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**THE CAPACITY OF THE EUROPEAN
COMMISSION TO PROTECT THE
FUNDAMENTAL VALUES OF THE
EUROPEAN UNION: THE ISSUE OF RULE
OF LAW IN POLAND 2015–2018**

Bachelor's thesis

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Abstract

Although European Union has been described as a union based on values, recent years have seen the principles of democracy and rule of law being challenged in some of the member states. For the first time, the European Commission has proposed to declare a risk of a breach of the fundamental values of the European Union in a member state, addressing rule of law in Poland. If the value based union is to be maintained, the issue of how to ensure respect for the common values post-accession, has to be addressed.

The aim of this research is to study the capacity of the European Commission to ensure the respect of the fundamental values of the European Union in its member states. A qualitative case study on the issue of rule of law in Poland between 2015 and 2018, is carried out since it has created a precedent. The author uses document analysis to look at the steps taken by the Commission to protect the principle of rule of law and the impact on Poland. The approach of Europeanisation is applied to analyse the strategy and obstacles in ensuring compliance.

The results confirm the hypothesis as the relative power of the Commission decreases post-accession. The Commission has attempted to engage in dialogue and has applied negative conditionality on Poland but the situation has deteriorated. The persuasion power of the Commission is decreased by low sense of identity, legitimacy and credibility. Poland has argued the Commission has no right to intervene and the process is politically motivated. There are no benefits to be gained from compliance and the costs on Poland are not high enough because the credibility of sanctions is low.

Based on the analysis, budgetary measures could be a way to increase the influence of the Commission. However, capacity building has to consider maintaining the unity of the European Union and preventing potential backlashes.

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Introduction

Since the creation of the Coal and Steel Community in 1952, the European Union (EU) has been framed as a project promoting peace and democracy in its neighbourhood (McCormick 2010). According to the Lisbon Treaty, it is based on values like freedom, democracy and rule of law. In case of candidate countries, conditionality can be used to evoke respect for these principles and non-compliance does little harm as the countries do not directly represent the EU. The relative power the EU has over its member states, however, is considerably lower and the costs of disrespect significantly higher.

In recent years, the balance of power has been challenged in some of the member states with Poland and Hungary gaining the most attention (Schlippak and Treib 2017). After the Polish Law and Justice Party (PiS) won the parliamentary election in 2015, it has attempted to increase the power the government has over the judiciary. This has resulted in the first ever proposal by the European Commission to launch Article 7 of the Treaty of the European Union (TEU) on the risk of a serious breach in the fundamental values of the EU in a member state. These tendencies challenge the idea of a value based union as well as the unity and credibility of the European Union.

The aim of this research is to study the capacity of the European Commission to ensure the respect of the fundamental values of the EU in its member states. While the influence of the EU over its candidate countries has been widely covered in literature (e.g. Grabbe 2001; Héritier 2005; Scherpereel 2010), the power remaining post-accession has not gained as much scholarly attention. The paper aims to contribute to this effort by looking at the principle of rule of law in Poland. The hypothesis tested is that the capacity of the European Commission to ensure respect for the fundamental values of the EU decreases after a country has joined the Union.

To engage with the hypothesis, the approach of Europeanisation is applied. Europeanisation studies rule transfer from the EU to nation states, also, regarding values (Bulmer 2008; Radaelli 2000). The approach allows to analyse the preconditions for rule adoption and the capacity of the EU to evoke such change. The main authors used in creating the theoretical framework for the research, are Frank Schimmelfennig and Ulrich

Sedelmeier. Their models of Europeanisation (2005), inspired by the works of Tanja Börzel and Thomas Risse (2000, 2003), are applied to analyse the logic of action of the parties. Schimmelfennig and Sedelmeier also discuss factors conducing and hindering rule adoption, which are applied in the paper to explain the capacity of the European Commission to protect the fundamental values.

A qualitative case study on the issue of rule of law in Poland is carried out. The case study analyses the steps taken by the Commission to protect the fundamental values of the EU and their impact on Poland. First, a timeline of key moments is composed by looking at which steps of Poland have triggered a response from the Commission. Second, the power of the Commission over Poland is assessed by analysing the dynamics between the actors and whether changes have been evoked. Lastly, models of Europeanisation by Schimmelfennig and Sedelmeier (2005) are applied to explain the strategies and obstacles in rule transfer. Official statements and documents released by the European Commission and the Polish Ministry of Foreign Affairs from October 19, 2015, to April 1, 2018, are used. The sample is composed of 62 documents, 31 from both parties.

The paper is divided into two chapters – theoretical and empirical. The theoretical chapter first covers the concept and models of Europeanisation, next, it moves onto the context of values and the capacity of the EU. It gives an overview of the conferral of powers to the Commission and the main criticism and proposals regarding the protection of values. In the second chapter, a qualitative case study is carried out based on the theory introduced in the first chapter. The analysis is divided into three parts based on the steps of analysis described above.

The research is solely focused on the actions of the Commission. In order to get a more comprehensive picture of the capacity of the EU as a whole, the European Parliament and the Council of the European Union should be included. Moreover, monitoring Polish media would contribute to analysing the effect of socialisation since it would allow to assess the influence of the EU on domestic debate. It should be noted that the goal of the paper is to study the dynamics of action and reaction between the actors, it does not aim to offer a legal analysis of the judicial reforms in Poland.

1. Theoretical framework

The chapter sets out the theoretical foundation on which the research is based on. It gives an overview of the literature on Europeanisation and its relevance in the context of protecting the fundamental values of the EU. First, the general concept and process of Europeanisation is covered. Next, the models of Europeanisation based on the main actor and logic of action are introduced, as well as the main factors hindering and evoking Europeanisation. The third subchapter turns to the issue of safeguarding the fundamental values of the EU and how rule adoption is supported by EU capacity building through the conferral of powers to the Commission. The last subchapter gives an overview of the most prevalent criticism and proposals on the capacity of the EU in protecting its fundamental values.

1.1. The concept of Europeanisation

Europeanisation has a wide array of definitions and it is often used alongside other theories on European integration or international relations (e.g. Börzel and Risse 2000; Schimmelfennig and Sedelmeier 2005). Thus, Europeanisation has been described as an approach, rather than a full-fledged theory (Bulmer 2008; Featherstone 2003). Europeanisation describes the impact the European institutions and policies have on domestic politics, politics and policies (Schimmelfennig and Sedelmeier 2005, 5). Frank Schimmelfennig and Ulrich Sedelmeier (2005, 7) have defined Europeanisation as “a process in which states adopt EU rules“. Rules can range from regulations in concrete policy areas to rules on the political process and can be both, formal and informal (Schimmelfennig and Sedelmeier 2005, 7). The concept of Europeanisation is also used for analysing how these transfers are reflected by the delegation of power to the supranational level (Bulmer 2008; Olsen 2002). Case studies mostly involve member states (e.g. Börzel and Risse 2003) or candidate countries (e.g. Harmsen and Wilson 2000; Olsen 2002).

There have been several approaches for categorising different types of Europeanisation. According to Johan P. Olsen (2002, 923–924), Europeanisation can explain five processes: 1) changes in external boundaries, 2) developing institutions at the European level, 3) central penetration of national systems of governance, 4) exporting forms of political organisation within and outside the EU, 5) Europeanisation as a political unification project – developing capacity of the EU. Kevin Featherstone (2003) has

differentiated four categories of Europeanisation, namely, Europeanisation as 1) a historical process, 2) a transnational cultural diffusion, 3) an institutional adaption, 4) an adaption of policies and policy processes.

This paper will follow the approach by Simon Bulmer (2008) who distinguishes two broad processes 1) Europeanisation as the transformation of policy, institutions, rules or norms and 2) Europeanisation as European capacity building (Bulmer 2008, 47). Bulmer's approach summarises the study of Europeanisation and underlines that the changes do not only take place on the national level but also have an effect on the supranational level and, as a result, lead to a reshuffle of power. Moreover, the two processes are related since European capacity building can lead to a transformation of rules on a domestic level.

Rule adoption varies by extent and the motivation of the domestic actors. Schimmelfennig and Sedelmeier (2005, 8) distinguish three forms of rule adoption – formal, behavioural and communicative or discursive. In the case of formal adoption, EU rules are simply introduced into national law. Therefore, the adoption takes place *de jure*. In the behavioural model, change also takes place *de facto* and the behaviour is rule-conforming. Discursive adoption represents two opposite poles in the extent of rule adoption, either the rule is truly internalised and referenced positively or the adoption is simply rhetorical and used strategically (Schimmelfennig and Sedelmeier 2005, 8).

Europeanisation is complex and rarely takes place according to a universal model. The regularity, extent and location of change vary and result in an asymmetry (Featherstone 2003, 4). Moreover, convergence and homogenisation are always somewhat different since domestic actors interpret rule adoption according to national institutions, traditions, identity and resources (Radaelli and Pasquier 2008; Olsen 2002). Tanja Börzel and Thomas Risse (2003) have set out two preconditions for Europeanisation to take place. First, there must be an incompatibility between the institutions, policies or rules on the European and state level, they call it “a misfit”. The misfit evokes an adaptational pressure which may result in domestic change, yet, not necessarily (Börzel and Risse 2003). The bigger the misfit, the greater the pressure for rule adoption (Börzel and Risse 2000, 5). In addition to a misfit, factors which respond to the pressure, such as responsible political actors or institutions, must exist to elicit the change (Börzel and Risse 2003, 58).

1.2. Models of Europeanisation

There are two main approaches for explaining the motivation for Europeanisation. The first, logic of consequentialism, follows from rational institutionalism and the second, logic of appropriateness, follows from sociological institutionalism (Börzel and Risse 2000, 2003). According to rational institutionalism, actors are rational and goal-oriented and base their actions on a cost-benefit analysis to choose an alternative which maximises their benefits (Börzel and Risse 2000, 6). Hence, logic of consequentialism argues that Europeanisation is pursued because it is necessary for achieving certain goals of the state.

According to the logic of appropriateness, the change is a result of socialisation and collective learning (Börzel and Risse 2000, 2). The theory of socialisation suggests that institutional conditions, formal and informal rules of an organisation affect the behaviour of the members up to a point where the norms about appropriateness are internalised as part of the self (Beyers 2010, 909). The actors base their actions on what they think is expected from them and what is socially acceptable (Börzel and Risse 2000, 7). Applied to the EU, the logic of appropriateness suggests that member states redefine their norms and values after European norms due to involvement in European venues and formats of cooperation

Schimmelfennig and Sedelmeier (2005) describe three alternative mechanisms for Europeanisation based on the principal actor and the logic of rule adoption (see Table 1). Schimmelfennig and Sedelmeier studied Central and Eastern European Countries (CEEC) as candidate countries, but the same approach can be applied to member states, bearing in mind the variation in the EU's "tool box", mainly the absence of conditionality as the carrot of membership has ceased to be relevant. The first distinction in the model is the principal actor. EU-driven models refer to situations where rule adoption would not have happened without the interference of the EU, whereas in CEEC-driven models, the state takes the initiative. In the CEEC-driven lesson-drawing model, the tools the EU has remain unimportant since rule adoption is seen as necessary and appropriate in the domestic context. *Status quo* is dissatisfying and the strategies of the EU do not have a significant role in evoking change (Schimmelfennig and Sedelmeier 2005, 8–10).

Table 1. Alternative mechanisms of Europeanisation.

| Principal actor in rule adoption process | Logic of rule adoption | |
|---|-------------------------------|---------------------------------|
| | <i>Logic of consequence</i> | <i>Logic of appropriateness</i> |
| <i>EU-driven</i> | External incentives model | Social learning model |
| <i>CEEC-driven</i> | Lesson-drawing model | Lesson-drawing model |

Source: Schimmelfennig and Sedelmeier 2005.

Logic of rule adoption explains the strategies and measures used to enforce rule adoption in EU-driven models. The model of external incentives follows the logic of consequence. Bargaining takes place and the EU offers rewards and sanctions to tip the scales for the cost-benefit analysis on the national level. The governments adopt the rules in case the rewards offered by the EU exceed the domestic costs (Schimmelfennig and Sedelmeier 2005, 10–12). Schimmelfennig and Sedelmeier (2005) define four factors which increase the likeliness of rule adoption. These can be applied to member states with some modifications.

First, determinacy of conditions, meaning the rule is clear and formal. This gives an indication of what needs to be changed and prevents using rules to one's own advantage. Second, rewards are quick and significant. In case of member states, sanctions can have the same effect. Third, credibility of conditionality, which means that 1) the EU itself would not carry high costs by the use of incentives, 2) the EU is consistent and coherent in its actions, 3) there are no third parties offering comparable benefits, 4) the EU can monitor compliance. Lastly, rule adoption is more likely if there are few veto players and low adoption costs, such as opportunity costs, welfare and power losses (Schimmelfennig and Sedelmeier 12–17).

In case of social learning, logic of appropriateness applies and the EU aims to persuade the nation states that its rules are legitimate and pursuing them is right in the normative sense. To increase the persuasion power and likeliness of rule adoption, legitimacy, identity and domestic resonance are essential (Schimmelfennig and Sedelmeier 2005, 18–20). For a rule to be legitimate it must be clear, adopted legitimately and applied consistently. Legitimacy is increased if other international actors follow the same principles (Schimmelfennig and Sedelmeier 2005, 18–19). Sense of identity means there is a level of aspiration and the EU is seen as a collective whose recognition is valued and pursued (Schimmelfennig and Sedelmeier 2005, 19). Lastly, resonance means that the

rule can be easily adopted to the domestic context and there are no conflicting rules derived from the domestic political or legal culture (Schimmelfennig and Sedelmeier 2005, 20).

1.3. Power conferred to the European Union in the context of values

Europeanisation not only changes the formal institutions and policies but also has an effect on the values and discourse in the member states (Radaelli 2000, 13). According to Article 2 of the Treaty of the European Union (TEU), the EU is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. These values are meant to be shared by the member states. However, there is no way to terminate a membership of a country if it does not comply with the rules it has agreed to. Under the current treaties, the EU cannot expel its members, countries can only leave voluntarily. Hence, whereas EU has a strong bargaining position *vis-à-vis* candidate countries, after accession the relative power of the EU decreases noticeably as exclusion cannot be used as a credible deterrence.

The EU mainly uses political tools to protect its fundamental values. There is a Commissioner responsible for co-ordination on the Charter of Fundamental Rights and a special article introduced into the TEU for protecting the values stated in Article 2. Since 2014, the First Vice-President of the Commission, Frans Timmermans is responsible for co-ordinating the Commission’s activities in the area of rule of law and fundamental rights (Blauberger and Kelemen 2017, 324). This allows the Commission to publicly assert pressure in case there is a threat of a violation. The most powerful tool the EU has is evoking Article 7 of the TEU, which allows imposing sanctions on a member state if there is a consistent breach of the values stated in Article 2. The sanctions can go as far as suspending the voting rights of the member state in the Council of the European Union.

There are three main steps in the process of evoking Article 7. Under paragraph 1, the Commission, the European Parliament or 1/3 of the member states can issue a reasoned proposal for triggering Article 7 in case there is a *risk for a serious breach* of the values in Article 2. After hearing out the respective member state, the Council can decide the risk to be apparent if 4/5 of the member states and the Parliament agree. Under paragraph 2, the *existence of serious and persistent breach* can be determined by a unanimous decision of the European Council while also having the consent of the Parliament. After

the determination under paragraph 2 has been made, rights of the member state can be suspended by the Council under Qualified Majority Voting (QMV). All obligations remain binding on the member state. The measures can be changed or revoked under QMV (Article 7 of the TEU). Throughout the process, the Parliament needs a 2/3 majority (Article 354 of the TFEU).

Sedelmeier (2017) argues that social pressure and persuasion should be the main tool of the EU as it has proven efficient in the past. He highlights that in order for social pressure to be effective, it has to be consistent, impartial, public and transparent (Sedelmeier 2017, 344). The Commission has tried to make the dialogue with troubling member states more transparent. In 2014, the Commission presented a framework for addressing the issue of rule of law, making the process and dialogue leading up to Article 7, official. The framework differentiates assessment, recommendation and follow-up. First, the Commission collects data on the potential breach. Based on the investigation, it can initiate a dialogue with the member state by sending a Rule of Law Opinion. Next, the Commission gives recommendations for solving the identified problem within a fixed time limit. Lastly, if the follow up shows no improvement, the Article 7 procedure can be initiated by the Commission (European Commission 2014).

In addition to political measures, judicial measures can be used as they offer legal clarity and might be perceived as more legitimate. According to the Treaties, if the Commission considers a member state has failed to fulfil an obligation under the Treaties, it can deliver a reasoned opinion. If the state does not address the concerns in the time frame set by the Commission, the matter can be brought before the Court of Justice of the European Union (Article 258 of the TFEU). So far, the values stated in the TEU remain too vague and would need to be operationalised by secondary legislation for using the infringement procedure (Blauberger and Kelemen 2017, 326). Since 2013, the Commission also publishes an annual EU Justice Scoreboard which uses different indicators to assess the judicial systems in the member states, including an evaluation on judicial independence (European Commission 2013).

1.4. Criticism and proposals

The criticism towards the capacity of the EU to respond to member states falling back on the fundamental values can be summed up in lack of credibility, as the main concerns covered in literature are effectiveness and partisan politics. There are also other issues,

for example, Kochenov (2013, 148–149) has turned criticism towards the values in general, claiming they have not been provided with enough content, being mostly declarative and aimed for external consumption. It has also been referred there is no responsible political actor for drawing attention to these issues nor a common political space or platform for political debate (Müller 2015, 150).

Political measures have been criticised for being difficult to launch or likely to prove ineffective. Blauberger and Kelemen (2017) point out evoking Article 7 is politically unlikely as it can be easily blocked. If the member state in question can find at least one ally in the Council, the decision will not pass. European Parliament has discussed addressing this concern by making Article 2 a legal base for infringement proceedings and legislative measures. In this case, it would be decided under Ordinary Legislative Procedure (Blauberger and Kelemen 2017, 326). The Rule of Law Framework has been criticised for being too naive in assuming it would be effective on illiberal states (Kochenov and Pech 2015). Rhetorical measures and public critique may be insufficient towards antidemocratic or unconstitutional countries since the opposition cannot use the external pressure for undermining the government (Grabbe 2014; Sedelmeier 2017).

Ulrich Sedelmeier (2017) has highlighted the role of partisan politics in the European Parliament. It hinders political party groups to vote against their colleagues. In addition, parties which do not hold European integration or liberal democracy in such a high regard, may hamper sanctioning uncompliant member states for ideological reasons (Sedelmeier 2017, 340). Sedelmeier claims partisan politics can contribute to enforcing confrontation if the European level becomes an extension of national rivalries, referring to Polish Civic Platform and the Law and Justice Party (PiS), belonging to European People's Party and the European Conservatives and Reformists, respectively (Sedelmeier 2017, 341).

On the other hand, Blauberger and Kelemen (2017) have argued relying on judicial tools too much would politicize the EU judiciary and leave political leaders not responsible for addressing democratic backsliding. Under the current system, the Commission has been criticised for prosecuting infringements selectively and only launching cases it believes it can win. Thus, politically sensitive conflicts are avoided in order not to lose credibility or give a feeling there was no breach simply because the vote failed (Blauberger and Kelemen 2017; Sedelmeier 2017).

There are three main proposals for increasing the reaction capacity of the EU for preventing democratic back sliding. These include 1) creating a separate body for monitoring, 2) widening the capacity to address the issues judicially and 3) increasing monitoring in the current framework (Müller 2015; Scheppele 2013; Sedelmeier 2017). Müller has proposed creating a “Copenhagen Commission”, composed of legal experts and respected statesmen that would investigate possible breaches regarding the fundamental values of the EU. The body should be able to trigger a procedure short of Article 7 to send a message. Based on the proposal by the Copenhagen Commission, the European Commission would also be required to freeze pay-outs or impose fines on the member state. Müller (2015, 150–151) also proposes adding a clause of expulsion to Article 7 for deterrence.

Instead of creating new bodies, current systems could be developed further. Kim Lane Scheppele (2013) has proposed giving the Commission the power to gather separate breaches of fundamental values into one infringement procedure. It would allow for the Court of Justice to see a pattern of a worrying behaviour instead of some elements of it, and it could provide the Court with a better understanding of the judicial context. Also, it would prevent the Commission from cherry-picking the cases it estimates to win (Scheppele 2013). Sedelmeier (2017) proposes including the issue of fundamental values into the annual Justice Scoreboard reports, which so far have focused more on the efficiency of national judiciaries. He argues consistent monitoring would increase transparency and legitimacy by helping to operationalise the values stated in Article 2 (Sedelmeier 2017, 347).

2. Empirical analysis

This chapter applies the theory of Europeanisation on the case of Poland by carrying out a qualitative case study. The chapter is divided into four subchapters. The first part introduces the methodology of the case study. The second gives an overview of the steps taken by the Commission. The third part analyses the impact the Commission's actions have had. In the fourth subchapter, the models and preconditions of Europeanisation by Schimmelfennig and Sedelmeier are applied on the case to offer explanations.

2.1. Data and methodology

To test the hypothesis on whether the capacity of the European Commission to ensure the respect for the fundamental values of the EU decreases after a country has joined the Union, a qualitative case study of Poland's rule of law process is carried out. The aim is to study the interaction of the two main aspects of Europeanisation – capacity building of the EU and rule transfer from the EU by assessing how the powers conferred to the Commission enable it to evoke rule adoption in the member state in the context of fundamental values. This is studied by analysing the narrative of the formal communication between the European Commission and Poland on the issue of rule of law in Poland, from 2015 to 2018. The case study assesses the transitive dynamics of the process by analysing the actions and reactions of the parties as well as the narratives used. The analysis engages with the hypothesis by applying the models and preconditions of Europeanisation by Schimmelfennig and Sedelmeier (2005) to assess the strategies and obstacles in rule adoption.

Poland is chosen for the case study because it has created a precedent in terms of safeguarding the values of the EU in the member states. It is the only country that has been a subject of a proposal for launching the Article 7 procedure. After winning the general election in 2015, the governing Law and Justice Party (PiS) started judiciary reforms that the European Commission has seen as a threat to the principle of rule of law – one of the fundamental values explicitly mentioned in the treaties. Since this is the first time evoking the Article 7 procedure is proposed, it gives ground to analyse the capacity of the EU and the reasons why other measures to influence Poland have been insufficient. Due to the formal course of action, the developments are well documented and provide data for carrying out the case study.

The actions of the European Commission are analysed to refer to the capacity and role of the EU since Commission is the “guardian” of the Treaties and, hence, responsible for monitoring adherence to the fundamental values. The Commission has been in formal dialogue with Poland and is the most relevant EU institution in the process. The European Parliament has been involved by expressing its concern on the rule of law in Poland, organising formal debates on the topic and issuing a resolution on Poland. The matter has also been discussed in the Council of the European Union. Yet, the role of the European Parliament and of the Council remain beyond the scope of this study due to limit restrictions.

The period under study is between October 19, 2015, and April 1, 2018. The starting date marks the day of the election to the *Sejm* – the lower house of the Polish Parliament. The period ends with March 2018, since March 20 was the deadline given to Poland by the Commission to adopt changes before Article 7 is launched. By extending the period under study by ten days, it is possible to see the interaction for some time after the deadline. The process is ongoing and it is not possible to define an endpoint for Europeanisation, however, for the purpose of analysis the boundaries must be set. This period is considered to be long enough as there has been time for dynamics to establish and there is enough data to carry out the case study.

The analysis is based on Simon Bulmer’s (2008) definition of Europeanisation and focuses on the capacity of the European Union in evoking transfers of norms and values. The case study is carried out in three steps. First, the key moments in the process are defined to build a timeline of the events. This is done by looking at what steps by Poland have caused concern regarding the respect for the principle of rule of law and how has the Commission reacted. Next, the impact of these actions is assessed by analysing the dynamics of action and reaction, thus, how Poland has responded to the measures taken by the Commission and what narratives have the actors used to explain their actions.

Lastly, the models of Europeanisation by Schimmelfennig and Sedelmeier (2005) are applied (see Table 2) to explain the strategies and possible reasons for compliance or non-compliance. The models provide a framework to analyse the strategies and logic of action of the Commission and the Polish Government. In addition, the existence of the preconditions of Europeanisation by Schimmelfennig and Sedelmeier are analysed to look for possible obstacles hindering rule transfer.

Table 2. Main features of the models of Europeanisation.

| MECHANISM OF EUROPEANISATION | | |
|---|---|--|
| External incentives model | Social learning model | Lesson-drawing model |
| <ul style="list-style-type: none">▪ Commission-driven▪ logic of consequence▪ bargaining▪ cost-benefit analysis▪ rewards▪ sanctions | <ul style="list-style-type: none">▪ Commission-driven▪ logic of appropriateness▪ dialogue▪ persuasion▪ proving legitimacy of rule▪ normative arguments | <ul style="list-style-type: none">▪ driven by Poland▪ both logics applicable▪ domestic debate▪ cost-benefit analysis or normative arguments▪ role of Commission unimportant▪ dissatisfaction with the <i>status quo</i> |

Source: Schimmelfennig and Sedelmeier (2005).

Primary sources are used to carry out the research. Official documents released by the European Commission and the Polish Ministry of Foreign Affairs are used to analyse the narratives used by the actors. The data provided by official sources of both parties will be used in order to avoid biased coverage. The European Commission Press Release Database is used from the side of the EU. A search is conducted with the keyword “Poland” in the period under study, hence from October 19, 2015 to April 1, 2018. Results are manually checked and all documents referring to rule of law are included. In addition, the original Rule of Law Recommendations and the Reasoned Proposal by the Commission were analysed. In total, 31 documents were included in the sample (see Appendix 1).

For Poland, the same is done on the website of the Ministry of Foreign Affairs of Poland using the keyword “European Commission”. The database of the Foreign Ministry is used since it represents the Polish position and issues documents in English. Media coverage is excluded from the selection because it is not available for the Commission. Annual overviews on the priorities of Polish foreign policy are also analysed as they address the dialogue with the Commission, reflect the Polish position towards the EU and give an insight into the reasoning presented in domestic debate. Likewise, 31 documents remained in the sample (see Appendix 2).

The documents are organised according to the template below (see Table 3). The sample for the Commission is composed of speeches, fact sheets and press releases, of which, weekly meetings of the College of the Commissioners are differentiated. The Polish Ministry of Foreign Affairs does not differentiate between document types; this is done by the author while compiling the sample. The documents are differentiated into letters, speeches, statements and meetings where the latest refers to statements about meetings or visits. In addition, most important keywords of the document are indicated.

Table 3. Template for organising the sample.

| Date | Type | Title | Keywords | Reference in text | Available at |
|------|------|-------|----------|-------------------|--------------|
| | | | | | |

Using qualitative methods offers the most relevant insight into the dynamics between the actors. Especially, since preventing selection bias is considered when composing the sample. As the case under study has created a precedent and the scope of research is limited, this approach is considered more appropriate than using comparative methods. However, focusing the analysis only to the Commission, might limit the explanatory power of the research. In order to get a comprehensive overview of the effects of EU membership on the protection of values and assess the role of partisan politics on the matter, further research involving the actions of the European Parliament and the Council of European Union, is needed. Likewise, the sample should be widened to include the domestic dimension to better analyse the effect of socialisation. It is possible there would be added value if all the letters exchanged by the parties would be included. Yet, the aim of this research is to study the capacity of the EU and this also means how the process and the actions of the EU are perceived in public, thus, research based on public sources remains relevant.

2.2. Key moments in the process of rule of law

The rule of law process between the European Commission and Poland started with concerns about the Polish Constitutional Tribunal. The issue dates back to the previous parliament of Poland, which nominated five judges to be appointed to the Constitutional Tribunal two weeks before the next general election in October 2015 (Table 4, see Appendix 3 for a detailed overview). The term of two of the judges was supposed to start during the mandate of the next *Sejm*, making the two nominations unconstitutional. The next *Sejm*, elected on October 19, 2015, amended the Law on Constitutional Tribunal in

an accelerated procedure, annulled all nominations by the previous *Sejm* and nominated five new judges by the beginning of December (European Commission 2016a). Both, the nomination of the two judges in October and the nominations of the new judges in December, were judged invalid by the Tribunal itself on December 3 and December 9, respectively (European Commission 2016a).

Table 4. Main actions and reactions in the rule of law process.

| Action by Poland | Reaction by the Commission |
|---|--|
| <ul style="list-style-type: none"> 7th term of the <i>Sejm</i> nominates five judges to the Constitutional Tribunal (CT), two to start after the election. All nominations by the previous <i>Sejm</i> annulled by the 8th term of <i>Sejm</i>, five new judges nominated. CT rules two nominations by the previous and three by the current <i>Sejm</i> invalid. <i>Sejm</i> amends the Law on the CT, which, according to the Commission, affects the functioning and independence of the CT. | First letter from Timmermans. |
| <ul style="list-style-type: none"> Law on CT enters into force before the opinion of the Venice Commission has been submitted. | Rule of Law Framework initiated. |
| <ul style="list-style-type: none"> CT rules law on CT to be unconstitutional, judgement not published by the government. | Rule of Law Opinion. |
| <ul style="list-style-type: none"> Law on CT approved, not removing the concerns of COM. | First Rule of Law Recommendation. |
| <ul style="list-style-type: none"> CT finds provisions of law from 22 July unconstitutional, judgement not published. Number of CT judgements published but not the ones concerning the CT. President signs three new laws. President appoints an Acting President of the CT who is elected President of the CT a day later. | Second Rule of Law Recommendation. |
| <ul style="list-style-type: none"> Reform of the judiciary announced. President vetoes two laws, signs Law on the Ordinary Courts Organisation | Third Rule of Law Recommendation, threat of Article 7. |
| <ul style="list-style-type: none"> Retirement age of judges to be based on gender. Increased discretionary power for prolongation of mandates of judges granted to the Minister of Justice. | Infringement procedure |
| <ul style="list-style-type: none"> Minister of Justice dismissing court presidents and vice-presidents. Laws previously vetoed by the President amended and adopted. | Reasoned proposal for Article 7(1), fourth Rule of Law Recommendation. |

Sources: European Commission Press Release Database, Ministry of Foreign Affairs Republic of Poland.

Adopting an amendment for the Law on the Constitutional Tribunal on December 22 initiated the first response by the Commission on December 23, 2015. Vice-President Frans Timmermans sent a letter to the Polish Government inquiring about the steps taken in response to the rulings of the Constitutional Tribunal on December 3 and December 9. Timmermans expressed hope that the amending law will not enter into force before its effect on the functioning of the Constitutional Tribunal is verified. He suggested working with the European Commission for Democracy through Law –the Venice Commission– on the matter (European Commission 2016b). The next day, Poland requested an opinion from the Venice Commission (Ministry of Foreign Affairs Republic of Poland – Polish MFA 2015a). The Government published the law less than a week later without waiting for the opinion (European Commission 2016a).

In January 2016, considering how Polish Government had ignored the concerns of the European and Venice Commission as well as the judgements by the Constitutional Tribunal, the College of Commissioners held a first orientation debate on the rule of law in Poland. The College expressed its concern on the Constitutional Tribunal emphasizing 1) the issue on the nomination of judges, 2) non-compliance with judgements of the Tribunal and 3) measures taken to affect the functioning of the Tribunal, such as, shortening the term of the President and Vice-President with an automatic end to the current terms or raising the attendance quorum and majority needed for passing a judgement for constitutional review of legislation (European Commission 2016a). The College mandated Vice-President Frans Timmermans to start a dialogue with the Polish Government under the Rule of Law Framework (European Commission 2016c).

After the orientation debate, numerous meetings took place and letters were exchanged. Timmermans personally met the Minister of Foreign Affairs, Minister of Justice, Deputy Prime Minister and President of the Constitutional Tribunal in Warsaw (European Commission 2016d; Polish MFA 2016a). On March 9, 2016, the Constitutional Tribunal ruled the law of December 22 to be unconstitutional but the judgement was not published in the Official Journal of the Government, leaving it with no legal effect (European Commission 2016e).

As no satisfactory results had been achieved, on June 1, 2016, a Rule of Law Opinion was published by the Commission. It referred to a “crisis of Constitutional Tribunal” again, referring to the appointment of judges and the functioning of the Tribunal in the

light of non-publication. Additionally, the Commission highlighted the lack of constitutional review resulting from these issues. Especially having in mind that several laws, found to be “particularly sensitive” by the Commission, such as the Media Law, the new Civil Service Act and the Law on the Police and Public Prosecution Office, were adopted in an accelerated procedure (European Commission 2016e). Despite the Opinion and offers by the Commission to help in the legislative process, the Law on Constitutional Tribunal was approved on July 22, 2016. This triggered publishing the first Rule of Law Recommendation on July 27, 2016 (European Commission 2016f). In addition to the three issues mentioned in the Opinion, new provisions, such as the role of the Public Prosecutor-General and the postponement of deliberations, caused concern to the Commission (European Commission 2016g).

The Polish Government did not agree with the Recommendation in its response (Polish MFA 2016b). The intensive adoption of legislation continued, in addition, the President of the Republic Andrzej Duda appointed an acting President of the Constitutional Tribunal who had been nominated by the *Sejm*. The next day, the acting President convened a General Assembly meeting where she was elected President, although only 6 of the 15 judges participated in the vote (European Commission 2017a). As a result, on December 21, the second Rule of Law Recommendation was issued. In addition to three new recommendations, all previous were repeated. Several provisions were in conflict with the earlier ruling of the Tribunal, for instance, on the selection and role of its President. The Commission also expressed concern about the statements of the Government that were undermining the Constitutional Tribunal. For the first time, the threat of launching Article 7 was mentioned (European Commission 2016h).

In July 2017, motivated by four new legislative acts, the Commission went ahead and published the third Rule of Law Recommendation, despite the fact that two laws on the judiciary had been vetoed by President Duda (European Commission 2017b). In his statement, Frans Timmermans expressed that the new laws increased the systemic threat to the rule of law and independence of the judiciary. He claimed the reforms would make judges “serve at the pleasure of the political leaders and be dependent upon them from appointment to their pension” (European Commission 2017c). Timmermans emphasized three reforms: 1) judges of the National Council for the Judiciary would be named by the *Sejm*, instead of by judges, 2) mandate of all current judges of the Council would be

prematurely terminated and 3) the Minister of Justice would have the power to appoint and dismiss presidents of courts without a specific criterion and without having to give explanations (European Commission 2017c).

In parallel, the Commission opted for judicial tools by launching an infringement procedure against Poland on the basis of gender discrimination and independence of the judiciary under the new powers of the Minister of Justice (European Commission 2017d). The letter of Formal Notice was followed by a Reasoned Proposal for infringement procedure about one and a half months later (European Commission 2017e).

After the Polish Minister of Justice started exercising his power to dismiss court presidents and vice presidents, dismissing 24 and appointing 32 and following the adoption of two new laws on the Supreme Court and National Council of Judiciary, the tension reached its peak. On December 20, 2017, the Commission issued a Reasoned Proposal for Article 7, together with the fourth Rule of Law Recommendation (European Commission 2017f). The Commission claimed the 13 consecutive laws adopted during the previous two years gave the legislative and executive bodies power to interfere with the composition and functioning of different bodies in the judicial system. As a consequence of the rapid pace of the reform, there was no time for consultation with all stakeholders (European Commission 2017g). It emphasized that 40 % of the Supreme Court judges would be forced to retirement and the new judges would be appointed on the recommendation of the “largely politically appointed” National Council of Judiciary (European Commission 2017a). The deadline for a response to prevent the Commission from moving forward with the proposal was set on March 20, 2018.

On March 7, 2018, the Chancellery of the Polish Prime Minister published a White Paper on the Reform of Polish Judiciary. It outlined the reforms and their motivation claiming there was no divergence from the judiciary systems of other member states and that the proposal for launching Article 7 was unfounded (The Chancellery of the Prime Minister 2018a). The same was reiterated in the official response to the proposal (Polish MFA 2018a). There have been no official statements on how the process will continue.

2.3. Impact of the Commission on Poland

The action taken by the European Commission has not had much impact on Poland. Although Poland has addressed some concerns, the main issues have remained the same over the years. Moreover, with the adoption of the additional legislative acts, the Commission has expressed “the situation has continuously deteriorated” (European Commission 2017a). The criticism has widened and involves other issues than the Constitutional Tribunal. In the Reasoned Proposal, the Commission has also expressed concern about issues like 1) the dismissal and compulsory retirement of current Supreme Court judges, 2) the power to prolong the mandate of Supreme Court judges, 3) the introduction of extraordinary appeal which can overturn previous judgements, 4) the composition of the National Council of the Judiciary, 5) the retirement age and power to prolong the mandate of judges in ordinary courts (European Commission 2017a).

There have been small positive changes after almost every measure taken by the Commission, however, they remain symbolic (see Table 5). The decision of President Duda to veto the two laws in July 2017, reflects the political pressure put on the domestic actors by the Commission (European Commission 2017h). In a way, the President acted as a change agent. Yet, considering the extent of the issues covered by the Commission, the concessions represent a small minority and have only a symbolic effect on the whole judicial reform. This was evident when the Government published the rulings of the Constitutional Tribunal, but not the judgements on the constitutionality of the Tribunal itself (European Commission 2016i). The fact that none of the official recommendations have been followed upon gives ground to assume that the positive trends are not a direct response to the measures from Brussels, but a result of domestic debate. Still, characteristically to rhetoric rule adoption, adjustments have been highlighted by Warsaw to demonstrate its good will. Poland claimed the presidential vetoes prove that “Poland is open to dialogue with critics of the reforms” (The Chancellery of the Prime Minister 2018a).

Table 5. Impact of the action by the Commission.

| Measure by the Commission | Following steps by Poland |
|--|--|
| First letter from Timmermans. | <ul style="list-style-type: none"> ▪ Opinion requested from the Venice Commission. ▪ Dialogue started. |
| Rule of Law Framework launched | <ul style="list-style-type: none"> ▪ Expert group composed in the <i>Sejm</i> to prepare a new law on the CT. |
| Rule of Law Opinion. | <ul style="list-style-type: none"> ▪ CT attendance quorum decreased from 13 to 11. ▪ 2/3 majority replaced with simple majority. ▪ President of CT may order to halve the delay for hearings. ▪ Issue with disciplinary proceedings solved (reintroduced later). |
| First Rule of Law Recommendation. | <ul style="list-style-type: none"> ▪ No recommended action addressed. ▪ In official response, no new measures announced to alleviate concerns. ▪ 21 CT judgments from April 2016 to July 2016, published. ▪ 5 articles removed (referral to full bench, handling of cases in chronological order, postponement of deliberations, possibility of the Public Prosecutor-General to prevent examination of cases, transitional provisions for pending cases). |
| Second Rule of Law Recommendation. | <ul style="list-style-type: none"> ▪ No recommended action addressed. ▪ In official response, no new measures announced to alleviate concerns. ▪ President Duda refers law on the Supreme Court and on the National Council for the Judiciary back to the <i>Sejm</i>. |
| Third Rule of Law Recommendation, threat of Article 7 (1). | <ul style="list-style-type: none"> ▪ No recommended action addressed. ▪ Role of the President increased for deciding on the legitimacy of judges. ▪ Automatic dismissal of Supreme Court judges removed. ▪ Members of the National Council of the Judiciary need a 3/5 majority to be appointed. |
| Letter of Formal Notice for infringement. | <ul style="list-style-type: none"> ▪ Not available. |
| Reasoned proposal in infringement procedure. | <ul style="list-style-type: none"> ▪ Same retirement age for male and female judges. |
| Reasoned proposal for Article 7 (1), fourth Rule of Law Recommendation | <ul style="list-style-type: none"> ▪ Political institutions stripped from appointing the National Council for the Judiciary. ▪ Role of the Minister of Justice decreased. ▪ Dialogue relaunched. |

Sources: European Commission Press Release Database, Ministry of Foreign Affairs Republic of Poland.

The limited impact of the Commission's actions is reflected in the communication of the actors, which refers to a lack of interest for cooperation from Poland. The dialogue between Brussels and Warsaw was rather constructive in the beginning but developed into a confrontation by 2017. The first letter got a friendly response from the Deputy Foreign Minister as he thanked Timmermans and added: "Let me also take liberty of wishing you Merry Christmas and successful performance of your duties, as determined by the EU Treaties." (Polish MFA 2015b). There were working meetings between the parties and although Foreign Minister Witold Waszczykowski said he found the information exchange to be inadequate, Warsaw expressed interest for dialogue and invited Timmermans for a visit (Polish MFA 2016a; 2016c).

However, there was practically no dialogue in 2017 as the issue area was widened and attacks turned personal. The relations became increasingly tense after the second Recommendation in December 2016, when the Commission and Timmermans personally, was blamed for stigmatisation and political bias (Polish MFA 2017a). The MFA expressed its regret that the reforms were "abused by domestic and foreign opposition in the ongoing political fight" (Polish MFA 2017a). Warsaw claimed the Commission was using ultimatums to set the agenda for talks and said it would only enter a dialogue if state sovereignty was respected (Polish MFA 2017b; 2017c). Polish Government sent two letters demanding clarifications from the Commission and then published responses accusing Timmermans of copying the same arguments (Polish MFA 2017d). The tone of the exchange also shifted from the side of the Commission as Timmermans not only addressed the judicial reform, but also referred to journalists being intimidated, adding "this is not how it works in a free society." (European Commission 2017c).

The Reasoned Proposal for Article 7 has had the biggest effect on Poland since Warsaw has again shown willingness for dialogue. Yet, it has coincided with little initiative for compliance. There was a symbolic government reshuffle in Warsaw and the new cabinet has been more open for dialogue with Brussels. On December 8, 2017, Mateusz Morawiecki replaced Beata Szydło as the Prime Minister (The Chancellery of the Prime Minister 2017). A month later, Morawiecki dismissed a third of his Cabinet, including the Minister of Foreign Affairs who had been critical towards the Commission and its Vice-President (The Chancellery of the Prime Minister 2018b). The new Prime Minister

and the Minister of Foreign Affairs have gone to Brussels to discuss rule of law, supposedly on Polish initiative (Polish MFA 2018b; 2018c). According to the statements, the meetings have taken place “in a friendly atmosphere” (European Commission 2018). The goal of Warsaw might have been to improve the relationship with Brussels, but not to change direction. The reform has carried on and the new Foreign Minister reaffirmed the Polish Government will not “back out of the reforms” (Polish MFA 2018c).

Throughout the process, Poland has confirmed its respect for the principal of rule of law and the fundamental values of the European Union (e.g. Polish MFA 2016b; The Chancellery of the Prime Minister 2018a). However, it has used three main arguments to refrain from changing the direction of the reform, all of which attempt to undermine the legitimacy of the Commission and its actions. First, Warsaw has claimed there is no problem and the Commission does not understand the content and the context of the reform. Second, Poland has argued the Commission has no right to intervene in this matter as judiciary is a competence of the member states. Thirdly, it has claimed the rule of law process is politically motivated and a personal mission of Vice-President Timmermans.

The Polish Government does not see a misfit with the principle of rule of law and argues the reform is meant to fix the ills that have long characterised its judicial system. At least rhetorically, there is no pressure for rule adoption since the rules do not differ on the state level. Warsaw has repeatedly disagreed with the assessments of the Commission, arguing they are based on incomplete knowledge and are, as a consequence, unwarranted and groundless (Polish MFA 2016b; 2016c). For example, in its statement the MFA has said: “So, we regret to note that the Commission Recommendation is an expression of incomplete knowledge about how the legal system and the Constitutional Tribunal operate in Poland.” (Polish MFA 2016b). In the White Paper, Poland repeated its main arguments to justify the need for reform, claiming it 1) increases the low public trust in the judiciary, 2) increases the efficiency and speed of proceedings, 3) accounts for the Communist past and eliminates judges who had supported the undemocratic regime, 4) balances power and increases the accountability of the judiciary (The Chancellery of the Prime Minister 2018a). Moreover, Warsaw drew comparisons with the practices in other EU member states arguing the same practices are used elsewhere without problems (The Chancellery of the Prime Minister 2018a).

Poland has claimed the Commission has not been conferred with the power to interfere on the matter. Warsaw has questioned the appropriateness and legitimacy of the actions of the Commission and referred the Commission is attempting to increase its influence. Despite friendly exchanges in Brussels, presenting the Polish Foreign Policy Priorities in 2018, Polish Minister of Foreign Affairs stated: “the Commission is not a supra-government, and the European Parliament is not a supra-parliament empowered to instruct national governments and parliaments” (Polish MFA 2018c). Poland has repeatedly underscored the principle of subsidiarity, respect for sovereignty and national identity in the dialogue (Polish MFA 2016b; 2017a). It has reiterated the right to shape its own judicial system and expressed that “the right to introduce its own sovereign institutional solutions concerning the judiciary is a pillar of each national constitutional system in Europe.” (The Chancellery of the Prime Minister 2018a). Warsaw has also referred to the democratic deficit of the EU (Polish MFA 2018c). At the same time, it has emphasized the democratic mandate of the Polish government, justifying the reform by saying: “We owe it to our voters, this is what society expects of us.” (Polish MFA 2017e).

Warsaw has framed the issue to be political and personally about Vice-President Timmermans. Poland has referred to the partiality of the Commission (Polish MFA 2017b; 2018d). It has accused the Commission of “far-reaching arbitrariness in its choice of opinions on which it bases its reservations” (Polish MFA 2017b). The Foreign Minister has claimed the Commission is “an instrument in the hands of some States” (MFA 2018c). The Foreign Ministry also stated: “There is no place for any ‘personal mission’ on the part of the Commission Vice-President” (Polish MFA 2017c). In addition, the MFA summoned the head of the Commission representation in Warsaw over a rule of law analysis, which referred to intimidation and persecutions of judges as well as to “damaged brakes”. The Foreign Ministry considered it to be defamatory and questioned the reliability of other information provided to the Commission (Polish MFA 2017f).

The case study also reflects that although the Rule of Law Framework is a concrete measure the Commission has at its disposal in the protection of values, the power to interfere in other matters is limited. The concerns about the respect of fundamental values in Poland are not only about the principle of rule of law, even though it is an important element in preventing backsliding on the values in general. Due to the hindrance on constitutional review, other laws have been quickly passed. The Commission has also

engaged in a dialogue about the media law in Poland and launched an infringement case against Warsaw regarding logging in the protected Bialowieza Forest, on which Poland did not follow the interim measures issued by the Court of Justice (European Commission 2016j; 2017i). The limited reaction capacity is also apparent in the fact that despite the wide-ranging area of concerns, the infringement procedure could only be launched on the grounds of gender discrimination, implying the difficulty in operationalising the values stated in the Treaties.

2.4. Application of the models of Europeanisation

The models of rule adoption by Schimmelfennig and Sedelmeier (2005) provide the framework for analysis but their explanation power remains weak in the sense that rule adoption has been minimal despite the relevance of key characteristics of the models. Hence, the elements of the model exist, but rule adoption has not followed. Still, all models offer a different insight into the obstacles of rule adoption. Especially when the factors conducing or hindering the transfer as introduced by Schimmelfennig and Sedelmeier (2005), are analysed as well. The strategy of the Commission has followed the mechanisms explained by Schimmelfennig and Sedelmeier by combining social learning and external incentives to evoke change, leaning more towards incentives after dialogue failed to produce results. At the same time, changes have mainly been a result of domestic debate.

The attempts of the Commission to consistently engage in dialogue refer to the central role of the Commission and the model of social learning. The Commission has applied the model throughout the period but it was the most prevalent in the beginning of the process when the focus was exclusively on dialogue and persuasion. Timmermans has continuously emphasized the “objective is not the imposition of sanctions or resorting to Article 7” (European Commission 2017i). The Commission started the process by confirming its aim was to clarify facts and reiterated its commitment to constructive dialogue even after the relations had deteriorated (European Commission 2016a; 2017h; 2017i). The Rule of Law Framework itself is a tool for enhancing social learning as it was created with the aim of conducting a transparent and constructive dialogue and preventing turning to sanctions and other negative incentives.

Applicable to social learning, the Commission has aimed to persuade Poland of the appropriateness of the principle of rule of law. It has repeatedly stated the EU is a “union

of values” and rule of law is one of them (e.g. European Commission 2016a; 2016h; 2016k). Timmermans has argued one can “never use democracy as an argument against rule of law” (European Commission 2016j), moreover, the Commission has stated it is in the interest of Polish citizens to protect this principle (European Commission 2017j). The Commission has justified its involvement by expressing that rule of law is not only a domestic matter but the basis of trust and cooperation between the member states and a necessary precondition for the operation of the single market (European Commission 2016j; 2017i). It has further aimed to convince Poland on the legitimacy of the rule by expressing the “concerns are shared widely” by other international organisations (European Commission 2017i).

The attempt of the Commission to evoke rule adoption through social learning is hindered due to lack of legitimacy and sense of identity. Although the principle of rule of law has been introduced in the Treaties in a legitimate way, it is a broad concept and its operationalisation by the Commission has not been seen as legitimate by Poland. The Commission has based the interpretation of the norm on the case law and documents of the Court of Justice of the European Union, the European Court of Human Rights and the Council of Europe (European Commission 2016a) but Warsaw has referred to an inconsistent application of the rule by claiming the member states are “unequal before the law” and “double standards” apply (Polish MFA 2018d).

In addition, it can be implied that the sense of identity with the EU is eroding as Warsaw does not pursue its approval. Although Poland has high public support for EU membership and has expressed a strong EU to be its goal, the Foreign Minister has stated: “We feel a growing willingness within the Visegrád Group to advance our common interests.” (Polish MFA 2018d). The Visegrád countries have been in confrontation with the Commission and shown Eurosceptic tendencies. Based on its annual overviews of foreign policy priorities, criticism towards Brussels is also gaining ground in Warsaw (Polish MFA 2016d; 2017g; 2018d). Furthermore, Poland has emphasized its foreign policy has changed and Poland’s “broadly defined interests come first” (Polish MFA 2017g).

In the model of external incentives, the Commission fully relies on negative incentives, but they are not quick enough to stimulate compliance. The Rule of Law Framework is based on negative conditionality, there are no rewards the Commission can offer to

Poland. Despite formally non-binding, the underlying context of Rule of Law Recommendations is the fact that they are a prelude to the process of Article 7. The Commission has been setting deadlines for Poland to meet the concerns and prevent Brussels from proceeding with actual sanctions. The deadlines have become shorter in every recommendation, shrinking from three months to one, thus increasing the pressure on Poland. However, although the Commission has set clear conditions to Poland, potential sanctions remain too far in the future. The Commission has been in contact with Poland for about two and a half years; imposing sanctions under Article 7 would mean invoking Article 7(2), which has not even been proposed at this point.

Poland has used bargaining and cost-benefit analysis and this explains its non-compliance with the proposals from Brussels. The costs for Poland are not credible enough to evoke change. Poland has continued to argue against the assessments by the Commission and attempts to bargain by claiming there is no problem nor need for action. Warsaw is considering the cost-benefit analysis for rule adoption by assessing the likelihood of sanctions. Minister of Foreign Affairs has expressed gratitude towards Hungary for their “solidarity in the dispute with the Commission” (Polish MFA 2018d), hinting at the promise of the Hungarian Prime Minister to vote against evoking Article 7 on Poland (Wright 2017). This implies Poland is prepared and ready to find allies for blocking the vote.

Another factor decreasing the credibility of the EU is its high stakes in the process. Warsaw has expressed moving forward with the process would threaten the authority of the Commission (Polish MFA 2016e, 2017e). It is aware the Commission risks undermining the process of Article 7 if the final vote fails and might refrain from reaching that point altogether. Moreover, Poland has referred the actions “may strengthen anti-European sentiment” (The Chancellery of the Prime Minister 2018a), which is something the Commission has to consider in order not to achieve the opposite of its goal. However, Poland has repeatedly expressed its opposition to linking the process with allocations from the EU budget, also through bilateral channels (Polish MFA 2017h; 2018d). Foreign Minister Czaputowicz has expressed it is “contrary to EU law and goes against the aims of Cohesion Policy,” (Polish MFA 2018c). This indicates budgetary methods might prove effective and could be used by the Commission to increase the potential costs for Poland.

The model of lesson-drawing best explains the absence of rule adoption. There is no domestic interest in changing the *status quo*, no matter the action of the Commission. On the opposite, the reforms were started because the new government was not satisfied with the situation at the time of taking office. As assessed above (see page 23), changes have most likely been a result of domestic debate as the opposition is also critical towards the reform (Polish MFA 2017d). Domestic debate is also reflected on the setting up of an expert group, the vetoes of the President and the Government-initiated campaign “Fair Courts” for increasing social support for the reform (European Commission 2017a, 13). The lack of change indicates the veto power of the opponents of the reform is limited. Warsaw itself refers to lesson-drawing by claiming that most practices introduced exist in other member states as well (The Chancellery of the Prime Minister 2018a). The model should be further analysed focusing on domestic debate.

Table 6. Models of Europeanisation and the obstacles for rule adoption in Poland.

| MECHANISMS OF EUROPEANISATION | | |
|---|---|---|
| External incentives model | Social learning model | Lesson-drawing model |
| <u>Characteristics</u> <ul style="list-style-type: none"> ▪ initiative of the Commission ▪ obligations under Treaties ▪ threat of Article 7 ▪ infringement procedure ▪ deadlines | <u>Characteristics</u> <ul style="list-style-type: none"> ▪ initiative of the Commission ▪ information exchange, visits, support ▪ acknowledgment of positive changes ▪ normative arguments ▪ reference to other international observers | <u>Characteristics</u> <ul style="list-style-type: none"> ▪ little impact by the Commission ▪ national policy ▪ presidential vetoes ▪ lack of interest to change <i>status quo</i> ▪ information campaigns |
| <u>Obstacles</u> <ul style="list-style-type: none"> ▪ lack of credibility: support of Hungary, high costs for the Commission ▪ sanctions slow | <u>Obstacles</u> <ul style="list-style-type: none"> ▪ lack of legitimacy: mandate, inconsistency, operationalisation ▪ low sense of identity: national, Visegrád | <u>Obstacles</u> <ul style="list-style-type: none"> ▪ lack of interest of the Government ▪ weakness of the opposing actors |

Sources: European Commission Press Release Database, Ministry of Foreign Affairs Republic of Poland.

Conclusion

The aim of this research was to study the capacity of the European Commission to ensure the fundamental values of the EU are respected in its member states. Over the last couple of years, there have been signs of democratic backsliding in some of the member states of the European Union. These tendencies challenge the concept of a “union of values” and give ground to ask whether the EU has the capability to safeguard democracy after membership has been granted.

Motivated by the unprecedented proposal by the European Commission to launch a process on the risk of a serious breach in the fundamental values of the European Union in Poland, the author posed a hypothesis claiming the capacity of the European Commission to ensure the respect for the fundamental values of the EU decreases after a country has joined the Union. The European Commission was chosen to represent the EU as it has the role of the guardian of the Treaties.

In order to test the hypothesis, a qualitative case study on the issue of rule of law in Poland was carried out. Official statements from the European Commission Press Release Database and the webpage of the Ministry of Foreign Affairs of the Republic of Poland were used to analyse the dynamics of action and reaction of the European Commission and Poland. The author examined what actions did the Commission take to protect the rule of law principle and what impact did these steps have on Poland. Models of Europeanisation by Frank Schimmelfennig and Ulrich Sedelmeier were applied to the case to look for possible explanations for the established dynamics. The work of Schimmelfennig and Sedelmeier on the favourable preconditions for rule adoption was used to offer explanations.

The case study confirmed the hypothesis. Although the Commission has attempted to use social learning and external incentives, the impact on Poland has been limited. None of the recommendations of the Commission have been addressed, moreover, the scope of problems has widened. Despite continuously stressing the importance of dialogue, the Commission has turned to negative incentives as persuasion has not been successful. This has caused Poland to frame the issue as a political attempt to stigmatise a member state. The reasoned proposal for Article 7 triggered the relaunch of dialogue but Poland still

refuses to change course. It has referred to a lack of understanding, legitimacy and objectivity on the side of the Commission.

Rule adoption is hindered due to low sense of identity, legitimacy and credibility. The approval of the Commission is not pursued as national and regional identity are becoming more relevant in Polish foreign policy. Warsaw has expressed doubt on the legitimacy of the actions of the Commission, stating the issue has not been conferred to the EU and the application of the rules is selective. Moreover, the Polish Government stresses it has a democratic mandate for the reform. Furthermore, the costs for Poland are not credible enough to evoke rule adoption. The sanctions are significant but their imposition is slow and highly unlikely due to voting rules. The risk of failing to carry out its threats puts the authority of the Commission at stake and undermines its power.

The analysis implies a decrease in the relative power of the Commission once a country has joined the European Union and then falls back on the values. There are no benefits to offer and the costs are too unlikely to influence a country when there is no dissatisfaction or veto players on the state level. Based on the reactions of Poland, budgetary methods might be effective in evoking compliance. However, it would include a high risk of Eurosceptic sentiment and could only be legitimate if the rules are clear and the implementation consistent.

The paper has given an insight into the strategies and obstacles of the European Commission in protecting the fundamental values of the European Union in its member states. This understanding is necessary in order to maintain a union based on values. The paper contributes to the literature on Europeanisation by adding the dimension of values and studying the member states instead of candidate countries. The results could be used to create appropriate measures for responding to democratic backsliding in the European Union.

The research should be complemented by studying the actions of the European Parliament and the Council of the European Union to elaborate on the effect of socialisation and partisan politics. A comparative case study could be carried out to detect the reasons for the unprecedented escalation of the process. Also, domestic debate should be analysed to evaluate the relevance of lesson-drawing and look for the root causes of backsliding.

References

- Beyers, Jan. 2010. "Conceptual and Methodological Challenges in the Study of European Socialization." *Journal of European Public Policy*, 17 (6):909–920.
- Blauberger, Michael and R. Daniel Kelemen. 2017. "Can Courts Rescue National Democracy? Judicial Safeguards Against Democratic Backsliding in the EU." *Journal of European Public Policy*, 24 (3):321–336.
- Bulmer, Simon. 2008. "Theorizing Europeanization." In: *Europeanization*, eds. Paolo Graziano and Maarten P. Vink. London: Palgrave Macmillan, 46–58.
- Börzel, Tanja A. and Thomas Risse. 2000. "When Europe Hits Home: Europeanization and Domestic Change." *European Integration Online Papers*, 4 (15). <http://eiop.or.at/eiop/pdf/2000-015.pdf> (February 27, 2018).
- Börzel, Tanja A. and Thomas Risse. 2003. "Conceptualizing the Domestic Impact of Europe." In *The Politics of Europeanization*, eds. Kevin Featherstone and Claudio M. Radaelli. Oxford: Oxford University Press, 57–80.
- Consolidated version of the Treaty of the European Union. 2012. *Official Journal of the European Union*, C 326/13, October 26.
- Consolidated version of the Treaty on the Functioning of the European Union. 2012. *Official Journal of the European Union*, C 326/47, October 26.
- European Commission. 2013. "The EU Justice Scoreboard a Tool to Promote Effective Justice and Growth." *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions*, March 27, COM/2013/160 final.
- European Commission. 2014. "A new EU Framework to Strengthen the Rule of Law." *Communication from the Commission to the European Parliament and the Council*, March 11, COM/2014/0158 final.
- European Commission. 2016a. "College Orientation Debate on Recent Developments in Poland and the Rule of Law Framework: Questions & Answers." January 13. http://europa.eu/rapid/press-release_MEMO-16-62_en.htm (April 25, 2018).
- European Commission. 2016b. *Commission Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland*, August 12. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016H1374&from=EL> (April 25, 2018).
- European Commission. 2016c. "Rule of Law in Poland: Commission Starts Dialogue.", January 13, http://europa.eu/rapid/press-release_WM-16-2030_en.htm (April 25, 2018).

European Commission. 2016d. "Remarks by First Vice-President Timmermans and Commissioner Avramopoulos at the Readout of the College Meeting of 6 April 2016." April 6. http://europa.eu/rapid/press-release_SPEECH-16-1289_en.htm (April 25, 2018).

European Commission. 2016e. "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers." June 1. http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm (April 25, 2018).

European Commission. 2016f. "Rule of Law: Commission Issues Recommendation to Poland." July 27. http://europa.eu/rapid/press-release_IP-16-2643_en.htm (April 25, 2018).

European Commission. 2016g. "Commission Recommendation Regarding the Rule of Law in Poland: Questions & Answers." July 27. http://europa.eu/rapid/press-release_MEMO-16-2644_en.htm (April 25, 2018).

European Commission. 2016h. "Rule of Law: Commission Discusses Latest Developments and Issues Complementary Recommendation to Poland." July 27. http://europa.eu/rapid/press-release_IP-16-4476_en.htm (April 25, 2018).

European Commission. 2016i. "Commission Recommendation Regarding the Rule of Law in Poland: Questions & Answers." December 21. http://europa.eu/rapid/press-release_MEMO-16-4479_en.htm (April 25, 2018).

European Commission. 2016j. "Statement by First Vice-President Frans Timmermans and Commissioner Günther Oettinger – EP Plenary Session – Situation in Poland." January 19. http://europa.eu/rapid/press-release_SPEECH-16-114_en.htm (April 26, 2018).

European Commission. 2016k. "Opening Remarks of First Vice-President Frans Timmermans – Press Conference on Rule of Law in Poland." June 1. http://europa.eu/rapid/press-release_SPEECH-16-2023_en.pdf (April 26, 2018).

European Commission. 2017a. *Proposal for a Council Decision on the Determination of a Clear Risk of a Serious Breach by the Republic of Poland of the Rule of Law*, December 20 http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=49108 (April 17, 2018).

European Commission. 2017b. "European Commission Acts to Preserve the Rule of Law in Poland." July 26. http://europa.eu/rapid/press-release_IP-17-2161_en.htm (April 17, 2018).

European Commission. 2017c. "Opening Remarks of First Vice-President Frans Timmermans: College Readout on Grave Concerns about the Clear Risks for Independence of the Judiciary in Poland." July 19. http://europa.eu/rapid/press-release_SPEECH-17-2084_en.htm (April 25, 2018).

European Commission. 2017d. "European Commission Launches Infringement Against Poland over Measures Affecting the Judiciary." July 29. http://europa.eu/rapid/press-release_IP-17-2205_en.htm (April 25, 2018).

European Commission 2017e. "Independence of the Judiciary: European Commission Takes Second Step in Infringement Procedure Against Poland." September 12. http://europa.eu/rapid/press-release_IP-17-3186_en.htm (April 25, 2018).

European Commission. 2017f. "Rule of Law: European Commission Acts to Defend Judicial Independence in Poland." December 20. http://europa.eu/rapid/press-release_IP-17-5367_en.htm (April 25, 2018).

European Commission. 2017g. "Commission Action on the Rule of Law in Poland: Questions & Answers." December 20. http://europa.eu/rapid/press-release_MEMO-17-5368_en.htm (April 25, 2018).

European Commission. 2017h. "Remarks of Frans Timmermans on European Commission Action to Preserve the Rule of Law in Poland." July 26. http://europa.eu/rapid/press-release_SPEECH-17-2170_en.htm (April 25, 2018).

European Commission. 2017i. "Opening and Closing Remarks of First Vice-President Frans Timmermans on the Rule of Law in Poland, at the European Parliament's Committee on Civil Liberties, Justice and Home Affairs." August 31. http://europa.eu/rapid/press-release_SPEECH-17-3042_en.htm (April 26, 2018).

European Commission. 2017j. "Opening Remarks of First Vice-President Frans Timmermans, Readout of the European Commission Discussion on the Rule of Law in Poland." December 20. http://europa.eu/rapid/press-release_SPEECH-17-5387_en.htm (April 20, 2018).

European Commission. 2018. "Statement Following the Working Dinner between President Juncker and Polish Prime Minister Morawiecki." January 9. http://europa.eu/rapid/press-release_STATEMENT-18-86_en.htm (April 26, 2018).

Featherstone, Kevin. 2003. "Introduction: In The Name of 'Europe'." In *The Politics of Europeanization*, eds. Kevin Featherstone and Claudio M. Radaelli. Oxford: Oxford University Press, 3–26.

Grabbe, Heather. 2001. "How Does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity." *Journal of European Public Policy*, 8 (6):1013–1031.

Grabbe, Heather. 2014. "Six Lessons of Enlargement Ten Years on: the EU's Transformative Power in Retrospect and Prospect." *JCMS: Journal of Common Market Studies*, 52 (S1):40–56.

Harmsen, Robert and Thomas M. Wilson. 2000. "Introduction: Approaches to Europeanization." *Yearbook of European Studies*, 14 (1):13–26.

Héritier, Adrienne. 2005. "Europeanization Research East and West: A Comparative Assessment Conditionality." In *The Europeanization of Central and Eastern Europe*, eds. Frank Schimmelfennig and Ulrich Sedelmeier. Ithaca: Cornell University Press, 199–209.

Kochenov, Dimitry. 2013. "On Policing Article 2 TEU Compliance: Reverse Solange and Systemic Infringements Analysed." *Polish Yearbook of International Law*, 23: 145–170.

Kochenov, Dimitry and Laurent Pech. 2015. "Upholding the Rule of Law in the EU: On the Commission's 'Pre-Article 7 Procedure' as a Timid Step in the Right Direction." *European Issues No. 356*, Paris: Foundation Robert Schuman.

McCormick, John. 2010. *Europeanism*. Oxford: Oxford University Press.

Ministry of Foreign Affairs Republic of Poland. 2015a. "Minister Waszczykowski Requests Venice Commission's Opinion on Constitutional Court.". December 24. http://www.msz.gov.pl/en/news/minister_waszczykowski_requests_venice_commission_s_opinion_on_constitutional_court_;jsessionid=E06FFF3259EFC3A9E14EB394044FD6CD.cmsap1p (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2015b. "MFA Replies to Frans Timmermans Letter." December 24. http://www.mfa.gov.pl/en/news/mfa_replies_to_frans_timmermans_letter (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2016a. "Minister Witold Waszczykowski Meets with Vice-President of the European Commission Frans Timmermans." April 6. http://www.msz.gov.pl/en/news/minister_witold_waszczykowski_meets_with_vice_president_of_the_european_commission_frans_timmermans (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2016b. "MFA Statement on the Polish Government's Response to Commission Recommendation of 27.07.2016." October 27. http://www.msz.gov.pl/en/news/mfa_statement_on_the_polish_government_s_response_to_commission_recommendation_of_27_07_2016 (April 25, 2018).

Ministry of Foreign Affairs Republic of Poland. 2016c. "Minister Witold Waszczykowski Addresses Letter to First Vice-President of European Commission Frans Timmermans." March 2.

http://www.msz.gov.pl/en/news/minister_witold_waszczykowski__addresses_letter_to_first_vice_president_of_european_commission_frans_timmermans (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2016d. "Minister Witold Waszczykowski on Priorities of Polish Diplomacy." January 29. http://www.msz.gov.pl/en/news/minister_witold_waszczykowski_on_priorities_of_polish_diplomacy (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2016e. "MFA Statement on Decision of the European Commission." July 27.

http://www.msz.gov.pl/en/news/mfa_statement_on_decision_of_the_european_commission_1;jsessionid=61417CE4F375171C28EA001D9C9D9198.cmsap1ps (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2017a. "MFA Statement on Poland's Response to European Commission's Complementary Recommendation of 21 December 2016." February 20.

http://www.msz.gov.pl/en/news/mfa_statement_on_poland_s_response_to_european_commission_s_complementary_recommendation_of_21_december_2016_ (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2017b. "MFA Statement Following the European Commission's Recommendation of 26 July 2017 Regarding the Rule of Law in Poland." July 26.

http://www.msz.gov.pl/en/news/mfa_statement_following_the_european_commission_s_recommendation_of_26_july_2017_regarding_the_rule_of_law_in_poland_ (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2017c. "MFA Statement." July 19.

http://www.msz.gov.pl/en/news/mfa_statement_1 (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2017d. "Communique Following European Commission Reply to MFA letter." August 23.

http://www.mfa.gov.pl/en/news/communique_following_european_commission_reply_to_mfa_letter (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2017e. "MFA Statement on the European Commission's Decision to Launch the Disciplinary Process Against Poland Laid out in Article 7 of the TEU." December 20.

http://www.msz.gov.pl/en/p/msz_en/news/mfa_statement_on_the_european_commissio

n_s_decision_to_launch_the_disciplinary_process_against_poland_laid_out_in_article_7_of_the_teu (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2017f. "The MFA Summons Marek Prawda, Head of the European Commission Representation in Poland, to Provide Explanations over a Rule-of-law Analysis on Poland Submitted to the European Commission." January 23.
http://www.mfa.gov.pl/en/news/the_mfa_summons_marek_prawda_head_of_the_european_commission_representation_in_poland_to_provide_explanations_over_a_rule_of_law_analysis_on_poland_submitted_to_the_european_commission (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2017g. "Minister Witold Waszczykowski on Polish Diplomacy Priorities in 2017." February 9.
http://www.msz.gov.pl/en/c/MOBILE/news/minister_witold_waszczykowski_on_polish_diplomacy_priorities_in_2017 (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2017h. "MFA's Reaction Following Austrian Chancellor Christian Kern's Interview to Frankfurter." July 28.
http://www.mfa.gov.pl/en/news/mfa_s_reaction_following_austrian_chancellor_christian_kern_s_interview_to_frankfurter_allgemeine_zeitung (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2018a. "MFA Statement: Poland Responds to European Commission Recommendation of 20." March 20.
http://www.mfa.gov.pl/en/news/mfa_statement_poland_responds_to_european_commission_recommendation_of_20_december_2017 (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2018b. "Deputy MFA Chief Accompanies Prime Minister During European Commission Meeting." January 9.
http://www.msz.gov.pl/en/p/msz_en/c/MOBILE/news/deputy_mfa_chief_accompanies_prime_minister_during_european_commission_meeting (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2018c. "Talks with High-ranking EU Officials." February 9.
http://www.mfa.gov.pl/en/c/MOBILE/news/talks_with_high_ranking_eu_officials (April 26, 2018).

Ministry of Foreign Affairs Republic of Poland. 2018d. "Information of the Minister of Foreign Affairs on Polish Foreign Policy Tasks in 2018." March 21.
http://www.msz.gov.pl/en/ministry/minister/speeches/information_of_the_minister_of_foreign_affairs_on_polish_foreign_policy_tasks_in_2018 (April 26, 2018).

Müller, Jan W. 2015. "Should the EU Protect Democracy and the Rule of Law Inside Member States?" *European Law Journal*, 21 (2):141–160.

- Olsen, Johan. P. 2002. "The Many Faces of Europeanization." *JCMS: Journal of Common Market Studies*, 40 (5):921–952.
- Radaelli, Claudio. 2000. "Whither Europeanization? Concept Stretching and Substantive Change." *European Integration Online Papers*, 4 (8). <http://eiop.or.at/eiop/texte/2000-008a.htm> (February 27, 2018).
- Radaelli, Claudio M., and Romain Pasquier. 2008. "Conceptual Issues." In: *Europeanization*, eds. Paolo Graziano and Maarten P. Vink. London: Palgrave Macmillan, 33–45.
- Scheppele, Kim Lane. 2013. "What can the European Commission Do When Member States Violate Basic Principles of the European Union? The Case for Systemic Infringement Actions." Presented at the "Assises de la Justice", Brussels.
- Scherpereel John A. 2010. "EU Cohesion Policy and the Europeanization of Central and East European Regions." *Regional & Federal Studies*, 20 (1):45–62.
- Schimmelfennig, Frank and Ulrich Sedelmeier. 2005. "Introduction: Conceptualizing the Europeanization of Central and Eastern Europe." In *The Europeanization of Central and Eastern Europe*, eds. Frank Schimmelfennig and Ulrich Sedelmeier. Ithaca: Cornell University Press, 1–28.
- Schlipphak, Bernd and Oliver Treib. 2017. "Playing the Blame Game on Brussels: The Domestic Political Effects of EU Interventions Against Democratic Backsliding." *Journal of European Public Policy*, 24 (3):352–365.
- Sedelmeier, Ulrich. 2017. "Political Safeguards Against Democratic Backsliding in the EU: The Limits of Material Sanctions and the Scope of Social Pressure." *Journal of European Public Policy*, 24 (3):337–351.
- The Chancellery of the Prime Minister. 2018a. "White Paper on the Reform of the Polish Judiciary." March 7. https://www.premier.gov.pl/static/files/files/white_paper_en_full.pdf (April 25, 2018).
- The Chancellery of the Prime Minister. 2018b. "Prime Minister Mateusz Morawiecki Presented the Members of his Government." January 8. <https://www.premier.gov.pl/en/news/news/prime-minister-mateusz-morawiecki-presented-the-members-of-his-government.html> (April 19, 2018).
- Wright, Louisa. 2017. "Hungary Will Block Punitive EU action on Poland." *Deutsche Welle*, December 22. <http://p.dw.com/p/2pp3H> (April 24, 2018)

Appendices

Appendix 1

Appendix 1. European Commission Press Release Database.

| Date | Type | Title | Keywords | Reference in text | Available at: |
|------------------|----------------|---|---|----------------------------|---|
| January 13, 2016 | Fact sheet | College Orientation Debate on recent developments in Poland and the Rule of Law Framework: Q&A. | College, Timmermans, fundamental values, CT composition, rule of law, democracy, treaty obligations, clarification, dialogue. | European Commission 2016a. | http://europa.eu/rapid/press-release_MEMO-16-62_en.htm (April 25, 2018). |
| January 13, 2016 | Speech | Readout by First Vice- President Timmermans of the College Meeting of 13 January 2016. | Fundamental values, EU responsibility, media law, dialogue, cooperation, democracy. | - | http://europa.eu/rapid/press-release_SPEECH-16-71_en.htm (April 26, 2018). |
| January 13, 2016 | Weekly meeting | Rule of law in Poland: Commission starts dialogue. | Fundamental values, EU responsibility, Timmermans, cooperation, | European Commission 2016c. | http://europa.eu/rapid/press-release_WM-16-2030_en.htm (April 25, 2018). |
| January 19, 2016 | Speech | Statement by First Vice-President Frans Timmermans and Commissioner Günther Oettinger – EP Plenary Session – Situation in Poland. | European Parliament, Timmermans, Oettinger, Constitutional Tribunal, dialogue, sovereignty, media law, democracy, objectiveness, obligation, non-partisan, Venice Commission, democracy argument. | European Commission 2016j. | http://europa.eu/rapid/press-release_SPEECH-16-114_en.htm (April 26, 2018). |
| April 6, 2016 | Speech | Remarks by First Vice-President Timmermans and Commissioner Avramopoulos at the Readout of the College Meeting. | Warsaw visit, dialogue, publication, multiparty effort, urgency. | European Commission 2016d. | http://europa.eu/rapid/press-release_SPEECH-16-1289_en.htm (April 25, 2018). |

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|---------------|----------------|---|---|----------------------------|---|
| May 18, 2016 | Press release | College discusses a draft Rule of Law Opinion on the situation in Poland. | Timmermans, dialogue, common values, opinion, CT. | - | http://europa.eu/rapid/press-release_IP-16-1828_en.htm (April 26, 2018). |
| June 1, 2016 | Fact sheet | Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers. | Fundamental values, EU responsibility, dialogue, media law, appointment, publication, CT functioning. | European Commission 2016e. | http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm (April 25, 2018). |
| June 1, 2016 | Press release | Commission adopts Rule of Law Opinion on the situation in Poland. | Dialogue, EU foundation, appointment, publication, constitutional review. | - | http://europa.eu/rapid/press-release_IP-16-2015_en.htm (April 26, 2018). |
| June 1, 2016 | Speech | Opening Remarks of First Vice-President Frans Timmermans - Press Conference on Rule of Law in Poland. | Timmermans, common values, dialogue, advice, Prime Minister, political debate. | European Commission 2016k. | http://europa.eu/rapid/press-release_SPEECH-16-2023_en.pdf (April 26, 2018). |
| June 1, 2016 | Weekly meeting | College focusses on Invest EU, EU standards, Glyphosate and Poland. | Opinion, CT, dialogue, treaties. | - | http://europa.eu/rapid/press-release_WM-16-2283_en.htm (April 26, 2018). |
| July 27, 2016 | Speech | Remarks of Frans Timmermans on European Commission action to preserve the rule of law in Poland. | Business, citizens, dialogue, law of 22 July, positive changes, constitutional review, prevention. | European Commission 2017h. | http://europa.eu/rapid/press-release_SPEECH-17-2170_en.htm (April 25, 2018). |
| July 27, 2016 | Fact sheet | Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers. | Common values, EU responsibility, dialogue, CT, crisis, publication, undermining CT, Venice Commission, law of 22 July, improvements. | European Commission 2016g. | http://europa.eu/rapid/press-release_MEMO-16-2644_en.htm (April 26, 2018). |

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|-------------------|----------------|--|--|----------------------------|---|
| July 27, 2016 | Weekly meeting | Focus on rule of law in Poland and fiscal situation of Spain and Portugal. | Dialogue, CT, constitutional review. | - | http://europa.eu/rapid/press-release_WM-16-3722_en.htm (April 26, 2018). |
| July 27, 2016 | Press release | Rule of Law: Commission issues recommendation to Poland. | Dialogue, law of 22 July, publication, undermining CT, Venice Commission. | European Commission 2016f. | http://europa.eu/rapid/press-release_IP-16-2643_en.htm (April 25, 2018). |
| August 12, 2016 | Document | COMMISSION RECOMMENDATION (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland. | Fundamental values, dialogue, appointment, publication, constitutional review, | European Commission 2016b. | https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016H1374&from=EL (April 25, 2018). |
| December 21, 2016 | Fact sheet | Commission Recommendation regarding the Rule of Law in Poland: Questions & Answers. | Appointment, publication, CT functioning, CT president. | European Commission 2016i. | http://europa.eu/rapid/press-release_MEMO-16-4479_en.htm (April 25, 2018). |
| December 21, 2016 | Press release | Rule of Law: Commission discusses latest developments and issues complementary Recommendation to Poland. | Dialogue, positive changes, undermining CT, publication, Venice Commission. | European Commission 2016h. | http://europa.eu/rapid/press-release_IP-16-4476_en.htm (April 25, 2018). |
| December 21, 2016 | Weekly meeting | Security Union, Terrorist financing, EU-Turkey Customs Union, rule of law in Poland. | Recommendation. | - | http://europa.eu/rapid/press-release_WM-16-4504_en.htm (April 26, 2018). |

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| January 27, 2017 | Document | COMMISSION RECOMMENDATION (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374. | Fundamental values, dialogue, small improvements, appointment, publication, constitutional review, CT president. | - | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017H0146 (April 26, 2018) |
| July 19, 2017 | Speech | Opening remarks of First Vice-President Frans Timmermans: College readout on grave concerns about the clear risks for independence of the judiciary in Poland. | Independent observers, European Parliament, National School of Judiciary, National Council for the Judiciary, Ordinary Courts Organisation, Supreme Court, constitutional review, appointment, publication, EU law, business, dialogue, EU citizens, infringement, article 7, personal attacks, intimidation of journalists. | European Commission 2017c. | http://europa.eu/rapid/press-release_SPEECH-17-2084_en.htm (April 25, 2018). |
| July 26, 2017 | Press release | European Commission acts to preserve the RoL in Poland. | Article 7, infringement, Juncker, Timmermans, independence of courts, EU law, dialogue. | European Commission 2017b. | http://europa.eu/rapid/press-release_IP-17-2161_en.htm (April 17, 2018). |
| July 26, 2017 | Speech | Remarks of Frans Timmermans on European Commission action to preserve the rule of law in Poland. | Presidential vetoes, dialogue, independence of judiciary, 4 new laws, article 7, infringement, retirement age, gender discrimination, discretionary powers of Minister of Justice. | European Commission 2017h. | http://europa.eu/rapid/press-release_SPEECH-17-2170_en.htm (April 25, 2018). |

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|--------------------|---------------|---|---|----------------------------|---|
| July 29, 2017 | Press release | European Commission launches infringement against Poland over measures affecting the judiciary. | Infringement, retirement age, gender discrimination, discretionary powers of Minister of Justice, prolongation of mandates, Timmermans, invitation to Brussels. | European Commission 2017d. | http://europa.eu/rapid/press-release_IP-17-2205_en.htm (April 25, 2018). |
| August 31, 2017 | Speech | Opening and closing remarks of First Vice-President Frans Timmermans on the Rule of Law in Poland, at the European Parliament's Committee on Civil Liberties, Justice and Home Affairs. | Timmermans, European Parliament, presidential vetoes, for new laws, Bialowieza forest, clarifications on recommendations, Council, independent observers, dialogue, Prime minister invitation, value, EU law, non-partisan, independence of state, responsibility of EU, sovereignty, democratic mandate, respect, consequence to EU. | European Commission 2017i. | http://europa.eu/rapid/press-release_SPEECH-17-3042_en.htm (April 26, 2018). |
| September 2, 2017 | Document | COMMISSION RECOMMENDATION (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146. | Constitutional review, judicial independence, international observers, Council, European Parliament. | - | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017H1520 (April 26, 2018). |
| September 12, 2017 | Press release | Independence of the judiciary: European Commission takes second step in infringement procedure against Poland. | Infringement, retirement age, gender discrimination, discretionary powers of Minister of Justice, prolongation of mandates, appointment and dismissal, European Court of Justice, dialogue. | European Commission 2017e. | http://europa.eu/rapid/press-release_IP-17-3186_en.htm (April 25, 2018). |

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|-------------------|---------------|--|--|----------------------------|---|
| December 20, 2017 | Fact sheet | Commission action on the Rule of Law in Poland: Questions & Answers. | Fundamental value, EU responsibility, dialogue, article 7, meetings, independence and legitimacy of CT, constitutionality of legislation, retirement, judicial cooperation, dismissal of judges. | European Commission 2017g. | http://europa.eu/rapid/press-release_MEMO-17-5368_en.htm (April 25, 2018). |
| December 20, 2017 | Press release | Rule of Law: European Commission acts to defend judicial independence in Poland. | Political control, breach of EU law, rule of law recommendation, infringement, article 7. | European Commission 2017f. | http://europa.eu/rapid/press-release_IP-17-5367_en.htm (April 25, 2018). |
| December 20, 2017 | Document | Proposal for a Council Decision on the Determination of a Clear Risk of a Serious Breach by the Republic of Poland of the Rule of Law. | Constitutional review, publication, CT president, ordinary judiciary, National School for Judiciary, risk of a breach of Article 2, international observers, European Parliament, internal market, judicial cooperation. | European Commission 2017a. | http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=49108 (April 17, 2018). |
| December 20, 2017 | Speech | Opening remarks of First Vice-President Frans Timmermans, Readout of the European Commission discussion on the Rule of Law in Poland. | Independence for judiciary, separation of powers, international observers, Council, ordinary courts, National Council for the Judiciary, fundamental value, EU law, business, mutual trust, dialogue, article 7, European Parliament, citizens, EU interest. | European Commission 2017j. | http://europa.eu/rapid/press-release_SPEECH-17-5387_en.htm (April 20, 2018). |
| January 9, 2018 | Meeting | Statement following the working dinner between President Juncker and Polish Prime Minister Morawiecki. | Prime Minister, Juncker, dialogue. | European Commission 2018. | http://europa.eu/rapid/press-release_STATEMENT-18-86_en.htm (April 26, 2018). |

Appendix 2. Ministry of Foreign Affairs Republic of Poland.

| Date | Type | Title | Keywords | Reference in text | Available at: |
|-------------------|-------------|---|---|--------------------------|--|
| December 24, 2015 | Letter | MFA replies to Frans Timmermans letter. | Deputy Foreign Minister, Venice Commission opinion, Timmermans. | Polish MFA 2015b. | http://www.mfa.gov.pl/en/news/mfa_replies_to_frans_timmermans_letter (April 26, 2018). |
| December 24, 2015 | Statement | Minister Waszczykowski requests Venice Commission's opinion on Constitutional Court. | Venice Commission's international prestige and independence, political controversies, importance of CT, stopping controversy. | Polish MFA 2015a. | http://www.msz.gov.pl/en/news/minister_waszczykowski_requests_venice_commission_s_opinion_on_constitutional_court_ ;jsessionid=E06FFF3259EFC3A9E14EB394044FD6CD.cmsap1p (April 26, 2018). |
| January 8, 2016 | Meeting | Konrad Szymański, Secretary of State, met with the Director of the EC Representation in Warsaw. | Dialogue, communication, Secretary of state, COM representation. | - | http://www.mfa.gov.pl/en/news/konrad_szymanski_secretary_of_state_met_with_the_director_of_the_ec_representation_in_warsaw (April 26, 2018). |
| January 29, 2016 | Speech | Minister Witold Waszczykowski on priorities of Polish diplomacy. | Foreign Minister, strategy, sovereign states, community of values, EU crises, regional cooperation, EU unity, sovereignty, attacks in foreign media, active media diplomacy, empowerment. | Polish MFA 2016d. | http://www.msz.gov.pl/en/news/minister_witold_waszczykowski_on_priorities_of_polish_diplomacy (April 26, 2018). |
| March 2, 2016 | Letter | Minister Witold Waszczykowski addresses letter to First Vice-President of European Commission Frans Timmermans. | Foreign Minister, Timmermans, judgements, publication, specification, objectivity, dialogue based on facts. | Polish MFA 2016c. | http://www.msz.gov.pl/en/news/minister_witold_waszczykowski_addresses_letter_to_first_vice_president_of_european_commission_frans_timmermans (April 26, 2018). |

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| June 4, 2016 | Meeting | Minister Witold Waszczykowski meets with Vice-President of the European Commission Frans Timmermans. | Foreign Minister, Timmermans, dialogue, Venice Commission opinion, inadequate communication, expert group, Polish invitation, cooperation interrupted. | Polish MFA 2016a | http://www.msz.gov.pl/en/news/minister_witold_waszczykowski_meets_with_vice_president_of_the_european_commission_frans_timmermans (April 25, 2018). |
| July 27, 2016 | Statement | MFA statement on decision of the European Commission. | Measures immature, COM authority, sincere cooperation, European standards, Venice Commission opinion. | Polish MFA 2016e | http://www.msz.gov.pl/en/news/mfa_statement_on_decision_of_the_european_commission_1;jsessionid=61417CE4F375171C28EA001D9C9D9198.cmsap1ps (April 26, 2018). |
| October 27, 2016 | Statement | MFA statement on the Polish government's response to Commission Recommendation of 27.07.2016. | Non-binding recommendation, sincere cooperation, welcoming suggestions, dialogue, incorrect assumptions, groundless, detailed response. | Polish MFA 2016b | http://www.msz.gov.pl/en/news/mfa_statement_on_the_polish_government_s_response_to_commission_recommendation_of_27_07_2016 (April 25, 2018). |
| December 22, 2016 | Statement | MFA statement on the European Commission's decision to issue a complementary Recommendation to the Polish Government regarding the rule of law in Poland . | Dialogue, CT efficiency, European standards, new president, unfounded concerns. | - | http://www.mfa.gov.pl/en/c/MOBILE/news/mfa_statement_on_the_european_commission_s_decision_to_issue_a_complementary_recommendation_to_the_polish_government_regarding_the_rule_of_law_in_poland (April 26, 2018). |
| February 9, 2017 | Speech | Minister Witold Waszczykowski on Polish diplomacy priorities in 2017. | Foreign Minister, strategy, state interests, public mandate, future of the EU, regional cooperation, bilateral relations. | Polish MFA 2017g. | http://www.msz.gov.pl/en/c/MOBILE/news/minister_witold_waszczykowski_on_polish_diplomacy_priorities_in_2017 (April 26, 2018). |

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| February 20, 2017 | Statement | MFA statement on Poland's response to European Commission's complementary Recommendation of 21 December 2016. | Non-binding recommendation, suggestions welcomed, European standards, Venice Commission opinion, new president, sincere cooperation, dialogue, objectivism, Timmermans, stigmatisation. | Polish MFA 2017a. | http://www.msz.gov.pl/en/news/mfa_statement_on_poland_s_response_to_european_commission_s_complementary_recommendation_of_21_december_2016_ (April 26, 2018). |
| February 23, 2017 | Meeting | The MFA summons Marek Prawda, Head of the European Commission Representation in Poland, to provide explanations over a rule-of-law analysis on Poland submitted to the European Commission. | COM representation, media reports, defamatory behaviour, intimidation of judges, unacceptable communication, objectivity, reliability of information. | Polish MFA 2017f. | http://www.mfa.gov.pl/en/news/the_mfa_summons_marek_prawda_head_of_the_european_commission_representation_in_poland_to_provide_explanations_over_a_rule_of_law_analysis_is_on_poland_submitted_to_the_european_commission_ (April 26, 2018). |
| July 19, 2017 | Statement | MFA statement. | Democratic mandate, European standards, political fight, external interference, Timmermans, unfounded action, "personal mission", dialogue, ultimatums. | Polish MFA 2017c. | http://www.msz.gov.pl/en/news/mfa_statement_1 (April 26, 2018). |
| July 26, 2017. | Statement | MFA statement following the European Commission's Recommendation of 26 July 2017 regarding the rule of law in Poland. | Ultimatums, dialogue, premature actions, partiality, public expectations, misunderstanding, international standards, national policy. | Polish MFA 2017b | http://www.msz.gov.pl/en/news/mfa_statement_following_the_european_commission_s_recommendation_of_26_july_2017_regarding_the_rule_of_law_in_poland_ (April 26, 2018). |
| July 28, 2017 | Meeting | MFA's reaction following Austrian Chancellor Christian Kern's interview to Frankfurter Allgemeine Zeitung. | Structural funds, bilateral. | Polish MFA 2017h | http://www.mfa.gov.pl/en/news/mfa_s_reaction_following_austrian_chancellor_christian_kern_s_interview_to_frankfurter_allgemeine_zeitung (April 26, 2018). |

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| July 29, 2017 | Statement | MFA statement on EC's decision to launch infringement procedure against Poland. | Infringement, retirement age, national policy. | - | http://www.msz.gov.pl/en/news/mfa_statement_on_ec_s_decision_to_launch_infringement_procedure_against_poland (April 26, 2018). |
| August 8, 2017 | Statement | Letter of Polish Foreign Minister to European Commission's First Vice-President. | Inaccuracies, legal basis, Timmermans. | - | http://www.mfa.gov.pl/en/news/letter_of_polish_foreign_minister_to_european_commission_s_first_vice_president (April 26, 2018). |
| August 10, 2017 | Statement | MFA communique following reply from Commission First Vice-President to Polish Foreign Minister's letter. | Effectiveness of dialogue, Timmermans, clarifications, legal dialogue. | - | http://www.msz.gov.pl/en/news/mfa_communique_following_reply_from_commission_first_vice_president_to_polish_foreign_minister_s_letter_1 (April 26, 2018). |
| August 23, 2017 | Statement | Communique following European Commission reply to MFA letter. | Interpretation doubts, journalistic wording, publication, Timmermans political. | Polish MFA 2017d | http://www.mfa.gov.pl/en/news/communique_following_european_commission_reply_to_mfa_letter (April 26, 2018). |
| August 28, 2017 | Statement | MFA statement regarding Polish response to European Commission Recommendation of 26 July 2017. | Sincere cooperation, dialogue, European standards, social expectations, groundless doubts. | - | http://www.msz.gov.pl/en/p/msz_en/c/MOBILE/news/mfa_statement_regarding_polish_response_to_european_commission_recommendation_of_26_july_2017 (April 26, 2018). |
| November 15, 2017 | Statement | MFA communiqué following European Parliament debate on Poland. | Parliament, premature, political pressure, migration, Białowieża Forest, socially-sensitive issues, public assembly, stigmatisation. | - | http://www.mfa.gov.pl/en/news/mfa_communique_following_european_parliament_debate_on_poland (April 26, 2018). |
| December 8, 2017 | Statement | Position concerning the European Parliament's resolution on the rule of law and democracy in Poland. | National policy, EU standards, efficiency, EU interests, Białowieża Forest, abortion law, extremism. | - | http://www.msz.gov.pl/en/p/msz_en/news/position_concerning_the_european_parliament_s_resolution_on_the_rule_of_law_and_democracy_in_poland (April 26, 2018). |

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|-------------------|----------------|---|---|-------------------|---|
| December 8, 2017 | Position paper | Position of the Ministry of Foreign Affairs (Polish side) on the European Parliament resolution on the rule of law and democracy in Poland. | Constructive dialogue, values, appointment, publication, national policy, Minister of Justice, harmful conclusions + as above. | - | http://www.msz.gov.pl/resource/9a5fe89f-10ec-4707-8dba-720479babd03:JCR (April 26, 2018). |
| December 20, 2017 | Statement | MFA statement on the European Commission's decision to launch the disciplinary process against Poland laid out in Article 7 of the TEU. | Dialogue, mutual trust, burden, objectivity, negative information campaign, public expectation, European Court of Justice (ECJ). | Polish MFA 2017e. | http://www.msz.gov.pl/en/p/msz_en/news/mfa_statement_on_the_european_commission_s_decision_to_launch_the_disciplinary_process_against_poland_laid_out_in_article_7_of_the_teu (April 26, 2018). |
| January 9, 2018 | Meeting | Deputy MFA chief accompanies Prime Minister during European Commission meeting. | Prime Minister, Foreign Minister, Juncker, Timmermans, dialogue, Polish initiative, European Agenda. | Polish MFA 2018b. | http://www.msz.gov.pl/en/p/msz_en/c/MOBILE/news/deputy_mfa_chief_accompanies_prime_minister_during_european_commission_meeting (April 26, 2018). |
| January 22, 2018 | Meeting | Minister Jacek Czaputowicz meets European Commission Vice President Frans Timmermans. | Foreign Minister, Timmermans, dialogue, Polish initiative, invitation to Poland. | - | http://www.mfa.gov.pl/en/news/minister_jacek_czaputowicz_meets_european_commission_vice_president_frans_timmermans (April 26, 2018). |
| January 22, 2018 | Meeting | Talks with high-ranking EU officials. | Foreign Minister, Timmermans, Bieńkowska, Jourová, Mogherini, dialogue, continuation of reform, regular contacts, budget allocations. | Polish MFA 2018c. | http://www.mfa.gov.pl/en/c/MOBILE/news/talks_with_high_ranking_eu_officials (April 26, 2018). |

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| March 7, 2018 | White paper | White paper on the Reform of Polish Judiciary. | Public trust, inefficiency, communist past, balance of power, bureaucracy, European standards, demand from judiciary, lesson-drawing, national identity, Article 7, European unity, anti-European sentiment, dialogue. | The Chancellor y of the Prime Minister 2018a. | https://www.premier.gov.pl/static/files/files/white_paper_en_full.pdf (April 25, 2018). |
| March 9, 2018 | Meeting | Presentation of the White Paper on Polish Judicial Reforms. | Foreign Minister, White paper, EU ambassadors, COM representation. | - | http://www.msz.gov.pl/en/p/msz_en/news/presentation_of_the_white_paper_on_polish_judicial_reforms;jsessionid=589D63878B141033F05C74D63236A8EA.cmsap1p (April 26, 2018). |
| March 20, 2018 | Statement | MFA statement: Poland responds to European Commission Recommendation of 20 December 2017. | Public expectations, continuation of the reform, efficiency, independence of the judiciary, dialogue. | Polish MFA 2018a | http://www.mfa.gov.pl/en/news/mfa_statement__poland_responds_to_european_commission_recommendation_of_20_december_2017 (April 26, 2018). |
| March 21, 2018 | Speech | Information of the Minister of Foreign Affairs on Polish foreign policy tasks in 2018. | Foreign minister, sovereignty, EU crisis, support for EU, mandate of EU, principle of conferral, democratic deficit, double standards, structural funds, Article 7, public expectations, Visegrád group, Hungary. | Polish MFA 2018d | http://www.msz.gov.pl/en/ministry/minister/speeches/information_of_the_minister_of_foreign_affairs_on_polish_foreign_policy_tasks_in_2018 (April 26, 2018). |

Appendix 3. Timeline of the events.

| Time of action | Poland | Commission |
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| Oct 8, 2015 | <i>Sejm</i> nominates five judges to be appointed to the Constitutional Tribunal (CT), two to take office after the elections. | |
| Oct 19, 2015 | General elections for <i>Sejm</i> . | |
| Nov 19, 2015 | Amending Law on Constitutional Tribunal - previous nominations can be annulled. | |
| Nov 25, 2015 | All five nominations of CT annulled. | |
| December 2, 2015 | Five new judges nominated by the new <i>Sejm</i> . | |
| December 3, 2015 | CT rules the nomination of the two judges by the previous <i>Sejm</i> invalid. | |
| December 9, 2015 | CT rules the nomination of the three new judges to be invalid. | |
| December 22, 2015 | <i>Sejm</i> adopts amending the Law on the Constitutional Tribunal - functioning and independence of CT. | |
| December 23, 2015 | Poland requests an opinion of the Venice Commission. | Timmermans letter to PL asking to explain the measures taken to address CT judgements. Recommends asking Venice Commission. |
| December 28, 2015 | Law on Constitutional Tribunal enters into force. | |
| January 7, 2015 | Reply to Commission on Media. | COM: In December 2015 and January 2016, a number of particularly sensitive new laws were adopted by the <i>Sejm</i> , several among them through accelerated legislative procedures, in particular, Media Law, a new Civil Service Act, a Law Amending the Law on the Police, Law on the Public Prosecution Office. |

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| January 8, 2016 | Polish Secretary of State and Director of the EC representation in Warsaw meet. Appropriate Communication emphasized, Minister of Foreign Affairs claims not an explanatory meeting. | |
| January 11, 2016 | Response to COM about CT reform. German ambassador meets Foreign Minister after Oettinger and Schulz express concern about Poland. | |
| January 13, 2016 | | Orientation debate in College of Commissioners. Assessing PL under Rule of Law (RoL) Framework. Information request to Poland by the College of Commissioners. |
| January 15, 2016 | PiS MEP-s launch a campaign "What is really happening in Poland" on Western Media. | |
| January 19, 2016 | Poland writes to Commission on appointment of judges referring to constitutional custom. | COM: between February and July numerous letters and meetings. |
| March 9, 2016 | CT rules law of 22 December to be unconstitutional. Government does not publish judgment in the Official Journal of the Government referring to the principles in the same law - no legal effect. | |
| April 5, 2016 | Timmermans meets Polish Minister of Foreign Affairs, Minister of Justice, Deputy Prime Minister and President of CT in Warsaw. | |
| April 26, 2016 | General Assembly of the Supreme Court adopts a resolution that the rulings of the CT are valid even if refused to be published by the government. | |
| June 1, 2016 | | Rule of Law Opinion to the Polish Government |
| June 24, 2016 | Government writes to COM acknowledging receipt of the Commission's Rule of Law Opinion. Informs and expresses conviction about new law that is being prepared. | |

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| July 22, 2016 | Law on CT approved, not removing the concerns of COM, incompatible with the CT rulings and opinion of the Venice Commission. | Comments and help offered throughout the legislative process of the law on CT. |
| July 27, 2016 | | Rule of Law Recommendation, three-month deadline (Oct 27). |
| August 11, 2016 | CT finds provisions of law of 22 July unconstitutional. Government does not publish the judgement. | |
| August 16, 2016 | 21 CT judgements between April, 6 and July, 19 published according to law of 22 July. Judgements of 9th of March and 11th of August not published as well as 16 judgements after August, 16. | |
| October 27, 2016 | Response to RoL Recommendation: disagreement on all points. | |
| December 1, 2016 | Law on the Status of Judges | |
| December 2, 2016 | Law on Organisation and Proceedings | |
| December 15, 2016 | Implementing Law | |
| December 19, 2016 | President signs the three laws, appoints a judge elected by the new <i>Sejm</i> to the position of acting President of the CT. | |
| December 20, 2016 | Acting President of the CT convenes a General Assembly meeting and is presented as candidate of President of CT to the President of the Republic. | |
| December 21, 2016 | Acting President of the CT appointed as the new President of CT. | Second Rule of Law Recommendation, two-months deadline (February 21). |
| January 20, 2017 | Government announces reform of the judiciary. | |
| February 20, 2017 | Reply to Second Recommendation: no agreement with COM assessment. | |

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| May 16, 2017 | | Council informed on Poland and calls upon COM to resume with the dialogue. |
| June 13, 2017 | Law on the National School of Judiciary published and in force. | |
| July 13, 2017 | | Letter to Warsaw expressing concerns about new laws. Polish Foreign and Justice Minister invited to meet in Brussels (invitation ignored). |
| July 14, 2017 | Response to COM letter reiterating previous explanations. | |
| July 19, 2017 | Letter requesting specifications. | |
| July 24, 2017 | President vetoes Law on the Supreme Court and Law on the National Council of Judiciary. | |
| July 25, 2017 | President signs Law on the Ordinary Courts Organisation. | |
| July 26, 2017 | | Third Rule of Law Recommendation, one-month deadline (Aug 26). Threat of infringement and Article 7 (1). |
| July 28, 2017 | Law on the Ordinary Courts Organisation published. | Response to letters of 14th and 19th of July. Timmermans invites Minister of Justice and Minister of Foreign Affairs to Brussels . |
| July 29, 2017 | | Letter of Formal Notice, one-month deadline (August 29) |
| August 4, 2017 | Request of clarification to COM. | |
| August 8, 2017 | | Response to letter from the 4th of August. |
| August 16, 2017 | Request of clarification to COM. | |
| August 21, 2017 | | Response to letter from the 16th of August. |
| August 28, 2017 | Reply to Commission on third Recommendation disagreeing with everything. No actions. | |
| September 11, 2017 | Polish Government initiates "Fair Courts" campaign to increase social support for judicial reform. | |
| September 12, 2017 | | Reasoned proposal for infringement procedure. |

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| September 13, 2017 | Minister of Justice starts exercising the power of dismissing court presidents and vice-presidents. | |
| September 26, 2017 | President transmits two new draft laws to <i>Sejm</i> on Law of Supreme Court and National Council of Judiciary. | |
| Dec 8, 2017 | Two new draft laws adopted by the Sejm. New Prime Minister appointed. | |
| Dec 15, 2017 | Law on the Supreme Court and Law on the National Council of the Judiciary approved by the Senate. | |
| Dec 20, 2017 | | 1) Reasoned proposal for Article 7(1) . Three-month deadline for withdrawal (20 March). 2) Taking PL to Court 3) 4th Rule of Law Recommendation. |
| January 9, 2018 | Government reshuffle in Poland. | Jean Claude Juncker meets Polish Prime Minister Mateusz Morawiecki |
| March 9, 2018 | White Paper on the Reform published. | |

EUROOPA KOMISJONI SUUTLIKKUS KAITSA EUROOPA LIIDU ALUSVÄÄRTUSI: ÕIGUSRIIGI OLUKORD POOLAS 2015–2018

Kristin Saar

Resümee

Töö eesmärk on uurida Euroopa Komisjoni rolli Euroopa liidu alusväärtuste tagamisel liikmesriikides. Euroopa Liitu on loomisest alates kujutatud ühendusena, mis põhineb jagatud väärtustel. Väärtused, nagu demokraatia, õigusriiklus ja inimõigused on sõnastatud Liidu aluslepingutes ning seatud liitumistingimuseks. Kandidaatriikidele rakendatav tingimuslikkus ei ole aga kohaldatav liikmesriikidele. Viimastel aastatel on võimu tasakaalu Euroopa riikides kahtluse alla seatud, enim tähelepanu on pälvinud Poola ja Ungari. Poolas võimule tulnud Õiguse ja Õigluse Partei algatatud kohtureformid on loonud pretsetendi. Euroopa Komisjon esitas esimest korda ettepaneku käivitada õigusriikluse põhimõttele tuginedes Poola vastu alusleppe artikkel 7, mis sätestab, et riigis on tõsine oht Euroopa Liidu alusväärtuste rikkumiseks.

Märgid alusväärtustest kaugenemisest seavad kahtluse alla Euroopa Liidu olemuse ja tõsieseltvõetavuse. Väärtuspõhise liidu alalhoidmiseks on vajalik uurida, milline on Euroopa Liidu suutlikkus oma liikmesriikides demokraatlike väärtusi kaitsta. Töö keskendub Euroopa Komisjoni rollile ning seab hüpoteesi, et Euroopa Komisjoni suutlikkus tagada Euroopa Liidu põhiväärtuste austamine väheneb pärast liikmestaatuse saavutamist.

Hüpoteesi tõestamiseks viib autor läbi kvalitatiivse juhtumianalüüsi õigusriikluse olukorrast Poolas ning sellega kaasnenud läbirääkimisprotsessist Euroopa Komisjoniga. Uuritud periood algab Õiguse ja Õigluse võimule saamisega 2015. aasta 19. oktoobril ning lõppeb pärast Komisjoni viimast Poolale seatud tähtaega. Uurimus tugineb euroopastumise lähenemisele, mis uurib normide ülekandumist Euroopa Liidust riiklikule tasandile. Teoreetiline raamistik põhineb peamiselt Frank Schimmelfennigil ja Ulrich Sedelmeieril, kes on loonud euroopastumise mudelid ja sõnastanud tegurid, mis soodustavad reeglite vastu võtmist.

Juhtumiuuring viiakse läbi kolmes etapis. Esmalt koostab autor ajajoone olulisematest sündmustest uuritud ajavahemikul ehk uurib, millised Poola sammud on põhjustanud Komisjoni reaktsiooni ning milliseid meetmeid on Komisjon kasutusele võtnud. Seejärel hinnatakse Komisjoni tegevuse mõju, vaadeldes tegutsejate vahelist dünaamikat ning

Poolas esile kutsutud muutusi. Viimaks analüüsitakse toimijate strateegiat rakendades Schimmelfennigi ja Sedelemeieri euroopastumise mudeleid ning esitatakse kujunenud olukorrale võimalikud seletused.

Juhtumiuuringu teostamiseks viiakse läbi dokumendianalüüs, kasutades Euroopa Komisjoni pressiteadete andmebaasi ja Poola Välisministeeriumi kodulehekülge. Mõlemal leheküljel viiakse uurimisperioodis läbi otsing võtmesõnadega „Poland“ ja „European Commission“. Seejärel eristab autor õigusriikluse põhimõtte järgimisega seotud pressiteated. Euroopa Komisjoni puhul lisatakse valimisse ka Komisjoni ametlikud soovitusel ning Poola puhul välisministri ettekanded Poola välispoliitika prioriteetidest, kuna need aitavad selgitada tegutsejate käitumisloogikat. Valimi moodustab 31 dokumenti Komisjonilt ja 31 dokumenti Poola Välisministeeriumilt ehk kokku analüüsitakse 62 dokumenti.

Juhtumiuuring kinnitab püstitatud hüpoteesi. Euroopa Komisjon on Poola mõjutamiseks kasutanud nii sotsiaalse õppimise lähenemist kui väliseid stiimuleid, kuid see ei ole Poolale märkimisväärset mõju avaldanud. Brüsseli meelest on olukord Poolas halvenenud ning probleeme juurde tulnud. Poola ei ole Komisjoni soovitusi ellu viinud ning muutused on tulenenud pigem siseriiklikest tingimustest. Komisjon on järjepidevalt kinnitanud oma valmisolekut dialoogiks, kuid pöördunud aina enam negatiivsete stiimulite poole. Ehkki ettepanek käivitada artikkel 7 tõi kaasa dialoogi taaskäivitamise, ei ole Varssavi nõus reforme peatama ning väidab, et Komisjon ei saa aru reformi sisust, ei ole objektiivne ega oma sekkumiseks legitiimsust.

Analüüsi põhjal takistab normi ülekandumist ja Komisjoni võimekust seda soosida nõrk euroopa identiteet ning Komisjoni madal legitiimsus ja usutavus. Poola välispoliitikas on olulisemaks muutunud rahvuslik ja regionaalne identiteet ning Euroopa Liidu tunnustus ei ole moraalseks mõjuvõimaks piisav. Varssavi on kahelnud ka Komisjoni tegevuse legitiimsuses, viidates, et õigussüsteemi korraldus on liikmesriigi pädevus ning valitsusel on reformi läbi viimiseks antud rahvapoolne mandaat. Lisaks on Poola väitnud, et reegleid rakendatakse valikuliselt. Komisjoni usutavust vähendab sanktsioonide kehtestamise madal tõenäosus. Ehkki need on märkimisväärse kaaluga, on rakendamine kõrge hääletuskünnise tõttu vähe tõenäoline ning aeganõudev, mis tähendab, et Komisjon võib mainekahju ennetamiseks pingete eskaleerimisest hoiduda.

Juhtumianalüüsi alusel väheneb Komisjoni suhteline mõjujõud riikidele pärast nende liikmeks astumist. Vastupidiselt liitumisprotsessile on Komisjonil võimalik kasutada ainult negatiivseid stiimuleid ning need ei ole piisavalt usutavad, et reeglite järgimist tagada. Arvestades Poola häälekat vastuseisu ideele siduda õigusriikluse põhimõte Euroopa Liidu väljamaksetega, võivad eelarvelised meetmed reeglite järgimist soodustada. Samas on sellise sammu puhul oht põhjustada euroopavastaseid meeleolusid ning valikulise rakendamise korral ka oht mõrendada liidu ühtsust.

Uurimus annab Poola näitel ülevaate Euroopa Komisjoni strateegiast ja takistustest Euroopa Liidu alusväärtuste kaitsmisel liikmesriikides. Juhtumiuuring rakendab euroopastumise lähenemist kandidaatide asemel liikmesriikidele ning lisab ülekande protsessi uurimisse väärtuste dimensiooni. Tulemusi saab kasutada kujundamaks Euroopa Liidu vastumeetmeid demokraatlike põhimõtete kaitsmiseks liikmesriikides. Samuti on need aluseks edasisele uurimisele.

Uurimuse täiendamiseks tuleks analüüsi kaasata Euroopa Parlamendi ja Euroopa Liidu Nõukogu tegevus, mis võimaldaks saada täielikumat pilti sotsialiseerumise ja parteipoliitika osatähtsusest. Olukorra eskaleerumise seletamiseks tasuks koostada võrdlev analüüs või laiendada analüüsi ka siseriiklikule tasandile uurimaks algpõhjuseid, mis väärtuste kahtluse alla seadmiseni on viinud.

Mina, Kristin Saar, annan Tartu Ülikoolile tasuta loa (lihtlitsentsi) enda loodud teose

“The Capacity of the European Commission to Protect the Fundamental Values of the European Union: The Issue of Rule of Law in Poland 2015–2018”,

mille juhendaja on Stefano Bragioli,

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Tartus, 18.05.2018
