MANAGING EU HEGEMONY AND LEGITIMACY

An analysis of the discursive practices of the European Commission in relation to the rule of law in Poland

Author: **Sonia Ydreborg**

Supervisor: **Mattias Nowak**

LUND
UNIVERSITY

Abstract

Since December 2015, the European Commission (EC) has defended the juridical autonomy in Poland by initiating the so called 'Rule of Law Framework' against the member state. Although the EC possess legal grounds for taking such actions against Poland, the supranational authority of the Commission is questioned in terms of legitimacy towards national governments.

The aim of this thesis is to analyse how the EC justify their legitimacy and authority towards member states through their discursive practices by using the situation in Poland as an example. The objective is realised through a 'critical discourse analysis' where documents concerning the EC's actions against Poland are examined using the *legitimation strategies* developed by van Leeuwen. The findings are subsequently put in a wider perspective using Fairclough's model, where the discursive practices are analysed in terms of effect on the general perception of EU as a legitimate supranational actor.

The conclusions are that EU legitimacy, in this context, is highly dependent on the perception of the EC as a legitimate supranational actor towards national government, but as long as the democratic representation within the EU's institutions are not sufficient, the EC will most likely have to keep defending the legitimacy and authority of the EU.

Keywords: EU, European Commission, Poland, Legitimacy, Rule of Law

1 Introduction

"Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law"[1]

- 'Charter of Fundamental Rights of the European Union'

In December 2015, the EU first encountered a new type of crisis that questioned the supranational identity and authority of the Union. The Polish government approved changes in the Tribunal, the national constitutional court of Poland, which affects how they appoint new judges.[2] This in turn affects the autonomy of the judicial system, which constitutes one of the cornerstones for democracy in all EU member states. The changes made by the Polish government do not only impact democracy, but compose a clear violation to the 'Rule of Law Framework' put in place by the European Commission (EC) in 2014.[3]

The framework was created after some countries had reviled a systematic threat to the rule of law, and provides an action plan for how to handle violations.[4] It is unusual for a country to provoke an action as extensive as the 'Rule of Law Framework' from EU governance, and never before has a member state taken sufficient steps backwards in the integration process and the democratic values of the Union, the way Poland has.[5]

The 'Rule of Law Framework', which will be presented more closely in chapter 3, builds on the EC as a communicative representative in the dialogue with the member state in question.[6] The framework lacks hands-on actions but relies on discursive reprimands to solve the ongoing crisis. If the dialogue fails to provide desirable results, the last step of the 'Rule of Law Framework' is to initiate the so called Article 7, which includes different sanctioning

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[1] "EUR-Lex Access to European Union Law," EUR-Lex - 31995L0046 - EN, October 26, 2012, accessed May 07, 2018, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT.
[2] European Commission, "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm.
[3] "Rule of Law Framework," European Commission, February 13, 2018, accessed May 06, 2018, https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/rule-law-framework_en.
[4] Ibid
[5] Ibid
[6] European Commission, "Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers," news release, December 21, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-4479_en.htm.

actions. The initiation of article 7 is, however, hard to realise since it requires unanimity among the member states.[7] In the case of Poland, there exists no such unanimity since a few member states are weaning to support the Polish government rather than the European Commission. Hence, the activation of article 7 is unfeasible, which puts pressure on the dialogue between the European Commission and Poland to deliver positive results, not only to solve the crisis in Poland, but also to safeguard the legitimacy and authority of the EC.

It would be interesting to analyse the dialogue between the EC and Warsaw. However, I have chosen to orient the research towards the Commission's official publications where they inform the rest of the member states, and the European public, about the situation in Poland, and their approach to it. Hence, the focus will be on the EC's report of their actions, and not on the situation itself. The aim is to analyse how the EC, which relies on the acceptance of their member states and their intergovernmental cooperativeness, represent and actualise itself as a supranational institution by its discursive practices. The opinion of the EC as a legitimate conciliator towards Warsaw, might affect the future of the Union since the trust in EU goodwill affect the openness national governments have towards European integration.

1.1 Research Question

Theoretically and methodologically, the research will be realised through a 'critical discourse analysis'. The so called *legitimisation strategies* developed by Theo van Leeuwen are used to analyse official documents published by the European Commission concerning the rule of law in Poland. The aim is, with reference to the Polish example, to examine how the EC justify their, and the EU's, legitimacy and authority towards member states through their discursive practices. Hence, the empirical material will be analysed in order to answer two questions: firstly; *How does the European Commission discursively convey the political situation in Poland, and can a difference be seen between earlier and later documents?* and secondly, *How is the EC discursively safeguarding their legitimacy and authority towards national governments and European citizens?* The results from the analysis will be discussed in relation to the legitimacy and power of the EU, and how the provided report of EC's actions against Poland might strengthen, or weaken the perception of EU as a legitimate supranational entity.

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[7] European Commission, "Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers," news release, December 21, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-4479_en.htm.

1.2 Outline

After the 'Problem Framing', which constitutes the second chapter, comes a chapter explaining the stages of 'The Rule of Law Framework' (3) whereupon the 'Material and Research Design' (4) is presented. Chapter 5 includes several subsections where the first one offers a general description of 'critical discourse analysis' (CDA), its background, advantages, and problematics. The second one dives deeper into the methodological and theoretical organisation of CDA as it is applied in this thesis, followed by a presentation of the specific tools used.

The analysis (6) is divided into three parts, wherein part two is divided in three. The division correlates to the stages in the 'Rule of Law Framework' presented in chapter 3. Each section includes both an analysis and a general discussion about the results of the analysis. The final thoughts are concluded in the second to last chapter (7) followed by thoughts on interesting directions of further research (8).

2 Problem Framing/ EU, Legitimacy, and Power

The situation between Poland and the EU is at its core a question about legitimacy and power. The EU proclaims perusing multi-level governance which aims to intersect the European, national, regional and local aspects of European integration, which in turn is accomplished through democratic cooperation between the member states.[8] The cooperative focus offers an intergovernmental dimension, where member states are indirectly represented by their population through elected representatives.[9] However, the European Union is a supranational entity which means that it is "less than a state, but more than an international organisation"[10],

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[8] Jonas Tallberg, *EU:s Politiska System* (Lund: Studentlitteratur, 2013), 173.
[9] Ibid,174.
[10] Michelle Cini and Nieves Pérez-Solórzano Borragán, *European Union Politics* (Oxford: Oxford University Press, 2016), 340.

where the elected institution, the European Parliament (EP), only constitute one part of a tripartite government. The fact that democratic representation only reaches as far as EP power, raises concerns about the democratic deficit of the EU.[11] Since the functioning of the EU is based on collective decisions, it deserves to be considered a democratic body. However, democracy does not imply that the system is legitimate, even though the procedures guarantee the participation of the governed. Legitimacy also requires the governed to trust the political system they are in.[12]

Trust comes in two forms, either as input legitimacy, which means that the people find the political system legitimate because they feel involved in the decision making process, even though the results might not always be the most desired ones. On the other hand, Output legitimacy, means that the people are satisfied with the outcomes and hence find the political system legitimate, even though they might not be very involved in the decision making process.[13] The European Union has often been criticised for only providing the output version of legitimacy, giving rise to Euroscepticism where national governments oppose the growing powers of the EU and its top-down approach to European integration.[14] Some countries, for example Poland, are concerned that their national interests will be lost in the deepening Europeanisation and are hence questioning the legitimacy of the European Union by testing the boundaries of EU's supranational power.

As presented in the introduction, this essay will investigate the EU's response to these kinds of tests by analysing the European Commissions' discursive practices in which they legitimise their supranational power towards national parliaments. The way the European Commission act discursively might have impacts on how the legitimacy of the EU is perceived coming out of its current crisis.

3 Managing the Rule of Law

In March 2014 the European Commission set out a new framework for addressing systematic threats to the rule of law in EU member states. The 'Rule of Law Framework' consists of different stages where the EC, as guardians of the rule of law in member states, is to follow

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[11] Jonas Tallberg, *EU:s Politiska System* (Lund: Studentlitteratur, 2013), 175.
[12] Michelle Cini and Nieves Pérez-Solórzano Borragán, *European Union Politics* (Oxford: Oxford University Press, 2016), 340.
[13] Ibid, 340.
[14] Ibid, 340.

particular steps in case of violations. The framework is meant to "enable the Commission to find a solution with the Member State concerned in order to prevent the emergence of a systematic threat to the rule of law that could develop into 'a clear risk of a serious breach' which would potentially trigger the use of 'Article 7 procedure'."[15]
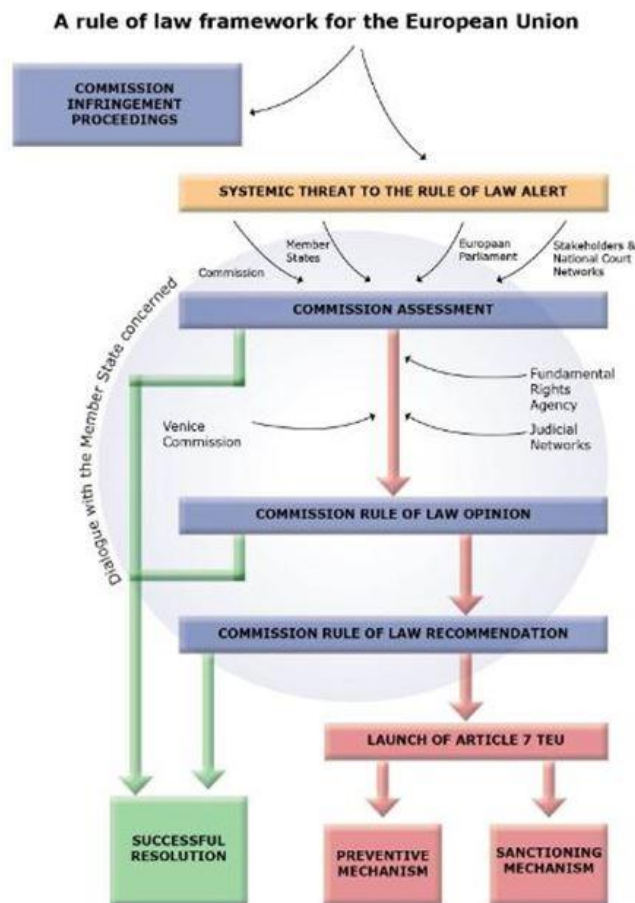
Figure 3.1: *Rule of Law Framework,* http://europa.eu/rapid/press-release_IP-16-4476_en.htm

There are three steps that require the EC to start a dialogue with the government of the member state in question. The steps are; the Commission Rule of Law Opinion, the Commission Rule of Law Recommendation, and the Launch of Article 7 TEU. The first step, 'Opinion', is activated after the situation has been assessed and all the information necessary to confirm the suspicions of a threat to the rule of law have been gathered. The 'Opinion' constitutes a warning that the rule of law in the country is at risk and that the EC henceforth

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[15] European Commission, "Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers," news release, December 21, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-4479_en.htm.

will enter into a dialogue with the authorities in the country in question in order to avert the crisis. The member state will have the opportunity to answer the opinion and give its response.[16]

The second step is initiated if the member state concerned does not answer to the 'Opinion' given by the European Commission during the time allowance provided, whereupon the EC will issue the rule of law 'Recommendation'. In this case, concrete steps to take in order to solve the crisis will be recommended, which has to be done within a set time limit, and the member state must inform the Commission of the steps taken to this effect.[17]

In the third stage, if the member state fails to address the problem/problems presented in the 'Recommendation' within the set time limit, the EC can initiate the Article 7 procedure which is written into the Treaty of the European Union (TEU) and include preventive and sanctioning mechanisms for the member state concerned, presented in five paragraphs:[18]

"Article 7"

(ex Article 7 TEU)

"1.   On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2.   The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may 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.

3.   Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

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[16] European Commission, "Commission action on the Rule of Law in Poland: Questions & Answers, news release, December 20, 2017, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-17-5368_en.htm
[17] Ibid
[18] "EUR-Lex Access to European Union Law," EUR-Lex - 31995L0046 - EN, October 26, 2012, , accessed May 14, 2018, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012M007.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union."[19]

The article 7 procedure is a last resort, and the only concrete tool the European Union can use against member states that violate the rule of law, or any of the EU directions.[20]

The 'Rule of Law Framework' will in this thesis merely be used as a frame for the analysis to hinge on. The information in this chapter is thus presented mainly as to offer some factual knowledge about the contexture in which the documents later analysed were produced, and a description of the general line of action included in them.

4 Material and Research Design

The empirical material which constitutes the basis for the analysis, are documents from the European Commission, published in relation to each of the action stages presented in the previous chapter. The documents are both an account of the steps taken by the EC in relation to the rule of law crisis in Poland, and reports of the successes and failures as they develop. The documents have all been published on the EC's website in several languages and are addressed to citizens of all member states. Even though the material was published in textual form, it contains a mixture of press releases, factual sheets and speeches. The press releases and fact sheets are official publications made by the European Commission on the date of each action stage, and the speeches are by Frans Timmermans, the first vice president of the European Commission, and entrusted by President Juncker to launch the 'Rule of Law Framework' against Poland.

The reasons for choosing these particular documents were threefold. Firstly, the texts were published in direct relation to the launch of a new action state, and included both accounts of the actions previously taken, the action taken on that date, and the opinion of the EC about the procedure, which in my opinion gives a broad foundation for an analysis.

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[19] "EUR-Lex Access to European Union Law," EUR-Lex - 31995L0046 - EN, October 26, 2012, , accessed May 14, 2018, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012M007.
[20] Ibid

Secondly, although the Commission have published a plenitude of documents about the proceedings against Poland on other dates than the ones represented in this thesis, those documents most often referred back to the chosen material and did not provide any usable additional insights to the study. Thirdly, using the 'Rule of Law Framework' as a skeleton for the analysis gives the thesis a concrete structure to build upon and also provides a context for the documents analysed.

As just mentioned, the research design is based on the 'Rule of Law Framework', presented in the previous chapter. This means that the framing of the analysis hinges on the three action stages in the Framework and will consequently consist of three parts. However, since, in the case of Poland, the second action stage, 'Recommendation`, has been issued three times, the second section will in turn be divided into three parts, each representing a date correlating with an issued 'Recommendation'. As a result, the analysis is arranged as presented in the Table 4.1 below.

Table 4.1: *Base material for critical discourse analysis.*

Title:	Issued	Number of Texts
Opinion	1st June 2016	3
1st Recommendation	27th of July 2016	3
2nd Recommendation	21st of December 2016	2
3rd Recommendation	26th of July 2017	2
7(1) Proposal	20th of December 2017	3
		Total:13

Firstly, the text material from each stage will be analysed separately according to Theo van Leeuwen's *strategies of legitimation,* presented later in the Methods chapter, with a focus on *what* strategies are used by the EC and *how often* they appear in the texts to answer the question; *How does the European commission discursively convey the situation in Poland and can a difference be seen over time?* Secondly, the results will be discussed according to the concepts of hegemony and power to answer the question: *How is the EC discursively safeguarding their legitimacy and authority towards national governments and European citizens?* The study is done using the method of 'critical discourse analysis' which is presented in the next chapter.

5 Critical Discourse Analysis – an Introduction

Different types of text analysis are leading methods within social sciences and humanities.[21] Text does not necessitate written sources, but all types of social communication created by humans, for humans, which includes spoken language and pictures. However, the analysis is most commonly built upon language related expressions. A collective trade for all text, regardless of form, that constitute the foundation of social research is *function*. Whether the text's purpose is to influence, inspire, or inform, it fills a function by forming, or transforming our social conceptualisations and how we respond to our surrounding world.[22] These socially constructed realities (collective identities, norms, and values) comprise the foundation of social research.

A relatively new text analysis method within the field of social sciences is discourse analysis (DA).[23] The conceptualisation of discourse in methodological terms is a subject of dispute, but the overall idea of what discourse entails is somewhat unanimous.[24] The Oxford English Dictionary defines discourse as "[t]o consider, go through, or treat of in speech or writing; to discuss, talk over; to talk or converse about […] to tell, recount, relate."[25] Discourse can also be described as "a process which reflects the mediation of knowledge, power and social relations – a system which has the ability to produce dictums related to the ones it include."[26] In other words, discourse is the implementation of text in a bigger social context, which includes its agency within social interaction.

With reference to these definitions, discourse can be considered as all interaction between humans everywhere. Simultaneously, discourse could be more exclusive and only include texts with a clear function, which is why researchers' opinions deviate. No matter the

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[21] Göran Bergström and Kristina Boréus, *Textens Mening Och Makt: Metodbok I Samhällsvetenskaplig Text-Och Diskursanalys*, vol. 3 (Lund: Studentlitteratur, 2012), 17.
[22] Ibid, 21-3.
[23] Ibid, 353.
[24] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 7.
[25] Oxford English Dictionary, "Discourse, v", accessed May 04, 2018, http://www.oed.com.ludwig.lub.lu.se/view/Entry/53986.
[26] Iver B. Neumann and Peter Dükler, *Mening, Materialitet, Makt: En Introduktion till Diskursanalys* (Lund: Studentlitteratur, 2003), 17.

broadness of the contextualisation, the concept of discourse as "an established way to think and understand the world"[27] creates the basis for discourse analysis.

Critical discourse analysis (CDA) is a subcategory to DA. It possesses all the aspects of discourse analysis but applies an additional critical lens on the research problem.[28] A critical perspective does not imply a negative approach to society, rather, it suggests a viewpoint where the order of society is not taken for granted or as something uncontested. Instead, the researcher investigates alternative truths and new approaches to the social interaction between humans.[29] The discourse is thus in CDA positioned in a dimension where it constructs and reconstructs the social world in relation to the actual world in an ongoing eternal process, i.e. the unobservable dimension is both making text production possible, and is affected by that which is produced.[30]

CDA has its theoretical background in structuralism, poststructuralism and social constructivism. Poststructuralism in relation to critical discourse analysis puts the relational system of language in a situation where it is defined in its "living concrete entirety", which means that the language is analysed in terms of "dialogical relations between words, texts, and humans."[31] Apart from structuralism's focus on intertextuality, that is "no text stands alone, but are a part of a complex web of text relations"[32], the poststructuralism adds a wider dimension.[33] The unobservable structure which enable text production, i.e. the collective identities, norms, and values, becomes in poststructuralism part of the analysis, hence becomes discourse.[34]

Despite its relatively late entry into social sciences and humanities, research based on CDA has grown rapidly within these fields and can now be considered one of the more common research methods.[35] The success of critical discourse analysis is mostly due to

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[27] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 7.

[28] Iver B. Neumann and Peter Dükler, *Mening, Materialitet, Makt: En Introduktion till Diskursanalys* (Lund: Studentlitteratur, 2003), 66.

[29] Paul S. Gray, *The Research Imagination: An Introduction to Qualitative and Quantitative Methods* (New York: Cambridge University Press, 2007), 13.

[30] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 32.

[31] Iver B. Neumann and Peter Dükler, *Mening, Materialitet, Makt: En Introduktion till Diskursanalys* (Lund: Studentlitteratur, 2003), 18-19

[32] "intertextualitet" NE.se, , accessed April 26, 2018, https://www.ne.se/uppslagsverk/encyklopedi/lång/intertextualitet.

[33] Göran Bergström and Kristina Boréus, *Textens Mening Och Makt: Metodbok I Samhällsvetenskaplig Text-Och Diskursanalys*, vol. 3 (Lund: Studentlitteratur, 2012), 258.

[34] Iver B. Neumann and Peter Dükler, *Mening, Materialitet, Makt: En Introduktion till Diskursanalys* (Lund: Studentlitteratur, 2003), 20.

[35] Göran Bergström and Kristina Boréus, *Textens Mening Och Makt: Metodbok I Samhällsvetenskaplig Text-Och Diskursanalys*, vol. 3 (Lund: Studentlitteratur, 2012), 353.

the flexibility and applicability of the method. However, the adaptableness also makes CDA difficult to realise and properly learn.[36] The flexibility of critical discourse analysis is based on the fact that the method presents a limited amount of concrete methodological tools for implementation and can therefore easily be flexed to proportions favourable for every researcher. CDA's long history within theoretical science gives an explanation to the methodological scarcity, since theoretical science does not require any empirical material. This, however, can prove problematic as the method is applied within the social sciences, where research is most often based on text analysis.[37]

Another problematic aspect of CDA is the lack of separation between the concepts of theory and method.[38] Normally, the methodological framework is separate from the theoretical perspective, which is chosen among numerous social theories depending on the aim of the research.[39] In critical discourse analysis however, the theoretical aspect is very well developed, but the practical application methods are more diffuse. In order to apply the method to a research problem, one must first craft a methodological and theoretical design.

5.1 Methodological and Theoretical Design

This thesis makes use of CDA, both in its theoretical and methodological form. The reason for choosing to with 'critical discourse analysis' is the presented flexibility the method offers. Since CDA makes use of text analysis as well as its contextual effects and reasons, the method seemed the best suited for the study conducted in this thesis.

Jørgensen and Philips mention five characteristic traits helpful when applying critical discourse analysis on a research problem. Firstly, the social practices analysed should in part be realised through discourse, i.e. the discourse needs to have a *function*. The function of the empirical material used in this thesis is to legitimate the actions of the European Commission towards member states. Secondly, the discourse needs to be constructive, which means that the discourse is, within the social practice, both a *product* and an *action*. In the case of this thesis, the texts are a product of the practical function of the European Commission and

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[36] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 7.

[37] Göran Bergström and Kristina Boréus, *Textens Mening Och Makt: Metodbok I Samhällsvetenskaplig Text- Och Diskursanalys*, vol. 3 (Lund: Studentlitteratur, 2012), 353.

[38] Iver B. Neumann and Peter Dükler, *Mening, Materialitet, Makt: En Introduktion till Diskursanalys* (Lund: Studentlitteratur, 2003), 14.

[39] Paul S. Gray, *The Research Imagination: An Introduction to Qualitative and Quantitative Methods* (New York: Cambridge University Press, 2007), 18.

of the 'Rule of Law Framework', and the action is the way the discourse is used to assert legitimacy towards the member states. Thirdly, the research should be based on a text analysis, which will be the case since the empirical material consist of documents published by the European Commission.[40]

These first three steps are recurring in Fairclough's model which will be presented later in this chapter, where the discourse analysis' three dimensions depend on each other. The next two steps, fourth and fifth, are according to Jørgensen and Philips what separate DA from CDA. As previously mentioned, the CDA research needs a *critical perspective,* which means that the researcher investigates the reason behind the research problem and not just the effect it has on social practice.[41] Lastly, discourse needs to be part of a power relationship which aims to either strengthen or weaken power.[42] It is in the affirmation of power relations between institutions, in this case the European Commission and the EU member states, that the theoretic perspective of the analysis is built. Additionally, the critical perspective is realised through the discussion about the reason for the Commission's use of legitimising discursive strategies to assert their own power as a trustworthy supranational institution.

Even if the categories presented by Jørgensen and Philips are markers for CDA, it is of importance to mention the role the researcher has in developing the method. Since critical discourse analysis is strongly influenced by the researcher's concrete choices of methodological tools and their application, the method might not possess all the characteristics presented above. However, this will not have a negative impact on the validity or relevance of the research. Instead, it helps developing the method for future researchers as well as it invites every reader to form his/her own apprehension of the study.[43] There is however an existing threat to validity and reliability within the field of critical discourse analysis, and it is to a large part dependent on the methodological tools used.[44] Since CDA is based on the researchers' own methodological framework and theoretical approaches, replicating the research may also prove difficult.

The methodological toolkit for critical discourse analysis it is difficult to define. Mostly because of early researchers' disinterest in developing the methodological aspect of the

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[40] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 63.
[41] Paul S. Gray, *The Research Imagination: An Introduction to Qualitative and Quantitative Methods* (New York: Cambridge University Press, 2007), 13.
[42] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 65.
[43] Ibid
[44] Göran Bergström and Kristina Boréus, *Textens Mening Och Makt: Metodbok I Samhällsvetenskaplig Text- Och Diskursanalys*, vol. 3 (Lund: Studentlitteratur, 2012), 405.

research practice. However, the last couple of decades have been productive ones, and there are now several methodological tools available for CDA. In this thesis, two CDA researchers are of great importance when it comes to the methodological approach. These are Norman Fairclough and Theo van Leeuwen. Their methodological tools for critical discourse analysis will form the basis for the analysis. After a presentation of the methodological tools the theoretic aspect of power and hegemony in critical discourse analysis will be approached in more detail.

5.1.1 Fairclough's three-dimensional model

The three-dimensional model created by Norman Fairclough will be used in examining the results of the analysis of the empirical material.[45] The model conjoins the theoretical aspects of CDA with text analysis, hence, builds upon the thought of *text* having a communicative function, which becomes *discourse* together with the practice where it is produced or consumed, which in turn affects the *social practices* (social identities, norms, and values). [46]
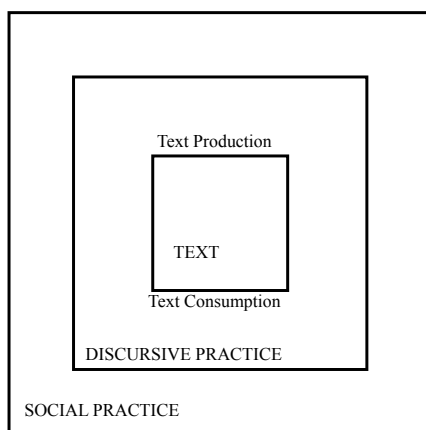
Figure 5.1: *Fairclough's three-dimensional model for discourse analysis*[47]

Even though the model itself will not appear in the analysis, the concept of critical discourse analysis as having three dimensions is referred to concerning the reason behind the way the European Commission discursively legitimise their actions and power.

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[45] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 66.
[46] Ibid, 74-5.
[47]Ibid, 74.

5.1.2 Theo van Leeuwen's Legitimation Strategies

As mentioned, Theo van Leeuwen has developed concrete tools for practical application of critical discourse analysis. His research is based on the text producer, or the *subject*, as a legitimating actor. This means that the subject in discursive correlations is a *role*, and there exists different roles depending on the context.[48] Some roles, like father, tourist, or dentist has a defined place within a social practice. The subject presents a more general role, for example "Institution within the European Union", as will be the case in this thesis.[49]

The subject function within the frames of its discursive practice which includes a mixture of legally and socially constructed rules for how the subject is allowed to act.[50] When we react to a text and evaluate its truth-value, our opinions about the subject will decide how we receive the message. Our receptiveness for the ideas presented in the text is affected by our opinion about the subject as owning a legitimate authority for transmitting this kind of text, more than the text message itself. Consequently, ways of strengthening authority within the discursive field by using different types of rhetoric tools, is a common strategy in text production.[51]

These *legitimation strategies* have been studied and defined by Theo van Leeuwen in his book "New Tools for Critical Discourse Analysis". The strategies form four categories which are based upon different legitimising tactics: *rationalisation*, *moral evaluation*, *authorisation*, and *mythopoesis*. The categories include several subsections that further illuminate different tactics within the groupings.[52] The legitimising strategies can be seen together or separately in a text, and can be used either to legitimise the subject or to delegitimise or critique the antagonist. A single strategy could occupy large sections of a text or be moderately scattered among more informative sections about the institutional practice of the subject.[53] What follows is a thorough presentation of the legitimising strategies and their illustration. The samples are taken from the empirical material but are here used as to exemplify

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[48] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 105.
[49] Iver B. Neumann and Peter Dükler, *Mening, Materialitet, Makt: En Introduktion till Diskursanalys* (Lund: Studentlitteratur, 2003), 104.
[50] Ibid, 104-5.
[51] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 105.
[52] Ibid, 105.
[53] Ibid, 106.

the use and certain words have been bolded to illuminate the use of the legitimising strategy concerned.

According to van Leeuwen, there are different types of *Rationalisation*, but the two main types of rationality, *instrumental rationality* and *theoretical rationality*, are the ones more commonly found in legitimising texts. *Instrumental rationalisation* is when the subject "legitimizes practices by reference to their goals, uses, and effects".[54] The purpose is constructed as to explain why social practices exist, and include words that indicate purposefulness, usefulness, and effectiveness in relation to it.[55]

Ex:

1. "The effectiveness of the constitutional juridical system […] is ***a key component*** of the rule of law."[56]
2. "The rule of law is one of the ***fundamental*** values upon which the European Union is founded"[57]

The other type of rationalisation, *theoretical rationality*, does not pay regard to purposefulness or effectiveness, but to weather the statement is founded in truth. The statement indicate that this is "the way things are"[58], however, the account does not have to relate to the real truth, but can be a projection of the subject's truth. Similarly, the subject sometimes relates to the statement as commonly known facts.[59]

Ex:

1. "***If you*** put an end, or limit, the separation of power, you break down the rule of law. And ***that means*** breaking down the smooth functioning of the Union as a whole"[60]

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[54] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 113.

[55] Ibid, 114.

[56] European Commission, "Opening Remarks of First Vice-president Timmermans on the Rule of Law Recommendation to Poland," news release, July 27, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-16-2657_en.htm.

[57] European Commission, "Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers," news release, July 27, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2644_en.htm.

[58] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 116.

[59] Ibid, 117.

[60] European Commission, "Opening Remarks Of First Vice-President Frans Timmermans, Readout of the European Commission Discussion on the Rule of Law in Poland," news release, December 20, 2017, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-17-5387_en.htm.

2. "***As you know***, the European Union is built on a common set of values, enshrined in the Treaty."[61]

The legitimising strategy of *Moral Evaluation* refer to value systems within social practices. Positively or negatively associated value words (for example: god, bad, healthy, important, normal, unnatural) or words with a moralising function (respectable, reliable, accessible) which often stir up feelings with the recipient are paired together with the action which is legitimised through the moralisation.[62]

Ex: "The procedure foreseen under Article 7 of the Treaty on European Union (TEU) aims at ensuring that all EU Member States ***respect*** the common values of the EU, including the Rule of Law."[63]

The strategy of *Authorisation* generally answers the question 'why?' – 'why should we do this?' or 'why should it be done this way?'.[64] The answer is often because the subject says so, but the subject might also signpost the authority of someone who is influential in the area, to rules or laws, or to the fact that it is part of an existing social practice to act this way.[65]

Ex:
1. "First Vice-President Timmermans has been ***entrusted by President Juncker*** with the responsibility for the EU's Rule of Law Mechanism and with upholding the respect for the rule of law."[66]
2. "On 11 March 2014, the European Commission adopted a new Framework for addressing a systematic threat to the Rule of Law in any of the EU's 28

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[61] European Commission, "Opening Remarks Of First Vice-President Frans Timmermans, Readout of the European Commission Discussion on the Rule of Law in Poland," news release, December 20, 2017, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-17-5387_en.htm.
[62] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 110.
[63] European Commission, "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm.
[64] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 106.
[65] Ibid, 118-9.
[66] European Commission, "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm.

Member States. ***The Framework establishes a tool allowing*** the Commission to enter into dialogue with the Member State concerned […]."[67]

The last rationalisation strategy presented by Theo van Leeuwen is the strategy of *Mythopoesis,* which refers to legitimation "conveyed through narratives whose outcomes reward legitimate actions and punish non-legitimate actions".[68] This narrativisation is most often presented as lengthy texts conveying a course of events, or references to the past.[69]

Ex:

1. "***Recent events*** in Poland concerning in particular the Constitutional Court have led the European Commission to open a dialogue with the Polish Government in order to ensure the full respect of the rule of law."[70]
2. "In November 2015, the Commission became aware of an ongoing dispute in Poland concerning the composition of the Constitutional Tribunal […]"[71]

5.1.3 Hegemony and Power

As the analysis aim to discover how the European Commission, as a supranational institution, acts discursively to assert power in relation to member states, the concept of power in critical discourse analysis will hereafter be described in more detail. According to Neumann, power relations in discourse are mainly realised through A's efforts to effect B in a way that goes against B's own wishes. The intention is to construct the social practice in which A and B function to make the exercise of power easier and less costly for A. Consequently, the social practice will be constructed in advantage for A and their desired actions.[72]

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[67] European Commission, "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm.

[68] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 106.

[69] Ibid, 118.9.

[70] European Commission, "Commission Adopts Rule of Law Opinion concerning the Rule of Law in Poland," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_IP-16-2015_en.htm.

[71] Ibid

[72] Iver B. Neumann and Peter Dükler, *Mening, Materialitet, Makt: En Introduktion till Diskursanalys* (Lund: Studentlitteratur, 2003), 141.

Neumann also stresses the effect the intragovernmental exercise of power has on sovereignty towards the dominated party. If A considers itself legitimate and as functioning in accordance to the social practices wherein it was constituted, it will find more easily to persuade B to conform to A's aspirations.[73] This relates to the Subject position, as presented in the precious section, where the general opinions about the subject decides how it is perceived.

The concept of hegemony is according to Fairclough not only about power and dominance, but a bargaining process where a consensus of meaning is created.[74] In this way, discursive practices can be seen as an aspect of the hegemonic battle in which production and reproduction of social practices (collective identities, norms, and values) becomes an essential part in the assertion of power.[75]

6 Analysis

As explained, both in the methods and the materials chapters, the analysis consists of five subgroups relating to the 'Rule of Law Framework' presented in chapter 3. Each action is analysed in terms of the frequency of different strategic legitimation adopted from Theo van Leeuwen's *legitimation strategies*. Presented in the table 6.1 below is a compilation of the initial text analysis, where the documents have been reviewed as to give a clear picture of the frequency of use of legitimising strategies in the texts.

Table 6.1: *Frequency of use of legitimation strategies*

Action Stage:	Rationalisation	Authorisation	Moral Evaluation	Mythopoesis
Opinion	9	10	**16**	7
1st Recommendation	11	**16**	11	8
2nd Recommendation	13	**14**	**14**	7
3rd Recommendation	3	**16**	3	5
Article 7 Proposal	11	**13**	10	9
Total:	47	**69**	54	36

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[73] Iver B. Neumann and Peter Dükler, *Mening, Materialitet, Makt: En Introduktion till Diskursanalys* (Lund: Studentlitteratur, 2003), 154.
[74] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 81.
[75] Ibid, 81.

Initially, the expectancy was that the legitimising strategies would differ more between the action stages. However, some differentiation appears to be present over time. This is especially obvious when it comes to the increased usage of *authorisation* compared to the other strategies in later texts.

The succeeding sections will each represent one of the action stages from the 'Rule of Law Framework'. After the documents have been analysed in accordance to van Leeuwen's strategies, follow a discussion on why the European Commission might choose to phrase themselves in this way. The discussion is grounded in Fairclough's three-dimensional model where the text in its discursive practice is both asserting and reforming the collective conception of the EC as a legitimate supranational actor in relation to national governments.

The analysis will also include direct citations from the related texts in the form of expressions or whole sections, if so, the document in question is referred to in the footnote. In some cases, particular wordings in the cited sections have been bolded to further highlight the use of the legitimising strategy. The analysis also includes citations from Theo van Leeuwen's book "*New Tools for Critical Discourse Analysis*" where the need for clarification in the use of a strategy has been considered necessary.

6.1 Opinion

The texts released on the 1st of June 2016, when the European Commission first launched the 'Rule of Law Framework' against Poland by adopting the 'Rule of Law Opinion', presents *moral evaluation* as the pre-dominant legitimising strategy. The strategy appears mainly in one of two forms; either as positive or negative words, to lift the "cooperative spirit"[76] of the European Commission and point out the related "refusal"[77] from the Warsaw. Or, the strategy

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[76] European Commission, "Opening Remarks of First Vice-President Frans Timmermans - Press Conference on Rule of Law in Poland," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-16-2023_en.htm.
[77] European Commission, "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm.

is paired with *mythopoesis* where a story of the actions taken by the Commission is presented together with "However, despite [...]"[78] relating to the perceived fruitlessness of these actions.

> "Just last night I [first vice-president Timmermans] spoke with Prime Minister Szydlo and I am pleased to say that she confirmed that she wants our dialogue to continue. ***However, despite*** our best efforts, until now we have not been able to find solutions to the main issues at stake."[79]

The word 'despite' is used several times in the texts relating to the efforts of the European Commission and often together with phrases like "concerns regarding the respect of the rule of law"[80], which I regard as an attempt to both highlight the seriousness of the situation and the inexhaustible work-ethic of the European Commission.

The fact that *moral evaluation* is used to this extent in the 'Opinion texts can be seen as an attempt from the EC to firmly state that the actions taken by Poland goes against the etiquette of EU cooperation. The *moral evaluation* strategy, according to van Leeuwen, can thus be used to "foreground desired and legitimate qualities of cooperation, engagement, and commitment"[81] hence, to convince the other member states that the EU project is worthwhile and dissuade any other country to follow the example of Poland.

> "These values include ***respect*** for the rule of law. That is how this organisation functions, that is how our Member States ensure the ***equal*** application of EU law across the European Union. Making sure the rule of law is preserved is a collective ***responsibility*** of the EU institutions and of all Member States."[82]

The Commission, in this statement, also makes sure to draw on peoples' feelings and communicate the intergovernmental community of the EU. In my opinion, the reason for relating to people's feelings this way is to picture Poland as especially unmoral and thus increase the overall perception the country as an antagonist state.

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[78] European Commission, "Opening Remarks of First Vice-President Frans Timmermans - Press Conference on Rule of Law in Poland," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-16-2023_en.htm.
[79] Ibid
[80] European Commission, "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm.
[81] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 111.
[82] European Commission, "Opening Remarks of First Vice-President Frans Timmermans - Press Conference on Rule of Law in Poland," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-16-2023_en.htm.

Another legitimising strategy frequently used in the 'Opinion' texts is *authorisation*. When used, the strategy refers most commonly to the 'Rule of Law Framework' and the authority it gives the Commission to act against Poland, which can be seen in statements like "Our Rule of Law Framework allows the Commission to present its assessment to the Polish authorities in written form, which is what we have decided to do today."[83]

However, the EC also relies heavily on legitimising its own authority as a European Union institution, but in these cases the authorisation is most often combined with one or more of the other legitimising strategies:

> "The Commission has deemed it necessary to formalise its assessment of the current situation with regards to the rule of law in Poland in the Opinion adopted today. […] The Commission is adopting today's Opinion in order to help focus these ongoing positive discussions towards the concrete steps needed to resolve the systematic risk to the rule of law."[84]

Moral evaluation referring to positive words, like 'help' or 'resolve', is here paired together with *instrumental rationalisation* explaining the purposefulness of the adopted Opinion in order to give additional strength to the authority claimed by the Commission.

Rationalisation can also be found in its other form, *theoretical rationalisation*, where the Commission relates to their efforts by presenting them as obvious common knowledge, starting phrases with "As you know […]"[85] to accentuate the undisputable violations made by Poland. However, the phrasing is also used in relation to the actions made by the Commission like in the statement "As you know, the European Union is built on a common set of values, enshrined in the Treaty."[86] I consider the reason for this usage of *rationalisation* to be a way of trying to limit the opportunities to question the power of the EU on these particular points at least. These points, which become indisputable by this wording, are later used in the document to legitimise other expressions of power exercise.

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[83] European Commission, "Opening Remarks of First Vice-President Frans Timmermans - Press Conference on Rule of Law in Poland," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-16-2023_en.htm.

[84] European Commission, "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm.

[85] European Commission, "Opening Remarks of First Vice-President Frans Timmermans - Press Conference on Rule of Law in Poland," news release, June 1, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-16-2023_en.htm.

[86] Ibid

6.2 Recommendations

All three recommendations issued by the European Commission make use of the legitimation strategy of *authorisation* to a great extent. Similar to the 'Opinion' texts, affirmation of authority in the recommendations are often paired with others strategies to increase the legitimacy of the EC's power. In addition, the authority in the recommendations is dependent on other actors to a greater extent than in the documents issued in relation to the 'Opinion'. Although the strategy of *authorisation* in the recommendation texts is overall more prominent, it is in the '3rd Recommendation' where the difference between the use of *authorisation* and other strategies is the most evident. What follows is a presentation of the strategies used within the texts in the three issued recommendations.

6.2.1 1st Recommendation

In the '1st Recommendation', issued on the 27th of July 2016, the predominant legitimation strategy is the strategy of *authorisation*. Compared to the 'Opinion' documents, where legitimation through authorisation was mainly realised by referring to personal authority i.e. where justification for the authority is redundant and the question to why? Is 'because I say so'[87], authority in the '1st Recommendation' is mainly related to role model authority where people or institutions with clear authority help legitimise the actions of the subject.[88]

> "The Commission, beyond its task to ensure the respect of EU law, is also responsible, ***together with the European Parliament, the Member States, and the Council***, for guaranteeing the fundamental values of the Union."[89]

The two second most used strategies within the 1st Recommendation are the strategies of *rationalisation* and *moral evaluation*. Whereas *moral evaluation* is used in the same way as it was in previous texts, i.e. by increasing the legitimacy of the Commission as compassionate, and helpful and the Polish authorities as mainly disrespectful, the application of the strategy of *rationalisation* changes. Within 'Opinion' texts, *rationalisation* most often

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[87] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 106.
[88] Ibid, 107.
[89] European Commission, "Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers," news release, July 27, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2644_en.htm.

took the form of *theoretical rationalisation*. However, in the first recommendation the EC mostly use *instrumental rationality*, mainly in order to describe the purpose of the actions taken by the Commission against Poland in statements like;

> "The rule of law is one of the fundamental values upon which the European Union is founded. The Commission, beyond its task to ensure the respect of EU law, is also responsible […] for guaranteeing the fundamental values of the Union."[90]

Or:

> "The effectiveness of the constitutional justice system, in any country where such a system has been established, is a key component of the rule of law. […] So we are recommending, first, that the Polish authorities publish and fully implement the judgements of the Constitutional Tribunal on the nomination of judges."[91]

This way, the Commission realises itself as a legitimate actor by referring to their work as being directed towards the greater good for all members of the EU.[92] The statements also include *moral evaluation* words like 'effectiveness', 'ensure', 'respect' and 'responsible' to make this alleged fact more noticeable.

6.2.2 2nd Recommendation

The 2nd Recommendation was issued on the 21st of December 2016 and has, as can be seen in Table 6.1, two dominant legitimising strategies, *authorisation* and *moral evaluation*, although they only present a slight dominance closely followed by *rationalisation*. The strategies are to a large extent used in the same way as in the documents issued in relation to the '1st Recommendation' but also include few, but lengthy, reports using the strategy of *mythopoesis*.

The similarity between the documents published on these two dates is mainly based on the fact that the '2nd Recommendation' to a large extent is a reprint of the '1st Recommendation'. The new texts include whole sections directly adopted from the first documents. It is my opinion that the focus seems to be mainly to legitimise the '1st Recommendation' even though it is explained as to "compliment the Recommendation of 27

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[90] European Commission, "Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers," news release, July 27, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-2644_en.htm.
[91] European Commission, "Opening Remarks of First Vice-president Timmermans on the Rule of Law Recommendation to Poland," news release, July 27, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_SPEECH-16-2657_en.htm.
[92] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 114-5.

July 2016."[93]   The reprinted sections are generally made up of long sections retelling the reasons for issuing the '1st Recommendation' and the concrete steps the Polish authorities need to take to fulfil the requests presented in those texts.

The long justifications are paired with *authorisation* where the Commission refers to personal authority, i.e. they rely on themselves as legitimate enough and only mention another authority figure at two occasions in the texts, once where they refer to a statement given by Timmermans, and once where they refer to support for the recommendation given by the Venice Commission;

> "[T]he Venice Commission also underlined the that the selection process ensures that only candidates with substantial support in the Tribunal can be elected as candidate to be proposed to be the President of the Republic."[94]

The strategy of *moral evaluation* presents itself in the 2nd Recommendation, not so much as to legitimate the Commission, but to de-legitimise the Polish authorities. This includes the usage on new negatively associated words like 'undermining'*,* 'denies'*,* 'disregard'*,* 'threaten'*,* and 'flawed'*,* all when talking about the actions, or non-actions, of the Polish authorities. This usage of *moral evaluation* can be seen as an attempt to legitimise the Commission by making the antagonist, i.e. the Polish authorities, appear less trustworthy.

6.2.3 3rd Recommendation

The greatest change in the usage of legitimation strategies can be seen in the texts published on the 26th of July 2017. This is where the predominance of the strategy of *authorisation* is really apparent. It seems like the European Commission has deemed the strategy to be the most effective one to gain the trust and legitimacy needed to reinforce their power and influence in the matter of rule of law in member states.

The *authorisation* in these texts appear in all forms presented by van Leeuwen; personal authority, role model authority, and authority through law.[95] However, the most recurrent use is role model authority and, compared to in previous documents, the particular implementation of actors and higher instances is evident. For example, whereas previous texts

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[93] European Commission, "Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers," news release, December 21, 2016, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_MEMO-16-4479_en.htm

[94] Ibid

[95] Theo Van Leeuwen, *Discourse and Practice: New Tools for Critical Discourse Analysis* (Oxford: Oxford University Press, 2008), 114-5.

have included formulations like; "First Vice-President Frans Timmermans said"[96], the texts released in relation to the '3rd Recommendation' goes one step higher in the hierarchy with statements like "President Jean-Claude Juncker said".[97] In the same way the texts include both references to the Commissions' own authority as an EU institution and references that include more instances like "A very broad majority of the Member States"[98] or "A wide range of other actors at the European and International levels"[99], to make evident that the Commission does not stand alone against Poland in this matter. In fact, the inclusion of all of the EU, its Member States, and also a wider world perspective, the impression of Poland as the 'odd man out' is made to portray Poland as antagonists, not only to the EU member states, but to the whole world.

6.3 Article 7 Proposal

The decision to activate Article 7 was taken on the 20th of December 2017 and although the strategy of *authorisation* is still overrepresented, the texts show an overall even spread of legitimising strategies. For instance, the strategy of *moral evaluation* can be seen in a new form. It is no longer used to antagonise the Polish government as it has in the Recommendations, but is again used in its original form with words like 'despite', and 'however'. *Instrumental rationalisation* is used to a great extent to enlighten the public about the efforts taken by the Commission to protect the rule of law in Poland, and in the whole European Union. The effectiveness of clear rules is fore fronted as well as the consequences the Polish violation might have on the overall security on several fields in all member states.

> "[B]ecause the when the rule of law in any Member State is put into question, the functioning of the Union as a whole, in particular with regard to Justice and Home Affairs cooperation and the functioning of the Internal Market, is put into question too."[100]

Instrumental rationalisation becomes a powerful tool, especially paired with *moral evaluation* where the Commission plead to the feelings of the European citizens in order

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[96] European Commission, "European Commission Acts to Preserve the Rule of Law in Poland," news release, July 26, 2017, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_IP-17-2161_en.htm.
[97] Ibid
[98] Ibid
[99] Ibid
[100] European Commission, "Rule of Law: European Commission acts to defend juridical independance in Poland," news release, December 20, 2017, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_IP-17-5367_en.htm

to encourage backup for their actions. I view this as an attempt by the Commission to implement the intergovernmental cooperativeness of the EU in a wider scale than they have done before. One example is the section cited below;

> "The Rule of Law is a necessary condition for effective cooperation between Member States. This is not just about the situation in Poland, this is about the EU as a whole, about who we are. An issue with the rule of law in one Member State is of concern to all Member States. And all Member States should be engaged to try and solve that issue in collaboration with the Member State concerned."[101]

This pairing of strategies has not been used in the other texts, probably because it requires the Commission to appear vulnerable in order to gain support. However, the Proposal to activate Article 7 is in itself a proof that the powers of the Commission have failed to gain resonance in Poland, thus formulations like the one above does, in my opinion, more to legitimise the EC at this stage than it would if used in the 'Opinion' documents.

When it comes to *authorisation*, the Commission uses a new strategy where they namedrop whole sections to legitimise their actions. The phrase "[t]he Commission's concerns are fully shared by a wide range of European and International organisations"[102] has been used in the '3rd Recommendation', but is in the 'Proposal' it appears complete with all the names of the organisations in question.

> "The Commission's concerns are fully shared by a wide range of European and International organisations, including the Council of Europe's Venice Commission, the United Nations, the OSCE and various European Networks of Supreme Courts, Constitutional Courts, and highest Administrative Courts, Councils for the Judiciary, and Bar Associations, and also by the European Parliament which took a very clear position."[103]

This can be seen as a way the Commission tries to incorporate the European Union in a new context. By doing so, they also try to reconstruct the overall identity of the EU as perceived by the European citizens. To refer to the model created by Fairclough, this can be seen as an ample example where the discursive practice aims to alter the social practice.[104] In other words, since many of these organisations possess the legitimate power that the EU seek, the European Commission gain some of that legitimacy by including the EU in the same supranational context.

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[101] European Commission, "Opening remarks of First Vice-President Frans Timmermans, Readout of the European Commission discussion on the Rule of Law in Poland," news release, December 20, 2017, Ec.europa.eu, accessed March 8, 2018, http://europa.eu/rapid/press-release_IP-17-5367_en.htm
[102] Ibid
[103] Ibid
[104] Marianne Jørgensen and Louise Phillips, *Diskursanalys Som Teori Och Metod* (Lund: Studentlitteratur, 2000), 66.

7 Conclusion

For scholars with interest in the European Union, times of socio-political or economic problems within the process of European integration may provide many new themes and areas for scholarly intervention and engagement. Historically, the EU has sometimes achieved the greatest growth coming out of its toughest periods.

This thesis has examined the discursive practices of the European Commission in documents relating to their actions concerning the rule of law in Poland. The aim was to analyse the EC's activities towards Poland as well as how the Commission legitimise their authority towards national governments in a situation where that legitimacy is questioned. The documents published by the EC in relation to each action stage of the 'Rule of Law Framework' have been studied using CDA and the *legitimation strategies* developed by Theo van Leeuwen, together with the three-dimensional model by Norman Fairclough. The problem framing introduced the continuous struggle the European Union has with legitimacy and authority towards member states. Even though the power of the EU, and the Commission, is constituted through the TEU, the legitimacy and authority as supranational entities are questioned by national governments on the basis of democratic deficit. Because of these problematics, safeguarding the legitimacy and power of the EU becomes equally important as reprimanding Poland for its violations of the rule of law.

Throughout the analysis two questions have constituted the main focus, firstly, *How does the European Commission discursively convey the political situation in Poland, and can a difference be seen between earlier and later documents?,* and secondly, *How is the EC discursively safeguard their legitimacy and authority towards national governments and European citizens?* Regarding the first question the result of the analysis show that the Commission relay mainly on two strategies to legitimise their supranational influence towards member states: *authorisation* and *moral evaluation*. A seen in the analysis, *authorisation* was mostly used to lend the European Commission legitimacy and authority from other European or international institutions that are perceived as especially influential in the context. *Moral evaluation* was most often used, in broad terms, to either accentuate the goodwill of the EC or to antagonise Poland.

The second research question is answered by incorporating the three-dimensional model by Fairclough. The theory is that the EC, by their discursive practice, i.e. how they legitimise their actions towards Poland, mean to alternate the perception of the EU to fit the authority of a supranational institution. Since the Commission lacks the legitimacy that comes with democratic elections, it needs to assert the legitimation and authority in another way. This might be the reason for the excessive use of the strategy of *authorisation* in the analysed texts.

Although the Commission at times relate to their own authority as an EU institution, the authorisation trough other actors of importance is more prominent. By referring to the European Parliament, a democratically elected institution that functions within the same context as the Commission, the EC gains some of that democratic legitimacy. Or, as in the final example in the analysis, where a number of European and international organisations were mentioned together with the EC, the Commission itself acquire some of the legitimacy and authority owned by these organisations.

To reference to what van Leeuwen mentions about the Subject position, the extensive use of *authorisation* the way presented above, functions as a way of alternating the perception of the EC as a legitimate authority and as authorised to express themselves the way they are in the documents. However, the need for the European Commission to legitimate their actions this insistently when acting on the basis of EU legislation give reason to believe that the EC itself is doubting the grounds of their legitimate power. To tie into what Fairclough says about hegemony, use of *authorisation* can also be seen as the Commission taking part in a power battle where they negotiate their dominance in the social practice wherein which they function, i.e. as a supranational institution.

To conclude, the supranational identity of the European Union has been questioned on the basis of democratic legitimacy. However, how the European institutions, such as the EC, confront critique relating to legitimacy and authority might have effect on how the European project is perceived by national governments and the European citizens in the entire union. Although, as long as the democratic representation within the EU's institution is not sufficient, the European Commission will most likely have to keep defending the legitimacy and authority of the EU to its member states.

8 Further Research

This research has focused on the Commission and the way they legitimise their actions through discourse, but as mentioned in the introduction, a different approach, where the focus is situated around the dialogue between the Commission and the Polish authorities, would result in an equally interesting paper. Maybe a comparison of the documents that form the basis of this analysis with the documents sent directly to the Polish authorities. Analysed in terms of Theo van Leeuwen's legitimation strategies, the texts might show greater variety than they did in this research, where all texts were directed towards the same audience. In addition, an analysis including both types of documents might give more depth to the problematics presented in this thesis concerning the legitimacy and authority of the European Commission towards national governments.

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