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ENFORCEMENT OF THE EUROPEAN UNION CORE VALUES: EU RESPONSES TO THE EROSION OF THE EUROPEAN VALUES IN AUSTRIA, POLAND AND HUNGARY

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ENFORCEMENT OF THE EUROPEAN UNION CORE VALUES: EU RESPONSES TO THE EROSION OF THE EUROPEAN VALUES IN AUSTRIA, POLAND AND HUNGARY

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Abstract

This thesis analyzes the mechanisms ensuring compliance with the EU values that the EU has utilized in the cases of Austria (1999-2000), Hungary (2010-2020), and Poland (2015-2020). The objective of the thesis is to find out what instruments the EU has at its disposal to address value breaches by member states, and how and with what results these instruments have been used. This thesis aims to explain why the EU has not been able to tackle the issue of value breach in member states efficiently by examining and assessing the available mechanisms. To examine the EU's response to the value breach in the selected member states, process tracing is applied. The timeline of the developments and crucial moments are assessed based on the information received from the treaty provisions, secondary legislation, press releases of the EU institutions and secondary analysis. The conclusions are made that due to the blurred nature of values the existing mechanisms as infringement proceedings, Article 7 procedure, Rule of Law Framework have proven themselves to be inefficient. Moreover, the EU creates a suitable environment for the violating states to proceed with their illiberal developments through funding them and engaging in a dialogue within the existing culture of cooperation as opposed to imposing punitive measures.

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List of abbreviations

CJEU – Court of Justice of the European Union

CVM – Cooperation and Verification Mechanism

EP – European Parliament

EPP – European People's Party

EU – European Union

FPÖ – Freiheitliche Partei Österreichs, Freedom Party in Austria

LIBE – European Parliament Committee on Civil Liberties, Justice and Home Affairs

NCJ - National Council for the Judiciary in Poland

PiS – Prawo i Sprawedliwość, Law and Justice Party in Poland

RoLF – Rule of Law Framework

TEU – Treaty on European Union

TFEU – Treaty on the Functioning of the European Union

Introduction

During the last decade, the EU has been experiencing democratic backsliding. Countries that promised to share European values before the accession, do not have strong incentives to keep their promises after having joined the EU. Some of them have deviated from the norms of liberal democracy. This results in serious implications not only for the states in which illiberal reforms unfold but also for the EU. Illiberal developments in the member states undermine the status of the EU as the community of law and values. Other EU members are becoming more alarmed as the EU is based on mutual trust and cooperation, where the structures of all states are intertwined. Europeanisation of the states' values it not only a matter of domestic scale as it affects the functioning of the whole European Union. The value crisis poses a great threat to the whole existence of the European Union as the values form the foundation of it.

The increasing concern stimulates the EU to come up with a response that would halt the erosion of values in the member states. This thesis will analyze the EU's responses to the erosion of democratic values in Austria, Hungary and Poland. The timeframe and the nature of the developments differ in each of these states. However, there is one thing these cases have in common. The EU has brought up the possibility of imposing penalties against the member states that diverge from the EU values on many occasions throughout its history. Nevertheless, only in relation to Austria, Hungary and Poland these measures were eventually applied. The pattern of the EU's actions differs in every case due to the specificity of the value domain. As the values lack precise definition it constitutes a problem when building mechanisms ensuring value compliance.

The objective of the thesis is to find out what instruments the EU has at its disposal to address value breaches by member states, and how and with what results these instruments have been used. This thesis aims to explain why the EU has not been able to tackle the issue of value breach in member states efficiently, by examining and assessing the available mechanisms. This work will focus on the assessment of the mechanisms ensuring compliance with the values that the EU has developed over time. The research tasks are to define these mechanisms based on their description in the regulatory framework of the EU and to provide an evaluation of their efficiency in practice. The central expectation of this work is that these mechanisms have developed over time in

response to challenges posed by illiberal trends in the member states, however, the existing instruments do not add up to an effective framework for ensuring compliance.

This research will contribute to the growing body of literature on compliance with the EU values. Most of the existing studies tend to focus on describing successful Europeanisation and the cases of failure, especially when it comes to the member states, receive less attention. Also, compliance with the EU law in the existing literature is usually analyzed through the prism of directive implementation. However, the problem of breaching EU values has been exacerbated only recently and remains underresearched. This problem requires an interdisciplinary approach, therefore, it will be addressed both from the perspective of political sciences and EU law. The mechanisms to ensure compliance are outlined in the legal basis of the EU, however, their application remains highly political. The value crisis is closely linked to the questions of balance between sovereignty and supranational governance, nature of the EU and its capability as an integration project to develop further.

This study will start with providing an overview of theoretical approaches related to the issue and stating the expectations that stem from the theory. The theory chosen for this thesis is Europeanisation, which describes the interaction between the EU and the member states. The hard and the soft mechanisms of Europeanization will be analyzed as they are applied when ensuring the value compliance. This theory was also chosen as the developments in Austria, Poland and Hungary pose the question of the extent and limitations of Europeanisation. Next, before examining the existing mechanisms linked to values, the essence of the EU values themselves is explained. Then the practical mechanisms of ensuring value compliance available to the EU will be listed and analyzed. The third chapter examines the utilization of these mechanisms in practice in the specific cases of Austria, Poland and Hungary. Based on the assessment, recommendations for future enhancement of the mechanisms are outlined. Finally, conclusions are made.

Having stated the agenda of this research, it is also important to indicate what this thesis is not aiming to do. This work is not going to explain the reasons why the chosen member states experience domestic transformations that lead to the erosion of the European values. The focus will remain on the EU responses to the issue and tools it has developed. The value breaches committed by the states in the empirical part will only be

briefly summarized without the aim to explain why exactly the governments chose and persisted in pursuing particular policies.

Chapter 1. Theorizing EU mechanisms ensuring value compliance

The purpose of this chapter is to provide a theoretical background with the aim to explain the relationship between the EU and member states in the domain of the rule of law value compliance. This chapter includes a comprehensive and systematic overview of the Europeanisation framework in order to derive the expectations for the empirical analysis. This framework was chosen as it puts the main emphasis on the interaction between the EU and its member states, analyzing the top-down and the bottom-up influences. The value breach in the member states can be interpreted as an instance of Europeanisation failure, where the EU was unable to ensure compliance of the member states with its values. The interaction between the EU and the member states is the central problem that this thesis analyses and the Europeanisation theory explains how exactly this interaction functions.

More specifically, this chapter will define the key premises of the theory. The place of the Europeanisation framework in the broader context of the literature on theories of integration will be assessed. The meaning of Europeanisation will be explained through the historical context of the theory's emergence and its position vis-à-vis other theories. This study will explain how the Europeanisation works, including the definition of Europeanisation levels and identification of the factors that are important for successful Europeanisation. The Europeanisation mechanisms will be analyzed in detail, focusing on the question of what is the nature of these mechanisms and why they vary depending on the domain. This would help to answer the questions why exactly the Europeanisation fails. Based on this analysis, theoretical expectations will be offered, which will later be tested in the empirical part.

1.1. Europeanisation

The theories explaining European integration have evolved together with the development of the European project. The very first theories such as federalism, functionalism and transactionalism had less explanatory power and lost their relevance with time (Eilstrup-Sangiovanni, 2006, p. 34). As a response to that emerged the key debates in the history of the EU between intergovernmentalism and supranationalism (Schmidt, 1996), between rationalism and constructivism (Jupille, Caporaso and Checkel,

2003, p. 11). Compared to the mentioned theories, Europeanisation constitutes a rather new framework. This theory started developing with the deepening of integration within the Union and the increase in the impact of the EU on the member states. Some scholars divide all the existing Europeanisation research into three waves. The first wave concentrates on the European integration and the efforts at the EU level. The second wave investigates Europeanisation as a factor that leads to domestic changes. The third wave is more recent and is supposed to constitute a combination of the previous two waves, dedicating its attention to both the EU and domestic level efforts that result in changes (Holzhacker and Haverland, 2006, p.1).

Despite the fact that Europeanization is a relatively new approach in the European studies, it is becoming more and more widely applied as it corresponds to the demands of the current state of affairs in the EU. The debates between the earlier invented theories became outdated. The EU became more fragmented and polycentric by its nature, which required a different approach when examining it. This became especially evident in the 1990-s when with the Maastricht Treaty the EU clearly declared its three pillar structure with the different levels of competence division between the EU and the states. This Treaty marked the creation of an ever-closer Union of political nature (Eur-Lex, 2018). The Europeanization theory to some extent constitutes a mixture of all previous theoretical approaches, using their key premises to explain the on-going developments. For instance, on one hand, as the multi-level governance and supranationalism theories, Europeanisation studies the process of "uploading" domestic policies to the EU level. On the other hand, as the intergovernmentalism theory, Europeanisation examines the state of affairs on the domestic level and how it influences European integration (Graziano and Vink, 2013, p. 33). At the same time, Europeanisation is an essentially new framework which as opposed to all previous theories does not only analyze the drivers of European integration, but also explains how exactly all the levels of the EU interact.

Compared to other theories, Europeanisation constitutes more of a framework rather than a clear and concise theory. Due to this fact, Europeanisation can be combined with any other European integration theory when conducting research. Also, this is the reason why with the emergence of Europeanisation there was no clear definition of what Europeanisation is. With the development of the framework, new definitions emerged reflecting the dominant thoughts during that period. Europeanisation remains a contested

concept up until today. It is a framework that describes the relations between the EU and the member states and assesses the level of transformation these relations foster. Most commonly used is the definition made by Radaelli who states that Europeanisation is a *"process involving, construction, diffusion and institutionalization of formal and informal rules, procedures, ... 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic ... discourse, political structures and public choices"* (Radaelli, 2000, p. 4). Although the scholars did not agree on one single comprehensive definition of Europeanisation, they still have agreed on the key features that this concept represents. Firstly, Europeanisation can start from any stage of the policy cycle. Secondly, it includes not only tangible aspects that can be measured as results of implementation of certain policies, but also is framed through values and norms. Thirdly, in order to assess the influence of the EU policies on the member states, two steps have to be analyzed: the policy formulation at the European level and the extent of its implementation at the domestic level (Bulmer and Radaelli, 2013, p. 361).

The most recent works in this domain "favor a definition of Europeanization either as the domestic impact *of* the EU, and/or the domestic impact *on* the EU (Flockhart, 2010, p. 790). Therefore, this framework has two foundational approaches – the bottom-up and top-down – arguing whether the EU or the members-states play the key role in European integration. As mentioned before, historically the research on Europeanisation at first concentrated mostly on the influences on the EU level and later shifted its focus on domestic changes. This, in turn, established the concepts of "uploading" and "downloading", when it comes to the interaction of domestic and EU policies. Downloading denotes implementation by the domestic actors of the policies that were developed and imposed by the EU. In this case, the lower is the degree of discrepancy between the existing and the offered policy, the lower are the costs for downloading. The least costly for the states would be the process of uploading, where the state "uploads" its policy to the European level. All the states strive to upload their policies to the EU level as it would minimize the adaptation costs for them. Nevertheless, this creates another problem as all the states have very different structures and following a policy beneficial for one state might not be the same for the other (Börzel, 2003, p. 20). In reality, this process constitutes a simultaneous interaction of the two levels in both directions.

1.2. Mechanisms of Europeanisation

It is also important to understand how exactly Europeanisation proceeds. In order to accomplish that, scholars have distinguished different typologies of the Europeanisation mechanisms. The classifications offered by various scholars differ, however, all of them have one thing in common. All of them agree on the fact that the Europeanisation mechanisms by their nature can be "hard", "soft" and that there is a range of mechanisms in between. The first type is associated with the demands of the EU to follow specific rules as, for instance, implementing the EU legislation. The soft mechanisms are related to indirect influences of the EU, where there is no request to meet certain requirements, however, the values of the actors are affected. This, in turn, frames their preferences and contributes to Europeanisation (Ladi, 2005, pp. 3-5). Other mechanisms include both the "hard" and "soft" elements that in combination influence the states.

The most comprehensive and most popular typology of the Europeanization mechanisms was offered by Knill and Lehmkuhl (Knill and Lehmkuhl, 1999). These scholars define the mechanisms based on different aspects of Europeanisation: institutions, opportunity structures and beliefs. The first mechanism, also labeled, the institutional model, describes Europeanisation that happens through prescription by the EU of a certain institution constellation for the state. The second mechanism is based on altering the domestic opportunity structures, which leads to redistribution of the power and resources. This way the EU does not offer a set of requirements to be met but simply excludes the opportunities for domestic actors that do not benefit the EU. Finally, the third mechanism functions through shaping the beliefs of the domestic actors. This mechanism does not have an immediate effect and affects the domestic developments in the long run (Knill and Lehmkuhl, 1999, pp. 2-3). Each of these mechanisms corresponds to three types of integration: positive, negative and framing. In the first type, the EU offers a positive model to follow, in the second the EU controls the environment of Europeanisation (i.e. the opportunity structures) and the third type happens through framing the preferences of the states (Knill and Lehmkuhl, 1999, pp. 1).

The less popular and comprehensive typologies were offered by Page and Schmidt. Page distinguishes three mechanisms of Europeanisation: coercion, imitation, adjustment and policy diffusion. The first one is considered the most "hard" one and

describes a process where the state is forced to follow the EU legislation. Imitation includes Europeanisation that happens without direct EU influence, where the states copy the best initiatives from other states. The difference between the last two mechanisms is not spelled out clearly and both of them refer to the EU framing the environment to guide the states' Europeanisation (Page, 2003, pp. 163-176). Schmidt came up with the following mechanisms: coercion at a high level, coercion at a less high level, mimesis, regulatory competition. The first two mechanisms can be seen as the classic "hard" mechanisms offered by other typologies. Mimesis allows the states to decide themselves whether they should follow the EU rules. Regulatory competition denotes a mechanism which does not include EU suggesting certain rules or institutional constellations, but a mechanism where the EU creates a competitive environment for the states which motivates them to change (Schmidt, 2002).

Three different mechanisms were distinguished based on the governance theory by Knill and Lenschow: coercion, competition and communication (Knill and Lenschow, 2005). Coercion is related to the states following the EU legislation, which also leads to the establishment of institutions based on EU standards. This mechanism can be classified as the classic "hard" mechanism of Europeanization. The second mechanism of competition presupposes fewer rules prescribed by the EU and more self-regulation initiated by the state. The main motivation for institutional transformation in the competition mechanism is the goal to achieve institutional efficiency demonstrated by other member states. This mechanism can be classified as a more "soft" one, where the state is not subject to harsh regulations but learns from other actors who achieved high results. Finally, communication excludes any rules imposed by the EU and is fully based on the learning process. It includes information exchange between the states and adoption of the best practices (Knill and Lenschow, 2005, pp. 583-587). Consequently, the three mechanisms offered by the scholars constitute a classification with a gradual mechanism type shift from the "hard" to combined and, finally, "soft".

The types of mechanisms largely depend on the policy sector, where they are applied. These mechanisms have built a system of conditionality that influences the neighboring countries, pre-accession states and also covers the post-accession period. For instance, the EU has developed an elaborate set of intertwined mechanisms, when it comes to accession. The first and the strongest mechanism is gate-keeping, which allows

the EU to influence the states by controlling their access to negotiations and further accession stages. Another mechanism includes setting certain benchmarks for the states to achieve and monitoring their success. These benchmarks are often related to adopting the EU legislation, which is also a separate mechanism. The EU offers a certain model for arranging the domestic institutions and the adoption of *acquis communautaire* is the central focus of any accession talks. One more mechanism is technical aid and financial assistance, that can be provided when the state meets the prescribed standards. Overall, providing advice to the country can be seen as a separate mechanism too. The latter can take place, for instance, in the form of twinning, where the EU officials from other countries are assigned to work for the structures of the state that requires aid. In this way, the state learns based on the examples of others' success (Grabbe, 2001, pp. 1020-1024).

The most recent attempt to summarize all the existing typologies was made by Bulmer and Radaelli (2013). These scholars distinguish three mechanisms, one vertical and two horizontal ones, based on the type of governance and policy, where they are applied. The vertical mechanism is associated with the positive integration, where the EU offers rules and templates for the states to "download". It is also related to market-correcting rules. The first horizontal mechanism is linked to negative integration, where the EU does not give any templates and offers market-making rules. The second horizontal mechanism is based on coordination and soft instruments as the Open Method of Coordination, soft law, policy exchange and communication (Bulmer and Radaelli, 2013, pp. 368). Although this classification is based on all of the previously mentioned works, the value of it when it comes specifically to defining mechanism types remains questionable. Essentially, distinguishing only between vertical and horizontal Europeanisation mechanisms, this classification is less useful than the primal typology by Knill and Lehmkuhl (1999), which fundamentally includes all the same domains but with better labels.

When the "hard" mechanisms boil down to EU legislation, the "soft" mechanisms show more diversity. The latter can also be divided into bottom-up and top-down mechanisms based on the logic of their functioning. The first strand includes voluntary learning, mimicking and the second is related to ideational and institutional diffusion, socialization, peer pressure (Tsakatika, 2012, p.680). Basically, learning and socialization can be classified as the same mechanism by its essence. These mechanisms

describe the same process with the only difference in the emphasis on the agency of the EU (socialization) or the agency of the states (learning). Overall socialization can be conceptualized as a process of "distribution of social rewards and punishments" that motivates the states to accept norms (Zürn and Checkel, 2007, p. 248). Another definition of socialization is "inducting actors into the norms and rules of a given community» with the aim of motivating the actors to internalize these norms and comply with them in the future (Checkel, 2005, p. 804).

Socialization can be divided into three sub-mechanisms: strategic calculation, role-playing, and normative suasion. Strategic calculation as a socialization mechanism is informed by the rationalist theory. According to this mechanism, the actors rationally calculate their actions and internalize the norms in order to get a certain benefit. Role-playing presupposes actors acquiring certain roles prescribed by the environment. This process does not necessarily lead to full norm internalization but provides the actors guidance when it comes to their actions. If the previous mechanism is based on the passive acceptance of the given role, normative suasion finally means active internalization of the norms (Checkel, 2005, pp. 808-812). In sum, these three mechanisms demonstrate a gradual shift from the logic of consequences to the logic of appropriateness that drives the socialization process. A more sophisticated socialization mechanisms classification if provided by Hooghe. Taking into account Checkel's mechanisms and also adding some other ones she classifies them by the following principle. The first type of socialization is when the actor is engaged in it consciously, as in normative suasion. Another type is subconscious socialization as role playing or social mimicking. Other division is between instrumental socialization, for instance, shaming and non-instrumental – communication (Hooghe, 2005, p. 865). Each of the mechanisms has its own necessary factors to ensure successful Europeanization, which will be discussed in the next section.

1.3. Important factors and outcomes of Europeanisation

It is impossible to define one set of factors that have to be present to ensure successful Europeanisation. The logic for it is the following. Depending on the sphere of Europeanisation, different mechanisms are applied. Therefore, each mechanism has its own factors that affect the outcome of Europeanisation. If we take into account the core

mechanisms offered by Knill and Lehmkuhl, then for the institutional model the success of Europeanisation will be defined by the level of compatibility of domestic institutions with the imposed standards. The degree of adaptation for the mechanism altering the opportunities will be defined by the level of redistribution of power between the domestic actors. Finally, the third mechanism that functions through framing the beliefs depends on the degree of domestic support for these beliefs which is necessary to implement reforms (Knill and Lehmkuhl, 1999, pp. 4).

Completely different are the factors that influence the "soft" mechanisms of Europeanization. For instance, the socialization mechanism of *strategic calculation* is most efficient under the circumstances of conditionality. This includes the fact that the promised reward is higher than the costs of compliance. The duration and the intensity of the contact, previous exposure of the actors to policymaking are among important factors for the *role-playing* socialization. *Normative suasion* has several factors such as new circumstances for the actor which then motivate him to critically re-think the situation and absence of old beliefs that contradict the new norms. This mechanism functions best in international institutions which serve as a platform where the actors can talk and persuade one another (Checkel, 2005, pp. 808-812). Schimmelfennig, viewing socialization as a process of reinforcement distinguishes three components that ensure successful outcome: the availability of a reward to be given after conforming with the norms, the value of the reward exceeding the costs invested in changes, and presence of pro-western internal party constellation (Schimmelfennig, 2007, p. 31).

However, there is one crucial factor that is independent of the mechanism type. When looking at the broader picture, an important detail that defines the result of Europeanisation is the diffusion of the EU influence (Grabbe, 2001, p. 1025). The policy sectors and the countries on different stages of integration are exposed to different levels of the EU influence. For instance, when it comes to integration stages, after acquiring the membership there is no strong incentive left for the country to comply with the value demands imposed from the top as the EU loses its leverage in the form of membership perspective. The compliance of the states with the EU standards is monitored more closely and strictly, when it comes to the candidates and after the accession the control weakens (Sadurski, 2004, p. 66). The institutions of the EU due to their nature also have different tasks and functions. Supranational institutions as the European Commission or

the Court of Justice of the EU have more opportunities to pursue the EU interests as opposed to intergovernmental EU institutions.

The outcome of Europeanisation also depends on one more central principle of the theory, which is the "goodness of fit". This principle argues that the higher is the level of the misfit within the existing system, the more pressure there is on the member-state to comply with the EU standards. This leads to a conclusion that the adaptation pressure within the EU is also one of the crucial factors of successful Europeanisation. Commenting on this concept, Radaelli mentions that more research is required and that it has less explanatory power when it comes to horizontal Europeanization. He also states that the level of adaptation pressure, to which the "goodness of fit" is directly linked cannot be interpreted as the ultimate explanatory factor influencing the outcome of Europeanization. A more important role here play the institutional veto points, which are always taken into account regardless of the level of adaptation pressure (Radaelli, 2001, pp. 130-131). Adaptation pressure is valid in a limited amount of cases, where the EU prescribes a specific model of development (Knill, 2009b, p.14). This means that the "goodness of fit" is better applied to Europeanization through "hard" mechanisms which offer a specific set of rule, as opposed to "soft" mechanisms, which have a less structured influence.

Europeanisation is also informed by other theories and their influence offers new factors to take into account. For instance, according to rational choice institutionalism, two crucial factors are domestic veto points and domestic institutions. Sociological institutionalism instead emphasizes the political culture of the state and the presence of leaders that would persuade the rest to change their beliefs. These two theories also correspond to two different logics of domestic change – logic of consequences and logic of appropriateness. Based on first, Europeanisation gives the actors different opportunity structures within which they pursue their interests. The logic of appropriateness works through persuasion and internalization of norms (Börzel and Risse, 2003, p.2). To sum up, Risse, Cowles, and Caporaso divided all the mediating factors into two groups – structure-related and agency-related factors (Graziano and Vink, 2013, p. 41). Veto points, mediating institutions and political culture are in the first group. The second group includes differential empowerment of actors and learning (Risse, Green Cowles and Caporaso, 2001).

As several factors for successful Europeanization have been listed, it is also useful to analyze the factors causing failure of Europeanization. From this point of view, the non-compliance of the member state with European standards can be intentional and unintentional. The intentional lack of compliance can have several motivations. These are disagreement of the state with the essence of the provision as it may be harmful to national interests, disagreement with the decision-making process on the EU and domestic level. The unintentional non-compliance can be related to misinterpretation of the provision, lack of administrative capacities or general political instability in the country (Falkner et al., 2005b, p.13). As most of the previously mentioned factors in this section focus on the EU level and mechanism type, the distinction between intentional and unintentional failure to comply draws the attention to the internal factors.

Several classifications have been invented regarding the assessment of the outcomes of Europeanisation. One of the frameworks offered by Börzel includes the following effects. The two outcomes linked to the lowest amount of change are *intertia* - absence of domestic changes and *retrenchment* - a phenomenon when the pressure from the EU only exacerbates the domestic situation. The highest level of Europeanisation is *transformation*, where the member state substantially changes existing policies on the demand of the EU. Between these levels are *absorption* and *accommodation*, which denote the member state accepting the EU policies but abstaining from major changes in the domestic system (Börzel, 2003b). A different classification for socialization outcomes is offered by Checkel. He divides them into two types: Type I and Type II internalization. The first type is related to adoption by the actor of a new role that does not necessarily lead to full norm internalization. Type II internalization includes changes in the values and interests of the actors at a deeper level (Checkel, 2005, pp. 808).

1.4. Mechanisms ensuring value compliance

The enforcement of the EU core values works through different mechanisms. Ensuring compliance with the values, on one hand, constitutes a formalized legal procedure. On the other hand, however, to a larger extent, it depends on the "soft" mechanisms as socialization which functions though framing actors' beliefs and values. Therefore, this policy domain has its own special characteristics. The compliance with the value demand cannot be measured immediately as there are no precise criteria and the

values are subject to interpretation. The compliance manifests itself through indirect factors as reforms and policies, therefore, the value shift cannot be detected rapidly. In addition, the EU is only authorized to take measures when observable implications of the illiberal attitudes become evident. Consequently, the more binding the EU policy is and the deeper it is rooted in specific demands embedded in the legislation, the higher is the adaptation pressure on the state that constitutes a "misfit" (Graziano and Vink, 2013, p. 46). Therefore, if the policy is not extensively regulated on the EU level, which is the case for the value compliance, the EU will be able to exert less pressure on the state.

Another perspective on the issue is that the success of Europeanisation largely depends on the level to which the offered EU policy corresponds to the interests of the domestic actors (Knill, 2009b, p.15). It is also supported by the conclusions of Radaelli (2001), who states that domestic veto points play a bigger role than the EU pressure, when it comes to defining the outcome of Europeanization. The controversial judicial reforms and other decisions of the government that are not in line with the EU values then can be explained with the fact that the existing EU standards hinder the opportunity of the domestic actors to consolidate their power. This means that the absence of a specific mechanism that would exert pressure on the member states to comply is not the crucial reason that leads to Europeanisation failure in the value domain. The interests of the domestic actors is also a decisive factor when defining the outcome of Europeanisation in the value domain.

Schimmelfennig's classification of factors defining the Europeanization outcome has a lot of explanatory power for the selected cases. As mentioned before, he distinguishes three crucial circumstances to ensure successful Europeanisation. The ultimate motivator is the offered membership in the EU. For the cases studied in the empirical part, this factor is no longer valid. Intergovernmental interaction is also important in the reinforcement of values. However, in the circumstances where the violating state is not the only outlier and other states demonstrate illiberal sentiments too, it is problematic to put enough pressure on the infringer. The third previously mentioned element of reward costs exceeding the adaptation costs is also weak for the selected states. Adaptation costs for the governments in the violating countries are rather high as implementation of the reforms based on liberal principles would hinder power consolidation. This conclusion leads to the final element which is the party constellation

in the country. If the country is governed by authoritarian political forces, the liberal socialization is doomed to fail (Schimmelfennig, 2007, p. 31). Based on these factors, the EU can no longer rely on positive socialization as a mechanism ensuring compliance with the liberal values. Instead of only offering positive incentives, EU now has to stick to coercive enforcement of norms. In order for it to be efficient, the punishment for the state has to be costlier than adaptation (Schimmelfennig, 2007, p. 35).

1.5. Summary and theoretical expectations

In sum, the discussion of the extent and mechanisms of Europeanization leads to the following theoretical expectations for this thesis. Firstly, due to the fact that the level of the EU's supranational control varies depending on the policy domain, the control mechanisms of the EU when it comes to values are not efficient. This is linked to the fact that it is not possible to define what constitutes a value breach due to the blurred nature of values. The second expectation addresses the dynamics of Europeanisation. The expectation in this regard is that the new mechanisms ensuring compliance with values develop as a response to the new challenges. This leads to another theoretical expectation that, taking into account the current state of affairs, the mechanisms ensuring compliance with the values have developed, however, their efficiency parameters remain low due to the specifics of this policy sphere. This fact is exacerbated with another expectation which states that if the domestic actors do not support the EU policy imposed, it is harder for the EU to impose its standards in the given domain.

Chapter 2. The EU's toolbox for ensuring compliance with values

This chapter will review the instruments the EU has invented in order to ensure compliance with the EU values. Firstly, the nature and the sources of the EU values will be assessed. Next, the mechanisms available to ensure compliance with the EU values will be examined. Special attention will be devoted to the mechanisms related to the cases when the state does not follow the demands of the EU and violates European values during transformations. The assessment of the instruments will proceed from the general measures to more specialized ones. Such tools as infringement proceedings, Article 7 procedure, Rule of Law Framework, Cooperation and Verification Mechanism, etc. will be reviewed. The role of the institutions when utilizing these mechanisms will be assessed. Finally, some newly proposed mechanisms will be examined.

2.1. Fundamental values of the EU

The values that lie at the heart of the EU are listed in Article 2 of the Treaty on European Union. Among them are: *"respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities…pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men"* (Eur-Lex, 2012a). The Article 2 is also called the "homogeneity clause" (Besselink, 2017, p. 129) as these values, stemming from the member states' constitutions also create a supranational principle that forms the identity of the EU. This identity then becomes reinforced by years of integration. This clause prescribes the behavior for the member states that have to be guided by these values (Mangiameli, 2013, p. 142).

The EU is often labelled as the community of values. When discussed more in detail, the values cover the following aspects. Human dignity lies in the basis of the fundamental rights of the individual within the EU. The freedom value includes a whole set of freedoms as the free movement of citizens, freedom of speech, religion, assembly, etc. Democracy provides the EU citizens with political rights as to stand as a candidate and to vote during the elections. Equality initially stems from the economic rights as equal pay for the same work done, and includes the equality of all citizens before law in all domains. The rule of law in the EU is embedded in the legal basis of the EU and is ensured

by the independent judiciary and the CJEU as the highest court in the EU (European Union, 2020). The EU has been awarded the Nobel Peace prize in 2012 for contributing "to the advancement of peace and reconciliation, democracy and human rights in Europe" (Nobel Media, 2020).

Nevertheless, the values listed in Article 2 remain open-ended, which means that in order to enforce them they first have to transposed into norms (Mader, 2019, p. 159). When it comes to investigating the specific value breach, the EU has to set the exact criteria and components. For instance, the rule of law value, according to the Venice Commission, includes: legality (transparent process for enacting law); legal certainty; prohibition of arbitrariness; access to justice before independent and impartial courts; respect for human rights; non-discrimination and equality before the law (Venice Commission, 2016, p. 7). However, due to the nature of values, the legislation still lacks a precise definition of their components. The legal basis and the mechanisms ensuring the values develop as a response to the challenges threatening them.

The legal basis that identifies the EU values started evolving relatively recently. The first time when the demanded values were explicitly listed was reflected in the Copenhagen criteria in 1993. These criteria constitute an attempt to externalize them to the candidate members (Klamert and Kochenov, 2019, p. 3). The Copenhagen criteria include the stability of institutions that would guarantee values as the rule of law, democracy and human rights; functioning market economy and ability to implement the EU law (Eur-Lex, 2020). The EU values were later codified in the European Charter of Fundamental Rights in 2003 (Mader, 2019, p. 133). The emergence of this document was the first attempt to summarize all the rights of the individual that evolved throughout decades within the EU. In particular, it includes “personal, civic, political, economic and social rights” (European Commission, 2020c). At first, the status of the Charter was not clear and became legally binding only in December 2009 when the Treaty of Lisbon entered into force (European Commission, 2020c). Consequently, today the EU values are codified in two documents, the Treaty of Lisbon and the European Charter of Fundamental Rights.

As evident from the above, the EU values are to some extent paradoxical. On one hand, they lie at the heart of the European Union and form the basis of all structures and decisions made. On the other hand, they still lack precise definition which, in turn,

constitutes a problem when building mechanisms ensuring value compliance. The blurred nature of the values complicates the process of detecting and declaring the value breach. The next sections will investigate how the EU copes with this challenge.

2.2. Infringement proceedings

The first and most general measure is the infringement procedure, initiated by the Commission in case of any breach of the EU law. This tool is regulated by Articles 258-260 TFEU. The mechanism includes several stages of dialogue between the EU and the member state. It can be divided into two stages: pre-litigation and litigation phase (European Commission, 2019g). Firstly, within the pre-litigation stage, the Commission sends the member state a letter of formal notice in case an EU law violation is detected. Next, in case the violation continues, the Commission issues a reasoned opinion explaining why it believes the member state is breaching the law and asking the state to change the situation. If this step proves itself to be inefficient, the litigation phase begins. This final step is the referral of the case to the Court of Justice of the EU, which then makes a judgment and imposes penalties. This process can be stopped at any stage under the condition that the state provides a sufficient detailed response to the Commission. Most cases are solved before referring them to the CJEU (European Commission, 2020a).

When it comes to EU Law breaches in general, this tool is applied in most cases. There are four cases when the infringement proceeding can be initiated: when the state fails to notify the Commission regarding the transposition of the directive; when the Commission determines that the state's legislation does not conform with the EU directive, or with the EU Treaties; when EU law is applied incorrectly by the state (European Commission, 2019g). The Commission provides annual statistical reports on infringement proceedings in all of the policy domains. According to the latest available report, the total amount of pending infringement procedures launched by the Commission in 2018 was 644, which is 10% less than in 2017. This constitutes 23 procedures per member state when calculated on average. The amount of total open infringement proceedings by December 2018 reaches 1571 cases. The top policy domains concerned include environment (298), mobility and transport (244), internal market (172), justice and consumers (160) (European Commission, 2019f).

According to the Single Market Scoreboard, which monitors the infringement proceedings in relation to single market rules violations, the infringement procedures take a lot of time. The average duration excluding the stage where the case is sent to CJEU is 38.1 months. The average amount of time that passes before the states finally comply with the CJEU ruling in 2018 was 28.2 months, which almost doubles that overall infringement proceeding time (European Commission, 2018a). This deficiency of the mechanism is alleviated by the opportunity of requesting an interim measure from the CJEU, according to Article 279 TFEU. This measure can be requested if the matter is urgent and irreversible damage can be done if no measures are taken immediately (Koops, 2014, p. 109).

To understand the extent of efficiency of this mechanism, it is important to examine the outcomes and penalties. From the number of stages embedded in this mechanism, it is evident that the Commission expects for the issue to be resolved during the dialogue with the state. However, when it is not possible, the incompliance with the EU law is examined by the CJEU under Article 258 TFEU. It is worth noting that the final ruling of the CJEU is merely of declaratory character. The Court declares whether the state's actions or its legislation are compatible with the EU law and announces that the state has to take measures to comply with the ruling. The CJEU does not have the power to declare the member state's legislation invalid (Koops, 2014, p. 108). If the state ignores this, then under the Article 260 TFEU the Commission refers the case to the Court for the second time, where the CJEU then imposes a fine in form of a lump sum and a daily penalty which are previously calculated by the Commission (European Commission, 2019g, p. 10). The amount of the fine depends on the case. In 2018 the CJEU imposed fines under Article 260(2) TFEU on 4 states: Greece, Spain, Italy, Slovakia (European Commission, 2019f). For instance, for Greece the CJEU has ordered to pay the lump sum in the amount of 5 million EUR and a penalty of 3,276 million EUR for each six month period of transposition delay (CURIA, 2018a). Spain was ordered to pay a 12 million EUR lump sum and 10,95 million penalty for every six months of delay (CURIA, 2018b).

Nevertheless, the scholars have not reached an agreement on whether this tool can be interpreted as the ultimate instrument to ensure compliance with values. Some say that it is useful to ensure value compliance in three cases. These are when the obligations

of the states to comply with the values are explicitly spelled out in the Treaties, secondary legislation or in the EU Charter of Fundamental Rights (De Schutter, 2017, p. 27). Therefore, this instrument can only be applied to clear and concise EU law provisions that were not adopted by the state. Due to this fact, other scholars emphasize that the phenomenon of values remains vague and the illiberal reforms undertaken by the governments do not always fall under the scope of EU competences (Pech and Scheppele, 2017, p. 13). There is no single clear legal EU provision that is disrespected by the state during illiberal domestic reforms, therefore, in order to use the infringement proceedings, the Commission has to act indirectly without actually addressing the problem of the rule of law value breach. From the perspective of the infringement proceedings, the breach of rule of law value can be conceptualized through violation of certain directives. In addition, the outcome of the infringement procedure in the form of stating the EU law breach and potentially imposing financial sanctions does not really deal with the issue of ensuring compliance (Mader, 2019, p. 160). Several infringement proceedings were launched against Poland and Hungary, which will be addressed in the empirical part.

2.3. Article 7 procedure

Due to the fact that the infringement procedures are linked to breaches of hard law and the nature of EU values is rather blurred, the EU has also invented other mechanisms that regulate particularly the cases of value breach. The most mentioned in the public debate and media mechanism is the so-called Article 7 procedure. The debate regarding this Article intensified every time a member state was accused of EU value breach since the very invention of this Article. The victory of the far-right Freedom Party in Austria in 1999, developments in Hungary since the victory of Fidesz in 2010, Roma expulsion in France in 2012, political crisis in Romania in 2012, and several other cases were considered as possible candidates for the Article 7 procedure activation (Budó, 2014, pp. 3-6). Nevertheless, Article 7 was invoked only twice against Poland and Hungary. These cases will be discussed in the empirical part. Since then this Article has been labelled as the "nuclear option" of the EU (Cuddy, 2018). This catchy label will be re-assessed as it is important to understand what actually lies behind it: how this article was invented and what is the exact mechanism of its influence.

Article 7 TEU spells out the complicated mechanism that has to be applied in the case of breach of EU values. To, date, the essence of the Article 7 is the following. This article consists of two logical parts: the preventive and the sanctioning mechanism. The preventive measures are mentioned in the Article 7(1) and basically denote the Council of the EU declaring that a *"clear risk of a serious breach"* has taken place (Eur-Lex, 2012b). The Council has to vote with the majority of four fifths and the overall process can be initiated by the Commission, the European Parliament or one third of member states. The European Parliament also has to give its consent (Eur-Lex, 2012b). Triggering Article 7(1) does not really have any properties of the "nuclear option" as this tool has been named in the media. This measure is only of declaratory nature and does not entail any punishment for the violator.

The next, more serious step is described in the second and third paragraphs, which include the actual sanctioning mechanism. This measure is supposed to be taken in case the previous warning does not have any effect. For the sanctioning mechanism to be activated, the European Council has to unanimously declare the *"existence of a serious and persistent breach"* of values (Eur-Lex, 2012b). This step can be initiated by the same actors and consent of the European Parliament is required. Finally, according to Article 7(3), the Council of the EU acting by qualified majority voting has the right to "*suspend certain of the rights deriving from the application of the Treaties*" for the member state in question (Eur-Lex, 2012b). The preventive and the sanctioning mechanism do not depend on one another. This means that they can be applied separately and activation of Article 7(1) is not required to trigger Article 7(2) (European Commission, 2003, p.4).

The instrument described in Article 7 is a relatively recent invention. It was not present in the early treaties on the EU and was included only in the Amsterdam Treaty in 1997, which came into force in 1999. This means that for almost half a century the European project had existed without this measure. The decision to add such an article was made in anticipation of the Enlargement, which happened in 2004 and marked an essential change in the nature of the Union (Kochenov, Pech and Scheppele, 2017). It demonstrates that the existing EU members had a certain level of mistrust to the candidate countries with their different political traditions and the history of being under the oppression of the communist regime. Such background was very different from the

history of the founding countries which were concerned with the fact that the newcomers might not share the Western values (Sadurski, 2010, p. 35).

The initial version of the Article covered only the sanctioning mechanism, which constitutes the second part of Article 7 today. However, when in 1999 Austria was accused of breaching the EU values, the EU had realized that invoking this measure immediately is a radical decision. Therefore, later in the Nice Treaty that was signed in 2001 and came into force in 2003, the preventive measures were added to the Article 7, in order to complement the existing tool and make it more applicable within the EU framework (Kochenov, Pech and Scheppele, 2017).

The Article 7 has several strengths. The key beneficial element is its scope. This tool is superior to infringement proceedings and any other instruments as the Commission has emphasized that Article 7 *"is not confined to areas covered by Union law*", when it comes to its application (European Commission, 2003, p.5). This means that in case value breach or risk of value breach is detected, there is no need to link it indirectly to breach of specific legal provisions, as what is done during the infringement proceedings. Also, Article 7(1) includes a large number of actors who have the right to invoke it, which makes the initiation of the procedure more feasible (Kochenov, 2019, p. 16). Article 7 was introduced and improved as a natural response to the developments in the EU and therefore, constitutes a mechanism with several logical stages and involving different actors aiming to address the serious and persistent value breach of any degree. Nevertheless, despite the fact that Article 7 constitutes a very intricate mechanism in theory, its application in practice remains troublesome.

When it comes to the application of this mechanism to real life situations, its flaws in its wording and the overall design become evident. The Article 7 specifies that sanctioning can only take place in case the breach is *serious* and *persistent*. Nevertheless, what exactly is meant under these conditions is not clarified. These parameters are not set and are dependent on the interpretation (Besselink, 2017, p. 132). Also, the Article does not provide a detailed description of the possible sanctions. Paragraph 3 offers an example of punishment in the form of suspending voting rights of the state but it does not limit the possible options to it. Due to this reason, the provision remains vague as is does not provide a list of specific measures to be taken in case of a value breach (Kochenov, 2017, p. 10). In addition, from the perspective of design efficiency, the fact that in order to

trigger the sanctioning mechanism unanimity in the European Council is required, constitutes a weak point as like-minded law-breaking member states might team up and block the decision. Therefore, re-examination of the voting procedure shall be considered (Kochenov, Pech and Scheppele, 2017). Finally, the mechanism described in the Article 7 is to a great extent procedural. The values described in the Article 2 are diverse and relate to different domains, however, the offered mechanism ensuring the compliance with them is uniform. The reality shows, that a more tailored approach is required, which is why the following mechanism was invented.

2.4. Rule of Law Framework

The Rule of Law Framework was adopted by the Commission in 2014 and was utilized only once in 2016 in relation to Poland. This Framework constitutes a mechanism that is supposed to postpone the Article 7 procedures and establish a dialogue with a member state, where the erosion of the rule of law value is detected. This mechanism, as opposed to the previous one, is value-specific as it regulates the breach of rule of law. The Commission has labelled it an *"early warning tool*" (European Commission, 2014) which is aimed at preventing the escalation of the systematic threats to the rule of law (Kochenov and Pech, 2016, p. 1066). This framework was created to deal with systematic disregard of EU values as opposed to individual violations, where the Commission serves as the Guardian of EU values and can rely on assistance of other institutions as the European Parliament, Council, etc. (European Commission, 2014). The need to create this framework was highlighted by European Commission President José Manuel Barroso in his State of the Union speeches in 2012 and 2013, where he declared that there is a need in a "bridge between political persuasion and targeted infringement procedures" and "the nuclear option of Article 7 of the Treaty" (Barroso, 2013).

The Rule of Law Framework includes the following steps. First, the Commission evaluates the situation and issues a "rule of law opinion" signaling the state that it has detected the persistent threat to the rule of law. Next, Commission issues a "rule of law recommendation" which already includes the deadline for the state to improve the situation. Finally, the Commission monitors the following actions of the state in the rule of law domain and in case of dissatisfaction, it resorts to Article 7. This mechanism can be stopped at any stage in case the state makes the necessary amendments. Also, it is

based on active dialogue between the state concerned and the Commission throughout all of the phases (European Commission, 2014). The Rule of Law Framework by its essence copies some stages from the general infringement procedure and applies them specifically in the rule of law domain. Nevertheless, it does not have the efficient sanctioning element as in the infringement and excludes the Court of Justice of EU from the process.

The disadvantage of this Framework lies in the fact that is it based on the premise that the member state is willing to cooperate (Pech and Scheppele, 2017, p. 7). This framework relies on the discursive approach, non-legally binding opinions and recommendations. Moreover, failure to comply with the documents issued by the Commission does not automatically invoke the Article 7 process. This creates a situation where the cost of the punishment for the states who do not comply is minimal from the legal perspective (Kochenov and Pech, 2016, p. 1067). Therefore, there is a risk that it might only lead to protracted negotiations without any quality changes in the domain of the state's value compliance. Consequently, this instrument does not have any deficiencies in its structure. The problem is only in the context where it is applied and whether a "soft" instrument as the Rule of Law Framework is efficient enough or "hard" instruments should be utilized.

2.5. Other mechanisms

The previously mentioned mechanisms are tailored specifically for the cases of the rule of law value breach. However, the EU also has several other mechanisms that are mostly of preventive nature and function based on peer-pressure and naming and shaming. Even though the main function of these mechanisms is different, they still are an important influence in the context where the values have been breached. Although functioning indirectly, together they form a basis that stimulates the states to reinforce the EU values. Among them are the Cooperation and Verification mechanism, Justice Scoreboard, European Semester and Structural Reform Support Programme.

First of the mentioned frameworks is country-specific and was created specifically to help the two states who have recently joined the EU to correspond its standards. The Cooperation and Verification Mechanism and was established in 2007 to assist with reforms in Romania and Bulgaria after they have joined the Union. This tool sets certain benchmarks for the judicial system, fighting the issues of corruption and

organized crime (European Commission, 2019a). Scholars have been debating whether this mechanism is helpful when motivating the states to perform liberal reforms independently in the long run (Toneva-Metodieva, 2014, p. 537). In 2017 the Commission issued a report on the progress of Romania and Bulgaria under the CVM. It stated that even though the standards set were not fully achieved, the countries still demonstrated some progress (European Commission, 2019b). Consequently, despite the fact that the efficiency parameters of CVM are moderate, it still remains an important mechanism in the domain of post-accession conditionality for the states.

The next tool offers an assessment of all member states in the judicial sphere. The EU Justice Scoreboard was introduced in 2013 and since then yearly provides information on judicial systems of the member states, including the assessment of the reforms and efficiency of the justice system (European Commission, 2019a). It is intertwined with other instruments as its data is incorporated into the European Semester. The Justice Scoreboard is aimed at monitoring compliance with the rule of law and guiding the investments (Wahl, 2019). What makes it different from a regular annual report and turns the Justice Scoreboard into a real "soft" mechanism of influence is its format. As opposed to a compilation of different indexes, the Scoreboard is prepared in the form of a comparison between the states which highlights the best practices and sets the standards for other states through showing that their success is feasible. Before the creation of the Justice Scoreboard, the Commission was mostly only engaged in the cases of non-compliance of the states with the EU standards for the judicial system. When the Scoreboard was created, based solely on peer pressure and the information voluntarily provided by the states, it became an influence tool for the EU rooted in positive precedents (Strelkov, 2018, p. 15).

The final two tools are related to monitoring structural reforms in the states. The Structural Reform Support Programme launched in 2017 assists the member states with their reforms on their demand in all sectors, including the ones in the domain of rule of law. This tool covers all phases of reform from its preparation to implementation and is based on the knowledge retrieved from the Commission, experience of the member states and international organizations (European Commission, 2020b). Another mechanism European Semester was established in 2011 and has the primary goal of helping the country with its economic policies and in order to assist provides an evaluation of

structural reforms including the justice system, corruption, etc. (European Commission, 2019a). The creation of it was triggered by the 2007 economic crisis which demonstrated that the states did not perform best quality decision making in the economic sector. The European Semester constitutes a cycle that runs through the year and has several stages. First the Commission sets economic priorities in the Annual Growth Survey, which are later endorsed by the European Council. After that the member states submit their financial and economic plans. Finally, the Commission issues country-specific recommendations which later have to be implemented (Rasmussen, 2018, p. 343).

2.6. Institutions involved

The nature of the institutions engaged in the tackling of the value breach problem also plays an important role. The violation of the rule of law is monitored by the EU and non-EU institutions that promote democratic values. The existing EU mechanism heavily relies on the Commission, which is of supranational nature. The Commission monitors the compliance with values in the states, launches both the different mechanisms to ensure the value compliance and the infringement procedures once breaches are detected. Another supranational institution is the European Parliament which can draft reasoned proposals, vote on resolutions and give its consent to triggering of procedures as the Article 7. These two institutions are not governed by the national interests and have the opportunity to promote the measures that would not be favored in an intergovernmental format. However, the EU is based on the principle of conferral, which means that it only has the rights to act in the domains where the member states give their agreement for it to act. Under these circumstances, even though the Commission can raise certain unfavorable for the national governments topics, it does not have the opportunity to take radical measures as it is dependent on the approval of other institutions.

Such veto points in the system are intergovernmental Council of the EU and the European Council. Involvement of these institutions is crucial, when it comes to punitive measures in relation to value breach. At the same time the decision-making in these institutions is of more sensitive nature, as the representatives of the states have to confront each other to take the necessary measures. This fact, for instance, hinders the triggering of the sanctioning mechanism offered in Article 7 as unanimity of the European Council is required.

Remarkably, the Court of Justice of the EU is hardly involved in the regulation of value breach at all. The CJEU only takes part in the final stage of the infringement proceedings or assists with EU law interpretation. Such a role for this institution does not provide it an opportunity to offer a solution when the member state is demonstrating a systematic breach of European values. The exclusion of the CJEU from frameworks ensuring value compliance serves as a drawback as it has a reputation of an institution that contributes to the development of the EU by setting precedents through its rulings.

It is worth to mention other important institutions that function outside of the EU framework. The European Commission for Democracy through Law, knows as the Venice Commission is a Council of Europe's body specializing offering legal advice to its member states in order to ensure the functioning of domestic structures based on liberal values (Council of Europe, 2018). In January 2020 the Parliamentary Assembly of the Council of Europe (PACE) held a vote to bring Poland under the monitoring mechanism of the Council of Europe. Within the framework of this procedure it will assess Poland's compliance with the human rights standards (Dam, 2020). The United Nations and OSCE also monitor situation with regards to rule of law in the states and issue their recommendation.

2.7. New mechanisms proposed

Most of the mechanisms mentioned in this chapter were established less than two decades ago and new mechanisms still keep emerging. The value crisis in some of the member states is becoming a serious issue, therefore, the scholars and policy-makers are coming up with different solutions. Some of them are related to improvement of the existing mechanisms and some of them introduce completely new ones. These instruments are linked to increasing the political pressure on the violating member states and emphasizing the multi-speed integration in the long run, which would limit the access to the benefits of integration for the states that do not develop based on EU values (Kochenov, 2019, p. 24).

The broadest and most systematic approach was outlined by the European Commission. In 2019 the Commission had conducted a comprehensive review of the existing mechanisms and offered changes in the following three domains: promoting the rule of law value, preventing the value breach and in case it happens addressing the issue

promptly. In the first domain the Commission plans to rely on the support of the civil society, other EU institutions and other international organizations as the Council of Europe. In the sphere of preventing the rule of law breach, the Commission has offered to set a Rule of Law Review Cycle within the framework of which an annual report on ever state will be compiled. In last domain of handling the cases of value breach, however, Commission did not offer any new instruments and only emphasized the systematic launch of infringements procedures and cooperation of the EU institutions under Article 7 procedure (European Commission, 2019c).

The European Parliament has offered another mechanism "on democracy, the rule of law and fundamental rights" that would monitor the compliance with the EU values and annually issue reports with recommendations (European Parliament, 2020a). This tool is advantageous as it draws attention on the community to the value breach issue. Nevertheless, the existing tools based on peer-pressure have not demonstrated and effect, when it comes to serious value breach in member states. From this point of view, the mechanism offered by the EP would only replicate the existing tools and would not offer a fundamentally new approach to the issue.

Managing the finances based on the rule law compliance remains a hot topic. The EU officials have offered to revise the Multiannual Financial Framework. The Commission issued a proposal in 2018 regarding using the EU budget as tool "in case of generalized deficiencies as regards the rule of law in the Member States" (European Parliament, 2019). According to the proposal, once such deficiencies are detected, the Commission has the right to initiate the procedure. First, it consults the member state and in case does not receive an appropriate response, the Commission sends a proposal to the Council. The Council, in turn, holding a qualified majority vote approves, rejects or amends the proposal (European Commission, 2018b). This mechanism would have two functions. Firstly, it would constitute a punishment for the government implementing reforms not in line with the EU values. Secondly, at the same time it would serve as a security measure for the EU itself, protecting its financial interests (Bachmaier, 2019).

Solutions offered by the scholars range from fundamental legal basis revision to specific amendments of the existing procedures. For instance, Treaty revision is offered in relation to the Article 7(2). In particular, cancelling the unanimity requirement to trigger the sanctioning mechanism would be a powerful improvement (Šelih, Bond and

Dolan, 2017). However, adjusting the existing legal basis is very unlikely and the democratic backsliding in some member states requires immediate reaction. Less radical but also heated is the debate on the type of sanctions that can be introduced under the Article 7(3). For instance, imposing financial sanctions on the violating state remains a heavily discussed but unlikely option. Introduction of such sanctions will go against the logic of integration and put under risk the cohesion of the states (Bachmaier, 2019). A different approach regarding the infringement proceedings is offered by Scheppele, who as opposed to initiating the infringement proceedings on the case-by-case basis, introduced the concept of systemic infringement proceedings. Interpreting the infringements as a systematic phenomenon and handling it as one case would offer a consistent approach (Mader, 2019, p. 159).

Chapter 3. EU handling of value breaches by member states: case studies

This chapter will concentrate on the analysis of EU's responses to the illiberal developments in Austria, Poland and Hungary. First, the research design, methods and data will be outlined. The case selection will be justified. Next, the timeline of the events, key illiberal developments and measures taken by the EU in return will be examined for each of the states. For this, process-tracing will be applied. Based on the analysis, conclusions regarding the EU's approach to value breach are made. The efficiency and consistency of the application of the existing tools are evaluated. Finally, potential solutions will be discussed.

3.1 Research design, methods and data

The empirical section of this thesis examines states which were accused of breach of the EU values: Austria (1999-2000), Poland (2015-2020) and Hungary (2010-2020). There have also been other cases where the question of breaching the EU values by member states has been raised, however, these cases were chosen as only in relation to them actual measures were taken. Despite the fact that the actual breach of the EU values was detected only in the two latter states, it is important to analyze all of the three cases together in order to grasp how the EU mechanisms evolved. The first case concerns Austria during 1999-2000, when the Freedom Party got the second place in the parliamentary elections and was subsequently included in the government. Then the EU member states took preventive measures even before the breach occurred. The measures were outside of the framework prescribed by the existing legal basis. This was the first case when the EU discussed the activation of existing tools as the Article 7 and this case stimulated the development of mechanisms to tackle it in the future. Eventually, the measures taken were recognized as unnecessary. The questions why the existing mechanisms were not applied and why other measures were taken instead even in the absence of value breach will be answered. Next, the cases of Poland and Hungary are selected as they were the first countries, against which the Article 7(1) procedure was invoked and where the risk of persistent value breach was declared. The former case is related to EU handling the Law and Justice judicial reforms Poland during 2016-2020.

Finally, the EU's response to the Fidesz led reforms in Hungary during 2012-2020 is analyzed.

In all of these cases the reaction of the EU to the illiberal domestic developments will be assessed. In order to accomplish this, the process-tracing method (Beach and Pedersen, 2013) will be applied. There are several types of process-tracing and this paper will resort to case-centric process-tracing with the aims to explain the logic of the EU measures taken in reaction to illiberal reforms breaching the EU values. As there is no set mechanism ensuring compliance with the EU values, this paper will apply the inductive path when building it. This means that the empirical material is used to build an explanatory mechanism (Beach & Pedersen, 2013, p. 20). The qualitative type of research and in particular process tracing, presuppose an iterative process which means that a clear division between steps is impossible and the explanatory mechanism will be constantly updated until it acquires sufficient explanatory power (Beach & Pedersen, 2013, p. 21). This method does not help establish any generalizability or provide conclusions that can be extrapolated to explain other cases. The value of this method is in tracing the event sequence within the specific cases that would serve as an answer to why the developments are taking place in a particular way.

It is important to establish the preliminary steps to be taken regardless of their blurred nature. The first step of process-tracing includes establishing a timeline of the events that took place. This requires linking the decisions and actions of the EU regarding the reforms in the member state, in order to explain the reason why the EU was not able to ensure the compliance and take any further measures against the violator within its institutional and legal parameters. The following step of process tracing is to identify the key decisions in the interaction of the EU and the member state. These junctures will be analyzed with regard to the following questions: what are the implications of the action that took place? What were other possible measures for the EU to take and what is the reasoning behind ruling out other approaches? What is the role of the institutions in this process? The examination of cases demands the "soaking and poking" approach, where at first all the available information is gathered and all possible explanations are summarized (Bennett and Checkel, 2014, p. 18). The research design is deliberately framed not as a comparative case study because such format only focuses on a limited set of variables and ignores other potentially significant factors.

In terms of the data sources, the legal basis of the EU will be analyzed. This includes the treaty provisions regarding the compliance ensuring mechanisms, secondary legislation issued by the EU institutions, court rulings, etc. Also, the debates within the EU institutions, press releases of the EU institutions and secondary analysis of the developments will be taken into account. The document selection will be guided by purposive sampling with the final goal of reaching the data saturation point. The process chain of the events will determine the source selection.

3.2 Austria (1999-2000)

3.2.1 Developments in Austria

The case of Austria served as the first trigger for the EU to start the enhancement of the mechanism ensuring value compliance. This case is paradoxical as eventually, the experts detected that no EU values were breached, however, the developments in Austria triggered a strong reaction from the EU. The event that provoked it were the parliamentary elections in Austria in 1999. Then the far-right Freedom Party (Freiheitliche Partei Österreichs, FPÖ) was placed second winning 27% of vote and was included in the government (BBC News, 2020). The EU reacted rapidly in an attempt to prevent the inclusion of the Freedom Party in the government but failed, which will be discussed in the next section.

The ideology of the party and the controversial personality of the party chairman Jörg Haider constituted a major concern for the EU. Haider was known by his provocative anti-immigrant and anti-Semitic comments, remarks praising the Waffen-SS members (Freeman, 2002, pp. 115-116). For instance, he characterized the Waffen-SS members, an organization which was declared criminal at the Nuremberg Tribunals, as “decent individuals with character who stick to their beliefs despite strong opposition and remain true to them today” (Wodak and Pelinka, 2002, p. 8). Many of the FPÖ members were also former members of the Nazi party and agreed with Haider’s expressions. There are numerous quotes of the leading functionaries supporting Haider in downplaying the crimes of Nazism. Reinhard Gaugg who belongs to FPÖ made a dubious statement by defining NAZI as “new, attractive, single-minded and ingenious” (Wodak and Pelinka, 2002, p. 8).

Even though Haider and the Freedom Party were condemned for such statements, they were able to regain the support in Austria and even when being included in the government maintained their sentiments. The victory of FPÖ was possible due to the political environment in Austria at that time. The two big parties SPÖ (Social Democratic Party) and ÖVP (Austrian People's Party) had dominated the political space in Austria for more than forty years and the voters demanded changes (Freeman, 2002, pp. 116). When the Freedom Party came to power, despite no value breach in the state occurred, it was still condemned by the international community and the EU. The FPÖ was criticized for utilizing libel cases to silence the opposition and making ambiguous statements that can be interpreted as xenophobic or racist (Fiddler, 2019, p. 14).

Despite the alarming rhetoric of the Freedom Party, Austria did not ignore the concerns of the European community. Jörg Haider together with Wolfgang Schüssel with whom he formed the coalition government signed a declaration on the demand of the Austrian president Thomas Kletsil. In this declaration, they reaffirmed that they are willing to support the EU values, including human rights and non-discrimination (Freeman, 2002, pp. 119). After the EU had imposed sanctions, a statement was also made by the Minister of foreign affairs Benita Ferrero-Waldner who confirmed the words of the politicians and highlighted that European values are embedded in the Austrian Constitution and legislation. In addition, as it will be discussed in the following section, no illiberal reforms were eventually implemented. Therefore, no breach of EU values occurred. The only reason why the EU had reacted was the personality of Jörg Haider but not actual developments. Eventually, Haider resigned on 28 February as the party leader.

3.2.2. EU's response

The fact that the Freedom Party joined the government alarmed the EU member states and they imposed bilateral sanctions on Austria (Scheppele and Pech, 2018). On 31 January 2000, the Portuguese Council Presidency made a statement on behalf of the 14 member states that they will impose sanctions if the Freedom Party is in the government. This statement mentioned that the EU member states will not cooperate with Austrian government integrating the Freedom Party on the official bilateral level and will not support Austrian candidates applying for any positions within its structures, including accepting Austrian ambassadors only at the technical level (Merlingen, Mudde and

Sedelmeier, 2001, p. 60). The fact that one of the key EU principles of non-discrimination based on nationality was questioned shows that the EU was ready to take decisive measures (Falkner, 2001). In addition, the European Parliament adopted a resolution where it condemned the statements Haider had made in the past emphasizing that they do not align with the EU values (Freeman, 2002, pp. 119). On 4 February the Austrian government was formed disregarding the statements of the EU. As a reaction to this, the EU imposed diplomatic sanctions during February-March 2000 (BBC News, 2020).

Apart from the refusal to cooperate with the Austrian government and ban of the Austrian officials, the sanctions of the member states also included «boycotts of school trips, cultural exchanges, and military exercises» (Freeman, 2002, p. 120). Such measures do not really address the reason of the sanctions. Hence, they were interpreted as measures against the population of Austria and not its government. This state of affairs allowed Austria to pose itself as a victim of the European aggressive measures and use this status for benefits in its internal and external policies (Lachmayer, 2017, p. 443). The sanctions of the 14 member states imposed on Austria did not have any legal basis and also were an unprecedented phenomenon. They were imposed before the systematic value breach was detected in the country.

In this case, the states have reacted rapidly, although the question of whether there was an objective need for such measures remains debatable. Such a decision could be justified by the fact that it was the first case of the emergence of such sentiments in an EU member state. The European project was founded on the idea of rebuilding Europe after the tragedy of World War II and Austria was the first country, where after decades a party with Nazi roots joined the government in a European state (Mcintosh, 2019). This demonstrates that the context of events plays the crucial role. The member states were decisive in their actions as this case was an outlier in the existing state of affairs. The cases of Poland and Hungary, which will be discussed in the following sections did not trigger a similar immediate strong reaction due to the fact that Eurosceptic sentiment was dominating the context for a while.

Despite the fact that the Article 7 procedure already existed, although without the preventive part, it was not utilized. There can be several reasons for this. The Article 7 procedure was prepared in anticipation of the future Enlargement. As opposed to today when Article 7 is overall an instrument to be applied to all member states, at that time it

was not seen as an instrument to be applied in relation to existing members. At that moment Austria had already been an EU member for four years. Also, Article 7 requires the nature of the breach to be "serious and persistent". This presupposes monitoring the compliance with the values over some period of time in order to determine the nature of the breach, therefore this mechanism cannot be applied immediately, which the EU was willing to do.

A significant moment in the overall process was the establishment of the committee of the "three wise men". This committee had to produce a report assessing the value breach in Austria and the reaction of the EU. The report of the committee analyzed the legal framework of Austria and international agreements it is a party to, which was found satisfactory. It detected that the level of compliance with the EU values in Austria was comparable to the rest of the member states. Moreover, the level of protection of minority groups, for instance, was higher than in most of the member states (Duxbury and Ward, 2000, pp. 171-172). Eventually, the report concluded that no reforms breaching the EU values were implemented and that the sanctions of the member states should be lifted as there is no basis to justify them (Lachmayer, 2017, p. 442). Therefore, after 7 months the sanctions were lifted on 12 September 2000.

Eventually, the question whether the sanctions imposed on Austria were efficient remains debatable. The sanctions were imposed in a rush without a thorough preliminary analysis of the costs and potential benefits. In order to answer the question of the efficiency of these measures one has to clearly determine what was the initial goal when introducing them. The EU acted promptly as it believed that the statement of the Council would prevent the formation of the Austrian government including the Freedom Party (Freeman, 2002, p. 120). If the exclusion of the Freedom Party is seen as the main goal of the actions, then unquestionably such decision-making strategy was a failure as these measures did not induce any change in the Austrian government. Also, one can say that the goal of these sanctions was to demonstrate a unified reaction from the EU to the developments. When assessing the measures from this point of view, no clear conclusion can be made either. Although the sanctions were communicated on the EU level, essentially it was an action to be taken by every member state individually. Therefore, it is rather problematic to qualify this measure as a unified response. The Austrian case demonstrates complete neglect of the EU as a platform of consolidating the powers and

addressing the issue in a centralized manner on the supranational level. Consequently, when evaluating these measures today, the conclusion can be made that they constituted an overreaction.

The lesson taught by the Austrian case can be interpreted in many ways. On one hand, this case can be seen as a controversial sign for other countries that the EU only threatens to apply the Article 7 when referring to the value breach but will never use this tool in practice (Kochenov, 2017). On the other hand, the EU made two conclusions that became useful in the future. Firstly, albeit the Austrian case did not include any serious value breach, it served as a trigger for the revision of the existing tools ensuring compliance with values in the EU. The Article 7 TEU was eventually modified and the preventive mechanism was added to enhance the procedure. Secondly, this case signaled to the EU that the breach of the fundamental values can happen not only in the member states that are under the influence of Soviet path-dependency but also in the older members.

3.3 Poland (2015-2020)

3.3.1. Developments in Poland

This section will analyze the developments in Poland starting from the victory of the right-wing populist Law and Justice party (Prawo i Sprawedliwość, PiS) led by Jarosław Kaczyński in the parliamentary elections in 2015. This party was also reelected in 2019 although lost its majority in the upper house. Since 2015 Poland had started implementing illiberal reforms that benefitted consolidation of the autocratic power and undermined liberal values with which Poland is obliged to conform as a member of the EU. Polish authorities are accused of undermining the rule of law value through transforming the institutions. The rule of law value is based on such principles as the "independence of the judiciary, separation of powers and legal certainty" (European Commission, 2017a). The new bills passed compromised the separation of powers, endangered the irremovability of judges and established political dependency of the judiciary. The institutions affected included the Constitutional Court, Supreme Court, Ordinary courts and National Council for the Judiciary. The detailed timeline of the developments can be found in the Appendix 1.

The first changes applied to the Constitutional Court. This institution ensures that the laws do not violate the Polish constitution and resolves the clashes between the state institutions based on constitutional provisions (Democracy Reporting International, 2018). The PiS after coming to power reformed the Constitutional Court, introducing two-thirds majority of the 15 judges instead of a simple majority and quorum of 13 judges instead of 9 (Maurice, 2015). In addition, the Parliament appointed five new judges instead of the judges that were assigned by the previous government. Regardless of the fact that the Constitutional Tribunal recognized it as illegal, the President swore in the judges appointed by the new government (Democracy Reporting International, 2018).

The second institution affected is the Supreme Court. The Supreme Court serves as the highest court in Poland, where the rulings of the lower courts can be appealed (Democracy Reporting International, 2018). According to the new law that entered into force in April 2018, the retirement age of the judges was lowered from 70 to 65, which would force to retire 38% of judges.

This would also end the six-year term of the President of the Supreme Court prematurely. Also, the judges have the right to apply for an extension of their term for three years based on the President's decision, the criteria for which were not made clear (European Commission, 2019d). Two new chambers were created in 2017: Disciplinary Chamber that deals with disciplinary proceedings against judges and has an independent budget and president, Extraordinary Chamber with the power to overrule judgements of chambers (Democracy Reporting International, 2018).

The third institution affected by the PiS changes is the National Council for the Judiciary (NCJ). In 2018 the law was amended which allowed the lower house of parliament controlled by PiS to appoint the members of the NCJ. The main competence of this organ is to appoint the judges and protect the independence of the judiciary (BBC, 2020a). Before the amendment 15 out of 25 judges within the NCJ were appointed by their peers (Venice Commission, 2020). After the reform, the membership of the NCJ in the European Network of Councils for the Judiciary was suspended as it was no longer considered politically independent (BBC, 2019). The changes introduced by the PiS government also affected the common courts. In 2017 the retirement age for the judges of the ordinary courts was lowered to 60 for female judges and 65 for male judges from

67 for both genders. In addition, the Minister of Justice was given the right to prolong the judges' term after reaching the retirement age (Strupczewski, 2019).

When it comes to the most recent developments, in February 2020 the President signed into force a new controversial bill that has been labelled by the opposition the "muzzle law". It gives politicians the right to punish the judges who oppose the judicial reforms, question new appointments of the judges and government's decisions in general (Deutsche Welle, 2020). The government has the right to discipline or fire the judges whose rulings counter the government's stance (Dam, 2020). The new law was condemned by the international community. As the OSCE states, this bill violates the international and European law and further endangers the independence of the judiciary in Poland. The provisions that prohibit the judges to question the officials appointed by the president and take part in the public debates regarding the judicial reforms in Poland must be removed. This also applies to the provision regarding the increased penalties for judges in case of incompliance with the law. As the wording of the provision is vague, it leaves the space for interpretation that limits the judges' freedom of expression and might result in the exertion of groundless pressure on the courts (OSCE, 2020, p. 5). In addition, PiS ensured that presidential election will be held in May 2020 despite the coronavirus outbreak. It will be held in the form of a postal vote which raises several critiques. The capacity of the post and safety of such event are questioned. Moreover, what endangers the fairness of the elections is the limited amount opportunities of candidates to campaign, which boosts the chances of re-election for the current president Andrzej Duda (BBC, 2020a).

There are also several other domains heavily affected by the PiS reforms together with the judiciary. The government has also passed the bills that restricted the media freedom and a set of human rights. The media law amended by the PiS allowed re-appointing the management of the public service media and establishing the National Media Council as a regulatory organ. The counter-terrorism law extends the Internal Security Agency's surveillance powers and allows blocking of websites without prior judicial authorization. Other laws concern limitations of assembly freedom, civil society freedom, women's reproductive rights, asylum seeker rights, etc. (Human Rights Watch, 2017).

According to the World Justice Project Rule of Law Index, the parameters of Poland since 2015 have significantly decreased. This index provides annual data on the rule of law in 128 countries of the world based on surveys. With 1 being the highest score and 0 the lowest, Poland's overall score dropped from 0,71 in 2015 to 0,66 in 2020, demonstrating a negative trend. In the EU & EFTA region, Poland is ranked 19th out of 24. The factor that indicates the extent to which the government is bound by law since 2015 has dropped from 0,77 to 0,58 in 2020. The factor that measures the respect of human rights in the country decreased from 0,77 to 0,64. Criminal justice parameters in five years dropped from 0,74 to 0,60 (WJP, 2020).

In sum, the scope of value breach by Poland was explicitly defined by the Commission when activating the Article 7(1) procedure. Poland was accused of the breach of the rule of law value, which lies in the "lack of an independent and legitimate constitutional review" and adoption by the parliament of the legislation that endangers the independence of the judiciary in Poland including the laws on Supreme Court, Ordinary Courts, NCJ and other laws (Eur-Lex, 2017b). The measures taken by the EU to the breaches will be discussed in the following section.

3.3.2. EU's response

The EU has applied several measures in an attempt to halt the illiberal developments in Poland. These measures include the Rule of Law Framework, Article 7 procedure and infringement proceedings. The overall approach of the EU can be described as gradual strengthening of measures together with the rising concerns regarding the efficiency of the existing toolbox. From pointing out the problem and establishing a dialogue with the violating state, the EU is currently considering new more powerful instruments. This section will analyze the existing tools applied to Poland one by one, a timeline of the developments can also be found in the Appendix 1.

The first instrument applied by the Commission was the launch of the Rule of Law Framework on 13 January 2016. When initiating it the Commission first requested information from Poland regarding the judiciary and media reform. Overall the Commission has sent three rule of law Recommendations within the Rule of Law Framework. The first Recommendation was sent on 27 July 2016, where the Commission emphasized the presence of a systemic threat to the rule of law in Poland. In the second

Recommendation that was issued in December 2016, the Commission declared that some of the issues were resolved by the Polish government, however, the most serious ones remained and, moreover, new problems had emerged. The Third Recommendation letter sent in July 2017 raised the issue of introducing new judiciary legislation that compromises the rule of law. It addressed the two laws on the Supreme Court regarding the retirement and reappointment of the Supreme Judges and on the National Council. The President vetoed amendments to these laws, therefore, the actions of the Commission had a positive effect. Later, Poland had asked for clarification letters regarding the third Recommendation twice, which the Commission provided. After this, Poland sent an official reply disagreeing with the concerns of Commission (Eur-Lex, 2017a). Fourth Rule of Law Recommendation was issued in December 2017 stating that no progress was achieved. This recommendation also included a Reasoned proposal to the Council to activate the Article 7(1) procedure. In sum, within the Framework, the Commission had issued more than 25 letters to Poland and held several meetings with Polish officials (Eur-Lex, 2017a).

As the Rule of Law Framework did not yield any positive changes, the Commission was forced to trigger the Article 7(1) procedure. The Commission issued the Reasoned Proposal to the Council to determine a clear risk of a serious breach of the rule of law in Poland on 20 December 2017 (Eur-Lex, 2017b). Within the framework of the Article 7 procedure, the General Affairs Council held three meetings. During these meetings, the Polish delegation made presentations regarding the issues raised in the Recommendation letters and answered questions of other representatives. It is also remarkable that the representatives of Central and Eastern European countries did not raise questions, which demonstrates that all of the member states are interested and thus equally involved (Michelot, 2019). The developments that are taking place today also demonstrate that the Article 7 has proven to be an inefficient instrument. The international organizations as the Council of Europe, OSCE, UN and the EU institutions have declared that "the situation in both Poland and Hungary has deteriorated since the triggering of Article 7(1)" (European Parliament, 2020b).

The third course of action of the EU includes the infringement proceedings against Poland, which are triggered by the Commission and involve the CJEU as the last resort. Each of the proceedings served as a reaction to the changes introduced to different

Polish institutions, according to the new laws. The measures included the infringement proceedings on the Polish Law of Ordinary Courts, Polish Law on Supreme Court, infringement proceeding against disciplinary regime for Polish judges. All of the cases were referred to the CJEU. Two infringement rulings have been issued by the CJEU (Pech and Wachowiec, 2020a).

The infringement procedure on the Polish Law on Ordinary Court was launched on 29 July 2017. It concerned the different retirement age for male and female judges, lowering the retirement age for ordinary judges and giving the Minister of Justice the power to extend the service of judges. On 20 December 2017, the case was referred to CJEU (C-192/18) (López Garrido and López Castillo, 2019, p. 23). In two years in November 2019 the CJEU ruled that the mentioned provisions breach the EU law. The second infringement on the Polish Law on Supreme Court (C-619/18) that was launched on 2 October 2018. This case was also referred to CJEU, which issued the interim measures in December 2018. The final ruling was announced on 24 June 2019, which is before the ruling for the previous case. The third infringement procedure was launched on 3 April 2019 regarding the new disciplinary regime for Polish judges. It was referred to the CJEU C-791/19 but no ruling has been issued yet. On 14 January 2020, the Commission has requested an interim measure according to the Article 279 TFEU.

The cases regarding the reforms of the judiciary in Poland were initiated and referred to the CJEU not only by the Commission but also by the Polish courts themselves within the procedure of preliminary ruling. The judges raised the questions regarding the competences on the newly created Disciplinary Chamber and the lowering of the retirement age of judges. All the cases C-585/18, C-624/18, and C-625/18 were joined as essentially the addressed the same issues (Democracy Reporting International, 2019). The CJEU issued the preliminary ruling on 19 November 2019. In January 2020 the ECJ had seven pending requests for preliminary rulings from polish courts (Pech and Wachowiec, 2020b).

The question whether the infringement proceedings in the domain of the rule law are efficient does not have a straight answer. This procedure is labelled as one of the most efficient tools by some scholars (Bárd and Carrera, 2020, p. 10). It also plays they the key role in the evolution of the EU law, as the rulings of the Court constitute precedents and facilitate better interpretation of the EU legislation. However, what is questioned by other

scholars is the timeframe, as the infringement procedure does not allow a rapid response. Moreover, the final ruling of the Court includes merely a fine for the violator, but the deeper reasons of the EU value breach are not addressed (Grabbe and Krekó, 2020).

As evident from the above, the EU has taken measures regarding all the changes introduced for different institutions of Poland's judicial system. Nevertheless, the stance of the EU at the moment can be described as rather reactive than proactive. All the decisions the EU has made served only as a response to the changes that took place and the most recent developments as the freshly adopted "muzzle law" in January 2020, demonstrate that democratic backsliding in Poland continues.

3.4 Hungary (2010-2020)

3.4.1 Developments in Hungary

Before analyzing the reaction of the EU it is important to briefly summarize what exactly were the changes that resulted in the breach of the EU values. The victory of the Fidesz party with two-thirds majority in the parliament in 2010 had marked the beginning of the democratic backsliding in Hungary. Since then the Hungarian prime minister Viktor Orban together with Fidesz have been abusing its supermajority to extend the control over the "opposition, the media, religious groups, academia, NGOs, the courts, asylum seekers, and the private sector" (Freedom House, 2019, p. 13). Hungary was the first member state of the EU whose status was downgraded to "partly free", according to the Freedom House in 2019 (Freedom House, 2019, p. 13). The detailed timeline of the developments can be found in the Appendix 2.

The transformation of the country proceeded rapidly after the elections. In April 2011 the Hungarian parliament had voted on and the President signed the new Constitution, also called the Fundamental Law. The adoption process was fast and not transparent to the public debate in the society and the media (Venice Commission, 2011). This led to several changes that endangered the EU values. For instance, according to the new Constitution, the two-thirds majority of the parliament got the right to veto the rulings of the Constitutional Court. The overall independence of the judiciary was endangered and the government appointed new officials in several institutions as Media Authority,

the Prosecution Service, and the National Bank of Hungary (Neuwahl and Kovacs, 2020, p.2). Hungary had officially changed its name and was no longer a republic. The new Constitution came into force on 1 January 2012 (Bárd and Carrera, 2020, p. 4). Later, throughout the years, seven amendments to the Fundamental Law were adopted (Bárd and Pech, 2019, p. 13).

These changes introduced by the government allowed Fidesz to win the elections subsequently in 2014 and 2018 (Miklóssy, 2018, p. 278). The parliament also passed new electoral law in November 2012 that favored the ruling party. Under the new law, the previous two round system was reduced to only one round and the number of parliamentary seats was reduced from 386 to 199. The Fidesz government also redesigned the constituency map through gerrymandering the districts. These changes helped Fidesz win 67% of parliamentary seats with only 45% votes in 2014 (Republikon Institute, 2014). In 2018 Fidesz got 49% during the parliamentary election which secured the third consecutive term for the Prime Minister Orban (Bayer, 2018).

What makes the case of value breach in Hungary unique is the personality of its prime minister Viktor Orban. There are two remarkable moments about him. Firstly, it is the shift of Orban's opinion on European integration. In the 1990-s, before Hungary's accession to the EU, which happened later in 2004, Fidesz and Viktor Orban were in support of Hungary joining the EU. Returning back to power in 2010 and being frustrated with the eventual constraints imposed after the accession, they took a completely polar stance (Encyclopedia Britannica, 2018). Secondly, Orban is one of the few politicians who has gained an extensive experience of working with the EU over a decade. Therefore, he knows how to navigate through chaotic structures and find the weak points, as for instance, his veto power in the European Council (Grabbe and Krekó, 2020). Viktor Orban is known for using any crisis, be it migration or the virus outbreak, to manipulate the circumstances for his own benefit (Bárd and Carrera, 2020, p. 4).

The transformations introduced by the Fidesz party affected a range of institutions. The changes concerned the Constitutional Court, where the government amended the rules of nominating the judges. The judges were nominated by the government, their judicial terms were extended from 9 to 12 years and age limit of 70 was abolished (Democracy Reporting International, 2017, p. 2). The extent of the problem is reflected in the increase of the applications to the European Court of Human Rights to

overrule the decision of the national court. The overall share of Hungarian applications rose from 0,7% to 10,4 % between 2010 and 2016 (Democracy Reporting International, 2017, p. 3).

The new government took control over the media with the adoption of the "Media Act" in 2011 (Neuwahl and Kovacs, 2020). According to the new law, the Media Council was established, which is appointed by the government and scrutinizes the public service media outlets. The Media Service Support and Asset Management Fund was also created, to which the assets of the public media companies were transferred and which is funded by the government and supervised by the Media Council (CMCS, 2011). With time the media freedom in Hungary eroded even further. In November 2018 the Central European Press and Media Foundation (KESMA) was created. Its establishment resulted in an unprecedented level of concentration on the Hungarian media market with the Fidesz-supporting owners (Medvegy, 2019). Hungary was placed 89th in the World Press Freedom Index in 2020, demonstrating a steady decline throughout the years since 2013 when it was ranked 56th (RSF, 2020).

A major concern for the EU was the "Stop Soros" package which criminalizes the support to asylum applications (European Commission, 2019e). This package includes three bills. The first bill concerns the organizations supporting migration. It gives the definition of an organization supporting migration and declares that every organization active in this domain is obliged to obtain a permit from the government, otherwise its activities are considered illegal. The second bill states that those organizations which were given the permit have to pay 25% "Immigration Funding Fee" to the state. The third bill extends the scope from organizations also to individuals which will be held liable for assisting asylum seekers (Boros, 2018, pp. 2-3). This package received its name from George Soros, who is considered by the government as the key financer of migration. This package is justified by Orban as a means to preserve Christian values in Hungary and combat crime and terrorism (Boros, 2018, pp. 3). The bills were passed in June 2018, declaring that individuals and non-governmental organizations which provide help to asylum seekers will be regarded as "facilitating illegal immigration" (BBC News, 2018).

In sum, in 2018 the European Parliament adopted a request to the Council, where it listed all of the accusations regarding the value breach in Hungary. The clear risk of a

serious breach was declared concerning a large set of values in the domains of: functioning of the constitutional and electoral systems, independence of the judiciary, corruption, data protection, human freedoms, rights of minorities, etc. (European Parliament, 2018). Despite the measures the EU has already taken, the erosion of values in Hungary is ongoing. The most recent developments in Hungary demonstrate that the government uses every opportunity to consolidate its power. Due to the crisis related to the coronavirus outbreak, the Hungarian parliament with a two-thirds majority has passed the so-called "Enabling Act" that allows the Prime Minister Orban rule by decree (Bárd and Carrera, 2020). The new law does not specify the time limit of its validity (Bayer, 2020).

3.4.2. EU's response

In response to the developments in Hungary, the EU has launched several infringement proceedings and triggered Article 7(1). The developments in Hungary, which started unfolding earlier than the value erosion in Poland, initially were not interpreted as systematic value breach but seen as separate *acquis* violations (Pech and Scheppele, 2017, p. 8). Therefore, the framing of the problem defined the tools applied. For instance, the judicial reform that undermines the rule of law value was addressed as a breach of law based on age discrimination (Pech and Scheppele, 2017, p. 13). It is worth noting that the infringement procedure launched against Hungary regarding the lowering of the retirement age of the judges was the first case of referring the systematic rule of law breach to the CJEU in 2012. The breach was framed as the violation of directive regarding equal opportunities and treatment in employment (Mańko, 2019, p. 6).

Later, several other infringement proceedings were launched as a response to developments in different domains. The procedure regarding Hungarian law prohibiting the sale of agricultural land to foreigners was launched in October 2014 and was referred by the Commission to the CJEU in May 2016. The same month a new infringement procedure was launched with regard to ensuring equal access of Roma children to quality education (Halmai, 2018, pp. 5-6). An infringement procedure was launched in April 2017 regarding the Higher Education Law, which violated the freedom to provide services, right of academic freedom and freedom to conduct a business. This case was referred to CJEU in December 2017 (European Commission, 2017b). Another

infringement procedure that was launched on 14 July 2017 and referred to CJEU on 7 December 2017 regards the NGO law in Hungary which discriminates donations from abroad to organizations violating the free movement of capital and the right to freedom of association (European Commission, 2017c). In July 2018 the Commission initiated an infringement procedure regarding the criminalization of activities that support asylum and residence application. On 25 July 2019, this case was referred to the CJEU (European Commission, 2019e).

The Article 7(1) procedure was launched against Hungary by the EP on 12 September 2018 (Marzocchi, 2019, p. 4). The proposal was passed to the Council in September 2018. To date, two hearings were held within the framework of the procedure. On 16 September 2019, the General Affairs Council had a debate regarding the strengthening the rule of law in the EU and held a hearing as a part of Article 7(1) procedure regarding Hungary. Within the framework of this hearing, Hungary had an opportunity to express its views and the ministers could ask questions regarding the issues raised in the European Parliament's proposal to launch Article 7(1) procedure. This event was rather a "peer review exercise" and no evaluation of the substance of the development was given (Council of the European Union, 2019, p. 4). The second formal hearing during the General Affairs Council was held on 10 December 2019. Three domains were discussed: independence of the judiciary, freedom of expression and academic freedom (Council of the European Union, 2020). As mentioned in the section regarding the EU's response to developments in Poland, the EU institutions and international organizations have noted that since the evoking of the of Article 7(1) the situation in Hungary has not improved (European Parliament, 2020b).

One more mechanism of influence is not explicitly spelled out in the legislation but is hidden within the European political groups. Due to the democratic backsliding in Hungary, the European Parliament's biggest group European People's Party (EPP) raised the question of expelling or suspending certain rights of Orban's Fidesz party in March 2019. Then the voting rights of Fidesz were suspended. The decision to suspend the voting rights was prolonged in February 2020 (De La Baume, Bayer and Barigazzi, 2020). Nevertheless, the EPP does not exert an influence on Fidesz to its fullest extent in order to tackle the democratic backsliding. The EPP has been criticized for simply redrawing

the “red lines” for Fidesz, which the latter masterfully omits without any consequences (Bárd and Carrera, 2020, p. 9).

When it comes to analyzing the role of most active actors, it is remarkable that in the case of Hungary, the EP plays a more important role as an institution compared to the Commission. The EP adopted resolutions on the new media law and constitution in 2011, a resolution on fundamental rights situation in 2013. The following resolutions on the situation in Hungary were adopted in June and December 2015, May 2017 (López Garrido and López Castillo, 2019, p. 30). The European Parliament has also demanded from the Commission to start the dialogue within the Rule of Law Framework with Hungary several times, but the Commission remained inactive. In addition, the European Parliament has launched the Article 7(1) procedure against Hungary for the first time in the history of the EU.

In response to the EU’s measures, the Hungarian government actively uses the “national identity argument”. This provision is mentioned in the Article 4 TEU and states that the EU is obliged to respect states’ “national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government” (Eur-Lex, 2012c). This argument is utilized to justify the state’s illiberal actions using a provision which is recognized by the EU law. For instance, Orban has mentioned it when opposing the EU regulations regarding the migration policy and the refugee quotas. This behavior was justified by protecting the “sovereignty and cultural identity” from the migrants (Kelemen and Pech, 2018, p. 14).

In sum, the EU has attempted to take different measures in the form of launching a wide range of the infringement proceedings and evoking the Article 7(1). There were also attempts to exert political influence on Fidesz in the European People’s Party. Nevertheless, Viktor Orban together with Fidesz are continuing to exploit the crises to extend their powers as the recent developments demonstrate. Being granted the right to rule by decree due to the pandemic, Orban signals that Hungary has not altered its course of action. Potential solutions to this problem and erosion of liberal values in Poland will be assessed in the following section. To accomplish this, conclusions regarding the three studied cases will be made first.

3.5. Assessment and potential solutions

The examined cases show that the EU has not yet developed an efficient toolbox to ensure compliance with the EU values in the violating states. The Rule of Law Framework which was supposed to postpone the invoking of the Article 7 has proven to be ineffective as it did not prevent triggering the Article 7(1) for the cases of Poland and Hungary. The activation of the Rule of Law Framework for Poland only gave more time for the illiberal government to consolidate its powers before the Article 7 procedure was applied. In addition, although the Article 7 mechanism itself is elaborate on paper, the applicability of it to real cases is questionable. The application of the sanctioning mechanism requires unanimity in the European Council which is not achievable under the circumstances, when the violating states promised to block the decision to support one another. To date, the Article 7(1) procedure was launched within the framework of which three hearings of Poland and two hearings of Hungary in the General Affairs Council were organized.

Several conclusions can be made regarding the specificities of the value breach cases. Hungary and Poland draw attention to themselves because they contradict the goodness of fit principle (Radaelli, 2001). For the mentioned member states, the increased pressure from the EU institutions does not seem to induce the states to change but instead leads them to stick to existing policies. It is rather problematic to define whether the type of non-compliance for Hungary and Poland is intentional or unintentional. In these cases, the breach of EU values is not an aim in itself but a consequence of domestic actors pursuing their goals. The compliance with the EU values, from the perspective of domestic politics, is a concern that is often considered less important than other domestic issues. The success of compliance is dependent on its match with the vision of domestic actors and their interests. The non-compliance occurs in case of lack of political will and in this case it is expected to be of long-term nature (Falkner et al., 2005a, p.322). It can be argued, that the cases of judicial reforms in Hungary and Poland demonstrate retrenchment, according to Börzel's classification of Europeanisation outcomes (Börzel, 2003b).

The approach of the EU to the problem of value breach has several distinctive traits. Firstly, the EU demonstrates an internal inconsistency when applying its mechanisms throughout history. The reaction to elections in Austria in 1999 was rapid

and radical despite the fact that there was no risk of value breach detected. This behavior is different from the actions taken against Poland and Hungary now, where the infringement procedures are ongoing for years and the EU institutions prefer to abstain from radical measures. Moreover, at the moment it is evident that the approach of the EU also differs for the cases of Hungary and Poland. For instance, in the description of the Rule of Law Framework the Commission explicitly indicates that this Framework shall be applied equally to all member states that are breaching the values (European Commission, 2014). This Framework was applied only to Poland and not to Hungary, where the illiberal developments were detected much earlier. When comparing the cases of Poland and Hungary, for each of them a different EU institution plays a more important role. The proposal to trigger Article 7(1) was issued by the European Commission regarding Poland and by the European Parliament for the Hungarian case. While the LIBE EP committee was drafting the reasoned proposal to the Council on Article 7(1) activation since November 2017, the Commission was the first to activate the procedure against Poland in December 2017. The LIBE committee was instructed to draft a similar proposal against Hungary in May 2017, which is even earlier than against Poland and the launch of the procedure for Hungary had to wait until 2018.

The danger lies not only in the violating states but the EU institutions and member states who tend to ignore the Article 7 procedure and attempt to rely on other means (Kochenov, 2017, p.11). The actors that had the power to initiate the procedure preferred not to take the responsibility for years, just observing how the illiberal reforms in Hungary and Poland unfold. For instance, the Commission instead of initiating the Article 7, offered negotiations within the Rule of Law Framework for Poland. The European Parliament also focused on changing the existing structures instead of triggering the procedure. The member states wrote the letters to the Commission to take action, disregarding the fact that 1/3 of the member states have the power to initiate the Article 7 procedure themselves. The Council insisted on the annual rule of law dialogue as a method of influence instead of referring to the existing procedures of enforcing rule of law compliance (Kochenov, 2017, p.11).

Secondly, when tracing the evolution of the mechanisms, the EU demonstrates a tendency of taking a step back every time the situation requires decisive measures. New mechanisms are being invented over time, however, all with the same aim of postponing

the punishment of the member state. This is demonstrated by the fact that the Article 7 was complemented by the preventive mechanism. However, even with the existing preventive mechanism in the Article, when it came to handling the value breach in Poland and Hungary, the Commission created the Rule of Law Framework which was designed as another preliminary procedure before invoking the Article 7. The lack of political will among the member states and the EU institutions when it comes to taking punitive measures stimulates the establishment of alternative mechanisms.

Thirdly, to a certain extent, the EU itself creates an environment suitable for the thriving of authoritarian regimes (Kelemen, 2020, p. 483). The first factor lies in the fact that the cooperation culture of the EU paradoxically creates a situation, where the member states tend to overlook the problematic decisions of their peers. As opposed to pointing out the issue and confronting it, the states hope that the violator would redeem himself (Grabbe and Lehne, 2017). This can be detected among different alliances and groups within the EU. For instance, the Europarties as the EPP, shield the national member parties as they secure the votes for them. This limits the intervention of the EU in the domestic affairs (Kelemen, 2020, p. 483). The fear to criticize and impose strict measures can also be explained by the fact that other states are afraid to set a precedent by punishing their peer, which might lead to themselves being punished later (Grabbe and Lehne, 2017). The EU is trapped in a situation where it condemns but at the same time funds the illiberal regimes (Kelemen, 2020, p. 483). For instance, the right to veto the budget available to every member state casts a shadow on the potential efficiency of this tool. On one hand, adding the requirement to comply with the rule of law parameters might serve as a powerful incentive. However, on the other hand, the negotiations regarding the Multiannual Financial Framework often involve the member states testing one another. The budget is a result of tedious negotiations and the states cannot know in advance whether the violating member will dare to veto it.

Consequently, based on the measures taken, future possible courses of action can be outlined. The first option includes toughening the existing instruments and introducing strict punishment for the countries violating the EU values. The current state of affairs shows that the EU has to take a stronger stance and modify and universalize its approach to the violating member states. There are, however, several factors that hinder this scenario. The EU serves as a platform where decisions are made by consensus and

misbehavior of the member states is rarely addressed directly. This happens due to the fact that the member states are afraid to create a precedent that might trigger any measures against themselves in return. The EU is a compromise-making machine and the states would not want it to increase its supranational powers (Grabbe and Krekó, 2020). Also, not all actors are equally interested in taking serious measures against Poland and Hungary as the damage caused for the EU through democratic backsliding is high, however, the damage for separate heads of states or representatives is not sufficient enough to motivate them to act (Grabbe and Krekó, 2020).

Therefore, the second option implies considering a more bilateral approach by the member states. The lesson taught by the case of Austria demonstrates that the member states are capable to act bilaterally and achieve results through imposing punitive measures in such manner. The member states have to re-assess the value crisis in the EU as it poses a threat to the whole Union. Ideally, the combination of the EU supranational institutions tightening the grip and the member states showing more interest and being proactive in pressuring the violators would be useful in slowing down the erosion of the EU values.

It is evident that the EU has urgently to reconsider its stance as the fact that democratic institutions in Poland and Hungary are under attack poses a threat to the structures of the whole Union. For instance, the German and the Irish courts have already encountered issues when prosecuting Polish citizens as they were not able to ensure fair trial due to the fact that the independence of the judiciary in Poland is undermined (Bauomy, 2020). Another example is the extended access over the media in Hungary, which raises concerns regarding the fairness of the campaigns for the European Parliament elections (Végh, 2019). The existing instruments have not yielded any significant changes which endangers the liberal values not only in the violating states but in the whole EU.

Conclusions

The objective of this thesis was to identify and assess the mechanisms that the EU has invented in order to tackle the issue of value breach in the member states. The theoretical mechanisms were outlined using the Europeanisation framework, including the "hard" as well as "soft" mechanisms and the specifics of the value ensuring measures. The efficiency of the EU toolbox ensuring compliance with values and handling the violations was analyzed and evaluated. These mechanisms then were assessed in action with the help of process tracing in the empirical part, which covered developments in Austria (1999-2000), Poland (2015-2020) and Hungary (2010-2020). In terms of data, treaty provisions regarding the compliance ensuring mechanisms, secondary legislation issued by the EU institutions, press releases of the EU institutions and secondary analysis of the developments were used. The following conclusions were made.

To date, the instruments ensuring the compliance with the EU values include: infringement proceedings, Article 7 procedure, Rule of Law Framework, Cooperation and Verification mechanism, Justice Scoreboard, European Semester and Structural Reform Support Programme. In the case of Austria, none of the mentioned tools were used and the member states acted outside of the framework of the EU by imposing bilateral sanctions. Poland was subject to the Rule of Law framework, infringement proceedings and the Article 7(1) procedure. Only two latter tools were applied to Hungary. From the listed mechanisms applied, it is obvious that the approach of the EU is inconsistent, when it comes to enforcing compliance with values. In regard to every case, a different set of tools was applied. Moreover, the promptness of the reaction also varies. The sanctions were imposed on Austria immediately even in the absence of the value breach. The Article 7(1) procedure was activated for the first time against Poland in 2017, despite the fact that the illiberal developments had started first in Hungary in 2010 and in Poland only five years later.

The analysis of the existing instruments at the disposal of the EU shows that at the moment there is no existing efficient tool that would allow the EU to halt the illiberal reforms in the violating states. The evolution of the EU mechanisms demonstrates that the EU always takes a step back when inventing mechanisms that regulate value compliance. This process starts from the 1990-s, when the Article 7 had to be

complemented with a preventive mechanism and follows with the invention of the Rule of Law Framework, which was designed to postpone the activation of Article 7. The international organizations as the Council of Europe, OSCE, UN and the EU institutions have declared that "the situation in both Poland and Hungary has deteriorated since the triggering of Article 7(1)" (European Parliament, 2020b). Moreover, even if a strict mechanism is described in the legal framework of the EU, as the punitive mechanism in the Article 7, the institutions and the states have been hesitant to take any radical measures. The utilization of the latter requires unanimity in the European Council, which is threatened by the agreement of the violators to block the decision.

Not only does the EU not have powerful mechanisms ensuring value compliance, but it also creates a suitable environment for the member states to progress with their illiberal reforms. From the very beginning, the EU heavily relies on the member states to perform reforms in compliance with the EU values. This leads to a situation where the new mechanisms created are mostly based on the premise that the violating state is willing to cooperate (Grabbe and Lehne, 2017). The culture of cooperation results in hesitation and fear of other actors to use punitive measures. In addition, despite the fact that the EU condemns the illiberal regimes, it also funds them at the same time. Most of the existing procedures, including the approval of the budget, are susceptible to the right of veto inherent to every member state.

The expectations derived from the Europeanisation framework were valid when applied to the examined cases. As the violating member states oppose the EU standards, it is problematic for the EU to force them to comply. Moreover, due to the specificity of the value domain, it is problematic for the EU to declare what exactly constitutes a value breach, which makes it harder to sanction the states as the parameters of compliance with values are rather blurred. The issue is exacerbated by the fact that the nature of the violation allows it to unfold for some time. The problem of serious and persistent value breach cannot be addressed immediately as it requires some time to be detected.

Overall, any measures offered by the EU create a paradoxical situation. The member states that are implementing reforms that breach the EU values stick to this behavior due to their re-evalution of European integration. These states appeal to the fact that the EU is too intruding in their policies and the states have the right to preserve their national identities that are embedded in their political and other structures. On one hand,

decisive measures to be taken by the EU are required in order to demonstrate that this project has the capacity to tackle this issue. One the other hand, any serious statements from the EU side might result in the exacerbation of the situation through provoking a reaction of the breaching states. Ultimately, such situation could lead to political disintegration and pose a threat to the whole existence of the Union.

However, one thing remains clear. The existing tools that are rooted in the soft mechanisms of socialization, naming and shaming proved themselves to be inefficient. Based on the aforementioned observations, a recommendation can be given regarding the current and future policy of the EU. The EU has to review its policy in this domain and turn to more punitive and coercive measures as opposed to positive socialization. The costs of incompliance for the violating states have to exceed the costs of aligning with the EU values when implementing reforms. Not only the EU institutions, but also the heads of other governments and states need to reconsider their views and take a more proactive stance in this matter. Currently, the most promising tool at the disposal of the EU is the shaping of the Multiannual Financial Framework for 2021-2027. Including the requirement of compliance with the rule of law in order to get the EU funding will be a powerful incentive for the violating countries to reconsider their course of action.

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Appendices

Appendix 1

13 January 2016	Commission starts the dialogue with Poland within the Rule of Law Framework.
13 April 2016	EP resolution: supporting the launch of the Rule of Law Framework.
1 June 2016	Commission issues a Rule of Law Opinion.
27 July 2016	Commission adopts the first Rule of Law Recommendation, explaining the launch of RoLF and declaring a systemic threat to the rule of law in Poland. Poland has 3 months to answer but the government disagreed.
14 September 2016	EP resolution: condemning the developments in Poland.
21 December 2016	Commission adopts a second Rule of Law Recommendation. Polish government rejects the Commission's points once more
20 January 2017	A comprehensive judiciary reform is announced in Poland.
16 May 2017	Commission informs the Council on the situation in Poland.
13 July 2017	Commission sends one more recommendation letter which remains ignored.
26 July 2017	Four laws reforming the judicial system are adopted in Poland, two of them signed into force by the President. The Commission adopts a third Rule of Law Recommendation, concerning the Constitutional Tribunal and judicial reforms.
29 July 2017	Commission launches an infringement procedure on the Polish Law on Ordinary Courts, concerning retirement of judges.

31 July 2017	Polish President vetoes the laws amending the Law on National Council for the Judiciary and the Law on the Supreme Court.
4 August 2017	Poland asks for a clarification letter in relation to the third rule of law Recommendation.
8 August 2017	Commission provides clarification.
16 August 2017	Poland asks for a clarification letter in relation to the third rule of law Recommendation again.
21 August 2017	Commission provides clarification.
28 August 2017	Poland sends an official reply to the third Recommendation, stating it disagrees with issues raised.
11 September 2017	Poland launches campaign "Fair Court" to mobilize support for judicial reform.
12 September 2017	Commission sends Reasoned Opinion on Ordinary Courts case.
11-15 September 2017	Minister of Justice dismisses court president according to new law on Ordinary courts, rule of law violations continue.
25 September 2017	Commission informs the Council again on the situation in Poland.
26 September 2017	Polish President transmits to the Sejm two new draft laws on the Supreme Court and on the National Council for the Judiciary.
12 October 2017	Poland replies to Reasoned Opinion and denies the breach.
15 November 2017	EP resolution: supporting Commission's Recommendations and launch of the infringement procedure; LIBE is instructed to draft a reasoned proposal to the Council to activate Article 7(1).
8 December 2017	Two new draft laws proposed by the President adopted by the Sejm, the lower house of the Polish Parliament. Venice Commission adopts two opinions on the judicial reforms in Poland, concluding that they threaten the judicial independence.

15 December 2017	The two laws approved by the Polish Senate, the upper house of the Polish parliament.
20 December 2017	Commission activates the Article 7(1) procedure, sends a reasoned proposal to the Council to determine a clear risk of serious breach.
20 December 2017	Commission refers the Ordinary Courts Procedure to CJEU (C-192/18): different retirement age based on gender and power of Minister of Justice to prolong judge's term.
26 June 2018	First formal hearing in the General Affairs Council concerning Commission's proposal.
2 July 2018	Infringement procedure on the Polish Law on the Supreme Court launched: Commission sends a Letter of Formal Notice.
2 August 2018	Poland replies to Letter of Formal Notice rejecting the concerns.
14 August 2018	Commission sends a Reasoned Opinion concerning Supreme Court Law.
14 September 2018	Poland replies to the Reasoned Opinion rejecting the concerns.
18 September 2018	Second formal hearing in the Council.
24 September 2018	Commission refers the Supreme Court case to CJEU (C-619/18).
11 December 2018	Third formal hearing in the Council.
17 December 2018	CJEU rules to take interim measures concerning Polish Law on Supreme Court.
19 February 2019	GA Council discusses Article 7 progress, no conclusions.
3 April 2019	Third infringement procedure launched against new disciplinary regime for Polish judges: Letter of Formal Notice.
24 June 2019	CJEU rules on Supreme Court case: it breaches principle of judicial independence.

17 July 2019	Commission issues Reasoned Opinion regarding disciplinary regime for Polish judges.
10 October 2019	Commission refers Poland to CJEU regarding disciplinary regime for judges.
5 November 2019	CJEU rules that Poland's actions constitute EU law breach
February 2020	President signed into force a new bill "muzzle law", which gives the right to punish judges opposing government

Table 1, Timeline of developments in Poland, based on López Garrido and López Castillo, 2019, pp. 22-23; Marzocchi, 2019, pp. 4-5; Eur-Lex, 2017a

Appendix 2

2010	Fidesz party wins parliamentary elections.
2012	Constitution modification.
2012	Hungary is referred to EP Committee on Civil Liberties for disregarding Art. 2.
17 January 2012	Commission sends a letter of formal notice.
17 February 2012	Hungary replies to letter of formal notice.
7 March 2012	Commission issues reasoned opinion .
30 March 2012	Hungary sends a reply.
7 June 2012	Commission refers Hungary to CJEU.
6 November 2012	CJEU rules that lowering retirement age for judges constitutes an directive violation.
July 2013	EP approves the "Tavares report". Commission and European Council do not react.
10 June 2015	EP resolution: asking the Commission to launch the Rule of Law Framework.
10 November 2015	The EP sends the Commission an oral question on measures taken against Hungary; no answer received.
16 December 2015	EP resolution: condemning changes of law on access to international protection; inaction of the Council;

	asking Commission to launch the Rule of Law Framework.
17 May 2017	EP resolution: insisting on the clear risk of value breach and invoking Article 7(1). LIBE instructed to draft a reasoned proposal to trigger Article 7(1).
7 December 2017	EP: public hearing on the situation on Hungary.
12 September 2018	EP resolution: calling the Council to declare risk of serious value breach in Hungary .
June 2018	EP votes for triggering Article 7 against Hungary.
19 February 2019	GA Council discusses Article 7 progress, no conclusions.
30 March 2020	Parliament adopted the "Enabling act"

Table 2, Timeline of developments in Hungary, based on López Garrido and López Castillo, 2019, p. 30 and Marzocchi, 2019, pp. 4

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