

Backsliding Populist Governments in the Council: The Case of the Hungarian Fidesz

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Abstract

Populist governments aim to fundamentally challenge the EU, raising the question of when and how backsliding populist governments disrupt decision-making in the Council of the EU (hereafter Council). Due to their anti-elite and strong anti-EU stance, along with their opposition to core values of liberal democracy, I argue that these governments are more inclined to resort to *unpolitics*, understood as “unsettlement.” Analysing the behaviour of the Hungarian Fidesz government in the Council, the article demonstrates that populist governments resort to unpolitics but use an à la carte approach. Populist backsliding governments selectively oppose the Council’s formal and informal decision-making rules. Looking at the voting behaviour in the Council since 2009, the article shows that the Fidesz government preserves the norm of consensus. However, over time, it has become the government that has most often broken with this norm. Conversely, when it comes to “backsliding-inhibiting competences,” the Fidesz government challenges both formal and informal rules through a wide range of strategies, i.e., systematically contesting the legality of procedures and decisions, embracing a confrontational approach and diplomacy, self-victimisation, bending the truth, and accusatory rhetoric. To illustrate them, the article focuses on decisions related to the dismantlement of the rule of law in the country, such as Article 7 TEU, the application of Regulation 2020/2092, and the disbursement of Cohesion funds.

Keywords

confrontational approach; consensus; Council of the EU; diplomatic rules; Fidesz; legality; rule of law

1. Introduction

Much has been written about the rise of populist parties in the EU. Marginal in Europe (Mudde, 2007), they have achieved electoral victories in various EU member states in the decade of crises (Brack & Gürkan, 2021). Populists come from different ideological corners (Enyedi, 2023). They ascend to power with political programs that challenge, to varying degrees, the foundations of both national and supranational polities, all in the name of the people and national sovereignty (Brack et al., 2019). They oppose liberal democracy and its core institutions and values, as well as specific policies such as immigration and open borders, globalisation, and free trade (Schmidt, 2023). Against this backdrop, scholars of party politics devoted particular attention to the ideological core of populist parties (Enyedi, 2023; Mudde, 2007), while in EU studies, they have examined the potential impact of the populist wave on the functioning of EU institutions and the EU's capacity to act. Attention has been devoted to the European Parliament (EP; Börzel et al., 2023; Chiru & Wunsch, 2021; Falkner & Plattner, 2020; Kantola & Lombardo, 2021; Meijers & van der Veer, 2019; Ripoll Servent & Panning, 2021) and, with fewer exceptions, to the Council of the EU (hereafter Council; Blauberger & Sedelmeier, 2024; Novak et al., 2021; Winzen, 2023), which has experienced increased levels of contestation (Hobolt & Wrátil, 2020) and dissensus (Coman, 2022). Given that populist governments seek to fundamentally challenge the EU, the question is: When and how do they disrupt decision-making in the Council?

Due to their strong anti-EU stance and opposition to core values of liberal democracy, I argue that populist governments are more likely to resort to unpolitics (Taggart, 2018), understood as “unsettlement” (Robinson, 2023). As also contended by the editors of this thematic issue, populist governments contest EU legislation and day-to-day decision-making in the Council and tend to reject formal and informal rules, such as the norm of consensual decision-making (Zaun & Ripoll Servent, 2023). To test this argument, this article examines the behaviour of the longest-serving populist government, the Hungarian Fidesz, and proposes a longitudinal comparative case study. So as not to single out the Hungarian case, Hungary's voting behaviour in the Council is compared to other member states over time. On the one hand, the article demonstrates that, since 2009, the Fidesz government has selectively opposed the norm of consensus in the Council. Even in times of growing dissensus, the norm of consensus, understood as “the absence of explicit opposition” (Novak, 2013, p. 1094), seems to be preserved (see also Winzen, 2023). On the other hand, unsurprisingly, populist governments tend to disrupt decision-making in what Winzen conceptualised as “backsliding-inhibiting competences” (2023, p. 6), that is, areas in which the EU could constrain their deviations from the EU's common values. While the consensus norm is preserved overall, the Fidesz government seeks to disrupt decision-making through various strategies, systematically contesting the legality of procedures and decisions, embracing a confrontational approach and diplomacy, self-victimisation, bending the truth, and accusatory rhetoric. To demonstrate these contrasting tendencies (consensus versus unpolitics), the analysis is supported by two complementary sets of data: the voting behaviour of Hungary in the Council drawing on the database of Hix et al. (2022) updated for 2022 and 2023 and a series of interviews conducted between 2020 and 2023 with diplomats from different member states in Brussels. While the first set of data is used to test the opposition to formal decision-making rules, interviews have focused more on informal norms of behaviour in the Council in EU's decisions related to the dismantlement of the rule of law in the country, such as Article 7 TEU, the application of Regulation 2020/2092, and the disbursement of Cohesion funds.

The article is structured as follows: Drawing on recent academic debates, Section 2 builds a theoretical framework for the study of the backsliding populist governments' unpolitics strategies in the Council.

Section 3 empirically examines how the Fidesz government challenges formal rules in the Council, such as the norm of consensus, as well as decision-making procedures and outcomes. Section 4 illustrates challenges to informal rules through strategies such as a confrontational approach, bending of the truth, and self-victimisation. The conclusion underlines the contribution of these findings to the broader literature on the behaviour of populist governments in the Council.

2. When and How Do Populist Governments Disrupt Decision-Making: Consensus Versus Unpolitics in the Council

Populist parties are flourishing in EU member states. They have increased in number within the EP, and their influence, either directly on decision-making or indirectly on other parties and groups at the national and supranational levels, has attracted increased political and academic attention. A growing body of research has examined the political goals of populist parties (Falkner & Plattner, 2020) in general and the radical right in particular, with a focus on their strategies (Kantola & Lombardo, 2021) as well as on their Eurosceptic contestation in the EP (Börzel et al., 2023). Results from these studies show that, overall, their Eurosceptic contestation in the EP is lower than expected (Börzel et al., 2023, p. 15). Eurosceptic dissensus seems to be highest in policy areas that touch on cultural and constituent issues (Börzel et al., 2023, p. 2) and lowest on redistributive policies, where contestation is curbed by national interests (Börzel et al., 2023, p. 15). As far as the concrete impact of populist parties on decision-making is concerned, scholars have examined the voting behaviour of the members of the EP on specific policy areas, including the EU's attempt to prevent democratic backsliding (Chiru & Wunsch, 2021; Meijers & van der Veer, 2019), showing, for instance, the role of the European People's Party (EPP) in shielding the Hungarian Fidesz (Kelemen, 2020) and the role of partisanship in voting resolutions pertaining to democratic backsliding and rule of law (Coman, 2022).

With some exceptions, less is known about the concrete strategies and potential impact of populist governments on the functioning of the Council (Albertazzi & Mueller, 2013; Blauburger & Sedelmeier, 2024; Novak et al., 2021; Winzen, 2023; Zaun & Ripoll Servent, 2023). Given their anti-EU stance, how do they express opposition? How often do they contest EU legislation in the process of decision-making? These questions are key in an institutional arena such as the Council, where diverging national interests are supposed to be accommodated and reconciled. Accommodating the interests and preferences of 27 governments is not only a challenging political process but also a prerequisite for a well-functioning EU. Despite its outward appearance of unity, the Council is a complex institution that brings together 27 national governments, their administrations, and the decision-making core, including the Permanent Representations in Brussels. The Council meets in 10 different formations, grouped by policy areas. Experts, civil servants, and diplomats collaborate to prepare the decisions that ministers adopt, with the former focusing on technical aspects and the latter navigating the intersection of technical and political considerations. Through their interactions and coordination with national capitals, they seek to reach agreements even before they are presented to the ministers (Häge, 2008; Hayes-Renshaw et al., 2006; Lewis, 2005; Puetter, 2014).

Although the decisions in the Council are adopted either through a simple majority (in a limited number of cases) or by qualified majority and unanimity, in practice, ministers rarely vote (Novak, 2013). Decisions are typically adopted "by consensus," meaning that a formal vote was not required by any of the member states. Consensus means the absence of explicit opposition (Novak, 2013, p. 1094). A significant amount of groundwork has to be done beforehand by diplomats to accommodate ministers' views. The pre-vote

diplomatic work explains why there has been a limited number of abstentions and votes against, as well as a very low (2.9%) number of cases when the Council has voted “no” (Pircher & Farjam, 2021, as cited in Winzen, 2023, p. 5). Public voting records since 1993 show an average opposition rate of 20%. This culture of consensus has been explained in many ways. As Lewis pointed out, it stems from norms of behaviour and socialisation in the Council. Diplomats, responsible for preparing approximately 80% of the work handled by ministers, bear a dual loyalty: They represent their member state but also have a responsibility to reach agreements (Lewis, 2005, p. 939). They rarely express dissent. Ministers vote against or abstain when they believe “such action will produce more benefits than costs” at home (Novak, 2013, p. 1094). To ensure credibility, vital interests are rarely invoked, and attempts to push for a vote are limited by instrumental behaviour. There is an “obligation to practice mutual responsiveness and collectively legitimate arguments” to find solutions and “keep the legislative agenda of the Council moving forward” (Lewis, 2005, p. 939) and “to bring everyone on board” (Lewis, 2005, p. 949). Hence, member states’ representatives use their veto with parsimony and strive to provide strong arguments when they do (Lewis, 2005). Voting by consensus does not imply that a general agreement has been reached. Instead, it signifies that “opponents remain silent” (Novak, 2013, p. 1094) as a strategy of blame avoidance (Novak, 2013, p. 1091). As Novak (2013) put it, silence is preferred, as formal voting would disclose the opponents’ identity.

How do populist governments express opposition in the Council? As many scholars have pointed out, populists come from different ideological corners (Enyedi, 2023). They are vocal about their anti-EU stance, challenging the authority of the EU in the name of “another Europe” (Coman & Leconte, 2019). They portray themselves as “above” the political sphere while maintaining an ambiguous engagement with politics (Robinson, 2023, p. 306). In light of this, one can anticipate populist governments translating their stance into concrete acts in the Council. Taggart (2018) argued that populists tend to resort to unpolitics, a concept coined for the Brexit context to describe an ambivalent relationship to politics or “the repudiation of politics as the process for resolving conflicts” (Taggart, 2018, p. 81). The term does not imply the rejection of politics or anti-politics (Taggart, 2018, p. 81). Through this specific behaviour, actors seek to create unsettlement (Robinson, 2023; Taggart, 2018, pp. 79–87) and to obstruct or disrupt decision-making (see Ripoll Servent & Zaun, 2024). The question is, then, how do populist governments seek to unsettle or disrupt decision-making? Unpolitics is used here as an umbrella concept to refer to a set of tactics (or strategies) that populist governments use to slow down or disrupt the functioning of the EU. This article looks more specifically at backsliding populist governments, whose actions go beyond the traditional appeal to the people as they stand against liberal democracy and dismantle its core values, such as the rule of law and rights, including pluralism and multiculturalism.

The article builds theoretically on two recent strands of research. One examines the behaviour of populist and backsliding governments in the Council (Blauberger & Sedelmeier, 2024; Winzen, 2023; Zaun & Ripoll Servent, 2023). The other explores the strategies of populist and backsliding parties in different institutional arenas and political contexts (Cadier, 2021; Lequesne, 2021; Taggart, 2018; Visnovitz & Jenne, 2021).

As argued by Ripoll Servent and Zaun (2024):

- Populist governments are more likely to break the formal rules of EU policymaking.

Formal rules encompass both procedures (compromises or votes) and outcomes. A diverse body of research has focused on the strategies of populist parties in the EP and, more recently, on the behaviour of governments in the Council, summarised in Table 1. Populist governments challenge procedures (Coman, 2022; Priebus, 2022). They contest the legality of decisions (Coman, 2022) and the final outcomes (Zaun & Ripoll Servent, 2023) despite having obtained concessions (Baraggia & Bonelli, 2021; Coman, 2022; Hillion, 2021). They “reject traditional means of ensuring compromises” and “exploit the ensuing deadlock to prove that the EU is weak and dysfunctional” (Zaun & Ripoll Servent, 2023, p. 653), aiming to maintain a permanent state of disequilibrium (Kelemen, 2020). However, primary empirical evidence shows that backsliding governments in the Council break the norm of consensus with parsimony. Even in the face of growing dissensus (Coman, 2022), overall, the culture of consensus seems to be preserved (Novak et al., 2021, p. 476). In this regard, Kelemen (2020) pointed out that most EU policies, such as the EU’s market and funds, benefit backsliding populist governments. For this reason, they seek to “uphold the appearance of constructive and legitimate conduct” in the Council (Winzen, 2023, p. 8) and only selectively voice their opposition (Winzen, 2023, p. 5). However, recent studies show that they tend to abandon their caution and oppose common policies more frequently (Blauberger & Sedelmeier, 2024):

- Populist governments are more likely to challenge informal rules of decision-making.

Informal rules encompass diplomatic norms of behaviour (Lewis, 2005; see also Deters, 2024). The work of diplomats is crucial for the functioning of the EU, as they aim to find compromises among 27 member states while also defending national positions. While populist parties embrace a critical stance vis-à-vis the EU, this attitude extends to their diplomatic and political representation (see also Juncos & Pomorska, 2024). Scholars have shown that the Fidesz government not only challenges informal rules of diplomacy within the EU but also in other regional or international organisations, privileging a confrontational approach (Cadier, 2021; Lequesne, 2021) and a confrontational diplomacy (Visnovitz & Jenne, 2021, p. 694). This confrontational stance has been defined as radicalisation by Bohle et al. (2023, p. 5). In their political activity, populist parties tend to adopt a tone, tools, and metaphors that have more in common with war than with the practice of politics (Bohle et al., 2023; Taggart, 2018, p. 82). Analysing speeches in the EP, Kantola and Lombardo (2021) have shown how populist parties aim to shift the focus of debates from domestic concerns to situations in other member states, often resorting to “blame game” strategy and self-victimisation. This article complements the list of

Table 1. Formal and informal strategies of populist governments in the Council.

Rules	Strategies	
	Selective opposition to consensus (Winzen, 2023)	Selective disruption of the norm of consensus
Formal	Contestation of the legality of procedures (Coman, 2022)	Use of legal arguments (legality) to contest procedures
	Contestation of the legality of outcomes (Coman, 2022; Platon, 2022; Priebus, 2022)	Use of legal arguments to contest decisions
Informal	Challenge the rules of diplomacy/norm behaviour (Cadier, 2021; Lequesne, 2021)	Confrontational diplomacy
	Bending the truth (Kantola & Lombardo, 2021)	Change the focus of debates from domestic to concerns in other EU member states
	Self-victimisation (Kantola & Lombardo, 2021)	Claim that decisions are unjust

strategies already mapped in the literature by demonstrating how the Fidesz government uses two other strategies—legality and legal arguments—to contest formal and informal procedures and decisions.

This article proposes a longitudinal comparative case study. To illustrate how the Fidesz government challenges formal rules, Section 3 begins by examining the voting behaviour in the Council from 2009, drawing upon the database of Hix et al. (2022), updated by the author for 2022 and 2023. In so doing, this section complements Winzen’s analysis based on the Decision-Making in the EU (DEU) dataset from 2023. To further explore the contestation of other formal rules, the article zooms in on the specific case of “backsliding-inhibiting competences,” that is, decisions concerning the state of the rule of law in Hungary, such as Article 7 TEU, the adoption and implementation of Regulation 2020/2092 (see also Csehi, 2024), as well as the disbursement of Cohesion funds (Baraggia & Bonelli, 2021; Coman, 2022; Hillion, 2021; Kelemen, 2020; Pech, 2020; Priebus, 2022). Section 4 delves into informal rules, leveraging insights from interviews with diplomats in Brussels conducted between 2020 and 2023.

3. Challenging Formal Rules in the Council

Fidesz’s attitude towards the EU has evolved over time from relatively moderate or veiled Euroscepticism to overt and aggressive criticism, even radicalisation (Bohle et al., 2023). Rather than advocating for a withdrawal from the EU, the Fidesz government aims to reform it from within. On multiple occasions, “Brussels” has been compared with Moscow in Soviet times (Ágh, 2012). Favouring an intergovernmental decision-making system, it opposes the empowerment of supranational institutions such as the EP, the European Commission (hereafter Commission), and the Court of Justice, whose authority has often been contested. Not only the decision-making system but also the nature of the EU polity as a community of norms and values is contested, as well as its role in upholding the values enshrined in Article 2 TEU. The party claims to defend the nation and sovereignty in the name of “another Europe,” advocating for a Christian Europe and rejecting both multiculturalism and pluralism (Coman & Leconte, 2019). It aims to replace the liberal order with “a new, nationalist, ultraconservative, Christian order on domestic and European levels” (Bohle et al., 2023, p. 6). The rhetoric “us versus them” serves not only as a strategy to win elections (Vachudova, 2020) but also to “justify the authoritarian concertation of power” at the domestic level (Bohle et al., 2023, p. 1776). While there is consistency and consequentiality in Fidesz’s ideological core (Enyedi, 2023), it seems that its discourse against the EU has radicalised since 2015 (Bohle et al., 2023, p. 14) in the context of the crisis of the management of migration.

3.1. Hungary’s Voting Behaviour in the Council: Selective Contestation of the Norm of Consensus

From 2009 to 2023, the Council adopted 1,551 EU legislative acts. Figure 1 shows that of these, 58.60% were decided by consensus (no vote) before Brexit (EU-28). From January 2020 to 2022, votes by consensus increased to 71.27% for EU-27, and the culture of consensus was disrupted in 30.38% of the legislative files passed in the Council. It is, however, important to note that, for example, in 2023, 86 decisions were adopted by the Council; only in 46 did the culture of consensus prevail (53%), an indicator of change over time and the expression of increased opposition by the member states.

As illustrated in Figure 2, Hungary has challenged the culture of consensus in 82 cases, representing only 5.38% of the total of 1,551 acts adopted. The decisions on which Hungary voted against or abstained were in

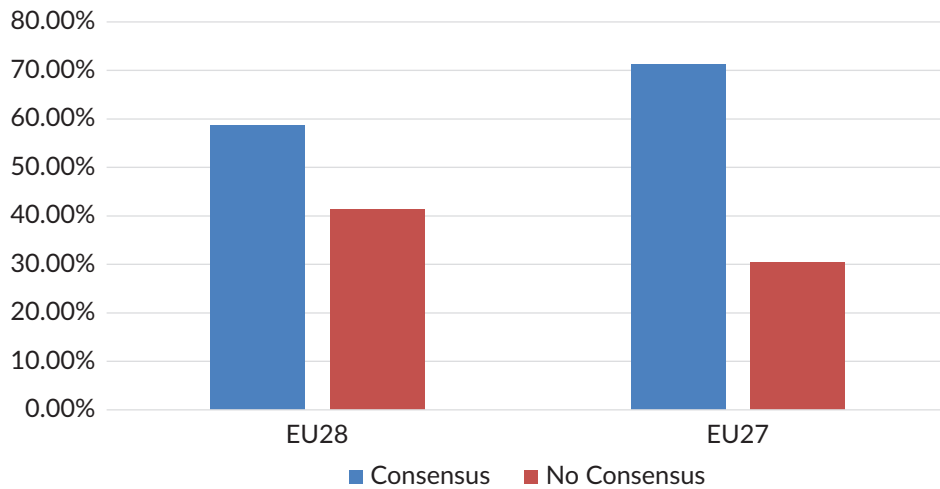


Figure 1. The culture of consensus in the Council before and after Brexit (2009–2023).

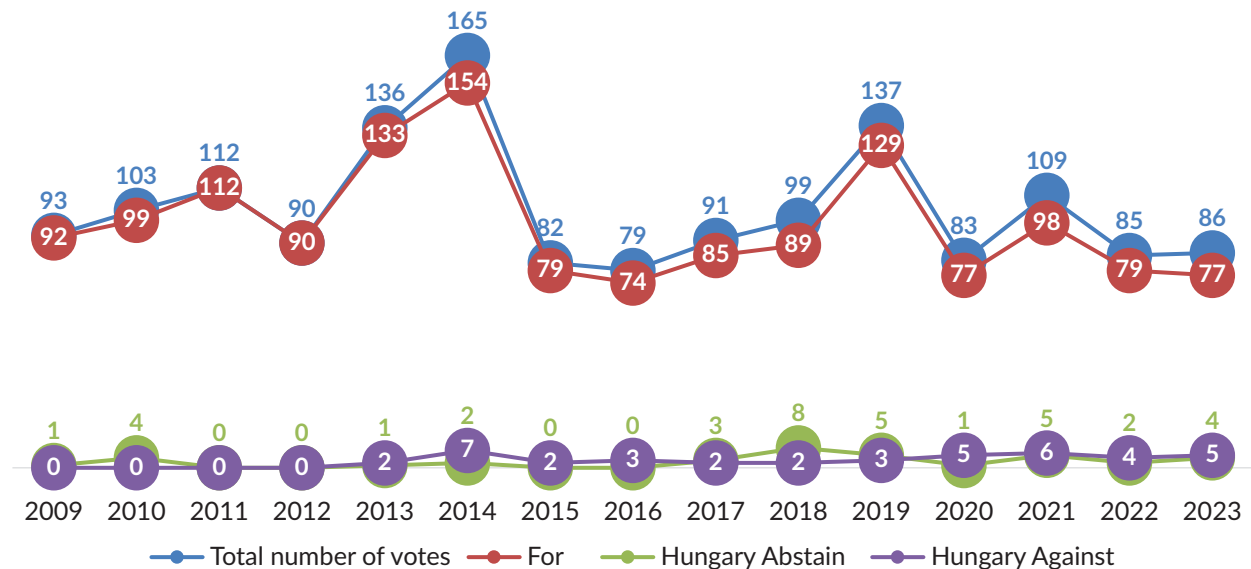


Figure 2. Hungary’s voting behaviour in the Council (2009–2023).

relation to “environment and public health,” followed by decisions in the areas of “civil liberties,” “employment and social affairs,” “legal affairs,” “gender equality,” “agriculture,” “regional development,” “budgetary control,” “economic and financial affairs,” “industry,” and “general affairs.”

Out of these 82 cases, the Hungarian government was the only member state to break the culture of consensus in 15 cases, meaning that in all the other cases, Hungary’s objections were shared by other governments, such as Poland, the UK, Denmark, Bulgaria, Romania, Austria, and Czechia, as illustrated in Figure 3.

From 2009 until February 2022, the member states that had most frequently resorted to voting were the UK (20.50%), Denmark (10.18%), and Ireland (6.83%). These countries often either vote against, abstain, or do not vote. Poland (5.35%) and Hungary (5.28%) followed them almost on equal footing. After Hungary, Austria

(5.09%) followed, and with lower scores: Germany (4.19%), the Netherlands (3.67%), and Sweden (3.28%), as illustrated in Figure 4. This voting behaviour tends to confirm the selective use of opposition, as underlined by Winzen (2023).

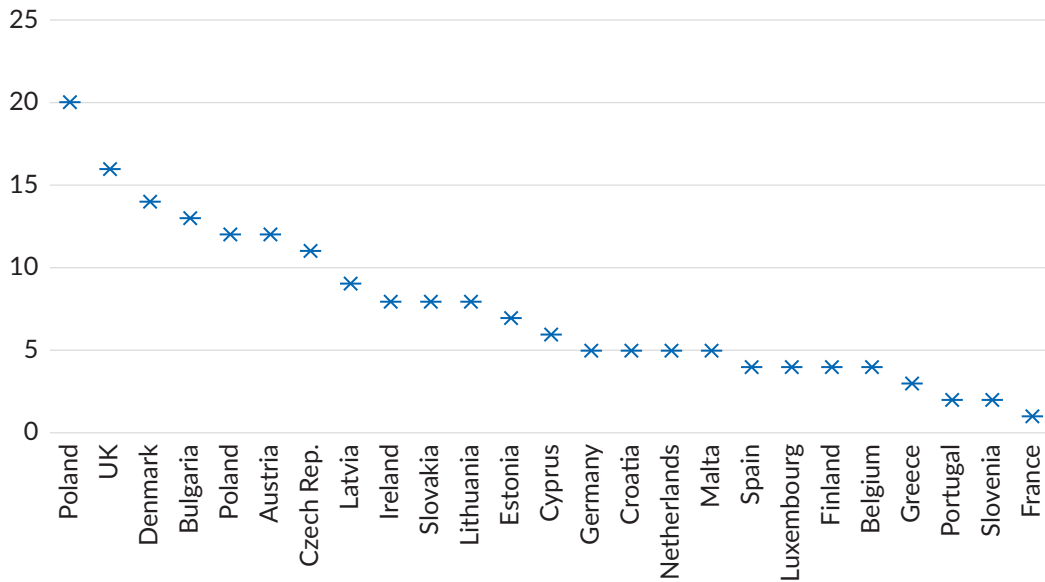


Figure 3. Member states which voted against or abstained alongside Hungary.

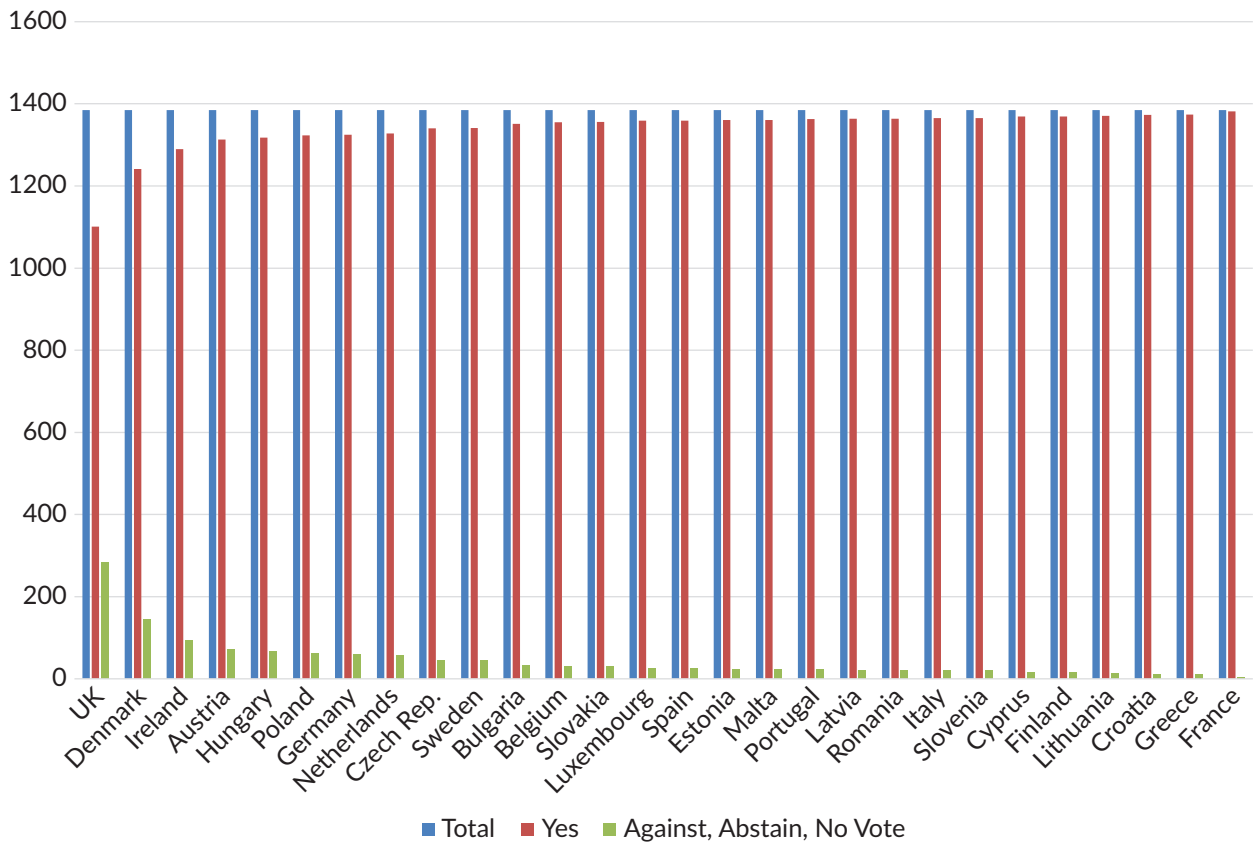


Figure 4. Consensus, abstention, vote against, or no participation per member state (2009–2023).

Zooming into the last legislative period from 2019 until the end of 2023, Hungary comes third, ahead of Poland, in breaking the consensus norm but is still preceded by the UK (including the votes before Brexit) and Denmark, as illustrated in Figure 5. Denmark and Hungary are almost on a par. Although Poland broke the rule of consensus more often in 2023, it remains behind Hungary overall. The voting behaviour in the Council shows that although opposition is used with parsimony, the Fidesz government has emerged as the most proactive Central and Eastern European government in breaking the rule of consensus, although in a limited number of cases.

Figure 6 shows that Hungarian opposition in the Council is not a new pattern. It has been voiced at various times, with the highest peaks between 2012 and 2015, then gradually increasing between 2015 and 2019 and again between 2020 and 2022. This corresponds not only to debates on migration but also to domestic changes in the field of rule of law and the EU's responses.

3.2. Contesting the Legality of Procedures, Decisions, and Outcomes in Backsliding-Inhibiting Competences

An analysis based solely on votes, especially in procedures requiring a qualified majority, shows that Hungary does not systematically block decisions but does so more often than other member states. With a focus on Article 7 TEU, the adoption of Regulation 2020/2092, and the disbursement of EU funds, the article shows how the Fidesz government contests the legality of formal rules (procedures and decisions), particularly in policy areas pertaining to the core values on which the EU is founded or backsliding-inhibiting competences, as defined by Winzen (2023).

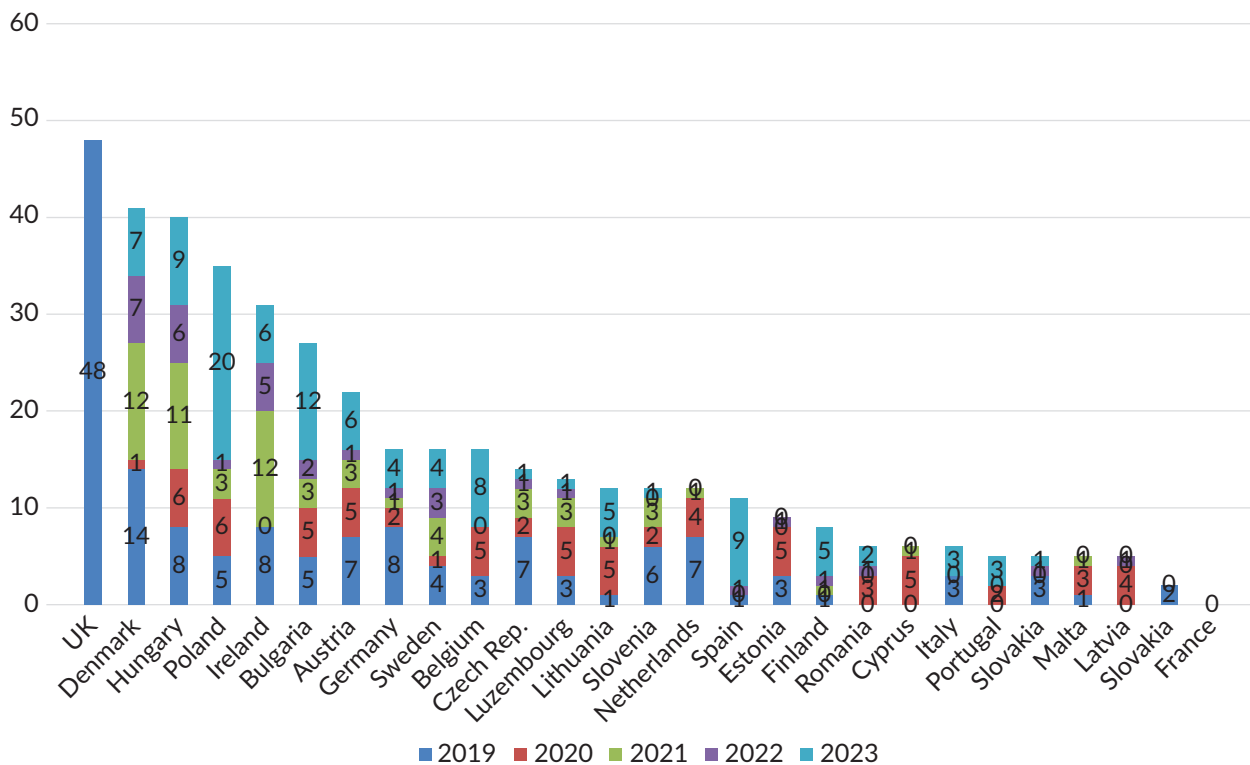


Figure 5. Breaking the norm of consensus in the Council per member state (2019–2023).

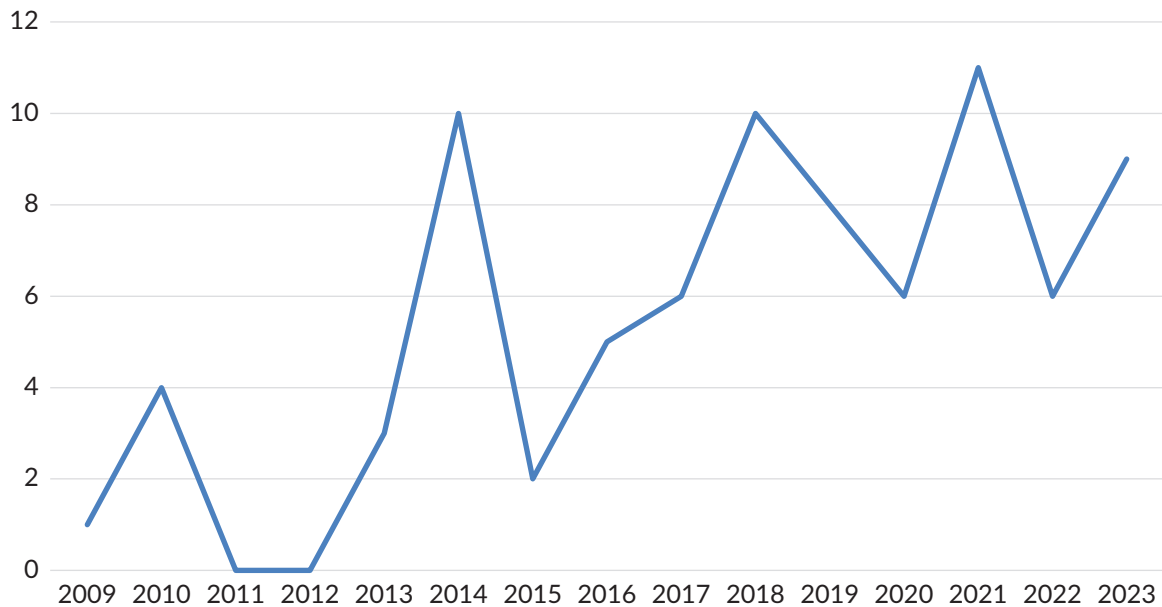


Figure 6. Hungarian opposition in the Council over time (2009–2023).

3.2.1. Triggering Article 7 TEU

The triggering of Article 7 TEU against Hungary has been a contentious issue within EU institutions, causing divisions among them. It took eight years before this procedure was initiated against Hungary, after long debates in the EP and a notable absence of action in the Council (Coman, 2022). Following the EP’s vote in September 2018, the Fidesz government challenged the decision to the Court of Justice, contesting the voting modalities (Platon, 2022). The main bone of contention was whether the EP should have included abstentions in its vote; had they done so, the reasoned proposal of the EP would not have been adopted (Hungary v European Parliament, 2021). Judit Varga criticised the procedure as “political and non-objective,” labelling the Article 7 TEU proceedings as “absurd” (“Hungary optimistic over swift end,” 2019). In a speech prepared for the European Parliament, minister Varga declared “that not only the Rules of Procedure, but also the EU Treaties were violated” (“Here’s justice minister,” 2020). Although this case dates back to 2018, in a recent interview, János Bóka stated that “these procedures should not have started against Hungary in the first place. The launch of the Article 7 TEU procedure by the EP was a clear political act with purely political objectives” (Dobozi, 2023) that the Fidesz representatives combat on legal grounds. Not only did the Fidesz government contest the voting procedure of the EP, but it also deplored the lack of procedures in the Council for the organisation of the hearings as part of Article 7 TEU. As a result, the organisation of the first hearing was delayed partly due to procedural issues and partly due to the reluctance of the member states to put the Article 7 TEU issue on the agenda.

3.2.2. Regulation 2020/2092

The Regulation on a general regime of conditionality for the protection of the EU budget emerged after years of internal deliberation within the Commission, culminating in its proposal in May 2018 (see also Csehi, 2024). This Regulation empowers the Commission to propose the suspension of EU funds in cases where rule of law breaches affect the sound management of the Union budget. While the EP largely supported the Commission’s

proposal, it faced resistance within the Council. Member states' delegations, notably Hungary and Poland, strongly opposed the proposal, prompting the Council's Legal Service to scrutinise its compatibility with EU law (Baraggia & Bonelli, 2021, p. 136). Although the Polish and the Hungarian delegations were the most vocal opponents to this proposal, other member states also raised concerns about certain aspects of the Regulation (Coman, 2022). Even before the Legal Service's opinion, the Hungarian government spokesperson, Zoltan Kovacs, publicly questioned the Regulation's legal basis in a tweet: "There are EU Treaties in force, and we work on the basis of these. No other assumptions exist in a legal sense" (Kovacs, 2018). The Legal Service's opinion changed the nature of the proposal and slowed down decision-making in the Council (for a detailed analysis of the process, see Coman, 2022). However, the onset of the Covid-19 pandemic accelerated the process, with some member states conditioning the adoption of the Next Generation EU to the adoption of the rule of law regulation. Thus, after almost two years, during the German presidency in the second half of 2020, efforts were made to reach a compromise within the Council. This attempt resulted in a diluted version of the Commission's original proposal (Baraggia & Bonelli, 2021; Coman, 2022; Hillion, 2021). Despite concessions addressing Hungarian concerns (Hillion, 2021), in December 2020, Poland and Hungary still voted against it. Hungary invoked "vital national interests," citing serious legal concerns: "Serious legal concerns remain as to the conformity of the draft Regulation with EU law that compel Hungary to vote against the Council's position in first reading on the draft Regulation" (Council of the EU, 2020).

In March 2021, Poland and Hungary challenged the Regulation to the Court of Justice, with Justice Minister Varga stating in a Facebook post: "What is unlawful cannot be left without a word," arguing that Regulation 2020/2092 violates the principle of "legal certainty" (Bayer, 2021). Even after the Court of Justice of the EU confirmed the validity of the Regulation in February 2022 (Bonelli, 2022), János Bóka argued in an interview that "the legal prerequisites for the initiation of the conditionality procedure have not been met" (Dobozi, 2023). Legal considerations were also raised concerning the Commission's decision to apply this Regulation 2020/2092 against Hungary in April 2022. János Bóka contended that "the Commission pays relatively little attention to the constitutional arrangements, national traditions, legislative practice, legislative styles and operational characteristics of the legal systems" (Dobozi, 2023).

3.2.3. Cohesion Funds

The respect of the Charter of Fundamental Rights is a core condition in the Common Regulation Provisions for the disbursement of EU Cohesion funds. The Commission suspended the disbursement of Cohesion funds to Hungary as the Hungarian Child Protection Act discriminates against people based on their sexual orientation and gender identity. While the Hungarian government invoked public interest (to protect children against paedophilia), in a letter sent by Commissioner for Justice Reynders and Commissioner for Internal Market Breton to Judit Varga, it was stated that this argument had been used "in a way that discriminates against people based on their sex and sexual orientation, departing from the values set out in Article 2 TEU, in particular, the respect for human rights, freedom and non-discrimination" (Reynders & Breton, 2021). The Commission's letter also states that the Hungarian law puts on the same footing homosexuality, sex change, and divergence from self-identity corresponding to sex at birth as pornography and are considered capable of exerting a negative influence on the development of minors. Against this backdrop, the Commission decided in July 2022 to refer Hungary to the Court of Justice of the EU, arguing that this Act violates the internal market rules, the fundamental rights of individuals, and the EU values, in particular the prohibition of discrimination based on sex and sexual orientation enshrined in Article 21 of the

Charter. In contrast, the position of the Hungarian government maintains that the Act “enhances child protection” and seeks to ensure that “parents have the right to play a decisive role in deciding what sexual content reaches their minor children” (Dobozi, 2023). Both the Commission and the Hungarian government refer to the Charter, albeit in different ways and again on legal grounds. In reference to Cohesion funds, the Hungarian government, however, argued that “EU member states cannot be forced to adopt the budget of the recovery budget on a political or ideological basis” (Ministry of Justice, 2020).

4. Challenging Informal Rules Through a Confrontational Approach

As Wajner and Giurlando put it, “populist leaders do not keep the diplomatic etiquette....Rather, they freely express their feelings” (2023, p. 13). In the Council, diplomatic rules (Lewis, 2005) matter, as most of its decisions are prepared by the Committee of Permanent Representatives. Since 2010, Prime Minister Orbán has adopted a confrontational approach in his relations with both the Commission and the EP, contesting the authority of the EU in addressing the major transformations undertaken by the Fidesz, domestically weakening democracy and the rule of law and putting pluralism and multiculturalism under strain. This confrontational diplomacy has been well documented by other scholars, particularly in the field of foreign policy (Lequesne, 2021; Visnovitz & Jenne, 2021). Viktor Orbán has made changes to diplomatic appointments in Brussels (Lequesne, 2021), selecting a series of lawyers to break with traditional Hungarian foreign policy thinking and management (Müller & Gazsi, 2023). He has emphasised the importance of “loyalty,” stating that diplomats should not be “world citizens” but rather defenders of the “will of the people” (Visnovitz & Jenne, 2021, p. 10). Drawing on interviews pertaining to the conduct of the hearings as part of Article 7 TEU, this section illustrates how Fidesz has embraced confrontational diplomacy using legal arguments when decisions are adopted concerning the rule of law in the country.

4.1. Article 7 TEU

Since the EP triggered Article 7 TEU against Hungary, six hearings have been organised in the Council. At these hearings, after a brief presentation of the situation, the member state concerned sets out its position, followed by a discussion based on questions addressed by the other member states. While there is no time limit for the hearings, some lasted up to four hours (Interview 6, Spanish diplomat). The initial hearings were particularly “uncomfortable” for all the delegations, as several diplomats pointed out, for several reasons (Coman & Thinus, 2024). To begin with, diplomats who attended these hearings noted that criticising a member state “is contrary to diplomatic norms” (Interview 8, Austrian diplomat). At a diplomatic level, member states refrain from criticising each other. Not only was this the first time the Council had met in this Article 7 TEU hearing format, but the Hungarian government’s position was intransigent, invoking a political attack by the EP. However, the activation of Article 7 TEU was based on a detailed report drafted by MEP Judith Sargentini, listing a large number of transformations that undermined the common values. The first hearings had been “difficult” (Interview 1, Belgian diplomat) and “uncomfortable for all the representatives” (Interview 2, Croatian diplomat) not only because the topics under discussion were “very controversial” (Interview 2, Croatian diplomat) but also because diplomats depicted the behaviour of the Hungarian representatives as being “very combative” (Interview 1, Belgian diplomat), sometimes “emotional” (Interview 3, Portuguese expert), “attacking other member states” (Interview 4, French diplomat) using a confrontational, defensive, and uncompromising style as Cadier also observed in foreign policy (2021, p. 11). Some hearings took a rather unusual turn, in particular at the beginning of the process. The diplomats

interviewed all emphasised the difficult position of both the Hungarian delegation and the other diplomats around the table who were supposed to be starting a dialogue at a time when the atmosphere was particularly tense, Minister Varga's tone being "tough," not hesitating to frontally attack the member states addressing questions during hearings. Although many argued that Minister Varga was very well prepared, her confrontational approach did not facilitate discussions. According to diplomats, the Hungarian representatives framed the issues at stake from a legal and legalistic perspective, which transformed the hearings into "long monologues" (Interview 7, Luxembourgish diplomat). At the same time, Judit Varga contended the opposite, that Article 7 TEU is "a political procedure with nothing to do with the rule of law" ("Justice Min likens," 2022). In some hearings, the Hungarian government appeared to question other member states' practices (Interview 4, French diplomat; Interview 5, Belgian diplomat), shifting the focus of debate from domestic concerns to situations in other member states. The Hungarian delegation selectively employed comparative law to support the argument that their domestic disputed measures mirrored practices in other member states. However, observers noted that some of the examples cited were "outdated," with one civil servant ironically remarking that they had not been referenced "since Napoleon" (Interview 6, civil servant, SecGen Council). As one diplomat declared: "When you listen to Judit Varga, you get the impression that Hungary is the beacon of Europe in the fight against corruption" (Chastand & Malingre, 2022).

As Kantola and Lombardo highlighted in their analysis focused on the EP, radical populist parties tend to present themselves as "victims" of "Brussels's" decisions, either of "double standards" or of the values and norms spread by international and supranational institutions that are pitted against national sovereignty and democracy (2021, p. 573). The existence of double standards has been put forward by the Hungarian delegation, who deplored attempts to "demonis[e] Hungary" (Ministry of Justice, 2021a) as an illustration of self-victimisation. Despite the concerns underlined by the EP, the Commission, and several EU member states, from the Hungarian perspective, as stated by the former Minister Varga, "[Hungary has] no problem of any kind with the enforcement of the rule of law" (Ministry of Justice, 2021b). The EU's actions are seen as "political attacks." In her words, the action of the EU is "politically motivated" and the result of "the liberal mainstream" (Ministry of Justice, 2021b). In a program on the Hungarian channel M1, Judit Varga even described the Article 7 TEU procedure as "a witch-hunt wrapped up in a legal gown" (Ministry of Justice, 2019).

5. Conclusions

Starting from the assumption that populist governments embrace an anti-EU stance and that backsliding governments stand against liberal democracy and its principles, the article examined when and how the Fidesz government disrupts formal and informal decision-making rules in the Council as a manifestation of unpolitics. In Section 3, the article aligns with Winzen's broader findings, indicating that populist backsliding governments selectively oppose the norm of consensus in the Council (Figure 2). The article also shows the limited instances where only the Hungarian government voted against or abstained, with other member states expressing opposition in tandem. Ranking third after Denmark and Ireland but before Poland (see Figures 3 and 4), Hungary's voting behaviour exhibits a fluctuating pattern yet with opposition expressed at different times. Despite these trends, the norm of consensus is preserved, as Kelemen's argument suggests that the EU's policies benefit populist backsliding governments (2020). Conversely, the article shows that the Fidesz government resorted to unpolitics in backsliding-inhibiting competences. In the EU's decisions

concerning the state of the rule of law in the country, it has systematically challenged both formal and informal rules. In the cases discussed in this article, the Hungarian Fidesz government employs strategies such as bending the truth or self-victimisation within the EP in debates on gender issues, as identified by Kantola and Lombardo (2021), and confrontational diplomacy in foreign policy, as identified by Lequesne (2021) and Visnovitz and Jenne (2021). What this article adds to the strategies mapped in the literature is the systematic resort to legality and legal procedures to contest decisions. Legality seems to be one of the tools used to slow down decisions, particularly in areas related to the EU's common values and liberal democracy.

To conclude, through an analysis of voting behaviour and interviews, the article tested the argument put forward by the editors of this issue but also brought some nuances with regard to when and how backsliding governments contest formal and informal rules of decision-making. The contribution of this longitudinal case study is twofold: On the one hand, it confirms the selective and limited opposition of the Fidesz government to the norm of consensus. On the other hand, it shows how the government resorts to diverse strategies to challenge both formal and informal rules, particularly in backsliding-inhibiting competences.

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Conflict of Interests

The author declares no conflict of interest.

Data Availability

The article draws on the database of Hix, S., Frantescu, D., Hagemann, S. (2022) VoteWatch Europe European Parliament and Council Voting Data, September 2022 <https://cadmus.eui.eu/handle/1814/74918>, updated by the author of this article for 2022 and 2023.

Supplementary Material

Supplementary material for this article is available online in the format provided by the author (unedited).

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