery mechanism to boost the economy through and beyond a pandemic was promptly in danger of becoming a dud. The basis for both Hungary and Poland to cast their veto was an inclusion of the so-called rule of law clause to the long-term budget. The European Commission explains that the rule of law "guarantees fundamental rights and values, allows the application of EU law, and supports an investment-friendly business environment. It is one of the fundamental values upon which the EU is based on." (European Commission, n.d.) This explanation mentions the "fundamental values" of the EU, and the same two words are often seen in conjunction with the "rule of law" in EU texts. Since the Copenhagen European Council in 1993, the EU has had established accession criteria for applicant countries; these criteria include political, economic, and legal criteria – rule of law being mentioned as one of the political criteria and accepting the aims of the Union as one of the legal criteria. It is, then, alarming to the Union institutions that a country that is (or has been) politically, economically, as well as legally committed to the principles and aims of the Union decides suddenly that the EU view of the rule of law is either flawed or redundant.

Hungary and Poland using their veto rights in this case might not have been a surprise to the European Council, or to someone who has followed EU politics closely. Although both countries are some of the biggest net receivers of EU funds, both countries' governments harbour some resentment towards the Union. For example, both countries have been targets of Article 7 of the Treaty on European Union (Article 7 TEU) proceedings. The European Commission invoked Article 7 in Poland's case in December 2017, and the European Parliament voted on invoking Article 7 in Hungary's case the following year, in September 2018. By itself, invoking Article 7 only means it is possible for a unanimous European Council (with the exception of the country Article 7 is invoked against) to "determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations." (Article 7, 2012) In the case of both Hungary and Poland, Article 7 was invoked, but the European Council has

not gathered to vote on the matter, and neither Member State has had, for example, their voting rights taken away.

It is interesting and worthwhile to study the discourse surrounding the EU initiative to strengthen the rule of law within the union, but also the main opposition to said initiative. This thesis will specifically focus on the discourse between the European Commission and one of its Member States, Hungary. Because of the lack of meaningful pressure from the EU institutions, Hungary has been able to pass a new constitution in 2012 that hindered checks of power for the government. According to the Human Rights Watch, the new constitution has impacted the freedom of the Hungarian judiciary, limited media freedom, criminalized homelessness, allowed discrimination against LGBT people, as well as made political participation more difficult among other issues that they deemed problematic. (Human Rights Watch, 2013) For this reason Hungary has been a target for accusations by different EU officials that the country does not comply with the union's core value of the rule of law. To counter this, the justice minister of Hungary, Judit Varga, claims that tying rule of law conditions to future EU aid is "unacceptable", and that proposing such is a "unilateral modification of the bloc's founding treaties", and would itself violate the rule of law, making the whole proposal count as "blackmail".

Firstly, this paper will attempt to combine socio-historical considerations of the European Union as a whole – and that of a Member State, Hungary – and contemporary political issues of both. Secondly, through getting a broad enough view of relevant characteristics of both EU and Hungarian political zeitgeist from throughout their recent history, this paper will attempt to form a robust analysis of the currently perceivable rule of law crisis within the EU in its relation to EU-Hungarian political discourse.

Finally, this thesis will not attempt to offer any kind of comprehensive solution to the perceived crisis of the rule of law within the European Union. Rather, it is aimed at fully understanding the political/legal situation and discursive space in the EU regarding its application of the term "rule of law"; moreover, it aims to exhaustively and cohesively explore the Hungarian political discourse space in relation to that of the EU. Through understanding the aforementioned discursive spaces, the study continues to analyze the reasons as to how and why did Hungary come to use their right to veto the 2021-2027 long-term EU budget and the included recovery package. Why does one of the largest

net receivers of EU funds decide to thwart a newly negotiated long-term budget plan? Why does the EU decide to tie a rule of law clause to said budget plan, knowing that Hungary (with Poland) would most likely not accept its inclusion? And, finally, what are the implications (to European political discourse) of having to further negotiate a crucial budget plan including a recovery mechanism that is necessary for the Union's economic recovery from the pandemic?

2. Historical background

This section will discuss the history behind both the inclusion of the term “rule of law” in the articles of the Treaty on European Union, along with the history of EU-Hungary relations and the Hungarian legal system. For the purposes of the analysis presented in this thesis it is important to cover the historical base for the issue of the rule of law and previous developments in the EU-Hungarian relations—Furthermore, it is important to know about the legal system of Hungary, from its foundations up to and including the most recent changes to the constitution of Hungary.

This collection of historical base facts about the previously mentioned issues that are present in this paper will serve as a fundamental part of understanding the presented issue as a whole. However, it is not necessary to delve deeper into, for example, the history of the Hungarian nation to firmly grasp the presented issues – despite the occasional use of historical Hungarian cultural icons as nationalistic symbols, analyzing such aspects of the nation-state’s political discourse is beyond the scope of this research. Moreover, it is not necessary to explore the EC/EU-Hungarian relations from earlier than the time Hungary officially joined the Council of Europe in 1990 – at this point the Hungarian Communist Party had dissolved, and the Hungarian state was free to form new political relations with the European Communities.

2.1. Rule of law in the EU

Rule of law is written into the Treaty on European Union, effective since 1993 (henceforth TEU, also known as the Maastricht Treaty), specifically its Article 2. The Article 2 states that “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.” (Article 2, 2012) As a core part of the treaty founding the European Union – and part of the common provisions most integral to the treaty itself – Article 2 lists the values upon which the EU is founded on. The rule of law is also mentioned in the preamble of TEU, first as a universal value developed through the “cultural, religious and humanist inheritance of Europe”, second as a principle that the heads of state of each ratifying party confirms their attachment to. TEU therefore sees the rule of law as one of the universal values of Europe, and as one of the principles that holds up the legitimacy of the European Union.

It may also be true that the law experts and officials who drew up the treaty take the clarity of the concept for granted, as it is given the status of a universal value that has developed through time and is not technically defined in a single document. Another core value of the union mentioned in Article 2, however – the value of human rights – *is* tied to a defining document, the UN Universal Declaration of Human Rights ratified in 1948. Drawing on said declaration, the European Convention on Human Rights was drafted, and every European country excluding Belarus (and Vatican City) has ratified it. This is a reason why invoking the term “rule of law” or lack thereof in assessing the actions of a Member State of the EU has its problems; although, for example, Article 7 lists procedures linked to the breach of values stated in Article 2, not all of these values are as well defined as human rights.

Magen (2016) writes that “no provision of the treaties or EU legislation ever defined what is actually meant by the ‘rule of law’ or how the term relates to the other foundational values listed in Article 2” (p. 1051), and he is certainly not the only one finding the term ambiguous. Ellis (2010) goes on to say that the term “rule of law” has some elasticity in its meaning, and that this causes it to be so universally endorsed as a value internationally. It is no surprise that politicians and lawmakers want to give the public a picture of themselves supporting and upholding the law, but this does not mean that invoking the “rule of law” would have the same meaning in every context. Despite the lack of a clear, universally (or even EU-wide) accepted definition for the term and value intrinsic to the rule of law, it is clear that the term is still widely used. Smith (2019) writes about a rule of law crisis in the EU, and states that some EU Member States have begun to test the limits of when the rule of law value has been broken enough for the Union to intervene, at least partly on the account that EU institutions have in a sense used the term arbitrarily.

Additionally, Smith (2019) writes about three approaches to the rule of law in the Union: the power-limiting norm, a tool of integration, and the rule of law as a value. They explain that the power-limiting, normative approach to the rule of law is most like the interpretation of the concept in public law: it denotes the prohibition of arbitrariness in legal decisions, the access to impartial courts and the like. As a tool of integration, they explain that the rule of law acts as a principle that promotes efficacy of the EU law procedures and the primacy of EU law, as well as the adherence to the law. Thirdly, the rule of law can be seen as a value instead of a principle – as it is written in, for example, Article 2 TEU – and according to Smith (2019), this degrading of the term from a principle to a value beside other values in the founding text of the EU may be a cause of some contestation of the term among Member States. These three approaches to the rule of law illustrated by Smith additionally

affirm the concerns of other scholars as well that, despite the term's wide-ranged usage in political and legal discourse within the EU, rule of law could use a better, official definition by the Union institutions themselves.

2.2. History of EU-Hungary relations

Hungary has a turbulent past as a Soviet satellite state during the twentieth century and, as a former communist country, there have been some doubts within the European communities of how well the new democracy functions. This part will elaborate the relations of Hungary and the EC/EU, beginning from 1990 when Hungary officially joined the Council of Europe, soon after the communist party became the Hungarian Socialist Party, and the first free parliamentary election was held in the country. Hungary began negotiations with the EU on its entry to the Union in 1998, and the negotiations concluded in 2002, after which the Hungarian major parties agreed to hold a binding referendum on EU accession. After the referendum passed (despite low voter turnout), Hungary acceded to the Union in 2004.

Before its accession to the EU, like any other candidate, Hungary had to go through the negotiation process with the Union. This process includes opening so-called chapters regarding issues (seen from the point of view of the Union) that need to be resolved, and thus the chapters closed, before the accession may officially happen. The chapters are always linked to the body of EU legislation (the *acquis*), which is divided by policy into 35 chapters. It is up to the Council to decide whether a chapter is to be opened, and at the end when all chapters have been closed, the acceding country's legislation is deemed to match the EU *acquis* sufficiently well. In Hungary's case, 5 of the then 31 chapters of the *acquis* were still open in 2002 when its negotiations with the Union concluded. These chapters included some that proved to include difficult reforms for Hungary, such as agriculture and financial and budgetary provisions. (Batory, 2002)

The EU – before Hungary's accession – was committed to the negotiations with most of the European countries that had transitioned away from communist governments. Additionally, Hungary had vied to become closer with the European Communities already during its last communist government, which made accession to the EC, and later the EU, faster. Although the ruling government party

coalitions changed three times during Hungary's accession negotiations, no major setbacks occurred; although from the point of view of Hungary its accession process beginning from 1994 might have seemed sluggish, it acceded to the Union in 2004 with nine other countries as planned. (Batory, 2002)

Beginning from the 1990s, the EU was dedicated to expanding towards the central and eastern European countries, many of which had ended up in a power vacuum following the fall of the Soviet Union. Hungary was no exception, although its former communist government had already gotten closer to the European Communities before the democratic transition of Hungary. The EU was able to pressure new Member States such as Hungary, and their governmental institutions, to adapt to the changing political and economic climate of Europe. Nonetheless, the amount of political pressure from EU was higher during the pre-accession period than it could ever be after. (Ágh, 2015) Additionally, already during the EU accession negotiations of Hungary, in a European Parliament briefing on Hungary and the enlargement of the Union, the prime minister Viktor Orbán was mentioned to have received criticism on his attempts on media control. (European Parliament, 2000) Orbán served as prime minister during the years 1998-2002, but his party, Fidesz, lost the elections of 2002 and 2006. Orbán has been elected prime minister three times since, though, and has been serving again since 2010 – with similar media control accusations following him and his party to these recent terms as well.

Aside from the mention of criticism on attempted media control in Hungary, the European Parliament briefings on its accession also include some other similar remarks on issues that would threaten democracy or human rights in Hungary. For example, the 2000 European Parliament briefing mentions another report by the European Commission that states that Hungary still has to resolve some issues regarding the situation of Roma people, as well as strengthen its efforts to curb corruption. (European Parliament, 2000) Especially the remarks on media control are comparable to more recent pieces of criticism from EU institutions towards the Hungarian government. During the coronavirus pandemic, in May 2020, Orbán and the Hungarian government were criticized after enacting an emergency law to allow Orbán to rule by decree until the emergency law is revoked. The emergency law also criminalized stating and spreading false information about the pandemic and government efforts to fight against it, which was seen as excessive as well as ambiguous, and possibly endangering freedom of expression. (Zalan, 2020)

In conclusion, Hungary began nearing the European Communities already during its last communist government, and as such made it easier for the country to eventually negotiate its way into the Council of Europe. The country was regarded as a textbook example of a democratic transition at the time it started negotiating with the EU about its accession to the Union, and had few problems that proved difficult to solve preceding accession. The EU certainly had its role in pressuring Hungary in its political and economic reformations, and in fully transitioning into a democratic republic; Risse (2009) states that the EU has, with the carrot of Union accession, been able to interfere in the development of its neighbouring countries domestic institutions and legislation in a profound way. After a country has acceded to the Union, though, the EU is not able to interfere as radically anymore, as the possibly biggest incentive for the country to comply has gone away. Hungary exists in this state of a new democracy that never fully liberalized yet, and despite benefiting monetarily from the Union, is opposing an increasing amount of EU policies.

2.3. The Hungarian legal system and its history

Hungary passed a constitutional reform in 2012, aided by the supermajority of Fidesz, the party led by the current prime minister Viktor Orbán. The new constitution of Hungary, the “Fundamental Law”, is also a noteworthy part of the rule of law debate between the EU and Hungary, and thus a part of what is called the rule of law crisis in the EU. This is because the constitution and its amendments are seen to weaken checks of power for the Hungarian government especially by way of judicial reform and undermining judicial independence.

Barker and Lorman (2018) write that as the new constitution (the Fundamental Law) came to force in 2012 in Hungary, Orbán hailed it as a revival to the Hungarian nation, whereas opposition parties called the law a joke. Jakab (2018) claims that the new constitution largely follows the regulatory system of the old constitution, and in total, the Fundamental Law and its amendments include partial improvements and partial worsening. This, however, does not reveal much about the details in the new constitution yet. It is the details in the “worsening” part that would interest, for example, someone in the Human Rights Watch or the European Commission. Jakab (2018) mentions that the law includes numerous *ad hoc* exceptions to, for example, provisions governing courts and churches, and that even some of the exceptions were later amended. They also write that during this process, many of the experts in constitutional law left the process, which led to a lack of pressure to restrain the government from adjusting state power. Jakab (2018) further shows example charts of both the

number of new laws passed and the time between submitting a legislative bill and promulgation of the law during different governments, both of which show that Orbán has passed laws as a power politics move.

The first reason for drafting the new constitution of Hungary is, however, simple. After Hungary fell under Stalinist ideology and became a Soviet satellite state, a new legal framework and written constitution were adopted in 1949. This same constitution was in force until 2012, albeit rewritten for a significant part during the 1989 negotiations which led to Hungary declaring itself a democratic republic. This partly rewritten constitution was not meant to be a permanent solution, but nothing had been done about it until the Orbán-led government from 2010, because an earlier attempt in 1994-95 to draft a new constitution had failed. The rewritten constitution had already successfully facilitated a democratic shift, a creation of a multi-party system and a market economy. Barker and Lorman (2018) also write that only one sentence had remained unchanged from the 1949 constitution: the capital of Hungary is Budapest. Orbán had, however, also stated his opinion that the communist constitution should not be recognized due to it originating from tyrannical rule (Barker & Lorman, 2018), and that the traditional perspective he holds is that the historical constitution (which he wants to honor with the Fundamental Law) consists of all the written and unwritten regulations that have made Hungarian society function since its beginning. (Magyarország Kormánya, 2018, as cited in Barker & Lorman, 2018)

The Fundamental Law explicitly refers to the historical constitution of Hungary, and describes it as an integral part of Hungarian law. Pócza (2018) writes that the Fundamental Law “implicitly presupposes that the text of the law is *only one part* of the Hungarian constitution: this is why it is called a ‘Fundamental Law’, and not a constitution.” (p. 214) This, in his view, causes a paradox in which the text that should be the ultimate reference point for constitutional debates in Hungary instead phrases itself in such a way that causes ambiguity. He also states that confusion exists as to what exactly the historical constitution is, and what unwritten legal norms spring from it.

The legal order in Hungary is otherwise, in the words of Jakab (2018), rule-fixated in the sense of understanding law as only the written rules or a system of rules, instead of understanding the whole practicality of the law, discourse surrounding it and its symbolism. He also mentions, however, that this rule-fixation is mainly a characteristic of Hungarian lawyers, and that the problems in the

Hungarian legal order are otherwise caused by political decisions and cultural factors. Jakab (2018) also writes that it is a characteristic of Hungarian, but also more generally post-socialist lawyers and lawmakers, to not only primarily focus on the part of the law about rules, but also to proudly ignore all other aspects of law (such as constitutional narratives; asking what is the purpose of the constitution). It may, then, be that the understanding of the rule of law discourse is fundamentally different among the Hungarian government compared to how the EU institutions understand the rule of law. If one is fixated on the written rules instead of the values behind them, for example, constitutional narratives such as the constitution having a purpose of restricting state power or guaranteeing human rights, the perspective of the EU may feel alien. In the perspective of the Union, values such as prevention of abuse or misuse of powers and non-discrimination are embedded in the quasi-constitution that is the founding treaties of the Union, thus affecting the legal order as a whole. The perception of law may not be the same in Hungary.

3. Discursive spaces of the EU institutions and the Hungarian government

An integral part of this study is to create a base for the analysis, and laying out details about the discursive spaces of the EU institutions and of the Hungarian government is important. The texts that are to be discussed in this paper are archetypal to written and spoken texts of politicians working for the EU institutions (especially the European Commission), and in the government of Hungary. Hence, it is useful, and indeed even mandatory, to discuss what topics of political discourse are pertinent to these two discursive spaces to distinguish them from each other. In this paper, the concept of discursive space is used to characterize arenas of information flow that create distinct spaces of political discourse; these discursive spaces (of EU institutions and the Hungarian government) have their own history, and create their own knowledge. This section will discuss in some detail these discursive spaces of EU institutions and of Hungarian politics – or rather, the Hungarian political arena dominated by the Viktor Orbán government – both as separate entities, and as systems of knowledge that interact with each other and in part create the developing rule of law crisis that this study examines. Lastly, the focus must be narrowed down in avoiding the need to describe the whole discursive space of the institutions of a massive, supranational and ever-changing entity. Specifically, this section aims to, first, create a basic picture of both objects of interest in order to explain some systemic factors that contribute to the discourse created within these spaces. Second, some driving ideological forces will be explored especially in the case of Hungarian political discourse. Finally, this section will discuss previous crises and problematic policy discourses that have, in particular, set the scene for the rule of law crisis between the EU and Hungary.

3.1. Discursive space of the EU institutions

The discourses of the European Union have moulded over time to what they are today throughout the creation and expansion of the European Communities which later turned into the EU. The Union itself is also comprised of 7 core institutions, as well as dozens of smaller institutions dedicated to specific areas of governance in the Union. The history of the Union coupled with a complicated system of governance – and a multitude of institutions that both work with each other as well as occasionally vie for more power and control – makes for an intricate web of political discourse. The Treaties of the European Union, which form a part of the EU “acquis”, can be said to be one of the larger dictating forces behind the development of EU political discourse. This is especially because the Article 2 TEU lays down the fundamental values of the Union, and thus guides the decision-

making process of every institution. The core values of the Union therefore affect the direction in which political discourse moves within the Union. The *acquis* also holds within it, for example, case law of the European Court of Justice (ECJ), declarations and resolutions adopted by the EU, and international agreements that the EU has concluded. Another considerable force behind the development of a “discursive space of the EU institutions” is simply the social and ideological development within, first, the European Communities, and later the EU – as both have simultaneously expanded to include more sovereign nations that inevitably influenced the development of both.

The Articles in the EU founding treaties create a base for both the relationship between the Union and its Member States, as well as for the roles of each institution. This base is logically also a part of EU discourse and contributes to the whole of the discursive space in question. As every Member State along with their governments, every appointed judge in the ECJ, every commissioner and every member of the EU parliament is formally required to adhere to the EU treaties, their actions become a part of the discursive space as well. In the provisions on the institutions of TEU the institutions, their composition and functions are described, which is the legal base upon which the institutions sit.

A more specific part of the EU institutions’ discursive space that is of interest in this paper pertains to both the new long-term budget (the Multiannual Financial Framework) as well as the EU rule of law issues (since the rule of law clause was attached to the Multiannual Financial Framework). Both of these are a part of the larger whole of EU discourse, but must be described as separate entities for it to be clear which part of the discursive space of the EU institutions this study will attempt to examine closely. Georgiev (2020) explains that economic inequality caused in part by the economic and monetary policies of the Union, as well as the internal market. He further states that “measures of solidarity to reduce and eliminate economic and social disparities and inequalities need to be taken in the whole of the EU” (Georgiev, 2020, p. 288). These inequalities, which have only grown since the 2008 financial crisis, are therefore a large part of what the Commission attempts to solve any time a new multiannual budget is negotiated.

Additionally, the rule of law crisis in the EU affects both the negotiations on financial frameworks as well as measures the institutions attempt to implement in pressuring Member States to adhere to the values stated in the Treaties. Beside the values in Article 2 TEU and the mechanisms linked to Article 7 TEU (prevention of the breaches of fundamental values by a Member State), another part of the

rule of law discourse within the EU institutions is the EU Charter of Fundamental Rights (CFR). Jakab (2016) argues that the best method to enforce the rule of law within the Union would be to creatively reinterpret the Article 51(1) of the CFR. Article 51 CFR itself is part of the Charter's general provisions, and its task is to determine the scope of the charter. Jakab (2016) writes that a literal interpretation of the Article 51 CFR requires EU law to exist in an area where the Charter would be applied, and restricts its use; however, he states that this interpretation of the article not only contradicts existing case law of the ECJ, but also the rest of the Charter itself. He continues by explaining that Article 53 CFR states that the Charter "cannot lead to a diminished level of fundamental rights protection" (Jakab, 2016, p. 192). The interpretations of the articles within the Charter are therefore, logically, a key piece of EU discourse in determining the ways in which the rule of law crisis will be alleviated.

Lastly, the Article 7 TEU and the proceedings it contains have been a large part of the rule of law discussion/arguments in the EU since the Article 7 was invoked against both Hungary and Poland. Bugarič (2016) explains how Hungary's violation of the values listed in Article 2 TEU lead to the proceedings against them, but also that the Article 7 TEU proceedings are seen as a political move on the one side, and seeing that actual implementation requires unanimity, almost impossible to use on the other. This part of the EU political process regarding the rule of law is up for debate any time Article 7 is on the table; it is simple to support Article 7 proceedings against a Member State because of the lack of concrete consequences.

All in all, the part of the EU institutions' discursive space this paper is interested in consists of the discourses surrounding the rule of law crisis and the political/legal debate surrounding it. Much of the text produced by the institutions regarding the topic is generated by the European Commission, with the Council and the Parliament acting as the democratically elected officials, who have implementation power of any solutions in the end. Both the Treaty on European Union and the Charter of Fundamental Rights play a role as the legal foundation of the rule of law debate, and interpretations drawn from both texts are, in the end, important in determining the direction the rule of law debate moves towards.

3.2. Discursive space of the Hungarian government

The current Hungarian government is led by Viktor Orbán, who became Prime Minister for the second time in 2010 (he was previously Prime Minister during 1998-2002), and has been the Hungarian Prime since. The financial crisis of 2008 preceded his government and partly aided him in garnering support, and during his tenure the EU has faced a migration crisis, and a rule of law crisis in many ways caused by the actions of Orbán himself. Orbán can be said to embody the Hungarian government and its political views as a whole, which is further evident from the emergency powers granted to him during the coronavirus pandemic in 2020, which allowed him to rule by decree for the duration of the emergency law. Statista (2020) shows in data from a yearly survey measuring the popularity of Orbán since 2013 that his popularity is higher now than at any other point in the graph. It can therefore be assumed that these EU crises and his view of them may have had a part in making him steadily more popular over time. This section will explain some of Orbán's views, as well as construct a picture of the Hungarian governmental discourse.

During the migrant crisis of 2015 Hungary was one of the quickest to react to the situation, in part because of its location. Barlai and Sik (2017) argue that another key reason for the political reactions of Hungary during the time was the decline of public opinion towards the ruling major party Fidesz. This decline in popularity sparked action from the party, and they explain that the party's staff began looking for topics that could swing back the favour of the public – these topics would then include the possible reinstatement of death penalty, as well as xenophobia. Categorising all immigrants as parasites, and alleging that the EU wants to settle a large amount of them in Hungary was a discussion topic that would spark reactions from the public. Additionally, creating a narrative of the Hungarian state as a stalwart shield against the coming masses would, then, cause the popularity of the government to rise.

The migrant crisis further caused the Hungarian government to first tighten border security on its borders with Serbia and Croatia, and later containing migrants in camps. Lamour and Varga (2017) write about this behaviour of populist parties to focus on the state border as a topic of great importance. They assert that the border acts as a discursive resource for leaders such as Orbán, and that by cultivating discourse about closing borders, and using migrants as scapegoats for a multitude of problems, a simple solution is given to a complex problem. A part of the public consequently wants a simple reason for a complex and sensationalized problem – which reveals the practical reason to

use the border as a discursive resource by populist politicians: leveraging power. The migrant crisis was the first EU-wide crisis after the economic crisis, and the first one for Orbán after he regained his position as the Prime Minister of Hungary in 2010. His handling of the migrant crisis and the discourse he cultivated during that time have built the narrative of his government.

Another topic in Hungarian politics related to the migrant crisis of 2015 that cannot be dismissed is the conspiracy theory that Hungarian-born billionaire George Soros would have, through NGOs, been backing the flow of migrants to Europe in order to weaken nation-states. Pintilescu and Magyari (2020) write about how the Orbán-led government painted a picture of Soros as a puppet master attempting to bring masses of Muslim migrants to Europe. Soros has been blamed for inciting protests against the government as well as backing media outlets with a “hidden agenda”, and through these allegations he has been described as an evil mastermind undermining national sovereignty (Pintilescu & Magyari, 2020). Disseminating conspiracy theories about a liberal-minded Jewish billionaire, who backs anti-government protests to weaken Hungary acts as a way of creating an us versus them perspective. This has led to Orbán further disparaging liberalism (he has called his Hungary an “illiberal” state after all), and tightening control on the civil society.

Orbán and his government has also continued to criticize EU during the coronavirus pandemic. They blame EU for a slow rollout of the covid-19 vaccines, and have even made a move to purchase large amounts of another type of vaccine from China despite the Chinese Sinovac vaccine not being approved by health officials in Europe (Hungary Today, 2021a; Hungary Today, 2021b). This is a part of the campaign by Orbán to undermine EU authority and to further sensationalize crises within the Union in order to appeal to his supporters. All in all, the Hungarian government has used EU crises to its advantage in garnering public support. It has used divisive rhetoric in creating a narrative of the EU and George Soros as flooding migrants into Hungary, and further grouping all migrants as Muslims that will weaken European nation-states – and further, it has created a narrative that the EU would be taking Hungarian national sovereignty away, when Union officials have criticized the rule of law situation in Hungary.

4. Description of research materials

The first main point this thesis will explore is the concept of the rule of law in today's European Union. For this reason, a key text to be analyzed is the European Commission's *2020 Rule of Law Report*, which begins with several paragraphs explaining the rule of law, its importance to the EU, as well as mechanisms linked to it. (European Commission, 2020a) The 2020 Rule of Law Report an official EU document discussing rule of law and the Rule of Law Mechanism pertaining to Article 7 TEU, and as such is an important piece of EU political discourse; comparing the surrounding textual information to the rule of law as a term from the 2020 report to earlier EU documents mentioning the rule of law will give insight into its contemporary, rediscovered importance. Further, by analyzing the development of a robust description for the ideal of the rule of law in the EU, it will be possible to more clearly portray different reasons as to why Hungary in particular has been both a target for accusations on undermining the rule of law as well as itself criticizing the EU for the application of the term.

The 2020 Rule of Law Report may not contain much new information to someone closely following EU politics, and has read previous communications by the European Commission – however, it is interesting to analyze the intertextuality within the text, how meanings are constructed in it, and how the Commission attempts to legitimize certain political themes in it. The report may not have legal significance, as communications from the Commission do not have binding power, but the text nevertheless gives insight into how the discursive space of the European Commission is constructed. It also gives insight into what themes regarding the rule of law seem the most important to the Commission, which aspects of the EU definition of the rule of law seem to be mentioned the most, and, for example, what things despite their relevance are *not* mentioned. The Member State this paper is interested in, Hungary, is naturally also a part of the Rule of Law Report, and therefore the text is also a part of the political discourse that happens between the Commission and Hungary.

Hungary, who has been a target of Article 7 proceedings by the EU, cast (and later withdrew) a veto on the 2021-2027 budget proposal of the Union, which had a rule of law clause attached to it. The prime minister of Hungary, Viktor Orbán, wrote in a statement that “tying economic and financial questions to political debates would be a grave mistake, one that would undermine Europe's unity” (About Hungary, 2020). As the Hungarian prime, his word shows the Hungarian government's stance on the issue. Tying the rule of law clause to a long-term budget under negotiation is something the

Union has not done before, and is a part of the ongoing rule of law crisis in the Union. Analyzing the words in the statement by Orbán – as well as other texts related to the same issue – offers insight into how and why Hungary argues against Union efforts to strengthen the rule of law. Viktor Orbán alone does not create the discursive space of the Hungarian government, and so, another text that will be analyzed in this paper is an opinion piece written by the Hungarian Justice Minister Judit Varga on EU Observer. The opinion titled “The EU Commission rule of law report: wrong in so many ways” is the stance Justice Minister Varga has on the issue, and reflects the concerns by the Hungarian government on EU interference.

5. Previous studies

Studies concerning rule of law have mainly been written within the disciplines of law and political science, as well as philosophy. Extensive academic literature exists both about the definition of the rule of law as well as its more practical aspect related to case law. However, studies employing the approach of critical discourse analysis in conjunction with rule of law debates are more difficult to find. Määttä (2007) writes about the EU constitution (and with it, the rule of law principle), from a critical discourse analytic perspective and mentions that few critical linguistic studies of the EU constitution exist. This remains true after over a decade, but with good reason: the EU constitution was not ratified by every Member State, so the ratification process ended, and after a reflection period, the Treaty of Lisbon was created in its place. Other linguistic analyses pertaining to the EU, as well as the rule of law have, however, been written.

Rule of law discussion in the EU is not a new phenomenon, and it has been discussed from multiple different angles. It has been argued that the EU uses a misrepresentation of the rule of law as a term and does not, in fact, view the rule of law as an institutional ideal and instead employs the term as a way of shielding the legal order of the Union from internal or external contestation. (Kochenov, 2015; Kochenov, 2016) Rule of law has also been seen as having a reputation of overuse and abuse as a term. Palombella (2020) states that rule of law may be used as an ideal, an abstract value term that is “unqualified good”, but the term might also be used to shroud the exercise of power. (p. 388) The heterogeneity of EU Member States and the lack of a valid effort to enforce the same rule of law standards within compared to without the Union has also been the subject of studies. Grimheden and Toggenburg (2016) point that, while the EU aspires to have effective rule of law oversight within the Union, it lacks the legal means to pressure Member States to comply with its guidelines; additionally, they conclude that the EU should find a way for its rule of law ideal to apply equally to all actors, instead of merely using the term together with a unilateral punitive mechanism.

Beside critical analyses of rule of law ideals and definitions, a multitude of studies on the discourse of EU institutions have also been conducted, although much of the research relating to these institutions handles EU foreign policy. Krzyzanowski (2011) writes about political communication and institutional cultures within the EU. They claim that, as a part of creating a cohesive organizational structure within, for example, the European Commission or the European Parliament, a set of specific, institutional practices are socialized into officials working at said institutions. In

their view, this keeps these institutions working linearly, as well as their gears rolling (which is called “engrenage” in the paper). In another study about the discourse of the European Commission, Martínez Guillem (2015) analyzes two “communications” by the Commission about the immigration policies of the Union. They describe the convention of using “integration” as a frequent term in EU institutional discourse as a discreet word choice between the more loaded words “assimilation” and “multiculturalism”. Both of these studies can also be claimed to border the study of a discursive space of the Commission, but rather focusing on the discursive construction of its discourse.

Additionally, the discursive construction of Europe in EU Member States has also been studied. Cozzolino (2020) writes about Italian austerity measures and their legitimation through the discursive construction of Europe from a Critical Discourse Analysis perspective. The article touches upon the arguably most important aspect of the Union, its economic policies, and specifically how those policies can save Member States from economic crisis. On the other hand, from a Eurosceptic point of view, Europe and the Union may be constructed in a vastly different way. Scholars have linked different EU crises to rising Euroscepticism (Taggart & Szczerbiak, 2018), as well as linking Euroscepticism and populism in general to each other (Zappettini & Krzyżanowski, 2019). Assuming the rule of law crisis has similar compounding effects on the rhetoric and policies of certain Member States as previous crises, such as the financial crisis of 2008 or the migrant crisis of 2015, it can be used as leverage to instigate more animosity towards the Union.

In the case of Brexit (the British exit from the European Union), nationalism, isolationism and Eurosceptic rhetoric paved the way for the referendum to end in a victory for the “leave” vote. (Zappettini & Krzyżanowski, 2019; Zappettini, 2019) In the same vein, the discourse of present Hungarian prime minister Viktor Orbán can be called Eurosceptic, and the rule of law crisis shows how such rhetoric can be fuel to the fire during a crisis of Union policy (although Hungary is not in a situation where leaving the Union would be a viable option economically). Studies on the rhetoric of Orbán have also been conducted. Szilágyi and Bozóki (2015) make a claim that the beginning of Orbán’s political career – and in particular, a speech he held in 1989 at the reburial ceremony of Imre Nagy – deeply affected his rhetoric further in his career, because of the effect his “revolutionary” 1989 speech had. Palonen (2018) also characterizes Orbán’s rhetoric as confrontational and describes the aspects of his populist rhetoric as lacking in underlying ideology, but strong in empty signifiers to create common points, and having a divisive usage of “us” as opposed to the “others”, which is archetypal for populist rhetoric.

In conclusion, studies of rule of law and the ongoing rule of law crisis in the EU are almost abundant, and certain journals, such as the *Journal of Common Market Studies* specialize in research about European integration. Populism and Euroscepticism are themes that generally interest researchers focusing on European politics, but there are still plethora of themes surrounding the rule of law crisis that have not been explored yet. This study, then, attempts to peek at one of those unexplored niches of the crisis by forming an analysis on the discourse surrounding Hungary's use of a veto during the 2021-2027 budget negotiations.

6. Theoretical background and methodology

This paper will draw from the theoretical foundations of Critical Discourse Analysis (CDA) as its main approach and guiding lens for analysis. As the research presented combines multiple facets of politics, law, as well as linguistics, an inherently interdisciplinary theoretical base and methodology is needed to support a robust analysis of the discussed phenomena. Fairclough (2013) states that “What CDA can contribute is a linguistically and semiotically sophisticated but still socially framed understanding of the properties of practices of public dialogue.” (p. 394) It is therefore a fitting perspective to conduct credible analysis on political discourse in different discourse spaces; as an approach it can fit inside itself methods to consider both the logical ways of interpreting speech or written acts as well as the social frameworks within which these texts are produced. Fairclough (2013, p. 394) explains that the three main contributions CDA can make are:

- (a) describing the dynamic structuring of social orders of discourse in ways which locate diverse discursive practices of the public sphere in relation to other discursive practices and to each other, and the tendencies of insulation and flow affecting those locations;
- (b) analysing particular discursive practices (actions) conjuncturally in terms of their selective interdiscursive articulation of practices (permanencies) from across social orders of discourse;
- (c) providing a framework for 'internal' analysis of any particular discursive practice which highlights properties germane to their functioning within the public sphere.

The method of analysis in this thesis will be based on the Discourse Historical Approach (DHA). Reisigl and Wodak (2009) write that an important tool of the Discourse Historical Approach is *triangulation*. By triangulation, a wide range of empirical observations, as well as a multitude of theories, methods and background information are taken into account in the analysis. Triangulation is problem-centric, and the specific problem which is to be studied decides the foci of the observations and dictates the use of background theory. As the research problem in this thesis is centered around political discourse within the EU, specifically between different bodies of the Union and state officials of Hungary, appropriate theoretical framework and methods regarding the topic will be employed. Principally DHA can be divided into three: Firstly, the topic and contents need to be identified from the source material. Next, discursive strategies will be examined, and finally, the types of linguistic realizations relating to the context and setting will be studied. The historical, or diachronic context of the analyzed text may also be explored by finding its place in the larger scheme of the discourses it is pertaining to. Shortly, DHA can be employed without needing to unnecessarily

restrict one's analysis due to disciplinary borders (in this case between linguistics and political science, for example). Due to this inherently interdisciplinary nature, the approach fits the analysis of political rhetoric, with its multiple possible viewpoints.

Triangulation in conjuncture with the method of DHA will be employed in this study by means of combining diachronic and semiotic aspects of the discourses in question to the main analysis. This is done in order to gain a deeper understanding of the topic, and to find underlying historical and symbolic themes pertaining to the texts. In constructing the discursive space of an institution such as the European Commission, or the Hungarian government, the analysis of their discourse must include historical and semiotic considerations; these are vital to producing an analysis of the inherent phenomena and to answer not only "how" and "why" questions on the topic, but also to place the analyzed texts into an imagined 4-dimensional space of all the surrounding political discourse. Not only does this require a multi-part analysis, but it also necessitates the inclusion of aspects from semiotics (particularly relating to textual discourse), as well as a diachronic side. The semiotic analysis is realized in this case as a closer look into the genres and textual signifiers found within the materials, to then piece together the semiotic side of the produced meaning in the analyzed pieces of political discourse. Diachronic analysis plays a part in finding out where the texts in question stem from – how are the same, or similar topics realized in texts by the same institutions in the near history, and what conclusions can be drawn from how the language of said institutions has changed over time.

Another important aspect in the analysis is intertextuality. Political discourse and rhetoric are no different from other genres of discourse in its intertextuality as actors mention of previous texts. Farrelly (2019) writes about a new methodological approach to intertextuality in CDA, and lists absence and ambiguity as key foci in analyzing intertextuality in CDA. Absence, in this case, can refer to the absence of inter-text sources – for example, a political actor can make claims based on something, without mentioning the source of the text the claim is based on. This is closely related to the ambiguity concept of Farrelly, in which it remains unclear in a text whether or not a part of it refers to another text. Analyzing intertextuality may also uncover certain networks of intertextuality, and thus tie into the diachronic and semiotic parts of linguistic analysis as well; metonymy, synecdoches and symbolism found in political discourse can be a part of a network, where different actors refer to each other, or other texts that then become common to the discursive space they occupy.

Finally, to answer some concerns regarding the meaning behind the term “rule of law” in this paper, some context will be provided. While the topic of this study concerns political discourse and rhetoric generally, the analyzed texts more specifically concern an ongoing “rule of law crisis” within the European Union. In the founding treaty of the Union, rule of law is mentioned to be one of the values upon which the union is built – however, the term itself has some elasticity to it, and the 27 Member States all have differing legal traditions and the autonomy to amend their legislation as long as it does not interfere with the EU body of legislation. It is not a new idea that the rule of law as a term is analyzed because of the seemingly arbitrary nature of its value. Shklar (1987) finds there to be two archetypes of the rule of law, the meanings of which have been blurred due to the political context giving them meaning being forgotten. According to them, these two archetypes have come through the writings of Aristotle, and later Montesquieu. Aristotle had simple rule of reason behind his ideas of lawful conduct, whereas Montesquieu had an institutional context to his ideas on the rule of law – specifically as a restraint to governmental agents preventing the abuse of the society. (Shklar, 1987) It can be reasonably assumed that, out of these two, the European Union bases its view of the rule of law rather on the ideas of Montesquieu than the ones of Aristotle.

Furthermore, the Council of Europe does attempt to provide a definition to what exactly the rule of law means in the context of the European Union. However, rather than mentioning any philosophy behind the value of the term, only the practical side of the more literal rule of law is laid out. The Council of Europe (and specifically its advisory Venice Commission) lists four core elements in their rule of law concept: legal certainty, prevention of abuse/misuse of powers, equality before the law and non-discrimination, and access to justice. (Venice Commission, 2014) On top of this list of core elements, the European Commission Rule of Law Report of 2020 also lists media as a factor to the rule of law. (European Commission, 2020a)

7. Analysis

The purpose of this analysis is to explore the discourse between the European Commission and Hungary relating to a veto that was cast by Hungary on the new EU multiannual financial framework of 2021–2027. A few texts both preceding and following the veto will be studied in this section: Firstly, the 2020 Rule of Law report on Hungary by the European Commission, which compiles perceived rule of law issues current in Hungary – and secondly, a statement by the Hungarian Prime Viktor Orbán on the veto vote, as well as an opinion piece by the Hungarian Justice Minister regarding rule of law in Hungary. Albeit highly different stylistically, these three texts showcase the issues EU has with rule of law in Hungary, together with the opinions of the Hungarian Prime and Justice Minister. The texts also feature years of intertextuality pertaining to the subject, and diachronically surround the topic of interest (rule of law debate between the European Commission and Hungary). The structure, language, intertextuality, as well as broader implications of the Rule of Law report of 2020 will be analyzed together with counter-commentary by the two Hungarian ministers Viktor Orbán and Judit Varga with the aim of exploring both sides of the rule of law discussion between the European Commission and Hungary.

This analysis will be divided into two major sections: a section analyzing the 2020 Rule of Law Report on Hungary by the European Commission (hereinafter the Report) – as well as a section analyzing a statement on the Hungarian veto by Viktor Orbán and an opinion piece by the Hungarian Justice Minister Judit Varga. The statement by Orbán has been translated into English, and this analysis trusts the accuracy of the translation. The text by Varga, however, has originally been written and published in English. Common themes in the texts will be the first thing to be explored, followed by a more detailed look from different angles into how the concept of rule of law is portrayed in each text. Nomination and its corresponding predication strategies, argumentation strategies and perspectivisation in the texts will all be examined. Furthermore, the analysis attempts to explore how the rule of law debate between the European Commission and Hungary has progressed diachronically. An additional point of interest is how events, actions and responsibilities are discussed in each text; how the author's role compares to the role given to their opposition or to another entity.

The Report will be examined first, since the other texts tie into it, and answer to the claims made in the Report. As an official document by the European Commission, the genre of the text is different from the texts by Orbán and Varga, but analyzing the Report is vital in understanding the nuances of

the rule of law debate between the European Commission and Hungary. The Report is, of course, preceded by years of rule of law discourse within the European Union, but is the first of its kind in such a format (as of writing this paper, another Rule of Law Report has been published in 2021). As such, it is an interesting focal point for analyzing the rule of law debate. The Report is deeply rooted in the institutional discourse of the European Union, and it does not feature a considerable amount of – for example – explicit perspectivization, symbolism, metaphor or evaluative predication. Hence, it must be approached differently than the texts by Orbán and Varga, by finding implicit and intertextual evidence of the discursive strategies employed by the European Commission.

The second main section of the analysis concerns the veto statement by Viktor Orbán and the opinion piece by Judit Varga. They are both intertextually linked not only to the Report, but to a whole range of previous and later discussions on the rule of law issues in the EU – thus, they are only a part of the whole discussion, but nevertheless contain salient aspects of the debate as a whole. These two texts counter the hegemonic discourse of the Commission: The text by Varga is an opinion piece which attempts to delegitimize the Rule of Law Report, and the statement by Orbán attempts to legitimize the Hungarian veto on the multiannual budget of the EU. Both directly relate to the Report, which is why they are analyzed after it.

All of the texts will be examined by analyzing different discursive strategies explained by Wodak (2009, p. 29.), which are:

- Referential strategy or strategy of nomination
- Strategies of predication
- Strategies of argumentation
- Strategies of perspectivization, framing or discourse representation, and
- Strategies of intensification and mitigation

All in all, the aim of the analysis is to study how the rule of law discussion within the EU is constructed from the perspective of both Hungary and the European Commission.

7.1. Analysis of the 2020 Rule of Law Report

This section will analyze the 2020 Rule of Law Report by the European Commission. The Report is a fairly long document to analyze in close detail, which is why this analysis will attempt to pick out the most salient themes by either frequency of occurrence or by how well they relate to the overall rule of law discourse. The structure of the Report will be examined first, followed by a section on how the rule of law as a concept is constructed within the Report. After this, different discursive themes within the Report will be explored.

First, before continuing with the structure of the Report, it is useful to look at the Commission's introduction to the rule of law situation in the European Union. It is a document directly linked to the Report chapter of Hungary and contains a succinct explanation and definition for the rule of law from the point of view of the EU (European Commission, 2020a). Said definition will then be used as the basis for analyzing how the Report communicates its concerns on the rule of law situation in Hungary.

The introduction to the rule of law report (European Commission, 2020a) starts the definition of "rule of law" by citing Article 2 of the Treaty on European Union, stating that it is one of the common values for all Member States. The definition continues as such:

Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. The rule of law includes principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law.

This definition for the rule of law as it is viewed by the EU mentions the key principles pertinent to the term, the effectiveness and realization of which the Commission has investigated in drafting the Rule of Law Report. This definition is needed to fully understand the points made in the country chapter of Hungary, as it does not directly mention rule of law in the body text – instead mentioning different concerns and it is implied that they are related to rule of law issues.

7.1.1 Structure of the Report

The Report is divided into an abstract and four main parts: I. Justice system; II. Anti-corruption framework; III. Media pluralism; IV. Other institutional issues related to checks and balances. The first three parts explain different rule of law concerns from the Commission towards Hungary in 2020. The first section talks about the state of the justice system in Hungary – first explaining its structure, but also delineating the judicial reforms of the previous decade to some extent. Most concerns regarding the justice system of Hungary are about the independence of the judiciary. Secondary concerns later in the chapter are about the quality and efficiency of the Hungarian justice system. The section on anti-corruption framework in Hungary talks about, firstly, perceived corruption in Hungary. The section is considerably shorter than the first, and mainly breaks down numbers about corruption in Hungary, as well as what kinds of systems are in place to curb corruption and to prosecute suspected corruption cases. Media pluralism is the third main concern of the Report, and the section on it talks about the protection of media freedom in Hungary at a constitutional level, but also explains the practicalities of media freedom in Hungary.

The fourth section of the Report mentions a few concerns that did not directly relate to the previous sections, but that do not warrant their own section. These include, perhaps most importantly, concerns over the use of an emergency law during the beginning of the covid-19-pandemic to give the government the power to rule by decree. Other notable concerns in the fourth section include pressure towards the civil society, as well as hostilities directed against organisations helping immigrants. Finally, the Report ends with the sources clearly laid out in Annex I (as expected from a Commission working document), and with Annex II containing lists of entities the Commission met while preparing the document. Annex II is divided into a list of Hungarian entities and other entities. The organisations and agencies are too many to fully list, but some mentions are more interesting than others considering the topic of this thesis and discourse surrounding the Report. The first list includes the Hungarian ministries of Justice and Interior, the Hungarian Supreme Court and the State Audit Office among others – but also independent organizations, such as Amnesty International Hungary, Transparency International Hungary and Mérték Media Monitor. The second list is about horizontal meetings the Commission had with non-Hungarian international Organisations. Notably (regarding a

few conspicuous themes in the Report), Amnesty International, Front Line Defenders and Reporters without Borders are mentioned.

The first noticeable theme in the Report is that the rule of law issues the Commission perceives in Hungary are framed as *concerns*. Instead of, for example, blaming Hungary for any infractions or directly suggesting that they are doing something wrong, the Report uses *concern* as a euphemism. Surely bureaucrats in the Union may legitimately feel concern for the political situation in Hungary. However, it can be assumed that in the context of the Report the word is merely used as a polite expression in place of something blunter. Three other immediately noticeable themes are naturally the main themes of the first three sections of the Report: justice system, anti-corruption framework and media pluralism. Each country chapter of the Rule of Law Report gets the same treatment – as in, these three issues are investigated and reported from each country in their respective chapters. The interest of this analysis lies in the problems reported regarding each theme (the Commission and Hungary would not have a rule of law debate without them).

The most notable issue raised in the Report about the justice system of Hungary is judicial independence. The power of the Hungarian parliament regarding judicial appointments to the Kúria (the Hungarian Supreme Court) is raised as an issue. Another mentioned issue with judicial independence in Hungary according to the Report is media pressure by pro-government media towards certain judges and lawyers. The cited source for this is a survey from 2019 stating that forty per cent of Hungarian judges had experienced a lack of respect for their independence by the government and the media. Furthermore, the Report cites an example of this media pressure, by stating that pro-government media outlets have criticized “releasing convicts on parole, awarding compensation to Roma children segregated in schools and to inmates complaining about their detention conditions”. Finally, the possibility of re-electing a Prosecutor General for another period of nine years is called into question by the Report. The Report cites a suggestion by GRECO (Group of States Against Corruption) that also mentions a possible loophole of extending an expired mandate of a Prosecutor General by means of blocking the election vote for a new one.

The most apparent themes from the section on Anti-Corruption Framework are the limited prosecution of high-level corruption, perceived issues in political party financing as well as issues with lobbying regulations and “revolving doors”. The Report states that the Hungarian anti-corruption

network “does not include actions in . . . political party financing, asset disclosure, or regulation of lobbying and ‘revolving doors’”. The Report thus implies that there is a high risk for individuals holding political office having vested interests in the private sector. Additionally, the sources of political party income are stated as being vague.

Issues with media pluralism provide a particularly long section in the Report. The most noteworthy theme in the media pluralism section is KESMA (Central European Press and Media Foundation), a media conglomerate established through a merger of more than 470 different media outlets. The Report claims that KESMA will “exacerbate the overall risk(s) to media pluralism in Hungary across several key indicators analysed by the Media Pluralism Monitor”. The worries presented about media pluralism in the Report are generally about government and pro-government independent media outlets economically taking over other independent media, as well as conducting systemic obstruction of the work of other independent media. Besides KESMA, the most noticeable worries presented by the Report are the threat to freedom of expression presented by emergency powers granted to the government during the pandemic, as well as the harassment of journalists by pro-government media.

7.1.2 Construction of the Rule of Law in the Report

Rule of law as a term is constructed in the Report through a few different ways. As mentioned in the previous section, the introduction of the Rule of Law Report offers an extensive definition of rule of law as seen by the European Union. Furthermore, the way it is constructed in the country chapter of Hungary (the main focus of this analysis chapter) is through choices of what the Commission has decided to include in their report.

The body text of the Report chapter on Hungary does not explicitly use the term *rule of law* at any point, instead discussing perceived issues and *concerns* over the situation in Hungary. In a separate document, the methodology for the rule of law report is explained, and in the Report, chapters are structured around the given methodology (European Commission, 2020d). The methodology document includes a table of different topics (justice systems, anti-corruption framework, media pluralism, other institutional issues) and sources linked to them that are divided into comparative sources and country specific sources. The methodology is linked to the Rule of Law Mechanism of the European Union; the annual Rule of Law Reports by the Commission are the foundation of the

mechanism, which, according to the Commission, is a process for “annual dialogue between . . . stakeholders on the rule of law”. (European Commission, n.d.)

The methodology document explains the scope of the rule of law monitoring, which covers four “pillars” (the four main sections of the Report as explained earlier). These “pillars” are, then, divided into sub-topics, and a range of sources of information are used. Much of the monitoring that has taken place before writing the Report relies on EU-internal sources and institutions, with the rest of the *comparative* sources mentioned in the document coming from international organisations. According to the methodology document, each Member State also contributes to the monitoring by providing material relevant to the Rule of Law Mechanism. The document, then, extensively explains what goes into the Rule of Law Reports, including the assessment standards and the involvement of the Member States. In the interest of this paper, the relevant rule of law standards are mentioned to be found in the Venice Commission Rule of Law Check List (Venice Commission, 2016).

The Rule of Law Check List is a comprehensive paper identifying the meaning and features of rule of law as a common European value. It has been drafted by a group of legal experts, it follows a lineage of legal texts attempting to comprehensively define “rule of law” and is divided into five different “benchmark” categories of how the rule of law is realized, as well as explaining some of the challenges to the rule of law. A long history of legal texts debating rule of law precedes the Rule of Law Check List, which is then cited in the methodology for the Rule of Law Report, and the introduction in the Report promptly gives a short definition of the term “rule of law”. Thus, the intertextuality present in the Report chapter on Hungary is quite conspicuous, and the definition of the “rule of law” it leans on comes from a long line of legal debate.

Additionally, media pluralism is included as a section of the Report. This can at first glance seem unintuitive, as media pluralism may be easier to associate with democracy issues (freedom of the press, equal access to information) rather than rule of law issues. Also, media pluralism is not explicitly mentioned in the Rule of Law Check List. However, the Check List mentions the Charter of Fundamental Rights (CFR) as part of the “hard law” associated with it – and Article 11 section 2 of the CFR includes the passage “the freedom and pluralism of the media shall be respected.” (Venice Commission, 2016, p. 57; Article 11 CFR)

Rule of law is one of the values listed in the Article 2 of the Treaty on European Union (TEU Article 2), and during recent years it has been given more emphasis. The context of the Report is perhaps the most telling part of how rule of law is constructed in it. The Rule of Law Check List (2016) states how the Venice Commission adopted the first edition of the Report on the Rule of Law back in 2011, and that the report “identified common features of the Rule of Law, *Rechtsstaat* and *Etat de droit*” (p. 7). At that point the particularities concerning rule of law, one of the basic principles of the European Union, had already been subject to enough debate that it warranted a checklist to evaluate Member States’ adherence to the rule of law. Going some years further, the Commission (2019) published a document regarding a so-called “rule of law mechanism” that would – with the help of yearly evaluation – be used as a tool to increase dialogue regarding rule of law issues, and to prevent backsliding in Member States. The evaluations would, then, also be used to assess whether EU funds should be withheld from a Member State because of rule of law violations. Here is where the Report comes in – a product of a decade of debate on the rule of law in Europe, set in the broader sociopolitical context of supranational legal texts and with the potential use as a powerful tool to threaten Member States with the loss of EU funds.

Ultimately, the text of the Report assumes that the definition of the rule of law is self-evident to the reader. Rule of law as a term is constructed intertextually, through firstly the Treaty on European Union and the Charter of Fundamental Rights – and secondly a series of earlier Commission working documents, the Rule of Law Check List by the Venice Commission as well as material leading up to the Check List. It is written in the context of a mechanism to monitor Member States’ adherence to the rule of law and can be said to contribute to the Commission’s power towards Member States in deciding whether or not there is a reason to withhold EU funds from a Member State due to perceived rule of law issues. Additionally, the Report has added media pluralism among the issues related to the rule of law – widening the scope of the Report to include the Charter of Fundamental Rights. Thus, the Report, while monitoring the rule of law situation in Member States in terms of judiciaries and public sector corruption, also wants to monitor the freedom of the press and equality of access to information.

7.1.3 Referential strategies and predication strategies in the Report

The Report is written in a formal tone, and contains a low amount of explicitly positive or negative evaluations of actors. Essentially, the genre of writing is institutional and has some argumentative

aspects, but the argumentation happens by referring to sources when making claims, which lends some initial credibility to any claims made in the Report. The linguistic style of the Report affects the way nomination strategies appear in the text. The concept of membership categorisation (Sacks, 1992) can be used to identify referential strategies in the text. The two immediately noticeable, albeit for the most part only contextually recognizable categories present in the text are the examiner and the examinee: The European Commission, as the author of the Report investigating Member States takes the role of an examiner – Hungary, the Member State whose government and public institutions are being examined has the role of the examinee. The Commission thus exerts its power over the Hungarian government in rule of law issues by listing concerns over the functioning of Hungarian institutions.

Another instance of membership categorisation in the Report is the way different organisations are used as sources for claims in the text. The Commission has also asked Member States for their contributions towards the Rule of Law Report, and these contributions have been made public. In the Report, the Hungarian contribution is cited, but only referred to once. Only one section containing two paragraphs of the contribution (European Commission, 2020a, p. 10) is referred to in the Report, which makes the role of the contribution essentially non-existent. Inside sources (for example, different EU institutions) as well as sources from non-governmental organisations (NGOs) create the base for almost every claim in the Report – and their role is further expanded by the absence of references to the Hungarian contributions.

The way the Report uses *concern* as an evaluative term is interesting. The Report points to possible rule of law issues and categorizes actors in the text to in-groups or out-groups implicitly by referring to *concerns* by certain entities, for example *the Council of Europe*. All of the concerns that are voiced in the Report are by actors from the in-group of the Commission, whereas the targets of the concerns evidently belong to the out-group (the examinees). There are also instances in the report where a passive voice is used (for example *there are concerns as regards the level of inclusiveness of the legal aid scheme*) when concerns are mentioned, but rather than completely hiding the actor, one can still find sources of the concerns from the list of references.

The most noteworthy causes for these *concerns* in the Report include:

- Possible political influence over the Prosecutor General of Hungary

- Freedom of expression of judges and court presidents
- Party financing in Hungary
- Economic takeover of independent news media sites
- Legal certainty and freedom of expression
- Counterbalances to the power of the Hungarian Government

Overall, the Report manages to keep an objective tone, and does not explicitly assign positive or negative traits to any actors mentioned in the text. Additionally, since the style of the Report is formal and matter-of-fact, there are no noticeable instances of metaphor or metonymy in the text.

7.1.4 Argumentation strategies in the Report

The prevailing theme in the Report is whether or not certain predetermined pillars of the rule of law (defined by, among others, the Venice Commission) are met in Hungary. Much of the text is descriptive and seemingly avoids argumentative constructions in the text. However, some argument claims can be found in the text. The main arguments to be found in the Report are about whether or not an aspect of the rule of law is at risk in Hungary. This section will concentrate on claims that express solutions to rule of law related shortcomings that the Commission has found while evaluating the situation in Hungary, as well as claims of truth made in the Report.

Firstly, the underlying premise of the Report is that, because of the values stated in the founding treaties of the EU, its Member States must adhere to the rule of law. The principle of adherence to the rule of law is attached to the “Rule of Law Mechanism”, of which the Rule of Law Report is a part of. Rule of law, then, serves both as a value (stated in Article 2 TEU) and a power-limiting norm, because Member States can be evaluated and have their EU funds suspended based on it. The Report talks about the shared values of the European Union, one of which is the rule of law, but at the same time treats it as a principle that can be evaluated and used as a power-limiting norm. The underlying premise stems from an initial statement made in the introduction of the Rule of Law Report (European Commission, 2020a):

The European Union is based on a set of shared values, including fundamental rights, democracy, and the rule of law. These are the bedrock of our societies and common identity. No democracy can thrive without

independent courts guaranteeing the protection of fundamental rights and civil liberties, nor without an active civil society, and a free and pluralistic media. Globally, the EU is recognised as having very high standards in these areas. Nevertheless, these high standards are not always equally applied, improvements can be made, and there is always a risk of a backwards step. Standing up for our fundamental values is a shared responsibility of all EU institutions and all Member States, and all should play their part.

Toulmin (2003, p. 86) explains how an argument has both an anatomical structure and a psychological one (likening it to an organism). He explains how an argument can occupy, for example, a number of pages in text and contain multiple phases that ultimately go from an initial statement to a final presentation of a conclusion. The Report is not a single argument in on itself, and much of the text in it is explanatory rather than argumentative, but it contains several claims that use the initial statement made in the introduction to the Rule of Law Report as a warrant premise. The initial statement can be rephrased (matching the context) and shortened to: “Member States should strive to fix possible rule of law issues”. The Report contains arguments where certain rule of law concerns serve as grounding for the argument, while the main idea of the initial statement receives backing of some sort. Some of the argumentation in the Report will be deconstructed in this section with the help of excerpts.

First of the pillars in the Report is the justice system. The Report has a paragraph regarding the prosecution service and how the Prosecution General of Hungary is elected, a part of which reads:

While a number of aspects related to the organisation of the prosecution service have been addressed, some elements still raise concerns. . . . While the independence of the prosecution service is enshrined in law, certain elements of the legal framework led GRECO to issue recommendations to review the rules for appointment of the Prosecutor General in order to safeguard the office from political influence.

Here, the Report mentions *concerns* about some elements of the prosecution service in Hungary. The part about *concerns* serves as the grounding part of an argument (a concern over a rule of law issue). The warrant part is the underlying value premise mentioned at the beginning of this section, which dictates that all Member States should strive to fix rule of law issues. The underlying warrant premise (or conclusion rule) can be called the *rule of law topos*. The *recommendations by GRECO* serve as a backing for the warrant premise. The Report does not state a conclusion to the argument, making it an enthymeme; the conclusion claim itself is implicit in the text – Hungary should follow the

recommendations by GRECO to safeguard the office of the Prosecutor General from political influence in order to fix the rule of law issue.

This example of an enthymeme is certainly not the only one in the Report. In fact, many of the arguments in the text follow a similar structure. Another excerpt from the second section of the Report on anti-corruption frameworks shows the same strategy repeating:

While there is prosecution of high-level corruption in some cases, it remains very limited. . . . According to the Prosecutor General's Office, most corruption-related cases involve public officials, typically tax and customs officials. The fact that there had been no determined action to prosecute corruption involving high-level officials or their immediate circle has also been addressed in the context of the European Semester. While the prosecution service has launched a limited number of corruption-related investigations against members of Parliament from the ruling party, there has been no prosecution of high-level government officials in recent years.

Here, the grounding premise is that prosecution of high-level corruption remains limited (which the Commission sees as a rule of law issue). The *rule of law topos* is, again, the transition to the conclusion of the argument – this time backed by two things: the Prosecutor General's Office as a source and the European Semester having addressed the issue previously. Again, the conclusion is implicit: Hungary should make sure that (possible) high-level corruption is addressed in the country.

The Report does not make claims from an equal standpoint compared to Hungary. The Commission, as the author of the Report, does not practically engage in deliberation with Hungary over perceived rule of law infringements, although it does make some claims that seem deliberative. Rather, it evaluates the rule of law situation in Hungary following a definition of the rule of law given by an inside source in the Venice Commission, and formulates premises based on perceived rule of law issues. Finding parts of argumentation from the Report is not easy due to the style of the text. However, by recognizing that the topos (or warrant in the Toulmin model) that the Report relies on is the notion that Member States should adhere to the mutually agreed principles and values of the Union (specifically the rule of law), a model for arguments in the Report can be formulated. In this model, a grounding statement is given (the Commission recognizes a rule of law issue in Hungary). Then, the *rule of law topos* acts as the bridge between the grounding statement and a conclusion, and

backing is given in the form of sources. Finally, the conclusion is implied, but can be written out as a conditional statement. For example, a full argumentation scheme could be written in the following manner: Hungary does not prosecute high-level corruption, which is a rule of law issue – Member States should adhere to the rule of law – if Member States should adhere to the rule of law, Hungary should prosecute high-level corruption.

7.1.5 Perspectivization and framing strategies in the Report

As established before, the European Commission acts as an “examiner” in the context of the Report. The Commission does not position itself in any other explicit, linguistic manner (does not refer to itself or use deictics), but its perspectivization strategies may be evaluated through the way it refers to other actors in the text. The framing of the Report becomes apparent from its introduction. The introduction boasts about European values and their importance, and explains the new European Rule of Law Mechanism, which is supposed to “strengthen the values of democracy, equality, and respect for human rights”. The Report, then, is practically the extension of this mechanism – and used to evaluate Member States regarding their rule of law issues. This framing of the Report emphasizes European cooperation as well as a common commitment to enforce European values. Practically this common commitment entails sanctioning Member States where rule of law backsliding is deemed to have happened. The Report presents itself as a tool for guidance, but it has a more assertive edge to it as well.

From the nomination and predication strategies used in the Report one can infer which actors belong to the in-group of the Commission, and on the other hand, which actors belong to the out-group. In the case of perceived rule of law issues discussed in the Report, the Commission uses directive expressions in conjunction with the actors of the in-group. For example, when expressing concern over the independence of the Prosecutor General of Hungary, the Report mentions GRECO, and how it has *issued recommendations* to Hungary. Similar predications attached to the in-group actors include *voiced concerns*, *raised concerns* and *published alerts*. The Commission does not directly give recommendations or use directive language from its own position. Rather, it mentions these actors from its in-group and mentions the directive predications given by them to the out-group (Hungarian institutions that are on the receiving end of these directive expressions). Furthermore, the Commission seems to avoid hard language and predication that might be perceived as ordering. All in all, the Commission distances itself as an actor in the text, and rather describes the actions of others:

actors such as GRECO and the Council are expressed as directive actors and the in-group, contrary to the out-group (the Hungarian Government and public institutions) that are on the receiving end of the *suggestions* and *concerns*.

7.1.6 Intensification and mitigation strategies in the Report

As Reisigl and Wodak (2009, p. 113) explain, mitigation and intensification strategies are ways of “modifying the illocutionary force of utterances in respect of their epistemic or deontic status”. Intensification happens by, for example, making generalized inferences from inadequate data (epistemic intensification) or claiming normative necessity with insufficient justification (deontic intensification). Mitigation happens by, for example, attempting to weaken the authority of knowledge (epistemic mitigation) or backgrounding information tied to normative obligations (deontic mitigation).

If these strategies are present in the Report, they are subtle. It is an institutional text, written in a formal style and refers to a large number of sources – epistemic intensification or mitigation might happen in the text if one supposes that a certain theme is either over or underrepresented in the source materials of the Report. The Report refers to working documents by other European institutions, reports from non-governmental organizations as well as documents handed in by Hungary that answer rule of law related questions. The Commission hardly refers to the Hungarian contributions in the Report, relying instead on other sources for information regarding the rule of law situation in Hungary. In a way, this can be considered epistemic mitigation, assuming information given by Hungary could have been contrary to information from other sources. However, this is not likely the case – the two documents containing the Hungarian contributions (European Commission 2020b; European Commission, 2020c) only spell out facts about the Hungarian court system, anti-corruption framework and regulations regarding media pluralism. Facts contained within the Hungarian contributions are partly referred to in the Report by referring to legal acts themselves, or the same information has come from another source.

7.1.7 Diachronic analysis of the Report

This section will explore how the Report is situated within a timeline of texts by the European institutions. The Rule of Law Report of 2020 was the first of its kind, but texts regarding the rule of

law as a value, as a legal principle and as a part of the overall European Union discourse have been published long before the Report. In fact, by linking texts to each other, it is definitely possible to trace a timeline from the Rule of Law Report to the founding documents of each of the European Communities. However, that would be counterproductive, and instead this section will look at the texts directly linked to the Rule of Law Mechanism, as well as some of the texts where the European institutions first acknowledged an issue with rule of law as a term. The point of this part of the analysis is to trace how the discussion about the rule of law has evolved in the institutional discourse of the European institutions.

Firstly, the texts directly linked to the Report. The Report uses a methodology laid out in a separate document. This document (European Commission, 2020d) contains the methodology and scope for the Report, as well as the standard and type of assessment, among other things. The methodology document refers to the 2019 text *Strengthening the rule of law within the Union – A blueprint for action* (European Commission, 2019), which in turn was one of the catalysts for the new Rule of Law Mechanism. This document refers to a survey sent to citizens of EU Member States and that a clear majority of them had recognized the importance of the rule of law. The text also underlines the value of the rule of law and recognizes the ongoing crisis of the rule of law within the European Union. Furthermore, in the end of the paper is a breakdown of the new rule of law review cycle and its scope – which eventually led to the first Rule of Law Report. This “blueprint for action” clearly acknowledged a crisis of the rule of law within the Union, and actively promoted rule of law as both a *shared value* and something concrete to monitor within Member States.

The *blueprint for action* laid out the scope and review cycle for the new Rule of Law Mechanism, but the definition the Report uses for the rule of law stems from a 2016 document, the Rule of Law Check List by the Venice Commission (Venice Commission, 2016). This document is a comprehensive review of the rule of law, written on the basis on comments by independent legal experts from nine different countries. It lists benchmarks for the rule of law as well as selected standards related to the benchmarks. The Check List was drafted a few years after the Commission first published its *EU Framework to strengthen the rule of law* (European Commission, 2014). The Framework document was published in 2014, after the Commission determined that it needed some sort of tool between the “soft law” persuasive options and Article 7, the “nuclear option” to prevent rule of law backsliding in Member States. At this point, it is fair to say that the rule of law crisis was already present in the Union, as the communication speaks of “protection of the rule of law” as well

as “a systemic threat to the rule of law” (European Commission, 2014). The document reiterates the importance of the rule of law multiple times, which makes it seem like the communication recognizes a disagreement within the Union regarding the meaning and value of the rule of law.

There has been constant progress from the European Commission in particular to make rule of law a more practically understandable concept in the European Union. The communication from 2014 about the (at the time) new Rule of Law Framework is still trying to reiterate the importance of the rule of law multiple times during the text, while calling for practical measures to stop rule of law backsliding in the Union. Further documents after that gradually create an accurate definition for the term “rule of law”, although it takes five years from 2014 for the Commission to finally pitch a plan for action, and make rule of law a practically measurable principle. Framing of the term does not change much during that time, but from the different texts it seems that the meaning of “rule of law” needs to be repeated less over time. Whereas the 2014 communication tries to repeat the meaning of the term, the 2019 blueprint for action repeats the term while seemingly assuming that the reader knows its definition.

7.2. Analysis of the Orbán and Varga texts

This section will delve deeper into a statement given by the Hungarian Prime, Viktor Orbán, following the Hungarian veto on the new EU multiannual financial framework in 2020, as well as an opinion piece written by the Hungarian Justice Minister Judit Varga. These two texts showcase the political rhetoric of the current Hungarian government, and they are pertaining to the opposing policy text examined in this thesis, the 2020 Rule of Law Report by the European Commission. For this reason, these two texts give important insight into the Hungarian side of the ongoing rule of law discussion within the European Union.

First, the structure and contents of these two texts will be laid out, with some emphasis on the more prominent topics found in the texts – these more prominent topics will be more closely examined later. Secondly, different discursive features of the texts will be broken down to pieces: Strategies of nomination, and predication attached to it, argumentation strategies, as well as perspectivization and

intensification strategies found within the texts will be closely examined, each in their own subsections. Finally, the diachronic aspect and possible intertextuality in the texts will be examined in order to create a fuller picture of how and why the two politicians deliver the information that can be found in the two texts.

7.2.1 Structures of the texts by Orbán and Varga

Viktor Orbán issued a statement after Hungary had cast its veto on the new multiannual financial framework by the EU. This statement has been translated into English (and further proofread and corrected). The statement begins with Orbán stating what has happened, which is that Hungary had “exercised its veto over the EU’s budgetary legislative package”. The next five paragraphs list the presumed reasons for the Hungarian veto, with an emphasis first on the way Orbán (and the Hungarian Government) views previous actions by “Brussels”, or in other words, the European Commission. Migrant issues are mentioned in the text, and Orbán pits countries (Member States) which “oppose migration” against countries which “support migration”. Further, the issue of the rule of law is prevalent in Orbán’s statement, with him linking the rule of law concerns by the Commission to migration issues that the Union has faced. The text continues with Orbán describing what values he thinks Hungary and its government have adhered to in the past, and describes his views on Hungary and the rule of law. The statement ends with Orbán stating that “tying economic and financial questions to political debates” is a mistake, and that the Hungarian government requests that Member States “consider and adhere” to the requirement of penalizing Member States on rule of law issues only after a unanimous amendment of the Treaties. The statement by Orbán is a typical political statement, formal in its wording and structure, yet employing clear rhetoric devices aimed at influencing the person hearing or reading the statement.

The text by Judit Varga is notably different for being an opinion piece written for an online newspaper. However, similarities with the text by Orbán may also be found, most clearly in how the rule of law issue in Europe is framed in the text. The text begins with Varga exclaiming how the rule of law report by the European Commission (which will later also be analyzed) was the “wrong report” and “in the wrong place, at the wrong time”. Varga states her opinion that the report in of itself cannot serve as a basis for the ongoing rule of law debate within the European Union. She blames the report for having an arbitrary scope, and that it assumes a generally accepted definition for rule of law exists. The next few paragraphs of the text from the beginning on forward concern different flaws Varga has

found within the rule of law report by the Commission – she lists issues that she does not view as rule of law issues, the fact that the data used by the Commission was outsourced, that the report does not include a mention of minority rights, and that a famous European case of police brutality was not mentioned in the report. The validity and accuracy of these claims by Varga will be further analyzed in a later chapter. Varga then moves on to comparing her own country, Hungary, as well as Poland, to Belgium (where the European Commission is located) and a number of other Member States. Her concerns in the opinion piece revolve around a claim that Member States such as Hungary and Poland are targeted by the European Commission for alleged rule of law violations, when, in her opinion, similar rule of law infractions happen as much in other Member States without the same debate about the rule of law, let alone Article 7 being invoked against other Member States. A further concern Varga brings up in the text is the credibility of sources used by the Commission. Civil society organizations (CSO), she points out, provided a majority of the sources that were used to criticize Hungary for its issues with the rule of law, and in her opinion, this makes for “circular references” and undermines the credibility of the report. Lastly, Varga states that the report was published at an unfortunate time because of tension created by the budget negotiations together with the coronavirus pandemic. After stating these issues, Varga puts into question the motivations behind the Commission publishing the rule of law report as it is, and at the time it was published – she concludes her opinion text by claiming that rule of law as a term is a “tool to advance a political agenda”.

Both the statement by Orbán and the opinion text by Varga carry some similarities, notably that they obviously defend the country whose government they work for, but also that they question the usage of the term “rule of law” in the context where the European Commission uses it. The two politicians see Hungary, along with Poland and possibly some other Member States, as being oppressed by the European Commission for taking a different path with some of their internal issues (most recognizably migration, which has for some years been a Europe-wide issue up for debate). Rule of law, then, is for these two the term invoked when a Member State defends its sovereignty and its people.

7.2.2 Construction of the rule of law in the Orbán and Varga texts

Rule of law is approached in the statement of Viktor Orbán from a few different directions. Firstly, Orbán claims that only countries letting all migrants in are qualified by the EU as adhering to the rule

of law, and correspondingly, countries who protect their borders are not. Secondly, Orbán states that Hungary is a dedicated follower of the rule of law. He supports this statement by saying that current political leaders in Hungary were the same people who fought against the communist regime. Additionally, he continues by claiming that rule of law has been turned into a political and ideological weapon, and that rule of law is not examined through objective criteria.

The first claim by Orbán is a part of the larger migrant discourse and is certainly not a new claim from a political leader in Europe. For example, Barlai et al. (2017) write about European perspectives to the migrant crisis from 18 different European countries, and Žúborová and Borárosová (2017) write about migration-related political discourse in Slovakia. Certain migrant discourse themes exist across the board in all of the 19 European countries covered by these two texts. For example, perspectivization and framing are used by both politicians and media, and practically invariably the migrant discourses of different countries also evolve through time due to political agendas and economic situations also evolving. Barlai and Sik (2017, pp. 147-168) write about a “moral panic button” related to Hungarian migrant discourse, claiming that state-controlled media in Hungary have had a chance to harness existing xenophobia as well as contempt towards European elites, and to create support for anti-immigrant and anti-Europe policies. This anti-immigration discourse is something that Viktor Orbán has committed to using in pushing for his policies, and it has included not only inciting fear of terrorism and of losing Christian values, but also blaming European institutions for allegedly forcing a pro-immigration stance in the EU. The position of authority of Viktor Orbán inevitably gives him a solid platform to fuel the anti-immigration discourse in Hungary.

The second claim by Orbán is an easy statement for him to make – it would be absurd for him to say that Hungary is not a country that follows the rule of law. However, his supporting argument is that current political leaders in Hungary fought against communist rule decades ago. It is undoubtedly good progress for Hungary (and all of Europe) that it got its sovereignty back and started building a parliamentary republic during the collapse of the Soviet Union – but having opposed communism thirty years ago is not proof of adhering to current European standards for the rule of law. This claim by Orbán may be him creating a certain narrative directed towards either the EU or Hungarian people about Hungary being a law-abiding nation. On the other hand it might stem from Orbán having a different view (than, for example, the European Commission) of which factors constitute rule of law.

Judit Varga also has a position of authority in Hungary, and it is interesting to look into what she says about rule of law as the Minister of Justice of Hungary. At the beginning of her opinion piece, Varga claims that there is no “generally accepted definition of rule of law” and that the term “remains the subject of serious debate”. She also claims that the Commission does not follow any benchmark documents (regarding the definition of the rule of law). These claims are, at first appearance, an attempt to muddy the waters surrounding legal terminology and the binding legal documents of the European institutions regarding the rule of law. Magen (2016) writes that the European Commission has indeed created a “tangible conceptualization of the term” (p. 1052) and that it is possible to have a consensus on the definition of the rule of law. Having a European definition of the rule of law does not, of course, mean that there would yet be an internationally accepted definition for it – but in the context of the Rule of Law Mechanism it makes sense to use a definition accepted within the European institutions.

Furthermore, Varga makes a remark that media pluralism (one of the pillars used in the Rule of Law Report) is not a rule of law issue. She continues by claiming that issues related to the transparent allocation of state advertising and to public information campaigns are not issues that should be examined in the Rule of Law Report. Additionally, Varga comments that the “protection of the rights of ethnic and national minorities or the national frameworks addressing anti-Semitism are notably absent [from the Report]”. She further finds issues with the absence of a famous policy brutality case in Belgium from the Belgian chapter of the Rule of Law Report, and claims that the Rule of Law Report as a whole singles out Hungary and Poland to punish them using an arbitrary definition of the rule of law. These remarks are all linked to each other, but also distinct. They are similar in that Varga seems to attempt to create a narrative with them regarding an overly broad use of the term “rule of law”. This broadening of the scope of the term is, then, allegedly used as a tactic by the European Commission to single out Hungary and Poland and to punish them for infringement of the founding Treaties of the EU. These claims by Varga are also distinct from each other: Some claims are about issues examined by the Commission that she feels are not related to the rule of law, and thus cannot be used to incriminate Hungary – some are about issues that the Commission has not examined, and that appear to be projection by Varga due to the particular issues she mentions. Anti-Semitism may indeed be an issue in Hungary, at least when it comes to depicting Hungarian-American billionaire George Soros as untrustworthy (Palonen, 2018, p. 317) or creating conspiracy theories about Soros wanting to flood Europe with immigrants (Pintilescu & Magyari, 2020). Additionally, the protection

of the rights of ethnic minorities such as the Roma people in Hungary may be questionable (Schafft & Ferkovics 2017).

The third way in which Varga constructs rule of law as a theme is by attacking the source material of the Rule of Law Report. She claims that the use of Civil Society Organisations as sources, particularly ones that have received funding from the Open Society Foundations (a grantmaking network founded by George Soros), creates “a host of circular references”. Varga claims that the Rule of Law Report is practically written by these organisations because the same organisations can be found as sources for other Commission working documents. Furthermore, she comments on the fact that the Commission has not indicated a way of weighting each source and did not mention filtering circular references, verifying the neutrality of comments obtained or whether contradictory findings influenced the outcome of the Report. She summarizes her opinion piece by stating that the rule of law is “a tool to advance a political agenda”. One can see Varga discrediting non-governmental organisations as sources especially in cases where their funding is linked to George Soros. By drawing suspicion towards the sources used in the Report, Varga perhaps tries to disprove the findings in the Report, or to suggest that rule of law is a term used to specifically further the agenda of the mentioned organisations.

Viktor Orbán and Judit Varga approach the Rule of Law Report in largely negative ways. Rule of law as a topic is framed in both texts as something that is used by the European Commission in an unfair manner to judge certain Member States. Both Orbán and Varga claim that rule of law is used as an ideological tool by the Commission. Orbán associates the rule of law debate with immigration policies, thus bringing migration discourses into play. By claiming that the Commission only views “countries which let migrants in as those governed by the rule of law”, Orbán also implicitly refers to the same topic as when Varga blames the Report for circular references due to many source organisations getting funding from Open Society Foundations. This is because migrant discourses in Hungary often lead at some point to George Soros (who, as mentioned, founded the Open Society Foundations), who has been accused of masterminding an immigration flood into Europe (Pintilescu & Magyari, 2020). In addition to this discernible similarity, texts by both Orbán and Varga also include some other themes that they relate to the rule of law debate. Orbán takes the rule of law debate through a historical lens, when he equates being against communism with following the rule of law. Varga, on the other hand, engages in projection by implying that the Commission does not give importance to the rights of ethnic minorities and addressing anti-Semitism. She also asserts that there

is no clear definition of the rule of law together with the term being contentious, and as such, that the rule of law situations of Member States cannot be objectively evaluated.

7.2.3 Referential strategies and predication strategies of Orbán and Varga

The first part of the finer analysis of the Viktor Orbán and Judit Varga texts is to explore the referential strategies and the predication strategies linked to it in the texts. The texts are written in slightly different styles but are comparable enough that the analysis of the discourse strategies present in them does not necessitate separate sections for each. The relevant nomination and predication strategies for this analysis are ones that clearly categorise actors and actions in either positive or negative ways, or where metonymy or synecdoche are present. Examining these strategies is one of the ways the authors position themselves and other actors in their narrative.

Early on in his statement Orbán uses metonymy when referring to the European institutions as *Brussels*. This is a common way to use metonymy and often used by different media, but while it is common, it also categorises *Brussels* as *them* and Hungarians, whom Orbán represents, as *us*. Hungary is a part of the European Union, Hungarian bureaucrats work for each European institution, and a clear majority of Hungarians answered in polls by Statista (2022a; 2022b) that they would vote in favor of joining the EU again if they had to decide, and that they thought Hungary benefitted from being a member of the EU. In spite of these facts, Orbán wants to create a narrative where *Brussels* is distant and different, or even malicious. Referential strategies of this type are found throughout, for example, populist discourse. Wodak (2015) explains how “ethno-national populism relies on the strategy of presupposing or stressing difference”, (p. 78) which is what Orbán does when talking about *Brussels* and *they*. On the other hand, he refers to his side either as his country, *Hungary* (and *Hungarian Government*), or with pronouns (*our*, *we*). Orbán also talks about *countries* that, then, are qualified by the predication strategy as “us” or “them”. Furthermore, he talks about *the leaders of the current governing parties*. As the Hungarian government is an alliance of the parties Fidesz and KDNP, the leaders of these parties are the ones Orbán is referring to. Though, interestingly enough, some do not consider the government to be a coalition, rather viewing Fidesz-KDNP as a singular entity led by Fidesz and Viktor Orbán (HVG, 2011).

The predication strategies Orbán uses together with each actor that was mentioned show the presupposed positive or negative attitudes towards these actors. *Countries* that Orbán talks about are either *countries which let migrants in* or *countries which oppose migration*. In the same vein, he distinguishes between *those governed by the rule of law* and *those who protect their borders*. Orbán categorises countries in this way, engaging in a “border discourse” that views the borders of a nation as a fault line between “us and them” – in other words, the presupposed homogeneous people of Hungary (or any other nation that Orbán categorises as *those who protect their borders*) and the perceived outside threat (immigrants). Lamour (2021) talks about European border discourses in relation to the Schengen area, and finds that the representation or “border” is both a physical and symbolic boundary that can be exploited by politicians and the media to determine the type of space that is represented. Orbán also does not distinguish between types of migrants and bunches all migration in the same, negative category. Instead of talking about refugees, illegal immigration or labor-related migration, he narrows it down to just *migration*. This may be due to Hungary suffering from the emigration of skilled labor, which makes migration-related issues overall a difficult issue for Hungary and gives a reason for Orbán to negatively address all migrants. However, talking about migration without specifying the nature of it may also simply be a talking point for Orbán.

The *leaders of the current governing parties* Orbán mentions *fought out democracy in the face of the communist dictatorship* according to him. This analysis will interpret *fought out* as *fought for*, because it makes more sense (*fought out* might be a quirk in translation from Hungarian). As mentioned previously, using the plural *parties* may not be necessary in this case, as KDNP is more akin to a junior partner than an equal to Fidesz. Orbán was indeed working against the ruling Hungarian Socialist Workers’ Party before the peaceful revolution in Hungary. Fidesz was founded as an activist organization for young liberals and grew from a student activist movement to a political party, and Viktor Orbán was its leader since it was registered as a party in Hungary. It is unclear whether any other leaders of the party were activists at the time, and Fidesz has since abandoned its liberal roots. This is, in any case, a way for Orbán to bring communism as a discourse topic into his statement. Szilágyi and Bozóki (2015) write about the rhetoric of Viktor Orbán and state that, after a speech he held at the reburial of Imre Nagy in 1989, he has constantly attempted to recreate a similar speech situation. Therefore, even in a statement such as the one used for this analysis, one could see traces of discourse topics that he resorts to in speeches for an audience, and talking about the past fight against communism is one of them.

The referential strategies used by Judit Varga are in some ways different than the ones by Viktor Orbán. Varga refers to *the Commission* a total of sixteen times in her opinion piece, making it the main actor in the text (she also mostly writes the Commission without capitalization, but that may be due to English not being her native language). Individual members of the Commission, *Věra Jourová* and *Didier Reynders* are also mentioned. However, the word *we* is only used twice in the text, and Varga does not refer to her own position as much in the text as Orbán does in his statement. Rather, she makes claims about the actions of *the Commission*, other countries such as *Belgium, Denmark, Luxembourg, Netherlands* and *Finland*, the *Council of Europe* as well as *civil society organisations* and *other international organisations*. Besides these actors in her text, she also names and attaches her interpretation to *the report* and individual parts of it (*media pluralism, media freedom, corruption, the independence of the Hungarian prosecutor's office*). Her own country, *Hungary* – as well as *Poland* – are mentioned, both in a context that make them look like victims of oppressive policies by the Commission.

The most noticeable predication strategies used by Varga are attached to how she portrays the actions of *the Commission*. Varga makes numerous claims about the actions of *the Commission* – with either implicit or explicit negative traits assigned to every one of them. Only the first statement about *the European Commission* and that it *published its first rule of law report* is a neutral, factual statement (but also the only time she does not shorten the nomination to just *the Commission*). Firstly, Varga claims that *the Commission does not even follow any benchmark documents*. Here *the Commission* is portrayed as conducting amateurish evaluation on the rule of law issues of Member States, because according to Varga, it does not use an accepted definition of the rule of law. Instead, she claims that *the Commission both reduces and extends the scope of the concept*.

Secondly, *the Commission does not consider [police brutality] to be a rule of law related issue*. Here, Varga mentions a famous police brutality case where a Slovakian person died in Belgian police custody in 2018. Varga explicitly assigns a negative image to the Commission and attempts to evoke (in the reader) negative feelings towards the Commission. Next, she writes that the Commission *claims that it evaluates all Member States based on uniform and objective criteria*. Instead of saying that the Commission does, indeed, evaluate Member States' rule of law issues in such a way, Varga suggests that they might not. Additionally, she claims that *the Commission does not have the resources or the expertise to maintain its own monitoring system*. This claim is not backed by anything other than her own view that using external sources makes the Report automatically biased.

Furthermore, Varga writes that *the Commission essentially disregarded our contribution*, meaning that they would not have taken into account the information provided by Hungary in preparing the Rule of Law Report.

7.2.4 Argumentation strategies of Orbán and Varga

The texts by Viktor Orbán and Judit Varga are both in a genre that makes analyzing their argumentative content easier than that of the Report. The text by Orbán is a political statement with argument claims backing an action by the Hungarian government (exercising their veto right), and the text by Varga is a political opinion piece posted online. Both of them are linked to the rule of law discourse of the European Union: The text by Orbán follows the introduction of a rule of law clause into the multiannual budget of the EU, and the text by Varga follows the publication of the 2020 Rule of Law Report and does commentary on it. This section will address some of the arguments in each text, first laying out the whole argument, then deconstructing its parts and exploring the nature of their premises as well as possible fallacies. Instead of trying to fit the argumentation in these texts to a rigid list of topoi, this part of the analysis will attempt to formulate context-dependent topoi that may help to explain the argumentation schemes used by these two politicians. These two texts are too small of a sample to make far-reaching generalizations, but formulating argumentation schemes for each text will be useful in examining how these two politicians view the rule of law crisis. As Boukala (2016, p. 10) explains, topoi offer an opportunity to systemize arguments in a specific context – thus, this section will name certain topoi that explain how Orbán and Varga transition from premises to conclusions.

The argumentation strategy of Orbán revolves around the themes of migration, rule of law, EU funds and perceived unfair treatment of Hungary. There is clear interdiscursivity in the argumentation of Orbán, as the economic and rule of law discussion is complemented by argumentation about migrants, borders and democracy. What Orbán makes abundantly clear is that he has a different view than the European Commission about what adhering to the rule of law entails, and this reflects in his argument premises.

Firstly, some examples of claims surrounding migrants and the rule of law in the statement by Orbán will be examined. Viktor Orbán claims that “Brussels only views countries which let migrants in as those governed by the rule of law”. He follows this claim by saying that “those who protect their

borders cannot qualify as countries where rule of law prevails”. These claims of truth can be viewed as part of a topos of outside threat – the warrant premise of it being that if there is a specific threat, one should do something about it. At the same time Orbán argues about the link between immigration and the rule of law. The Charter of Fundamental Rights Article 18 (2012) guarantees the right to asylum according to the Geneva Convention, which means that giving refugees their proper rights is a rule of law issue. The way Orbán argues this fact, though, is by claiming that protecting a national border means refusing to let refugees through. This is an example of a false dichotomy; Orbán essentially argues that a Member State cannot both protect their borders and treat refugees according to the CFR Article 18.

Orbán also claims that “Hungary, in fact, is a dedicated follower of the rule of law”. He follows this claim by stating that “the leaders of the current governing parties were the people who fought out [sic] democracy in the face of the communist dictatorship”. Here, the premise that ruling Hungarian politicians were pro-democracy and denounced communism over thirty years ago has little to do with being dedicated followers of the rule of law today. This is a way for Orbán to invoke the events of 1989 and the peaceful transition away from the People’s Republic of Hungary and to argue that, because some of the same people who brought about change then lead Hungary now, Hungary follows the rule of law. The most obvious fallacy in this argument is that it is a non-sequitur; the warrant premise does not logically link the grounding to the conclusion. The argument Orbán is trying to construct is this:

1. Hungary transitioned away from communism and started democratic progress in 1989.
2. Current political leaders are the same people who brought about change back then.
3. If current political leaders are the same people who brought change in 1989, Hungary must be a follower of the rule of law.

Orbán makes multiple claims of truth and switches between discourses of immigration, Euroscepticism and the rule of law. Table 1 shows the central claims Orbán makes together with the topoi or fallacies they can be categorized into.

Table 1

Claims by Viktor Orbán	Topoi or fallacies
<ul style="list-style-type: none"> • <i>In Brussels today, they only view countries which let migrants in as those governed by the rule of law. Those who protect their borders cannot qualify as countries where rule of law prevails.</i> • <i>Once this proposal gets adopted, there will be no more obstacles to tying Member States' share of common funds to supporting migration and use [of] financial means to blackmail countries which oppose migration.</i> • <i>The only reason we accepted the compromise in July [the €750 billion recovery instrument] was our dedication to European solidarity and our willingness to offer help so that fellow Member States in financial need can secure the necessary funds.</i> • <i>Hungary, in fact, is a dedicated follower of the rule of law. The leaders of the current governing parties were the people who fought out [sic] democracy in the face of the communist dictatorship.</i> • <i>In the migration-related debates of recent years, rule of law has transitioned into a policial [sic] and ideological weapon from a legal point of reference.</i> • <i>Tying economic and financial questions to political debates would be a grave</i> 	<ul style="list-style-type: none"> • Fallacy of false dichotomy. • Topos of outside threat (there is a perceived outside threat, and thus the national border should be protected). • Fallacy of conspiracy (believing that the European Union or other organizations are trying to flood Europe with migrants). • Topos of victimhood (an action is going to unfairly affect us, so it should not be done). • Topos of solidarity (a fellow nation needs our help, so we should provide it). • Fallacy of non-sequitur (fighting for democracy thirty years ago has nothing to do with the rule of law situation today). • Topos of perceived continuity (the same people who enabled progress in history are still in power, thus progress continues). • Fallacy of irrationality. • Fallacy of inappropriate presumption (Orbán presumes that economic and

<i>mistake, one that would undermine Europe's unity.</i>	financial questions are not naturally linked to political debates).
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Overall, Orbán tries to argue that the European Union is endorsing migration into the Union, and that the rule of law clause is formulated to punish countries that do not accept it. He also argues that Hungary adheres to the rule of law and that the European view of the concept is flawed and weaponized to hurt perceived victims (Hungary and presumably Poland).

Judit Varga also argues against the rule of law mechanism by attacking the 2020 Rule of Law Report. Her argument claims revolve around two main themes: she claims that the Rule of Law Report is flawed from methodology to implementation, and that it was written by organizations funded by George Soros. The main claims by Varga are listed on Table 2.

Table 2

Claims by Judit Varga	Topoi or fallacies
<ul style="list-style-type: none"> • <i>The notion that there exists a generally accepted definition of rule of law that may serve as the basis of a comprehensive review remains the subject of serious debate.</i> • <i>The Commission does not even follow any benchmark documents. In some cases it reduces and in other cases it extends the scope of the concept [of the rule of law].</i> • <i>Protection of the rights of ethnic and national minorities or the national frameworks addressing anti-Semitism are notably absent [from the report].</i> 	<ul style="list-style-type: none"> • Inflation of conflict fallacy (although rule of law can be debated, it does not mean that the legitimacy of the definition by the Venice Commission is questionable). • Fallacy of inappropriate presumption (the Report follows its methodology, which follows the Rule of Law Check List by the Venice Commission). • Fallacy of whataboutism (discrediting the Rule of Law Report because it does not address these given problems).

<ul style="list-style-type: none"> • <i>Such tendentious interpretation of the rule of law results in a focus on a few pre-determined Member States, namely Hungary and Poland.</i> • <i>The Commission questions the independence of the Hungarian prosecutor's office, even though the prosecutor general is not subordinate to any other organ of official and may not be instructed.</i> • <i>It [the Report] refers extensively and repeatedly to certain civil society organisations . . . that have recently received financial support from the Open Society Foundations [founded by George Soros]. The result is a host of circular references.</i> • <i>We now see rule of law for what it is: a tool to advance a political agenda.</i> 	<ul style="list-style-type: none"> • Topos of victimhood (an action is going to unfairly affect us, so it should not be done). • Fallacy of missing the point (the Report expresses concern for a different reason). • Topos or fallacy of association (George Soros founded the Open Society Foundations – therefore organizations it funds distribute false information). • Improper premise fallacy (multiple organizations receiving funding from the same organization does not necessarily lead to circular references). • Topos or fallacy of ideology (debate on the rule of law is reduced to an accusation of furthering a political agenda).
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The argumentation schemes Judit Varga uses revolve around discrediting either the Commission or its sources for the Rule of Law Report, and drawing conclusions based on the premises of faulty sources or faulty methodology. One of her full argument schemes can be formulated as such:

1. Many of the sources used by the Commission for the Rule of Law Report are civil society organizations.
2. The Commission has used the same sources in previous communications, other international organizations referenced in the Report also use the same sources, and most of the civil society organizations referenced have received funding from the Open Society Foundations.
3. If the Commission and international organizations referenced in the Report both use the same sources, the Report must be full of circular references.

Firstly, Judit Varga clearly exaggerates the influence of these civil society organizations (or non-governmental organizations) over the writing of the Rule of Law Report. The Report cites 156 sources, and Varga states that 14 of them were from CSOs. Secondly, it is unclear what Varga means by “other international organizations”, but it may be that she differentiates Hungarian CSOs and Hungarian branches of international CSOs from exclusively international CSOs. Thirdly, the number of grants given to different organizations by Open Society Foundations number in the tens of thousands (Open Society Foundations, 2022), and Hungarian CSOs have typically received modest amounts of money (for example, Amnesty International Hungary received \$25,000 in the year 2020). It is reasonable to assume that Judit Varga makes these claims because of the character of George Soros.

The argumentation strategy of Viktor Orbán as well as the argumentation strategy by Judit Varga share some similarities. For example, both call into question the Commission’s usage of the term rule of law, and do not accept the definition of it used by the Commission. Both also employ a topos of victimhood by implying that, because of the specific foci of the Rule of Law Report, its function is to target and punish Hungary (as well as Poland). Additionally, arguments by both Orbán and Varga include improper premises, where certain facts within their argument premises are either objectively wrong or exaggerated. Overall, both Orbán and Varga attempt to delegitimize the efforts of the European Commission to evaluate Member States’ rule of law situations, as well as legitimize their own position (that Hungary adheres to the rule of law).

7.2.5 Perspectivization and framing strategies of Orbán and Varga

This section will examine the perspectivization and framing strategies employed by Viktor Orbán and Judit Varga when talking about the Rule of Law Report and how Hungary sees it. Deixis, ways of positioning themselves in contrast to the European Commission, framing the theme of the rule of law and certain discourse markers explaining their position will be studied.

In discursive framing an actor uses linguistic devices in order to influence the audience of, for example, a text. Framing is used to construct schemes which are the guidance for audiences to understand and interpret an issue (essentially attempted manipulation of an audience into accepting a viewpoint). For example, metaphors and figurative language as well as similes may be employed in framing (Waller and Conaway, 2011). The statement by Orbán is framed in the context of the

Hungarian veto on the budgetary legislative package of the EU for the time period of 2021–2027. Orbán frames the situation as a protest against the attempt to punish certain EU Member States. Two things stick out as the most obvious framing strategies by Orbán: He calls rule of law an ideological weapon (reification of rule of law into a physical object), and he invokes a symbolic “protecting the border” discursive scheme, essentially stating that the European Commission treats a country protecting their border from an outside threat as a country that does not adhere to the rule of law. He associates the whole discussion about a new rule of law clause with a debate about immigration.

The perspectivization present in the statement by Orbán categorizes actors into the ones that agree with Hungary (countries which oppose migration) and “them” (countries which let migrants in). The same categories are expressed as the deictics “we/our” and “they”, but Orbán does not seem to rely on deictics in his statement. Brussels (metonymy for either the Commission or European institutions in general) belongs to “them” and is framed as an agent that blackmails Member States. The whole metonymy of calling the Commission “Brussels” can be seen as a strategy to distance the in-group of Orbán from the out-group of a European political elite. Furthermore, Orbán engages in an interesting floating between positions of proximity and distance, as he claims that Hungary has had a “dedication to European solidarity” and requests Member States to display solidarity towards Hungary – and at the same time distances himself and Hungary from Member States that may agree with the rule of law clause.

Judit Varga uses a framing strategy that focuses on undermining the authority of the Commission and their Rule of Law Report. Her opinion piece is, like the statement by Orbán, linked to the rule of law debate as a whole and is situated in the context of the rule of law mechanism introduced by the European Commission. The opinion of Varga is dominated by four distinct framing schemes that she uses: She denies the definition of the rule of law used by the Commission, claims that other Member States also do not adhere to the rule of law, attacks the source material of the Report, and calls rule of law a tool to advance a political agenda. These frames are characterized by certain linguistic tokens. Firstly, Varga employs descriptive language to express her opinion on the definition for the rule of law. In her view, there is *serious* debate surrounding the definition, the scope of the Report is *arbitrary*, and media pluralism is *clearly* not a rule of law issue. Secondly, she uses sarcastic expressions in an attempt to delegitimize the Report, for example in these statements: “*Interestingly*, the Commission does not consider this [police brutality] to be a rule of law related issue” – and “*apparently*, however, this [a government dismissing a Prosecutor General] is not a cause for concern

for the Commission”. Thirdly, in an attempt to discredit the source material for the Rule of Law Report, Varga describes that the Report *extensively* and *repeatedly* refers to civil society organizations. Additionally, she calls the referencing in the Report *circular* and questions the *neutrality* and *reliability* of the source materials for the Report. Finally, similarly to Orbán, reification of the term “rule of law” is present in the opinion by Varga, as she calls rule of law a *tool to advance a political agenda*.

Perspectivization in the opinion text by Varga categorizes actors into several different categories of “us” and “them”. First of all, she distinguishes between “victims” (Hungary and Poland) and those that the Commission does not target in the Rule of Law Report (mentioned Member States Belgium, Denmark, Luxembourg, the Netherlands and Finland). Another categorization is apparent from her naming Věra Jourová and Didier Reynders and associating them with negative statements regarding the objectivity of the Rule of Law Report. Both of them are lawyers like Varga herself, and she distances herself (as the Justice Minister of Hungary) from them (Commission Vice President and Commissioner of Justice). Varga does not rely much on deictics, but does refer to herself and whoever reads the opinion piece as “we”, as well as asserts her position with Hungary (for example, by referring to “our contribution”), opposed to the Commission.

7.2.6 Intensification and mitigation strategies of Orbán and Varga

Reisigl and Wodak (2009, p. 118) write that exploring the intensification and mitigation strategies in a text can help identify the ideological positioning of the author. Intensification and mitigation in political discourse can manifest as generalizing from insufficient evidence, backgrounding relevant information or undermining the position of an opponent based on fallacious claims, for example. This section will examine illocutionary points in the texts by Viktor Orbán and Judit Varga, and which kinds of intensification or mitigation may be found.

Viktor Orbán claims in his statement that, because Hungary protects their borders, they cannot qualify as a country that follows the rule of law. His base for the claim is that, because he views migrants as a threat, borders must be protected to not let them in – and because the Commission does not approve of Hungary closing its border from migrants, Hungary does not adhere to the rule of law in the Commission’s point of view. This whole chain of claims is an example of both epistemic and deontic mitigation in the statement by Orbán. He does not specify why the Commission would view migrants

as the main issue dividing rule of law adhering countries from ones that do not follow its principle. He is backgrounding facts about the larger migrant discourse, and also uses migration as a discursive signifier in an attempt to bring certain qualities about them into the mind of the reader. Additionally, he is backgrounding information about the obligations of EU Member States regarding the Common European Asylum System (CEAS).

Orbán also claims that rule of law has been turned into an ideological weapon, and that it should not be used in conjunction with a procedure to penalize Member States, because it lacks objective criteria. Here, Orbán engages in deontic intensification as he argues that rule of law should not be a part of a new procedure by the Commission. He fallaciously claims that there are no objective criteria for evaluating the rule of law situation of Member States. Furthermore, he calls rule of law an ideological weapon – which is essentially claiming that rule of law is just an empty signifier used by the European institutions in their discursive practice. Orbán continues by asserting that unanimous amendment of the Treaties should be required to implement the Rule of Law Mechanism. This is another case of deontic intensification – he perceives Treaty change to be obligatory in the case of attaching special requirements to the budget proposal.

Next, the intensification and mitigation strategies of Judit Varga will be examined. Varga immediately attempts to delegitimize the Rule of Law Report in the beginning of her opinion piece. She claims that the Report is “based on an arbitrary scope” and that the Commission “does not even follow any benchmark documents” regarding the definition of the rule of law. Both of these claims can be categorized as epistemic mitigation, as Varga backgrounds or disavows information about the documents that serve as the methodology of the Report. Varga also claims that the Commission “does not have the resources or the expertise to maintain its own monitoring system” and that the external sources used by the Commission are chosen in a non-transparent and biased manner. This is also epistemic mitigation, as Varga downplays the expertise of the Commission and strongly discredits the source material of the Report without explicit reasoning.

Epistemic intensification is also present in the text by Varga. She points out that the Report does not address the “protection of the rights of ethnic and national minorities or the national frameworks addressing anti-Semitism”. She emphasizes the importance of these issues in relation to the rule of law and thus discredits the Commission for not including them in the methodology for the Report.

Varga also mentions a famous police brutality case, where a Slovak national died in Belgium and that has been investigated by a police oversight authority in Belgium. She writes that the Commission does not consider the case a rule of law issue, which is also epistemic intensification, as she fallaciously puts emphasis on an issue that the Report is not trying to investigate in order to delegitimize the Report.

At the end of her opinion piece, Varga writes that the Report “plays into the hands of those who never genuinely supported European recovery and reconstruction”, and that it thwarts the possibility of a quick agreement to budgetary issues regarding pandemic recovery “by reopening questions already settled in the July European Council conclusions”. She thus calls into question the justification for the publication of the Report, which can be seen as deontic mitigation. Another example of deontic mitigation is the following claim she makes: the Report “certainly did not strengthen mutual trust or a sense of community”. This claim calls upon a perceived obligation of the European Commission to further the mutual trust between Member States.

The intensification and mitigation strategies of Orbán and Varga are mostly based on attempting to delegitimize the authority of the Commission over evaluating the rule of law situation in Member States. Orbán focuses more on invoking the migrant discourse, possibly using migrants as a signifier that creates a certain picture for like-minded people. He also calls for the amendment of the Treaties, supposedly knowing full well that any such amendment in the case of rule of law issues would not pass because of another veto by Hungary. Varga, on the other hand, focuses on discrediting the source material of the Commission. She disregards the methodology of the Report and asserts that it wilfully ignores certain important themes (such as minority rights), and calls to question the justification for the Report due to perceived violation of an obligation to further the trust between Member States.

7.2.7 Diachronic analysis of the Orbán and Varga texts

Both the statement by Viktor Orbán and the opinion piece by Judit Varga were written after the first Rule of Law Report was published and are more or less directly related to it. However, it is interesting and important to this study to look at previous texts by members of the Hungarian government leading up to these two. After Fidesz gained a supermajority in Hungary in 2010, the party chose to authorize the writing of a new constitution for Hungary (which came to be known as the Fundamental Law). The new constitution came into force in 1 January 2012, and by that point, the European institutions

had not pressured Hungary about the contents of the Fundamental Law – which, for instance, was seen as violating the rule of law in terms of the separation of powers (Smith, 2019, p. 568). However, the rule of law crisis would soon escalate. This section will explore texts by Viktor Orbán and other members of the Hungarian Government regarding rule of law in Hungary and leading up to the 2020 Rule of Law Report.

In 16 February 2020, before WHO had declared the covid-19-pandemic, Hungarian Prime Viktor Orbán held a “State of the Nation Address” (About Hungary, 2020). In the address he celebrated the ten-year anniversary of Fidesz gaining a supermajority in the Hungarian Parliament, and the subsequent chain of policy changes that they started. This chain of policy changes included the formulation of a new constitution, which he calls a “Christian, national constitution” in the address. He also claims that Hungarian law is based on Christian values and that the rest of the Europe (excluding Poland) do not understand Hungary because of this. He frames the constitution as a collection of laws that “Brussels” does not understand. This can be seen as a way to prime his supporters to disregard anything the European Commission says about the rule of law.

Judit Varga has also written opinion pieces before the one about the 2020 Rule of Law Report. In 2018, she wrote an opinion piece regarding the Sargentini report, which condemned an anti-democratic turn of Hungary (Varga, 2018). She uses similar discursive strategies in it as she does in her opinion about the Rule of Law Report: she attacks the Sargentini report for factual errors and its use of non-governmental organizations (NGOs) as sources. She calls the report as a whole – in a way reminiscent of Donald Trump – a “witch hunt”. That same year the European Parliament adopted a resolution regarding the Article 7 proceedings against Hungary, and the Hungarian Government issued a note regarding the resolution (About Hungary, 2018). The note denounced the Article 7 proceedings against Hungary, and, like Varga has done in her opinion pieces, attempted to delegitimize the resolution by the European Parliament on ground of it using NGOs as sources for its information.

Going back to 2016, the State of the Nation Address by Viktor Orbán sounds much like the one in 2020. He draws on the migrant discourse and, again, calls “Brussels” an actor that attacks against the sovereignty of Hungary (Kormany.hu, 2016). He also calls the decisions of the European institutions “unlawful” and frames the migrant crisis as a Hungarian fight against the tyrannical decisions of the

European institutions. On May 20, 2015 Orbán spoke to the European Parliament (Kormany.hu, 2015), and although his tone is unsurprisingly more respectful, some themes remain in his speech. Migration was one of the main agendas of the address, but it is also interesting how Orbán refers to the Hungarian constitution. He states that Hungary has been examined through the “x-ray machine of constitutionality” more than any other Member State, and also says that he welcomes the European focus on “law and order”.

Throughout the years before 2020, the Hungarian Government as a whole, and Viktor Orbán and Judit Varga in particular have voiced their opinions clearly about the rule of law inquiries from the European Parliament and Commission towards Hungary. Interestingly, both have kept similar talking points in their speech and writing as are shown in the main data of this thesis. Although the European Commission has constantly progressed their practical measures regarding the rule of law, Viktor Orbán has kept talking about migration as the most serious issue facing Hungary and equating it to a European conspiracy. Similarly, Judit Varga kept the same tone from an earlier opinion piece and attempted to discredit and delegitimize the efforts of the Commission to address the rule of law crisis in the EU, particularly by discrediting NGOs as sources.

8. Discussion and Conclusion

This thesis examined the Rule of Law Report of 2020 (the Report) by the European Commission, as well as a statement by the Hungarian Prime, Viktor Orbán, and an opinion piece by the Hungarian Justice Minister, Judit Varga. These texts were analyzed to explore the discourse between the European Commission and the Hungarian Government regarding the rule of law, and to examine the discursive space they create together.

The most noticeable feature of the Report is that it talks about *concerns* somewhat ambiguously, referring to perceived rule of law issues in Hungary. This ambiguity is a prevailing theme in the Report, as most discursive themes in it are implicit, and some aspects of it can only be understood intertextually. The main focus of this analysis, the term “rule of law” is constructed intertextually in the Report, as the country chapter of Hungary does not include any definition of the term – it must instead be interpreted from documents directly linked to the Report. The texts by Viktor Orbán and Judit Varga are, by genre, more traditional pieces of political discourse. Rule of law as a term in these texts is framed using certain signifiers – Orbán refers to migrants and protecting the border, whereas Varga expresses denial towards any definition of the term. The most noticeable themes in these texts also relate to the way they approach the rule of law discourse. Orbán claims that countries adhering to the rule of law are ones taking in migrants, and Varga attempts to undermine the whole concept by attacking the methodology of the Report.

Referential strategies and predication strategies show how the authors of the texts position actors into in-groups and out-groups. In the Report, one can clearly see a divide between examiner(s) and examinee. The Commission, as the author of the Report, is contextually an examiner of the rule of law situation in Hungary, and thus holds a position of power – and Hungary is the examinee, whose institutions and practices are laid out in the Report. The Report also uses *concern* as an evaluative term, and the in-group of the Commission becomes apparent through references to various concerns by different institutions in the Report. Orbán refers to the Commission as “Brussels” near the beginning of his statement, which instantly applies distance between the European institutions and Hungary. The predication strategy of Orbán revolves around borders, migration and a historical fight against communism; in his view, Hungary has to protect its borders against migrants, and the Commission evaluates rule of law issues based on the acceptance of migrants. The referential strategy of Varga divides actors into, firstly, the Commission as well as Member States that are not “targeted”

by the Rule of Law Mechanism, and secondly, the in-group of only Hungary and Poland. Her predication strategy is to undermine the efforts of the Commission by implying that it does not care about certain emotionally loaded issues that could have, in her opinion, been included in the Report.

The genre of the Report made it difficult to find explicitly formulated argumentation schemes in the text. However, argumentation schemes in the Report can be examined by presupposing that there exists an underlying “rule of law topos” that transfers argument data in the Report into conclusion claims. The “rule of law” topos can be understood as a generally agreed on fact by the European institutions that Member States should strive to fix possible rule of law issues. Conclusion claims in the Report are mostly enthymematic, and must be inferred by context from the data and backing (sources) given in the actual text. The implicit conclusions can be thought of as rule of law issues that Hungary needs to address.

The texts by Orbán and Varga are both from a genre that makes analyzing argumentative content easier than that of the Report. Arguments by Orbán revolve around migration and the perceived unfair treatment of Hungary by the Commission. Orbán employs a topos of outside threat and a topos of victimhood in his main arguments. The topos of outside threat comprises a warrant premise that, if there is a perceived outside threat, the border should be protected. The topos of victimhood, on the other hand, follows this pattern: “if an action is going to unfairly affect us, it should not be done”. Orbán also makes certain fallacious claims to warrant his arguments: he expresses belief in a conspiracy that the EU or other organizations are trying to flood Europe with migrants (fallacy of conspiracy), and his argumentation schemes also contain non-sequiturs and false dichotomies. Arguments by Varga revolve around two main themes: she claims that the Rule of Law Report is flawed from methodology to implementation, and that it was written by NGOs funded by George Soros. Varga also includes the topos of victimhood in her argumentation schemes, but otherwise her arguments are different from those of Orbán. One of her main argumentation schemes starts from a grounding premise of the Commission using NGOs as sources for the Report. She, then, transfers the argument to the conclusion by explicitly stating that references in the Report are circular and that most NGOs that are referenced have received funding from Open Society Foundations (founded by George Soros). Her main argument, thus, contains a fallacy of association – because George Soros founded the Open Society Foundations, Varga assumes that NGOs receiving funding from the foundation distribute false information.

Perspectivization in the Report happens both through the same examiner-examinee continuum that became apparent from the referential strategies, but also through selection into an in-group and an out-group. These groups are differentiated by the in-group being the channel through which the “examiner” expresses concerns and suggestions towards the “examinee”. Intensification and mitigation, however, are practically non-existent in the Report. Orbán categorizes actors into the ones that agree with Hungary (countries which oppose migration) and “them” (countries which let migrants in). Orbán does not rely on deictics in his statement. Varga employs a framing strategy that focuses on undermining the authority of the Commission and the Report. Perspectivization in her text happens by dividing actors into several different categories of “us” versus “them”. She also makes a distinction between “victims” and those who are not targeted by the Commission in the Report. Intensification and mitigation strategies of Orbán and Varga mostly become apparent from their attempts at delegitimizing the authority of the Commission over evaluating the rule of law situation of Member States.

Diachronically, it seems that rule of law as a term has evolved in communications and working documents by the Commission within half a decade. From first being a vague concept that needed definition and reiteration, it seems to have become a ubiquitous term. The Commission seems to take the definition of the term for granted. Furthermore, the country chapter of Hungary in the Rule of Law Report of 2020 does not explicitly mention rule of law at all, instead relying on the context and title to communicate the context of the Report. Previous texts by Orbán and Varga show them applying the same discursive strategies as they do in the statement and opinion piece analyzed in this thesis. Rule of law, for them, seems to be a more distant and hostile concept. Viktor Orbán seemingly connects rule of law issues to migration every chance he gets, and Judit Varga attacks the credibility of the European institutions when they try to evaluate the rule of law issues present within Member States.

This study implies that conceptions regarding the rule of law differ wildly between the European Commission and the Hungarian Government. The discursive space of the European institutions and the Hungarian government regarding the rule of law has evolved over the years, but certain realities have remained the same: the Fidesz-led Hungarian Government does not have agreement with the European Commission over rule of law issues. The scope of this study is not enough to thoroughly

analyze either the institutional discourse of the European Commission or the discourse of the Hungarian Government, and doing deeper analysis on the way Hungarian political discourse influences the whole of EU political discourse – and vice versa – might be fruitful.

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Appendix A

Official English transcript of a statement by Prime Minister of Hungary Viktor Orbán, 18 November 2020

In line with the position communicated during the EU summit this July and in accordance with the veto power laid out in the EU Treaties, the Hungarian Government exercised its veto over the EU's budgetary legislative package.

In Brussels today, they only view countries which let migrants in as those governed by the rule of law. Those who protect their borders cannot qualify as countries where rule of law prevails. Once this proposal gets adopted, there will be no more obstacles to tying member states' share of common funds to supporting migration and use financial means to blackmail countries which oppose migration.

Throughout the debate, Hungary has adhered to a policy of loyal cooperation, predictability and transparency, while always staying open to compromise. Even in spite of the fact that Hungary has never considered treating the economic fallback with joint loans as an adequate solution. The only reason we accepted the compromise in July was our dedication to European solidarity and our willingness to offer help so that fellow member states in financial need can secure the necessary funds as quickly as possible.

Hungary, in fact, is a dedicated follower of the rule of law. The leaders of the current governing parties were the people who fought out democracy in the face of the communist dictatorship. In the migration-related debates of recent years, rule of law has transitioned into a political and ideological weapon from a legal point of reference. Without objective criteria and the possibility of legal remedy, no procedure that aims to penalize member states should be based on it.

In our view, tying economic and financial questions to political debates would be a grave mistake, one that would undermine Europe's unity. Any new procedure aimed at penalizing member states should only be introduced with the unanimous amendment of the Treaties.

We request that fellow member states consider and adhere to this requirement.

Appendix B

Opinion text on the EUobserver by the Hungarian Minister of Justice Judit Varga, 8 October 2020

The European Commission published its first rule of law report last week. Unfortunately, what we got is the wrong report, in the wrong place, at the wrong time. It cannot serve as a basis for any further discussion on rule of law in the European Union.

The report is based on an arbitrary scope. The notion that there exists a generally accepted definition of rule of law that may serve as the basis of a comprehensive review remains the subject of serious debate.

But that is not the primary problem because the commission does not even follow any benchmark documents. In some cases it reduces and in other cases it extends the scope of the concept.

Media pluralism, for example – as opposed to media freedom – is clearly not a rule of law issue.

The same applies to "transparent allocation of state advertising" or "public information campaigns" where – contrary to the commission's position – no well-established European standards may be identified.

On the other hand, protection of the rights of ethnic and national minorities or the national frameworks addressing anti-Semitism are notably absent.

Corruption appears in the report, but the text remains silent on money-laundering where systemic institutional failures have been exposed recently in some member states.

The report on Belgium mentions the so-called Comité P, an external body with authority for police oversight.

However, the report fails to mention that the Chovanec case, where a Slovak national died because of police brutality, has been investigated by Comité P for two years now without any tangible results.

Interestingly, the commission does not consider this to be a rule of law related issue.

Such tendentious interpretation of the rule of law results in a focus on a few pre-determined member states, namely Hungary and Poland.

The commission claims that it evaluates all member states based on uniform and objective criteria. Even if this was indeed the Commission's aim, which is doubtful considering recent statements by commission vice president Věra Jourová and commissioner Didier Reynders, the report is a manifest failure in this regard.

For example, the commission questions the independence of the Hungarian prosecutor's office, even though the prosecutor general is not subordinate to any other organ or official and may not be instructed.

In Belgium, Denmark, Luxembourg and the Netherlands, the prosecutor's office may be instructed by the ministry of justice, even in individual cases.

In Finland, the prosecutor general may be dismissed or suspended by the government. Apparently, however, this is not a cause for concern for the commission.

Hungary and Belgium were subjects of the same number of reports on the Council of Europe's platform to promote the protection of journalism in the period of 2019-2020. The commission's

interpretation? In Hungary there is a "systemic obstruction" of independent media, while in Belgium, intimidation is "relatively rare".

Since the commission does not have the resources or the expertise to maintain its own monitoring system, its report is based mostly on external sources. Its reliability and objectivity, therefore, depend on the selection and quality of these sources, the selection of which, unfortunately, is non-transparent and biased.

During the course of this year, Hungary has provided the commission with detailed analyses to assist the preparation of the report.

The commission essentially disregarded our contribution.

Open Society Foundation sources

On the other hand, it refers extensively and repeatedly to certain civil society organisations (CSO) – in the case of Hungary, 14 sources from 12 CSOs to be exact. Of these, 13 sources come from 11 CSOs that have recently received financial support from the Open Society Foundations.

The result is a host of circular references.

The very same CSOs are the preferred sources of reference of the commission's previous communications and sources of reference in reports by other international organisations that are also used as sources for the rule of law report.

In fact, the report has been written by these CSOs, even the parts that seemingly come from other sources.

The report does not define the indicators to be monitored under the specific issues, nor does it clarify how the commission synthesised the findings.

Was there a weight attached to each source; if yes, how were these calculated?

Did the commission filter circular references? How did contradictory findings influence the outcome?
How did the commission verify the neutrality and reliability of the comments obtained?

The report also comes at a very unfortunate time, as tensions over the budget and coronavirus recovery package negotiations run high.

It plays into the hands of those who never genuinely supported European recovery and reconstruction and puts at risk the possibility for quick and effective action by reopening questions already settled in the July European Council conclusions.

What did the commission achieve by the publication of its first rule-of-law report? It certainly did not strengthen mutual trust or a sense of community.

But it clarifies the picture. We now see rule of law for what it is: a tool to advance a political agenda.