

## Joint Master in EU Trade and Climate Diplomacy

*The price of compliance with law  
and justice. Evaluating the  
effectiveness of EU financial  
conditionality in addressing  
Poland's rule of law backsliding.*

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## **Abstract**

The election of Hungarian Prime Minister Viktor Orban in 2010, sparked a rule of law backsliding (RoLB) trend that spread across various Eastern European countries. Poland started to experience significant RoLB when the right-wing party Law and Justice (Prawo i Sprawiedliwość) came to power in 2015. As the rule of law is one of the foundational values of the EU, EU officials disapproved of these developments and responded. Various mechanisms were activated to counteract RoLB, and new ones were made. The Conditionality Mechanism is the latest addition to these instruments and makes it legal for the EU to withhold funds from member states that do not respect the values in Art. 2 TEU. This thesis aims to determine whether this conditionality effectively counters RoLB and identify its main strengths and shortcomings. RoLB will be analysed in depth, how it affects Poland and the EU's responses to counteract it, focusing on conditionality. Using quantitative and qualitative methods, the thesis will conclude that conditionality alone is not enough to counter RoLB; instead, a holistic approach should be adopted to guide backsliding member states (MS) out of this downward spiral.

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# 1. Introduction

The election of the Hungarian Prime Minister Viktor Orban on the 29<sup>th</sup> of May 2010 marked the beginning of a new form of government in Hungary. The 'illiberal' or 'non-liberal state' Orban referred to, does not make liberalism the central ideology on which the state is built but instead, it centres on "a different, special, national approach" (Pech & Scheppele, 2017, p. 2). The values of this Hungarian state divert significantly from the core values of the European Union (EU), as mentioned in Art. 2 of the Treaty on the European Union (TEU) (Von Bogdandy & Lacny, 2020). Solidarity, justice, pluralism, democracy and especially the rule of law lack in the foundations of Orban's state and because the EU has been rather slow in addressing this, other states have joined Hungary on its path (Von Bogdandy & Lacny, 2020).

The far-right government elected in Poland in 2015 became, under the leadership of the United Right (political grouping of two conservative parties), a close friend of the Hungarian Prime minister. Therefore, it is unsurprising that Poland also observed a significant fallback when adhering to EU values (Pech & Scheppele, 2017), with the 'constitutional crises' being a clear sign the situation was rapidly deteriorating (Wiacek, 2021).

Through these constitutional crises, the Polish government eroded the foundations of a well-functioning judicial system, including the judicial oversight of the government. As the judiciary power plays such an important role in a liberal democracy, the EU did not let these developments go unnoticed (Pech & Scheppele, 2017). The Commission made various rule of law recommendations to Poland and Hungary, advising them to improve the situation. The Venice Commission expressed its concerns about the developments in both countries. The European Court of Human Rights and the European Court of Justice (ECJ) were heavily involved in countering them, the latter especially heavily (Adamska-Gallant, 2022).

An independent judiciary is essential in the protection of public and private rights, the punishing of crimes, the application of the Constitution and is the main guardian when it comes to the rule of law (Bari, 1993). The rule of law and an independent judiciary are inextricably linked to each other, one making the other possible. The judiciary on the one hand upholds the rule of law and ensures the supremacy of the law. It is crucial that they can make impartial and independent rulings without external repercussions and that they keep a certain distance from other institutions. The rule of law, in return, creates legal frameworks and checks and balances that ensure the independence of the judiciary is not undermined (Kelly, 2016).

As the rule of law and an independent judiciary have such an important role in society, attempts to undermine them are followed up with consequences. EU legislation allows for several actions to sanction the erosion of the rule of law. The most basic of these is set out in Art. 7 TEU, which allows for a suspension of “certain of the rights deriving from the application of the Treaties to the Member State” (Consolidated version of the Treaty on the European Union, signed 13 December 2007 (entered into force 1 December 2009), p. 19). This includes suspending the MS’s voting rights in the Council (Consolidated version of the Treaty on the European Union, signed 13 December 2007 (entered into force 1 December 2009)). Specifically in response to the developments in Hungary, the EU adopted a Rule of Law Framework in 2014 that is supposed to prevent rule of law crises from escalating to the point where Art. 7 TEU has to be invoked (European Commission, 2023a).

Various authors have however questioned the usefulness of the Rule of Law Framework. It introduced the possibility for the Commission to monitor if member states respect the values referred to in Art. 2 TEU and to issue recommendations if this is not the case. (European Commission, 2023a). Two concerns regarding the framework have come forward in the years it has been in place. The first is that Art. 7(1) TEU already provides the possibility to issue recommendations to MSs that disrespect Art. 2 TEU. The second is that the framework only seems to delay the implementation of solutions to counteract RoLB, giving additional opportunities to talk instead of adopting hard measures that address the problem (Pech & Scheppele, 2017). In the case of Poland, the Commission issued four recommendations, none of which led to any improvements, but rather gave Poland more time to break down the justice system and the governmental control it exercises.

The commission's reasoning for introducing an additional avenue to issue recommendations is unclear. The Barroso Commission introduced the framework as an early warning system through which a structured dialogue is established with the MS concerned. In this way, the EU would be able to counter RoLB quicker and more effectively. The framework acts as a bridge between Art. 7 TEU, which is seen as the ‘nuclear option’ that can result in freezing a MS’s voting rights and the infringement procedure (Pech & Scheppele, 2017).

Infringement procedures have been used multiple times in the past to sanction both Poland and Hungary. In the case of Poland, infringement procedures were triggered in response to the judicial reform, the criminalisation of questioning the autonomy and independence of the national courts and the creation of a special committee able to dismiss public officials when

suspected of deterring from public interests (European Commission, 2023b; European Commission, 2023c). The cases were based on grounds such as failure to provide effective legal protection, ignoring the autonomy and primacy of EU law, endangering the impartiality and autonomy of national courts, violating the principle of democracy, violating the principle of legality and non-retroactivity of sanctions and breaching EU data protection rules. In some cases, the Polish administration responded positively to the court ruling, changing its laws per the ruling, but this is not always the case (European Commission, 2023b; European Commission, 2023c).

The problem with infringement procedures is that they do not directly address the root cause of RoLB, they only address individual laws (Kochenov & Pech, 2016). This problem can be circumvented if the Commission interprets Art. 258 TFEU more broadly. This would allow them to bring the combined effects of the illiberal laws passed by Hungary or Poland to the ECJ, thereby directly addressing RoLB. The Commission has however refrained from doing this. Furthermore, it is hard to bring EU MSs before the ECJ for cases related to the organisation of the national justice system when the EU lacks broad competences in this area. Lastly, whether Poland respects these ECJ rulings is not a certainty either as they have ignored them in the past (Pech & Scheppele, 2017).

The initial refusal of the EU to activate Art. 7 TEU is often attributed to the Commission's inaction. It is true that it is the Commission is the 'guardian of the treaties' and should therefore be the one undertaking action to ensure Art. 2 TEU is complied with. This critique is partially justified. In the Hungarian case, the Commission kept believing in a 'dialogue', thinking that a justice system that had already lost its independence would still be able to rectify the situation. As for Poland, the multiple rule of law recommendations merely gave the government more time to cement the undermining of their justice system. In the Polish case, the critique is more justified as the Commission should have learned its lesson from Hungary and activated Art. 7 TEU more quickly (Closa, 2020).

However, the Commission is not the only one responsible for action. Art. 7 TEU can also be activated by the Council, the European Council, the European Parliament (EP), and any MS.

The main issue when the European Council wants to activate Art. 7 TEU is that they have to reach unanimity (excluding the backsliding MS). However, reaching unanimity is hard when another MS will always veto the activation to protect an ally. Therefore, the European Council has

remained almost entirely silent. They seemed to be convinced that reaching accession criteria, e.g. the Copenhagen criteria meant to ensure new MSs have a well-functioning liberal democracy, meant that future risks to the liberal foundations of the state were off the table. This is however far from reality and a very dangerous way of thinking, as non-compliance with EU law, fundamental EU values or ECJ rulings threatens the very existence of the Union (Pech & Scheppele, 2017).

The actions of the Council do not deviate much from those of the European Council. The rule of law barely made it onto the Council's agenda. When it did, the ministers adopted a rule of law dialogue rather than activating Art. 7 TEU, for which the Council only needs a 4/5 majority and the approval of the EP. However, this rule of law dialogue, where MSs can exchange views about their justice system, anti-corruption framework, media freedom and other related institutional matters, is ineffective as it lacks independent checks and enforcement mechanisms (Kochenov, 2017).

The EP has been by far the most vocal on the issue. They have passed various resolutions urging the Commission to undertake action and passed the Tavares report on fundamental rights in Hungary. What seems to be the problem in the EP is that they consistently call on other institutions to act. In the Hungarian case, this can partly be explained by party politics. To activate Art. 7 TEU, the EP needs to reach a 2/3 majority. In the Hungarian case, this majority was hard to find as Orban's Fidesz MEPs were affiliated with the European People's Party (EPP), one of the largest parties in the EP. The Hungarians knew how to play the game and were able to paralyse the EP through the EPP, which protected its members. On the other hand, the Poles were affiliated with the much smaller European Conservatives and Reformists (ECR) through which they could not exert as much influence (Pech & Scheppele, 2017). Lastly, not a single MS brought the issue up to the EU. Nobody urged the Commission to undertake action and nobody was able to flag the issue effectively in one of the Councils. However, from a MS perspective, this is understandable as flagging the issue with the Commission would have sparked a political conflict without any assurance that the Commission would take further action. On the other hand, EU MSs share the responsibility of limiting RoLB in the EU as it is a problem that can spread and is becoming more dangerous as the right grows in Europe (Pech & Scheppele, 2017).

The latest addition to the EU's toolkit to fight RoLB is the conditionality mechanism, which entered force in January 2021 (European Commission, 2022a). With this mechanism, the EU can protect its financial interests against backsliding MSs that might waste or misinvest money by



introducing the explicit option to stop funding these MSs (Von Bogdandy & Laczny, 2020). The mechanism is based on the idea that RoLB can affect the proper management and implementation of EU funds and allows for the payout of funds when the rule of law has been reinstated in the MS in question (European Commission, 2022a). As there are still a lot of unanswered questions regarding this mechanism and because the consequences of activating it can be far-reaching, sufficient research is important. The effectiveness of the mechanism specifically, is a large gap in current research. The research questions of this thesis will therefore be the following:

RQ1: To what extent do EU conditionality mechanisms, such as financial sanctions, effectively influence Poland's rule of law?

RQ2: What are the limitations and strengths of these mechanisms in mitigating backsliding tendencies?

Answering these questions will help overcome obstacles to implementing conditionality and increase effectiveness. The expected results of the mechanisms in specific cases could be better predicted, and actions could be better coordinated and adjusted to the specifics of the backsliding.

This thesis will first give an extensive overview of RoLB and how it unfolds, focusing on backsliding in Europe. The second part of the thesis will focus on the situation in Poland, whereafter concrete EU responses, including conditionality, will be discussed. Lastly, the analysis and discussion will focus on the effects of conditionality in Poland and assess whether it is a good way to counteract RoLB.

## 2. What is the rule of law and rule of law backsliding?

### 2.1 Theory

I am myself fully confident in Hungary's democracy and rule of law. This country is a democratic country. Hungary is a democratic country. Hungary has known in a not so distant past what totalitarian regimes are. Prime Minister Orbán himself was fighting against totalitarian regimes. This is a democratic country and I think it's important that we have no doubts about it.

- José Manuel Durao Barroso, joint conference with Viktor Orban, 7 January 2011 (European Commission, 2011)

RoLB is a concept that has emerged more prominently in public debate since 2011 when Hungary took the presidency of the Council. During a joint press conference with Viktor Orban, the then Commission president José Manuel Durao Barroso, commented on the new media law that was passed by the Hungarian authorities the week before and significantly limiting media freedom and journalistic source protection (European Commission, 2011; Human Rights Watch, 2011). At this point in time however, the Commission president emphasised his confidence in the democratic character of Hungary and its ability to uphold the rule of law, as shown in the above quote (European Commission, 2011). Two years later the narrative changed. In a speech delivered on the 22<sup>nd</sup> of April 2013, Viviane Reding, then Commission vice-president and Commissioner for Justice, recognised the systematic nature of RoLB, talking about a “rule of law crisis” and the need to develop more adequate instruments to counteract it (European Commission, 2013).

In EU law, the rule of law is identified as one of the core values of the EU. According to the EU, “Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts” (EUR-lex, 2022). Respecting the rule of law is furthermore a precondition to joining the EU, as identified in the Copenhagen criteria (EUR-lex, 2022).

Finding a standard definition of the rule of law in academic sources is more complicated. Some scholars date the origins of the term back to Greek philosophers such as Aristotle and Cicero. As early as the 4<sup>th</sup> century BC, they identified the importance of the superiority and non-arbitrariness of the law and the independence of lawmakers from the judiciary (Stein, 2009). Later, other scholars formalised these notions. In the 19<sup>th</sup> century, Albert Dicey identified three

basic elements of the rule of law in his book “The Rule of Law”. First, he established that a person cannot be lawfully punished unless they have violated a law that was established through regular means and is enforced by a regular court. This notion refers to the supremacy and non-arbitrariness of the law of Aristotle and Cicero. The second element establishes that all people are equal before the law, regardless of their rank or occupation. The third and final element identified by Dicey relates to the role of case law in developing a formal body of law (Stein, 2009; Law Teacher, 2021).

Contemporary scholars have built on this work and identified necessary components of the rule of law. Lord Bingham defined the rule of law as follows: “[A]ll persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts” (Lord Bingham, 2007, p. 69). Next to this definition, he mentions eight additional principles which he perceives as the consequences of this definition. They relate to the (1) accessibility and predictability of the law; (2) non-arbitrariness and (3) equality before the law; (4) the protection of essential human rights; (5) the swift resolution of disputes; (6) the status of judges; (7) procedural fairness and (8) the obligations of the state under international treaties (Lord Bingham, 2007; Law Teacher, 2021). The different elements mentioned in Lord Bingham’s definition served as the basis for other scholars. Stein (2009) offers a five-part definition emphasising (1) the supremacy of the law to all members and bodies in society (including the government); (2) the stability and predictability of the law and its non-arbitrary character; (3) the accessibility of legal procedures that protect the human rights and dignity of the members of society; (4) the right of people to participate in the creation of the law and (5) the separation of powers. Bedner (2010) identifies two essential functions: (1) ensuring the state cannot infringe upon its citizens’ rights and (2) that the citizens cannot infringe upon other citizens’ rights. The first function refers to the installation of institutional and legal instruments to protect citizens from excessive government control (e.g. the separation of power or free media). The second function originates from a human rights perspective and addresses that it is not only the government that has the power to disadvantage its citizens, this can also be done by citizens themselves (e.g. discrimination based on gender, race, ethnicity) (Bedner, 2010).

EU institutions, to conclude, emphasise six specific elements when talking about the rule of law, of which a great deal are also mentioned by the aforementioned authors: (1) legality; (2) non-arbitrariness of the executive powers; (3) legal certainty; (4) impartial and independent courts;

(5) effective judicial review and respect for fundamental rights; (6) the equality of all people and entities before the law (Pech, 2022). This notion of the rule of law has not always been an integral part of EU law. Although it is rooted in the national constitutions of the EU MSs, the first time it was recognised at EU level was in 1986 with the ECJ case of *Les Verts*, where the judges emphasised the EU is a “community based on the rule of law”. Later, the concept was included in the Maastricht treaty and the Copenhagen accession criteria (Salati, 2019).

When a government tries to, for example, undermine their judicial system, illegally expand its powers outside of what was set in the Constitution, limit the space for civil society and/or the media or not treat all citizens or people equally (or a combination of these factors) the rule of law is undermined and the term ‘rule of law backsliding’ can be used (Grabowska-Moroz & Sniadach, 2021; Stein, 2009). The process of RoLB starts well before these elements start to show. In their 2017 work ‘*Illiberalism Within: Rule of Law Backsliding in the EU*’, Pech and Scheppele identified the process a democracy goes through when the rule of law is undermined (Pech & Scheppele, 2027; Scheppele, 2018).

1. First, a significant number of citizens lose faith in the governmental system, often accompanied by party system crises in which many become alienated from public institutions.
2. These disappointed citizens look for change and vote for a new leader propagating comprehensive reform. The new leader proposes these under the guise of ‘the will of the people’ to maintain a democratic and constitutional rhetoric. They preserve the facade of liberal institutions while they slowly break down the existing constitutional system. The new leader usually uses populist techniques to win over the people.
3. Once in power, the new leader will try to close critical institutions that might resist the change. These include free media, the judiciary system, security services, and other institutions that might limit the leader's powers.
4. The popular vote will be retained by handing out (economic) benefits, which will also positively influence public debate. Civil society groups could be oppressed to avoid negative statements about the new government, and newly captured institutions (e.g. public prosecutors) could further improve the public debate.
5. Next, election laws are changed and/or the opposition is suppressed (by driving them out of the country or by repressing their votes).

6. The affected changes are too complex for the public to recognise the threats to their democracy. When the population starts to realise what is happening, it is often too late to reverse the situation to its original state, as too much damage has been done (there remains no functioning opposition, and the constitutional system is completely undermined).
7. If resistance to the new leader still surfaces, flawed referenda can be organised to reconfirm that the 'will of the people' aligns with the leader's agenda. Because it appears the leader advocated the will of the people, he/she can easily put himself/herself above the democratic system.
8. In the situation that is created, in which opposing voices are eliminated or repressed and electoral laws have been changed, all the leader has to do to get the necessary votes in the next elections is propose imaginary enemies and present himself/herself as the solution or give away more benefits to win over the public. The leader avoids making it look like obvious tyranny by not engaging in massive human rights violations or overt repression.

The same authors offer a standard definition of RoLB (Pech & Scheppele, 2017):

The process through which elected public authorities deliberately implement governmental blueprints which aim to systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic state and entrenching the long-term rule of the dominant party (Pech & Scheppele, 2017, p. 7).

A related term to RoLB is democratic backsliding, which has a broader focus on a country's democracy. Depending on the definition used, a country's democracy consists of various elements such as organising elections, ensuring elected rulers are accountable, universal suffrage, sufficient space for academic and media freedom, the right to organise independent organisations or associations (e.g. political parties)... (Schmitter & Karl, 1991; V-Dem Institute, 2024). Democratic backsliding occurs when one or multiple elements erode without fully breaking down democracy and establishing an authoritarian system (Gora & De Wilde, 2022). RoLB is narrower and focuses explicitly on undermining the judicial system. It can also affect other systems, which could hinder the attainment of the goal (e.g. capturing the media). RoLB can therefore be seen as a symptom of democratic backsliding.

The reasons why democratic backsliding occurs correlate closely to the causes of RoLB. Populist-authoritarian figures, oftentimes fighting against mainstream parties and politicians, (alleged)

corruption, capitalism and globalisation, claiming the country is being left behind in a never-ending progression and blaming an intelligently picked bogeyman are all reasons why a leader would try to break down the system, ultimately just for personal gain (Zamecki & Glied, 2020; Norris & Inglehart, 2018). Claiming a population is threatened by, for example, mass migration, terrorist attacks or the destructive policies of a higher authority, are a frequent strategy to make the population cling to a so-called saviour that will drag them out of this crisis and ensure the damage is contained. This, coupled with easy-to-use and easy-to-manipulate media, can completely shut off the population from different perspectives. In such a situation, the leader has an almost completely free terrain to do as he/she pleases (Zamecki & Glied, 2020).

## 2.2 Rule of law backsliding in Europe

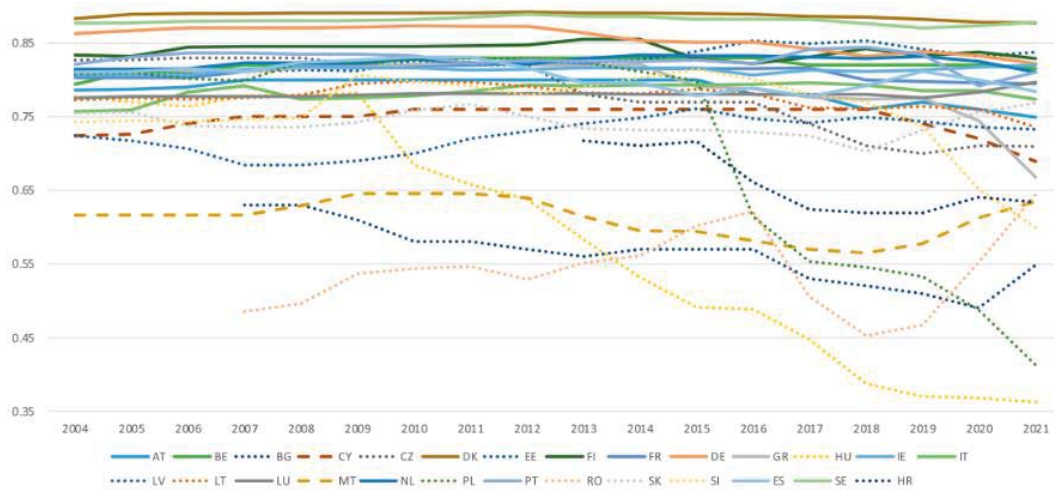
When looking at the current state of RoLB in Europe there appears to be an east-west divide where RoLB occurs more frequently in Central and Eastern European (CEE) countries than in Western European countries (Pech, 2022). There has indeed been more backsliding rhetoric by political elites in CEE countries than in Western European countries and the EU has launched more RoLB-related lawsuits against CEE countries. At EU level itself, CEE MEPs are less vocal during rule of law hearings or debates related to Art. 7 TEU and ask fewer to no questions related to the topic (Pech, 2022).

The abrupt transition from communism to liberal democracy and the artificial creation of democratic institutions such as the judiciary, the civil service, media and anti-corruption commissions, are part of the cause of this east-west divide. While Western European countries went through more gradual development, in which they had centuries to develop democratic institutions, CEE countries experienced an abrupt change from a period in which these institutions were weak to non-existent to a situation in which they rapidly had to build them up (Bugarcic, 2015). As such a rapid build-up is very hard to accomplish (and in the context of EU enlargement), Western European nations stepped in and tried to artificially create these institutions based on the models that worked in the West (Bergling et al., 2010; Bugarcic, 2015). However, this copy-paste model is not very effective as it lacks the will and support of the local political elites and civil society, who are now confronted with a partner holding different ideas and historical notions, trying to assimilate them into a foreign model. Therefore, the institutions will not have the necessary depth and substance as the creation focuses on formal structures instead of actual implementation and change (Hirschl, 2006; Bugarcic, 2015). This, coupled with additional economic and political problems, such as corruption, lower economic development, and a large dual economy, partly explains why democratic institutions in CEE countries are less resistant to threats to the rule of law (Bugarcic, 2015).

When looking at this geographical divide in reality, the post-2004 EU accession countries come forward as having the most problems with democratic and RoLB. Graph 1 gives an overview of the average liberal democracy scores for all EU countries. It is clear to see that CEE countries score consistently lower than Western European countries (Sedelmeier, 2024). When looking at other sources, like the Bertelsmann Stiftung Transformation Index (2024) (which does not have data for Western European countries), most CEE countries are classified as 'democracies in consolidation' or 'defective democracies'. Poland and Hungary specifically, are classified as

‘defective democracies’. Other than Poland and Hungary, countries like Romania, Croatia, Greece, Bulgaria, Malta, and the Czech Republic are often mentioned when researching backsliding countries (Sedelmeier, 2024; Stanley, 2019).

Graph 1: Average liberal democracy scores for Eastern and Western Europe (Sedelmeier, 2024)



Even though reality does provide strong evidence for the east-west divide it is important to remember that not all research is conclusive on this topic. More ideologically-oriented explanations place the divide between elites who try to defend the rule of law and elites who try to find a way to redefine the rule of law and defend this notion (Pech, 2022). This way of thinking links better to reality when looking at CEE countries in more detail. Table 1 (in the annex) gives an overview of commonly used indicators for RoLB and shows that not all CEE countries score consistently low (World Justice Project, 2023). Some countries like Slovakia, Slovenia and the Baltic states score relatively high on most indicators. They have established robust democratic systems that sometimes fluctuate on certain indicators but not to concerning extents. The main issues in these democracies are persistent flaws, such as corruption and socio-economic exclusion, that seem to be unresolvable (Stanly, 2019). Then, there are countries like Poland, Hungary, and the Czech Republic, which have undergone significant democratic development but experienced setbacks in recent years. This is fully in line with the ideologically oriented way of thinking as the backsliding in these countries started with the election of populist politicians (Stanly, 2019). Lastly, there is the group of ‘arrested developers’, like Bulgaria, Croatia and Romania, who have not experienced the same degree of democratisation as other CEE countries. They are characterised by high levels of corruption, political instability and discrimination against minorities and are at risk of being trapped in semi-consolidated



democratic systems where, instead of free and fair elections, the elites use their power to legitimise their position (Stanley, 2019).

The research mentioned above points to the fact that in many of these countries, the main problem is democratic backsliding. Gora and De Wilde (2022) highlighted that, while a lot of the EU's efforts are focused on counteracting RoLB, in many cases the issue is more related to the quality of the democracy, not specifically the rule of law (even though these two are connected). They stress that deliberation in party politics is eroding as parties challenge other parties' legitimacy and right to exist. However, in the case of Poland and Hungary, there is clear evidence of RoLB. The next paragraph will focus on the specific situation in Poland.

### 3. What is the situation in Poland?

RoLB in Poland is a process that has been going on for a while. It is characterised by the introduction of various laws, the most prominent of which are the judicial reforms introduced between 2015 and 2019. These greatly impeded the independence of the judiciary from the government thereby restricting judicial control over the government and introduced constraints on judges (Duncan & Macy, 2020). A central player in the implementation of these reforms is the Law and Justice Party (Prawo i Sprawiedliwość, or PiS), Poland's far right, Eurosceptic party that has been in power since 2015 (Gwiazda, 2021).

Next to the judicial reforms, which will be discussed later, a series of educational and cultural laws were introduced. The first of these was introduced in 2016 and built on the unsuccessful 2007 'Lustration' law. This law introduced 'blacklists' of people suspected to have collaborated with or participated in the communist security services during the Cold War. The people on these lists included journalists, scientists, public sector employees and managers of the sports league and were expected to declare all their activities between 1944 and 1990 (Bafoil, 2021). The 2016 version of this law, introduced right after PiS' electoral victory, prohibited any public reference to communism and stigmatised any person who had worked together with the communist forces by publishing their names in so-called blacklists (Bafoil, 2021). One year later, in 2017, a new law was introduced, reforming the Polish education system. It undid multiple changes implemented by the previous centre-right/liberal government including the duration of primary and secondary schooling. The mandatory age of compulsory education was increased from five to seven years, exacerbating inequalities before this age (Ciepielewska-Kowalik, 2020). Changes in the curriculum were made to better emphasise Polish patriotism, reducing the role of any communist-related historical event and inflating the role of the church, 'Polish heroes' and ethno-Polish citizenship (Bafoil, 2021). Lastly, management changes were made: school directors gained more influence over local government decisions, and the position of teachers was weakened by extending the chance of professional promotion from 10 to 15 years. These changes led to significant disorder and ultimately increased the control of the central government over the educational system (Ciepielewska-Kowalik, 2020). In the field of media and culture, theatre directors were fired and museums were closed for not following the government agenda closely enough or for over-emphasising the West in historical developments. Theatre plays were banned, journalists hostile to the government were removed from office, the public

service broadcaster came under stricter government control and the rules to be nominated to the National Broadcasting Council (NBC) changed (Bafoil, 2021).

The constitutional crisis started with a series of reforms introduced between 2015 and 2019, all aimed at giving the executive branch of the government more power. The first of these reforms was implemented in 2016 when the Polish government transferred all the powers of the General Prosecutor to the Minister of Justice and when this minister forced the nomination of new, government-friendly judges, to the Constitutional Court (Adamska-Gallant, 2022). To regulate the professional and personal activities of the judges, the Sejm (Polish Lower Chamber) created the Supreme Court Disciplinary Chamber. This chamber is responsible for checking if judges are acting within their mandate, in the way it is defined by the government. However, this chamber is highly controversial and has been criticized by EU bodies multiple times (Gajda-Roszczyńska & Markiewicz, 2020). It is led by a prosecutor who was appointed by the PiS Minister of Justice and can investigate the lives of judges very thoroughly (Gajda-Roszczyńska & Markiewicz, 2020). Judges can be penalised for participating in alleged political activities outside of their jobs, in which judicial independence is discussed; they cannot question the legitimacy of other judges and all judges are obliged to declare any membership or participation in public activities outside of their function (Mikuli & Pach, 2022). Possible sanctions for offences include salary cuts and dismissal from public positions (Duncan & Macy, 2020). According to a 2020 Council of Europe report, 1174 judges have been investigated by this Disciplinary Chamber between mid-2018 and 2020, of which 19 have been brought to court (Council of Europe, 2020). Furthermore, in 2018, the members National Council of the Judiciary (NCJ), the body responsible for appointing judges in all of Poland's courts, were replaced by exclusively Sejm members, giving the government full control over which judges are appointed to office (Duncan & Macy, 2020).

Further changes were introduced under the so-called 'Muzzle law' which prohibits Polish judges from following EU case law related to judicial independence (Adamska-Gallant, 2022; Duncan & Macy, 2020). Under this law, Polish judges are not allowed to reaffirm the right to a fair trial or other rights derived from EU treaties related to the right to a fair trial. Judges are also not allowed to question the validity of judicial appointments and cannot criticize political authorities. If they do, they face dismissal or transfers through the Disciplinary Chamber (Adamska-Gallant, 2022).

The remaining changes made to the judiciary system include giving the Supreme Court the quasi-exclusive right to investigate the independence of Polish judges and courts (Court of Justice of

the European Union, 2022) and lowering the mandatory retirement age for male judges from 67 to 65 and for female judges from 67 to 60 (Commission v. Poland, 2019).

When looking at the Polish constitutional crisis from a broader perspective, it is clear the government is trying to completely abolish any government criticism or scrutiny. To select the least government-sceptical candidates, judges are appointed by the (PiS) government through the NCJ. They are thoroughly scrutinised in their professional and personal lives by the Disciplinary Chamber, whose members are again appointed by the (PiS) government. Government criticism can easily be detected and prosecuted by the Supreme Court, composed of (PiS) government-elected judges. To ensure judges appointed before 2019, when the changes were made to the NCJ, were quickly replaced, the mandatory retirement age was lowered (in a gender-discriminatory way) (Duncan & Macy, 2020; Gajda-Roszczyńska & Markiewicz, 2020; Commission v. Poland, 2019). Even when the ECJ tried to remedy the situation, the Polish authorities had a solution: the government referred the matter to the Constitutional Court so they could declare it incompatible with the Polish Constitution (Adamska-Gallant, 2022).

The EU and other international organisations such as the European Network of Councils of the Judiciary (ENCJ) naturally responded to these developments. As mentioned in the introduction, the EU Commission sent various rule of law recommendations to Poland, urging them to reverse the abovementioned laws (Pech et al., 2017). In 2016, right after the election of PiS to the Presidency and the position of Prime Minister, the Commission activated the rule of law framework against Poland to prevent the backsliding situation from evolving to the point where Art. 7 TEU had to be activated (Pech & Scheppele, 2017). In the same year, the EP proposed to create an EU Pact for Democracy, Rule of Law and Fundamental Rights which, although never implemented, would facilitate the cooperation between the EU institutions and the MSs to better follow up on backsliding (European Parliament, 2016). The Council got involved for the first time on the 16<sup>th</sup> of May 2017 when they were asked by the Commission to debate the Polish case in the General Affairs Council (Pech & Scheppele, 2017).

These measures did however not have the desired effects. The same goes for the infringement cases the Commission launched against Poland. These cases are usually based on recurring breaches of the same provisions in EU law which are the following (non-exclusive list) (European Commission, 2023b; European Commission, 2023c):

- Articles 2 and 10 TEU which lay down, among other values, democracy and the rule of law as foundational principles of the EU

- Article 19(1) TEU which lays out the composition of the ECJ and mandates national courts give effective remedies to EU law to ensure it is adhered to and implemented correctly
- Article 157 TFEU under which the MSs are obliged to ensure equal pay for male and female employees in equal positions
- Article 279 TFEU which gives the ECJ the right to order interim measures to ensure the status quo is protected until conclusive legal remedies are granted
- Article 7 of the Charter of Fundamental Rights of the European Union (CFREU), granting to right to a private family life, home and communications
- Article 8 of the CFREU which protects personal data
- Article 47 of the CFREU which grants every person the right to a fair trial and effective legal remedies
- Article 49 of the CFREU which lays out the non-retroactivity of the law and the prohibition of sanctioning more heavily than what is set in the law
- EU GDPR

Even though Poland has been sentenced multiple times to financial penalties (e.g. under case c-204/21 based on Art. 47 CFREU, Art. 19 TEU and Art. 279 TFEU and case c-192/18 based on Art. 19 TEU and Art. 157 TFEU) they do not always follow the ECJ in its conclusion and in some cases even retaliate by claiming the EU has acted outside the powers conferred upon it by the Polish Republic and through simplifying the case matter and focusing on solely the appointment of judges which is indeed outside EU powers (e.g. c-204/21) (Curia, 2021). One thing that did change in response to ECJ rulings in cases c-791/19 and c-204/21 (both based on Art. 19 TEU) was the Supreme Court's Disciplinary Chamber. In the latter case, the ECJ ordered Poland to cease the operations of the chamber and imposed a penalty of one million euros per day if it kept operating. The Polish government ceased the operation of the Disciplinary Chamber and instead created the Chamber of Professional Liability. However, questions remain regarding the independence of this chamber as more than half of the members are elected by the NCJ and the government (Marcisz, 2022).

It is quite shocking to see how much time EU institutions have spent trying to make Poland see reason and reverse the damages to their judicial system. The EU has sent four rule of law recommendations, launched the rule of law framework without success, proposed to create another rule of law pact and encouraged discussions between the MSs. All the while, the Polish

government was clearly backsliding and harming fundamental rights (Pech & Scheppele, 2017). They were laughing in the face of the EU by challenging the legality of EU law and ECJ rulings, not only reactively, after ECJ rulings, but also proactively undertaking legal reviews of EU law (Polish Constitutional Tribunal, 2024). All along, the EU contributed to the survival of the PiS government by giving out massive subsidies that PiS could use to shower its citizens with welfare benefits (Tarasova, 2021). The various infringement procedures effectively did not lose sight of the situation, but they did not deal with the issue. Instead, Art. 7 TEU should have been activated much earlier (Tarasova, 2021).

Leaving the EU aside for now, other international organisations have also expressed their concerns about the developments in Poland. The ENCJ, which unites all bodies responsible for supporting judiciaries in delivering independent justice, took the NCJ's membership away in 2018 as independence of the legislative and executive branches of the government is a precondition of ENCJ membership (European Network of Councils for the Judiciary, 2024). The European Court of Human Rights (ECtHR) has likewise expressed concerns about the independence of the judiciary in Poland after finding multiple violations of Art. 6 of the European Convention on Human Rights and Fundamental Freedoms regarding the right to a fair and public hearing. The cases in which the ECtHR found violations related to the appointment of judges to Polish courts which were found to be irregular as the NCJ played a role in these, the dismissal of judges from Polish courts and the NCJ without clear reason and the flawed composition of the NCJ and the Disciplinary Chamber. The ECtHR even mentioned a case in which Poland's Supreme Court reversed a more than 10-year-old ruling in a defamation case which favoured Lech Walesa, Poland's former President and leader of the anti-communist Solidarity movement (European Court of Human Rights, 2023).

On the 20th of December 2017, the Commission finally decided to activate Art. 7 TEU against Poland. Under Art. 7, a preventive and sanctioning arm work together to ensure a MS can first be notified of the backsliding situation and is given the chance to rectify the situation (Art. 7(1) TEU). If this does not happen, the sanctioning mechanism can be activated under which EU institutions can decide to suspend certain rights granted under the treaties until the situation is resolved (Art. 7(2-3) TEU) (Pech & Grogan, 2019). In Article 7 itself, the only right explicitly referred to is the suspension of voting rights in the Council. However, this never occurred. For a country to lose its voting rights in the Council, all Council members have to agree unanimously and in the case of Poland, this would most likely never have succeeded as Hungary always

supported the PiS government (UK Parliament, 2024). As a way around this problem, the Commission came up with the idea to suspend EU funds destined for Poland. Under this regime, Poland lost access to €137 billion (European Commission, 2024a). Whether this measure is fully legal under Article 7 TEU (or any other EU legal provision) is a topic of debate and will be explored further in the next section (Von Bogdandy & Lachny, 2020).

## 4. EU rule of law instruments

### 4.1 Classical toolbox

The EU has ample mechanisms to fight RoLB, some of which have already been mentioned. They are summarised in Table 2 and will be explained in more detail below. The instruments can be classified as preventive measures and sanctioning or corrective measures. Preventive measures are used to ensure backsliding does not occur in the first place and to establish possible risks and rule of law breaches. They act as early warning systems and exert political pressure on high-risk MSs. Corrective measures are used when the situation has deteriorated so much that preventive measures no longer suffice. They allow extra political and financial pressure to ensure the MS meets EU law again (Skora, 2023).

Table 2: EU rule of law toolbox (partially based on Skora, 2023 and Priebus, 2022)

Preventive approach	Corrective/sanctioning approach
<ul style="list-style-type: none"> <li>• EU Justice Scoreboard (2013)</li> <li>• EU Rule of Law Report (and the European Semester) (2020)</li> <li>• EU Rule of Law Mechanism (and National Rule of Law Dialogues) (2020)</li> <li>• EU Rule of Law Framework (2014)</li> <li>• Cooperation and verification mechanism (2007)</li> <li>• Council Rule of Law Peer Review (2020)</li> <li>• Council Rule of Law Dialogues (2014)</li> <li>• EP resolutions, debates ...</li> <li>• RECONNECT (2018)</li> <li>• Article 7(1) TEU</li> </ul>	<ul style="list-style-type: none"> <li>• Infringement procedures</li> <li>• Article 7(2-3) TEU</li> <li>• Financial conditionality (vs. structural reforms and other forms of financial aid)</li> </ul>

The first of the preventive measures is the EU Justice Scoreboard created in 2013. The Scoreboard is published yearly and tracks various indicators on EU justice systems' quality, efficiency and independence. It provides reliable data to inform MSs on how they can improve



the effectiveness of their justice system and is used to create the EU's annual Rule of Law Report (European Commission, 2024a). This Report is a more qualitative report that tracks MSs profiles in key rule of law areas: anti-corruption, the justice system, media freedom and pluralism and other variables related to checks and balances. The report is made in cooperation with the MSs and hands out clear advice per country. The outputs of the report are also used during the European Semester, in which the results are discussed and used to identify future EU initiatives (European Commission, 2023d).

The Rule of Law Report is the basis for the Rule of Law Mechanism. The mechanism facilitates a dialogue between the EU institutions and the MSs, civil society, and other stakeholders such as the Council of Europe and the Venice Commission, encouraging inter-institutional cooperation and creating positive changes based on the report. The same model also exists on the MS level (the National Rule of Law Dialogues) and is facilitated by the Commission and the Fundamental Rights Agency (European Commission, 2022b). The Rule of Law Framework, on the other hand, is an older mechanism in which the Commission takes the lead in assessing, recommending and following up on MSs' rule of law. The framework was created specifically in response to the developments in Hungary, and its usefulness has already been questioned in the introduction (European Commission, 2023a). To specifically monitor judicial reforms, corruption and organised crime in Bulgaria and Romania, the Commission introduced the Cooperation and Verification Mechanism for Bulgaria and Romania (CVM) in 2007 (European Commission, 2022c). This instrument was introduced as both countries had significant problems in these areas when they joined the EU. It is used to help them develop well-functioning administrative and judicial systems in light of their EU obligations (European Commission, 2022c).

Next to the Commission, the other EU institutions have their own instruments to fight RoLB. There is the Council Rule of Law Peer Review which informs the Rule of Law Dialogue. These two instruments aim to identify problems and irregularities in the MSs who can then help each other through knowledge sharing instead of implementing top-down decisions (Skora, 2023). The EP, specifically the LIBE committee, organises regular debates and resolutions on the rule of law situation in the EU and interacts with local authorities and civil society on the topic (European Parliament, 2024). The last instrument in the preventive category is the RECONNECT project, which was launched under Horizon 2020. This project was launched in response to threats to the rule of law in the EU and aims to, first, ensure a consistent and coherent interpretation and application of democracy and the rule of law in the EU and second, to understand how these

concepts resonate with EU citizens through the actions and practices of national institutions. The project's mission was to respond to the unfolding situations in Hungary and Poland and tackle the EU's so-called legitimacy crisis (RECONNECT, 2020).

Art. 7 TEU falls partly under the preventive measures (Art. 7(1) TEU) and the corrective measures (Art. 7(2-3) TEU), of which the infringement procedure and financial sanctions are also part (European Commission, 2020a). Opposite to financial sanctions (which will be analysed below), the EU also gives technical and financial support to MSs to implement structural reforms to their justice system. The same structures are in place regarding funding opportunities for research, communication, and promotion for civil society organisations that promote effective judicial systems and independent media (European Commission, 2020a).

Judging by the years in which the Commission created these instruments, it can be concluded that they rightly picked up on the problem when it started to develop (in 2010) and appeared to be quite concerned with the rule of law as it developed so many instruments to support it. However, the effectiveness of these measures has been contested for a long time, and it is nearly impossible for EU authorities to notice that they were not effective. Next to a reluctance to use the instruments they had, there was a mismatch between the EU remedies and the causes of the problem. The EU relied too much on prevention and dialogue which are only effective in raising awareness and providing information on a topic. To counteract deliberate non-compliance with EU law, harder instruments, such as financial sanctions, are more effective (Priebus, 2022). This can even be observed in some of the infringement procedures against Poland, for example, case c-204/21 which led to the dissolution of the Disciplinary Chamber (Marcisz, 2022). The question now is, why did the EU not do anything when its actions failed? The literature offers various explanations for this. Kelemen (2020) attributes this to what he calls the 'authoritarian equilibrium'. Because a big part of the EU is based on intergovernmental cooperation, the system is prepared to tolerate a low level of soft authoritarianism as it is reluctant to interfere in national matters and override its mandate (Tarasova, 2021). Other authors attribute this reluctance to the high thresholds that must be reached to activate harder measures such as Art. 7 TEU and the political character of the provision as the role of the ECJ in Art. 7 is limited. The bulk of the procedure would be in the hands of the MSs and the Commission, which is harder to justify legally (Kochenov, 2023). Further criticism is based on the slow execution of corrective measures and the Polish non-compliance with ECJ rulings and EU conclusions (Skora, 2023).

In response to the issues the EU encountered in counteracting RoLB and activating the sanctioning arm of Art. 7 TEU, a more accessible instrument was developed based on Art. 322 TFEU. Through this instrument, the EU can lay down financial rules that determine how the EU budget is used, thereby introducing an element of conditionality to EU funding.

## 4.2 Conditionality

Conditionality clauses in EU law are not a new phenomenon. They find their origins in the EU's external relations. Association and trade and cooperation agreements include human rights conditionality clauses, which make it legal for the EU to suspend its aid when human rights violations are established (Bartels, 2005). Other examples of conditionality in EU law are the macroeconomic conditionality (Sacher, 2029) and the ex-ante and ex-post conditionality in the 2014-2020 multiannual financial framework (MFF) (Von Bogdandy & Lacny, 2020). In 2020, in response to the dire situation in Poland, the EU introduced another piece of secondary legislation that aims to protect the EU budget after it has been handed out to the MSs: the conditionality mechanism (Council regulation 2020/2092, 2020).

EU law conditionality is when a MS must first meet specific criteria formally established under EU law before accessing certain benefits. This compliance should continue in the future, and non-compliance should be penalised by taking away the benefits (Von Bogdandy & Lacny, 2020). A conditionality mechanism defines how the EU works with its MSs and goes one step further than the principle of sincere cooperation (Art. 4(3) TEU). The change from sincere cooperation to conditionality was brought about after the 2004 eastern enlargement, when concerns were raised that the new MSs would not be fully prepared to meet all obligations under EU law (Cremona, 2005). This accession conditionality consists of various criteria (e.g. Copenhagen criteria) that promote a well-functioning market economy, the protection of minorities, good governance, stable institutions and the rule of law (Feldman & Watson, 2002).

The reasoning behind the new mechanism is that a backsliding government cannot guarantee EU funds are soundly managed (Von Bogdandy & Lacny, 2020). This idea complements the broader assumption that EU values should be respected in all EU policies. Therefore, the EU budget should be a driver of "European added value" (p. 2) (European Commission, 2018). In the case of Poland between 2015 and 2023, this idea was not upheld as the Polish government increased welfare benefits for its citizens, a policy financed by EU funds, while blatantly disregarding EU laws and values (Bafoil, 2021; Tarasova, 2021). When such 'generalised deficiencies' are established, the EU allows itself to protect its financial interests (European Commission, 2020b).

The mechanism is set out in regulation 2020/2092 and was first proposed by the Commission in May 2018. The regulation defines breaches of the rule of law in two steps. First, there is a general description (Council regulation 2020/2092, 2020, p. 6):

- (a) endangering the independence of the judiciary;
- (b) failing to prevent, correct or sanction arbitrary or unlawful decisions by public authorities, including by law enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interest;
- (c) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.

Then, the regulation further specifies this and refers to the proper functioning of officials that manage, implement and control the EU budget, of authorities carrying out any investigations related to the implementation of the budget (e.g. tax fraud, corruption) and the cooperation with EU institutions on the budget, allowing for effective judicial review, the reimbursement of unduly paid funds and any other situations related to the sound financial management of the EU budget (Council regulation 2020/2092, 2020). These breaches should be recurring and widespread and should specifically (risk) affecting the sound financial management of the EU budget (Von Bogdandy & Lacny, 2020). The EU decided to work with an open-ended list of potential breaches to allow for some flexibility (Lacny, 2021).

When recurring breaches are established within a single MS, possible sanctions include the suspension or reduction of payments or economic advantages and a prohibition from entering into new legal commitments or loans guaranteed by the EU budget. Further sanctions related to budget implementation under shared management with other MSs include suspending programmes, payouts, commitments, pre-financing or payment deadlines. The sanctions are imposed after the Commission has identified a breach of the rule of law and informed the MS, the Council and the EP. At this point, the MS can still rectify the situation to avoid sanctions, which are decided on by the Commission and the Council (the EP is only informed). These sanctions can be lifted only when the conditions that led to their imposition are no longer fulfilled (Council regulation 2020/2092, 2020).

The regulation is based on Art. 322 TFEU, which gives the EU the competence to lay down the rules by which the budget should be established and implemented. Next to Art. 322 TFEU, the conditionality mechanism affirms Art. 317 TFEU, mandating the Commission and the MSs to work together to implement the budget to ensure sound financial management. Lastly, Art. 325

TFEU is relevant for the mechanism as it establishes an obligation for the Union and the MSs to combat fraud (Lacny, 2021). However, looking at EU secondary law more closely, it could be said that the EU authorities already have a way to suspend funds in cases of bad management. Under the Common Provisions Regulation (CP regulation), the EU can suspend the European Structural and Investment Funds (ESIF) payments used to implement the Cohesion Policy. In cases of malmanagement and/or deficiencies in the national control over this budget, the Commission can decide to suspend these funds. Even Art. 7 TEU could provide the option to suspend funds, although it does not explicitly refer to financial penalties. The new conditionality mechanism complements these two regulations in that it both refers to monetary penalties and a breach in one of the values laid down in Art. 2 TEU (Von Bogdandy & Lacny, 2020).

In the case of Poland, about 137 billion euros have been suspended for multiple reasons, the most prominent ones being the instalment of the Disciplinary Chamber, the fines imposed on Poland by the ECJ that they have refused to pay and the unlawful suspension of judges unfriendly to the government (Buras, 2022). Next to these rule of law breaches, Poland did not meet the necessary 'enabling horizontal conditions' in the CP regulation, which MSs must meet to guarantee effective management and use of EU funds (Council Regulation 2021/1060, 2021). The blocked funds originate from the Cohesion Policy Funds (76.5 billion euros) and Poland's National Recovery and Resilience Plan under the NextGenerationEU package (59.8 billion euros) (European Commission, 2024b). However, this suspension of funds was not based on the conditionality mechanism and finding the exact legal basis used to justify the suspension proved difficult. Even though the conditionality mechanism was not explicitly used to suspend the funds, this situation does provide a good case to evaluate the effectiveness of financial conditionality in restoring the rule of law in an EU MS.

## 5. Methodology

### 5.1 Research questions

This thesis aims to research how adequate withholding funds is in counteracting backsliding. The first research question seeks to determine whether conditionality has effectively counteracted RoLB in Poland between 2015 and 2023 (PiS term). While research on the new conditionality mechanism is scarce, other research on, for example, accession conditionality finds that it is indeed a successful policy tool if it is applied consistently and clearly (Grabbe, 2023). Previous research on financial conditionality has hypothesised that the mechanism might indeed increase the chances and pace with which sanctions are imposed but has expressed concerns about the procedural architecture (Blauberger & Van Hüllen, 2021; Von Bogdandy & Lacny, 2020). The first research question is therefore:

RQ1: To what extent do EU conditionality mechanisms, such as financial sanctions, effectively influence Poland's rule of law?

At the end of the analysis, the limitations and strengths of financial conditionality will be discussed, and concrete proposals for policy improvement will be made. Previous research has indicated that EU budget conditionality (e.g. ex-ante conditionality) has in the past been complex to access and could have asymmetric effects on the MSs, it does promote cooperation and can be a valuable instrument in addressing challenges the EU is facing (Kölling, 2017). Kölling (2017) argues that future financial conditionality should be more closely linked to the objectives it tries to reach and initiatives promoting the most European added value. To build on this research and to see if the EU adequately responds to past challenges, a second research question will be answered:

RQ2: What are the limitations and strengths of these mechanisms in mitigating backsliding tendencies?

## 5.2 Theoretical framework and data

The World Justice Project's (WJP) conception of the rule of law will be used to answer the research questions. The model uses 44 indicators that are grouped into eight factors to measure and define the rule of law (World Justice Project, 2024):

- *Constraints on government powers*: how well is government power limited and held accountable by law and institutional measures (e.g. checks by the legislature, judiciary, independent agencies, media, civil society), how does power pass from one person to the next and how are officials held accountable.
- *Absence of corruption*: examination of bribery, misappropriation of public funds or resources and improper influence by public or private interests in four areas of the government (the executive branch, the judiciary, the military and police and the legislature).
- *Open government*: measurement of the extent to which the government fosters citizen participation, empowers its citizens with tools to hold the government accountable and shares quality information.
- *Fundamental rights*: evaluation of the protection of key human rights established under international law (e.g. equal protection, the right to life and security, due process, freedom of opinion, belief and assembly, privacy and labour rights).
- *Order and security*: how well does society ensure the protection of property and individuals. As a defining aspect of the rule of law, order and security are preconditions for the rights the rule of law seeks to give.
- *Regulatory enforcement*: are government regulations effectively and fairly implemented? This factor does not measure which regulations a government passes; rather, it measures how well they are implemented and how well they structure the behaviour of their target audience.
- *Civil justice*: can ordinary people resolve disputes in a peaceful and timely manner? The factor specifically measures the absence of discrimination, corruption and outside influence and has an indicator evaluating alternative dispute resolution mechanisms (e.g. mediation and arbitration systems)
- *Criminal justice*: can the criminal justice system investigate and settle criminal cases in a timely way and without discrimination, corruption and outside influence? This is a



holistic factor that considers the entire system, including crime reduction, police, lawyers, judges, prosecutors and prison officers.

Next to the indicators provided by the WJP, other factors that stood out during the literature study will also be incorporated:

- Media freedom (measured with Reporters without Borders dataset and Freedom House dataset)
- Judicial independence (measured with ENCJ dataset and V-Dem)

The WJP indicators and their sub-indicators are summarised in Table 3. Explicitly listing the indicators can give a better idea of what the factors encompass. The corresponding dataset will be used next to the rule of law framework proposed by the WJP. Additional data from the V-Dem report and Reporters Without Borders will be used to explain and corroborate extra insights to ensure a complete analysis. The data will be analysed using statistical programmes such as SPSS and Excel and the results will be presented in the annex. To comprehensively explain the quantitative data, the literature study and possible additional literature research will be undertaken to contextualise the findings. This triangulation is done to ensure that the shortcomings of one method are rectified. The analysis focuses on the period between 2012 and 2023, as the WJP only provides data for these years. The other sources can provide data from different years, but to specify the analysis, this data will not be considered.

## 6. Analysis

### 6.1 Description of the PiS government

#### 6.1.1 Rule of law index

An interesting trend appears when looking at the indicators put forward by the WJP. For almost all indicators except ‘absence of corruption’ and ‘order and security’, there seems to be a downward trend from 2012 until 2014 that improved in 2015 when the PiS government entered office. All the figures for the indicators then go down again one year later in 2016. A few technical notes should be made before looking at the data in more detail. Poland’s indicators will be compared with global and regional scores in certain parts of the analysis. The regional scores include those of the EU countries, EFTA countries, and North America. All the WJP results are scored on a scale from 0-1, V-Dem data is scored differently. These scales are indicated in Annex 1, which explains what the V-Dem indicators encompass.

‘Limits on government power’ peaked in 2015 (0.72) but then decreased steadily until 2023, when the value dropped to 0.64, as seen in Table 4 (World Justice Project, 2023). With this score, Poland is below the global average of 0.54 and the regional average of 0.74. The straightforward explanation for this is the changes made to the judiciary by the PiS government (introduction of the Disciplinary Chamber, the changes made to the NCJ, the Muzzle Law and the changes to the retirement age for judges). However, looking deeper at the WJP data, it seems the Polish Parliament has even less power over the government than the judiciary (WJP scores of 0.45 and 0.50 respectively). Non-governmental checks and especially independent auditing scores are quite low, with scores of 0.58 and 0.46 respectively (World Justice Project, 2023).

Table 4: WJP scores for ‘constraints on government power’ (World Justice Project, 2023<sup>1</sup>)

	EU average	Poland
2012-2013	0.74	0.78
2014	0.75	0.73
2015	0.74	0.77
2016	0.75	0.68
2017-2018	0.75	0.61

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<sup>1</sup> World justice project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Constraints%20on%20Government%20Powers/>

2019	0.75	0.58
2020	0.74	0.58
2021	0.73	0.54
2022	0.73	0.54
2023	0.73	0.53

Start of PiS term

The V-Dem dataset indicates a similar trend when looking at relevant indicators. The first factor, ‘Judicial constraints on the executive’, shows how much the executive branch of the government respects the Constitution and court rulings and to what extent the judiciary can act independently (scored from 0-1, low – high). ‘Executive oversight’ measures the possibility that the executive branch engaged in illegal, unconstitutional or unethical activities and how probable it is someone (ombudsman, General Prosecutor...) would have questioned or investigated this (scored from 0-1, extremely unlikely - certain or nearly certain). The score last factor, ‘Executive respects Constitution’, indicates the executive can violate some Constitutional provisions without legal consequences (scored from 0-4, Constitution is violated without legal consequences – Constitution is never violated). Table 5 presents this data (V-Dem Institute, 2024). Here, too, the PiS government introduced changes in how the government functions.

Table 5: V-Dem scores for constraints on government powers (V-Dem Institute, 2024<sup>2</sup>)

	Judicial constraints on executive	Executive oversight	Executive respects constitution
2012	0.97	3.08	3.32
2013	0.96	3.08	3.13
2014	0.96	3.08	3.13
2015	0.88	3.05	2.48
2016	0.79	2.88	2.10
2017	0.70	2.88	2.06
2018	0.60	2.88	2.06
2019	0.58	2.82	2.06
2020	0.57	2.66	2.02
2021	0.53	2.66	2.02

<sup>2</sup> V-Dem Institute (2024): [https://v-dem.net/data\\_analysis/Yearcomp2Graph/](https://v-dem.net/data_analysis/Yearcomp2Graph/)

2022	0.57	2.58	2.02
2023	0.55	2.79	2.15

■ Start of PiS term

A brighter picture is painted when looking at the indicators ‘Absence of corruption’ in Table 6 and ‘Order and security’ in Table 7. Both indicators match the EU average and do not systematically decrease after 2015. The only difference is pre-2015, where ‘Absence of corruption’ decreased in 2014. The reason ‘Absence of corruption’ is so high is mainly due to the sub-indicators of government officials in the judiciary and the police and military not using public office for private gain (both 0.87) (World Justice Project, 2023). However, this result is somewhat invalidated when looking at other data scores. Transparency International (2023) and Statista (2024) do not classify Poland as high on ‘Absence of corruption’, giving them a score of 54/100. On the other hand, V-Dem is more closely related to the WJP, showing a decrease in the perception that executive officials or their staff would engage in corrupt activities, as shown in Table 8 (V-Dem Institute, 2024). However, considering the recent visa scandal, WJP data on corruption might not be current (Bienvenu, 2023).

Table 6: WJP scores for ‘Absence of corruption’ (World Justice Project, 2023<sup>3</sup>)

	EU average	Poland
2012-2013	0.73	0.72
2014	0.72	0.66
2015	0.72	0.67
2016	0.73	0.74
2017-2018	0.72	0.72
2019	0.73	0.73
2020	0.72	0.73
2021	0.71	0.72
2022	0.71	0.72
2023	0.71	0.72

<sup>3</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Absence%20of%20Corruption/>

Table 7: WJP scores for 'Order and security' (World Justice Project, 2023<sup>4</sup>)

	EU average	Poland
2012-2013	0.73	0.72
2014	0.72	0.66
2015	0.72	0.67
2016	0.73	0.74
2017-2018	0.72	0.72
2019	0.73	0.73
2020	0.72	0.73
2021	0.71	0.72
2022	0.71	0.72
2023	0.71	0.72

Table 8: V-Dem scores for absence of corruption (V-Dem Institute, 2024<sup>5</sup>)

	Executive bribery and corrupt exchanges
2012	3.41
2013	3.41
2014	3.41
2015	3.37
2016	3.19
2017	3.19
2018	3.04
2019	3.04
2020	3.04
2021	3.04
2022	3.04
2023	3.15

■ Start of PiS term

<sup>4</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Order%20and%20Security/>

<sup>5</sup> V-Dem Institute (2024): [https://v-dem.net/data\\_analysis/Yearcomp2Graph/](https://v-dem.net/data_analysis/Yearcomp2Graph/)

For ‘Regulatory enforcement’, in Table 9, the same trend can be observed as for ‘Order and security’, with the only difference being that Poland scores systematically below the EU average. On the one hand, this stable number seems strange as regulatory institutions such as courts and tribunals have been seriously weakened due to political interference and no longer make independent rulings, and legal certainty has been significantly reduced (Velasco-Rivera, 2021). The high score (0.88) for the WJP sub-indicator ‘government regulations are applied and enforced without improper influence’ would prove the opposite (World Justice Project, 2023<sup>6</sup>). However, the indicator does not measure which regulations a government passes, only how well they are applied and enforced. Laws made by a government bypassing the Constitution are not what this indicator measures; it is how well these are implemented and create change in the real world (World Justice Project, 2023). When it comes to enforcing EU law, however, the Polish government did not perform well, openly attacking the legality of EU law (for example, ECJ case c-192/18) and refusing to enforce and implement legislation (Curia, 2021).

Table 9: WJP scores for ‘Regulatory enforcement’ (World Justice Project, 2023<sup>7</sup>)

	EU average	Poland
2012-2013	0.68	0.61
2014	0.67	0.59
2015	0.70	0.62
2016	0.70	0.64
2017-2018	0.71	0.63
2019	0.72	0.62
2020	0.71	0.62
2021	0.71	0.61
2022	0.71	0.63
2023	0.71	0.63

■ Start of PiS term

For ‘Open government’, in Table 10, and ‘Fundamental rights’, in Table 11, the same downward trend can be found. The data decreases until 2015, then rises, and decreases again in 2016. In

<sup>6</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Regulatory%20Enforcement/>

<sup>7</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Regulatory%20Enforcement/>

the field of ‘Open government’, WJP finds that ‘the right to information for citizens’ is the biggest problem. Poland scores below the global average (0.50) and far below the regional average (0.66) with a score of 0.48 (World Justice Project, 2023). This low score could be explained by the frequent attacks on public access to information (e.g. possible amendments made to the act of 6 September 2001 on Access to Public Information establishing the right to information) (Article 19, 2021). Whether these attacks led to actual legislative changes is unclear (Article 19, 2021). However, media and journalistic freedom have been greatly limited by the PiS government, decreasing the amount of information flowing to citizens (see next paragraph) (Klimkiewicz, 2023). The other sub-indicators (‘Publicized laws and government data’, ‘Civic participation’ and ‘Compliant mechanisms’) score between the global and regional averages. These low scores can be attributed to the lack of a coherent strategy and governance framework, an open data ecosystem, the necessary infrastructure for this and the lack of relevant skills (OECD, 2015).

Under ‘Fundamental rights’ (Table 11), the worst performing factor is the ‘Guarantee of freedom of belief and religion’. With 0.54, Poland scores below the global average (0.63) and the regional average (0.77) (World Justice Project, 2023), a number confirmed by V-Dem, which finds a clear decrease in ‘Equality before the law and individual liberty’ (see Table 12) (V-Dem Institute, 2024). Other fundamental rights, specifically media and press freedom, will be discussed in the next paragraph.

Table 10: WJP scores for ‘Open government’ (World Justice Project, 2023<sup>8</sup>)

	EU average	Poland
2012-2013	0.67	0.59
2014	0.63	0.56
2015	0.72	0.72
2016	0.72	0.72
2017-2018	0.72	0.66
2019	0.72	0.63
2020	0.71	0.60
2021	0.71	0.59
2022	0.71	0.60
2023	0.71	0.58

<sup>8</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Open%20Government/>

Table 11: WJP scores for ‘Fundamental rights’ (World Justice Project, 2023<sup>9</sup>)

	EU average	Poland
2012-2013	0.79	0.85
2014	0.78	0.72
2015	0.79	0.76
2016	0.79	0.74
2017-2018	0.77	0.66
2019	0.78	0.66
2020	0.77	0.64
2021	0.77	0.61
2022	0.77	0.61
2023	0.77	0.61

Table 12: V-Dem scores for equality before the law and individual liberty index (V-Dem Institute, 2024<sup>10</sup>)

	Equality before the law and individual liberty
2012	0.97
2013	0.96
2014	0.96
2015	0.95
2016	0.92
2017	0.87
2018	0.87
2019	0.86
2020	0.82
2021	0.81
2022	0.81
2023	0.84

■ Start of PiS term

<sup>9</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Fundamental%20Rights/>

<sup>10</sup> V-Dem Institute (2024): [https://v-dem.net/data\\_analysis/Yearcomp2Graph/](https://v-dem.net/data_analysis/Yearcomp2Graph/)



Lastly, criminal and civil justice share the same downward trend, although it is stronger for criminal justice (see Tables 13 and 14 respectively). Unsurprisingly, the three worst performing factors for civil justice in Poland are (1) ‘Civil justice if free of improper government influence’ (Poland: 0.47; global average: 0.52; regional average: 0.75) (2) ‘Civil justice is not subject to unreasonable delay’ (Poland: 0.34; global average: 0.44; regional average: 0.52) and (3) ‘Civil justice is effectively enforced’ (Poland: 0.52; global average: 0.51; regional average: 0.67) (World Justice Project, 2023). Similar data is found for the delivery of criminal justice with the indicator ‘Criminal system is free of improper government influence’ scoring 0.42 (global average: 0.46; regional average: 0.74) (World Justice Project, 2023). However, both factors perform very well regarding impartiality, anti-discrimination, and anti-corruption (World Justice Project, 2023).

Table 13: WJP scores for ‘Civil justice’ (World Justice Project, 2023<sup>11</sup>)

	EU average	Poland
2012-2013	0.67	0.63
2014	0.67	0.62
2015	0.71	0.66
2016	0.71	0.67
2017-2018	0.71	0.65
2019	0.71	0.64
2020	0.70	0.63
2021	0.69	0.61
2022	0.69	0.61
2023	0.69	0.61

<sup>11</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Civil%20Justice/>

Table 14: WJP scores for 'Criminal justice' (World Justice Project, 2023<sup>12</sup>)

	EU average	Poland
2012-2013	0.69	0.73
2014	0.66	0.69
2015	0.68	0.73
2016	0.68	0.69
2017-2018	0.67	0.62
2019	0.67	0.61
2020	0.66	0.60
2021	0.66	0.58
2022	0.66	0.58
2023	0.66	0.58

■ Start of PiS term

When all of this is considered, and the general rule of law scores for Poland (shown in Table 15) are examined, the down-up-down trend persists (slight decrease before the PiS term, increase in 2015, and further decrease until 2023). In the following paragraphs, other relevant elements of the rule of law will be described to eventually determine the influence of financial conditionality on RoLB in Poland.

<sup>12</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/Criminal%20Justice/>

Table 15: General WJP scores (World Justice Project, 2023<sup>13</sup>)

	EU average	Poland
2012-2013	0.72	0.72
2014	0.71	0.67
2015	0.74	0.72
2016	0.74	0.72
2017-2018	0.74	0.67
2019	0.74	0.66
2020	0.73	0.66
2021	0.73	0.64
2022	0.73	0.64
2023	0.73	0.64

■ Start of PiS term

<sup>13</sup> World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/country/2023/Poland/>

### 6.1.2 Media freedom

Free media are essential to ensure the rule of law is upheld. They act as a fourth power, ensuring governments are transparent and accountable. They can function as early warning systems by informing others of possible power abuses by the government, keeping citizens involved and analysing the application of the law (Blackall & Tenkate, 2008). Keeping the public informed about court procedures is a precondition for the public to trust their justice system and be willing to settle disputes through these procedures (McLachlin, 2012). Backsliding governments often try to capture the media to prevent critical journalists from expressing their opinions and to introduce a favourable bias to the regime (Kapidzic, 2020). Media freedom and pluralism are furthermore central to the EU's strategy to enforce the rule of law. Through the European Media Freedom Act, the EU tries to protect journalists and their sources, journalists' independence and that of their organisations and ensure more transparency in online media sources. Media freedom is furthermore a central variable in the Rule of Law Mechanism and Rule of Law Report (European Commission, 2021).

Under the guise of, among others, 'countering Russian influence', the PiS government introduced the National Media Council Act (NMCA) in 2016, through which they could influence the staffing of media agencies, thereby shaping what was being published. This body, composed of government elected officials, replaced the NBC as the new media regulator. The new body would, presumably, only make decisions in favour of the PiS party and significantly undermine the independence of the public service broadcaster (International Press Institute, 2022). Further economic and legal pressures were put on commercial media by introducing a tax on advertising (Guzek & Grzesiok-Horosz, 2022). The EU Rule of Law Report confirmed these results, finding high risks to editorial independence, possible influence from commercial and public owners and unfair advertisement distribution practices (European Commission, 2023d). Journalistic source protection was also undermined, mainly when insults were aimed at the government, a crime punishable by imprisonment (Reporters Without Borders, 2024).

When looking at other data about the independence of Polish media, Freedom House (2024) mentions practices like purges of journalists, homophobic rhetoric in public media, using the media to create undue advantages in parliamentary elections and the use of media as propaganda tools when describing the Polish media landscape. During the 2021 refugee crisis at the Belorussian border, journalists were (violently) arrested and prohibited from covering the crisis (Reporters Without Borders, 2024). Even though practices like these are discovered in the

Polish media system, Freedom House (2024) does rate the freedom of Polish media relatively high at 3/4. This high score could be attributed to the diverse private media landscape, which, while under government pressure, still held up during the PiS term and enjoyed solid public support (Reporters Without Borders, 2024).

When looking at more quantitative data, the Centre for Media Pluralism and Media Freedom (CMPF) finds the same shortcomings. Regulatory autonomy is not guaranteed, journalists and journalists' sources are not well-protected and even threatened with prison sentences, public participation in media was silenced through an impressive amount of SLAPP lawsuits and concerns are mentioned about the possible use of Pegasus spy software against political opposition members (Klimkiewicz, 2023). The risk to these fundamental rights is rated as 'medium' (50%) by the CMPF, as shown in Graph 2. Table 16 is more detailed, revealing the risk level for specific fundamental rights (Klimkiewicz, 2023). These risk categories are scored as percentages, with lower percentages indicating lower risk.

Table 16: Risk categories of fundamental rights in Poland (Klimkiewicz, 2023<sup>14</sup>)

Protection of freedom of expression	64%	Medium risk
Protection of the right to information	46%	Medium risk
Journalistic profession, standards and protection	48%	Medium risk
Independence and effectiveness of the media authority	60%	Medium risk
Universal reach of traditional media and access to the internet	33%	Low risk

However, Poland's worst score was for political independence in the media. Preventing political bias and influence in news production and ensuring diverse output is hindered by excessive government control over appointments and dismissal in the media sector, limiting the editorial autonomy of the industry. New PiS laws on state-related advertising favour government-friendly outlets, further worsening the propaganda concerns raised earlier. The absence, or better politicisation, of regulatory safeguards, allowed the situation to continue. The risk category for political independence of media is, therefore, the worst of all, scoring 75%. The specific data are laid out below in Table 17 and show that the risk is greater for legacy outlets than for newer digital media (Klimkiewicz, 2023).

<sup>14</sup> See CMPF report by Klimkiewicz (2023): [https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland\\_results\\_mpm\\_2023\\_cmpf.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland_results_mpm_2023_cmpf.pdf?sequence=1&isAllowed=y)

Table 17: Risk categories of political independence of the media in Poland (Klimkiewicz, 2023<sup>15</sup>)

Political independence of the media	96%	High risk
Editorial autonomy	75%	High risk
Audiovisual media, online platforms and elections	53%	Medium risk
State regulation of resources and support to the media	67%	High risk
Independence of Public Service media	83%	High risk

Even though media ownership in Poland has become slightly more transparent, figures on market plurality in Table 18 show the government's considerable influence over the general media landscape. The 2021 takeover of Polska Press, one of Poland's largest publishers, transferred 32% of its voting rights to PKN Orlen, a state-controlled oil company (Article 19, 2022). The takeover was approved by the Polish Office of Competition and Consumer Protection, which gave rise to much criticism, especially as it was followed by a series of dismissals of regional editors-in-chief (14 out of 15 resigned or were dismissed) and showed broader problems in the application of Poland's anti-trust laws. Market plurality is therefore also categorised as high risk at 71% (Klimkiewicz, 2023). The large concentration of the media sector might also influence the risks to social inclusiveness, which is ranked as a medium risk at 63% and is displayed in Table 19. Although minorities are well-represented, there are only a few women in leading positions and the government's acquisition of media outlets harms the viability of local media outlets. (Klimkiewicz, 2023).

Table 18: Risk categories of media market pluralism (Klimkiewicz, 2023<sup>16</sup>)

Transparency of media ownership	50%	Medium risk
Plurality of media providers	90%	High risk
Plurality in digital markets	83%	High risk
Media viability	53%	Medium risk
Editorial independence from commercial and owners influence	77%	High risk

<sup>15</sup> See CMPF report by Klimkiewicz (2023):

[https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland\\_results\\_mpm\\_2023\\_cmpf.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland_results_mpm_2023_cmpf.pdf?sequence=1&isAllowed=y)

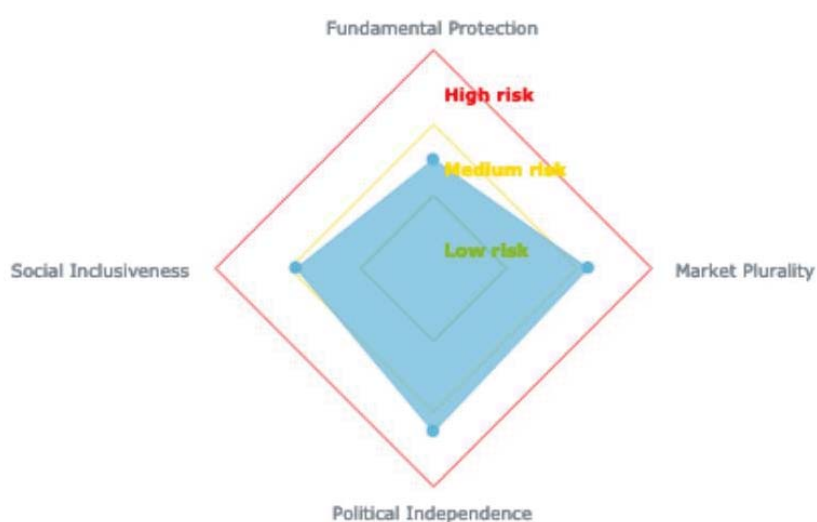
<sup>16</sup> See CMPF report by Klimkiewicz (2023):

[https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland\\_results\\_mpm\\_2023\\_cmpf.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland_results_mpm_2023_cmpf.pdf?sequence=1&isAllowed=y)

Table 19: Risk categories of social inclusiveness in media (Klimkiewicz, 2023<sup>17</sup>)

Representation of minorities in the media	49%	Medium risk
Local/regional and community media	71%	High risk
Gender equality in the media	67%	High risk
Media literacy	70%	High risk
Protection against disinformation and hate speech	56%	Medium risk

Graph 2: Risks to media pluralism in Poland (Klimkiewicz, 2023<sup>18</sup>)



<sup>17</sup> See CMPF report by Klimkiewicz (2023): [https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland\\_results\\_mpm\\_2023\\_cmpf.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland_results_mpm_2023_cmpf.pdf?sequence=1&isAllowed=y)

<sup>18</sup> See CMPF report by Klimkiewicz (2023): [https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland\\_results\\_mpm\\_2023\\_cmpf.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland_results_mpm_2023_cmpf.pdf?sequence=1&isAllowed=y)

### 6.1.3 Judicial independence indicators

When looking at specific V-Dem variables on judicial independence and the functioning of the judiciary shown in Table 20 in the annex<sup>19</sup>, almost all variables worsened under the PiS government (V-Dem Institute, 2024). The codebook necessary to interpret this table is in Annex 1.

The biggest changes can be found in 'Judicial purges', 'Government attacks on the judiciary', 'High Court independence' and 'Lower Court independence'. For all these variables the decrease is larger than one point. The reasons for these changes are the PiS government's actions which have been extensively covered in previous chapters (V-Dem Institute, 2024). Some of the decreases had already started before the start of the PiS term. However, the decrease during the PiS term is considerably larger than the decrease before. The decrease before (and some of the decrease during the PiS term) also corresponds with a larger European trend indicating (slight) democratic decay (Lindberg, 2018).

The only two factors that did not significantly decrease were 'Judicial accountability' and 'Judicial corrupt decision-making'. The latter corresponds to other sources cited above. As for judicial accountability, a variable capturing if judges who were found to have engaged in serious misconduct would have been held accountable or removed from their post, the result is surprising as some of the actions by the PiS government did decrease accountability. The merging of the posts of the Minister of Justice and the General Prosecutor or the changes made to the NCJ would indicate a stronger decrease in judicial accountability (Zoll & Wortham, 2018). This of course depends on how judicial accountability is measured and how the data is collected: a court with judges elected by the government can, in theory, still be held accountable to that government. In this case, accountability is not the issue, it is the way the judges are appointed.

The last two variables in Table 19, access to justice for men and women, are not originally from the V-Dem scale for the judiciary. This number is, however, interesting to show, as it has not come up in the analysis elsewhere and decreases quite a bit during the PiS term (V-Dem Institute, 2024). Previous research on citizens' access to the judiciary in backsliding countries mainly focuses on access to independent and impartial courts, not necessarily on general access (Bustos Gisbert, 2022). Even though there is not yet much scientific evidence on this topic, it most certainly is a fundamental right and therefore valuable in an analysis of RoLB.

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<sup>19</sup> For all data see V-Dem institute (2024): [https://v-dem.net/data\\_analysis/Yearcomp2Graph/](https://v-dem.net/data_analysis/Yearcomp2Graph/)



## 6.2 Influence of EU financial conditionality

Before going over the influence of the withheld funds, the next paragraph will briefly explain which the EU has specifically withheld and which other financial measures EU authorities have taken against Poland.

The first withheld fund concerns €59.8 billion in recovery funds. Poland is entitled to these funds under the Recovery and Resilience Facility (RRF), the EU's assistance package to help the MSs adapt to the consequences of COVID-19 and implement the twin transitions. The Polish National Recovery and Resilience Plan was initially approved despite concerns about the rule of law. However, the funds were eventually not paid out as a consequence of the judicial reforms made by the PiS government (Liboreiro, 2024). Instead, the Commission imposed three 'super milestones' on Poland that had to meet before they could access the funds (Liboreiro, 2023):

1. Reforming the Disciplinary Chamber and replacing it with a new body
2. Reviewing cases of judges that have been affected by the Disciplinary Chamber
3. Enabling the use of Arachne (anti-fraud IT tool)

In an attempt to meet these requirements, Poland ceased the operation of the Disciplinary Chamber and replaced it with the Chamber of Professional Liability. However, due to persistent concerns about this chamber's independence, the change did not spark much interest from EU institutions nor led to an unblocking of funds (Liboreiro, 2024).

On the other hand, under the CP regulation, the Commission blocked another €76.5 billion in Cohesion funds. The CP regulation lays out the 'horizontal enabling conditions' MSs have to meet to receive funding from eight specific budgets of which three were blocked for Poland: the Cohesion Funds, the European Maritime, Fisheries and Aquaculture Fund and the Asylum, Migration and Integration Fund (Liboreiro, 2024). Lastly, additional financial penalties were imposed on Poland through infringement procedures of which the most relevant case, c-192/18, imposed a daily fine of €1 million per day (Liboreiro & Mc Mahon, 2022).

When looking back at the data in the previous paragraph, it is hard to find a meaningful improvement in the rule of law in Poland. Of the indicators of the WJP, 'Absence of corruption', 'Order and security' and 'Regulatory enforcement' do not seem to be affected by RoLB ('Regulatory enforcement', however, with the necessary critique in the previous paragraph). This is somewhat confirmed by the V-Dem data on 'Executive bribery and corrupt exchanges', which decreases slightly but not to a concerning extent. All other indicators decrease consistently,

including the general rule of law measure. This trend is especially apparent in the WJP data, apart from a small exception in 'Open government', which lightly increases in 2022 but then decreases again. For the V-Dem data, 'Equality before the law and individual liberty' is not affected by RoLB, while all other indicators are. Of the other indicators, 'Executive oversight', 'Executive respects constitution' and 'Executive bribery and corrupt exchanges' started increasing in 2022 already, which could have been influenced by the 2023 elections that took place in October without incidents.

As for the media freedom and pluralism indicators, the PiS government's restrictive changes in 2016 still had not been meaningfully counteracted by 2023, indicating a weak and/or ineffective response from EU authorities. In 2023, editorial independence was still limited, media regulators were not independent of government influence, and the PiS party could still influence the media system ahead of the 2023 elections, indicating minimal effects (Camut, 2023). Interestingly, media freedom seems to be an almost entirely overlooked issue in Poland. While the EU was aware of this situation as they monitored it in the Rule of Law Report, its response was somewhat fragmented and underwhelming compared to the actions undertaken to ensure judicial independence. EU authorities only launched one media freedom-related infringement procedure against Poland and Hungary, which was more targeted at media freedom in Hungary. Furthermore, the legal bases on which Art. 7 TEU was activated in the case of Poland do not include media freedom. At the same time, this ground was used to activate the same procedure against Hungary, indicating an inconsistent application of the article. The Council and EP did adopt a new regulation on media freedom in 2024, partially in response to the events in Poland. However, they did not use existing regulations to limit the adverse effects of political interference in the media, such as the Audiovisual Media Services Directive (Wojcik, 2022).

Lastly, the V-Dem data for the judiciary indicates a similar conclusion. Throughout the PiS term, no indicator improves enough to reveal a response to the financial penalties. 'Judicial reform' increased a bit in 2020 but then decreased again. 'Compliance with the High Court' increases already in 2022, which could have resulted from dismissing the Disciplinary Chamber after ECJ ruling c-204/21. Corruption did again not or hardly change, confirming what was said above. 'Judicial accountability' does not change substantially either, which is a strange finding as judicial accountability was greatly impacted, as argued above.

## 7. Discussion: is conditionality a good way to stop rule of law backsliding?

Generally speaking, the conditionality measures did not seem to affect RoLB in Poland significantly. All the indicators that were used in the analysis except for the corruption indicators, 'Order and security', 'Equality before the law and individual liberty' and 'Judicial accountability' (with the necessary reflection), remain relatively consistent throughout the PiS term indicating a non-response to financial conditionality thereby answering RQ1. 'Absence of corruption', 'Order and security', 'Equality before the law and individual liberty' and 'Judicial accountability' are not affected by RoLB in Poland. Why they do not seem to be affected is not fully clear and would require more research. In general, additional qualitative research on how each of the WJP indicators is affected by RoLB would also shed more light on the effects of RoLB. Through this knowledge, early warning systems could be better informed and prevention strategies more intelligently made.

In the case of the PiS government, the data shows that the rule of law was improved in specific cases. In 2022, the V-Dem score for 'Compliance with the High Court' increases, which might correspond to the dismissal of the Disciplinary Chamber. However, no meaningful changes to the quality of the rule of law were implemented. The fact that the Commission was aware of the bleak situation and the ineffectiveness of the imposed financial conditionality but did not undertake any action to remedy the failing sanctions could be explained as they might not have been expecting meaningful changes. Bernd Riegert, a journalist for DW, was able to talk to a Commission official in 2023 who said the Commission's strategy relied for a large part on a change in government in Poland (Riegert, 2023).

While the new conditionality mechanism does cover an important discrepancy in EU law, between the rule of law-based Art. 7 TEU and the financial CP regulation, policymakers should be cautious when applying it. Even though some authors have high hopes for the new conditionality mechanism, calling it "potentially the most effective instrument" (Maurice, 2023) in the EU rule of law toolkit, only withholding funds from MSs does not automatically result in meaningful improvements in RoLB. An important distinction can for example be made between governments who cause the backsliding themselves (e.g. Poland) and governments who pick up the pieces of their predecessors (e.g. Romania). With the implementation of the RRF, the Romanian government showed commitment to further improving their rule of law situation by

implementing reforms in the judiciary and investing more in the fight against corruption (Maurice, 2023).

For MSs that are causing the backsliding themselves, the EU could implement a more holistic strategy focusing on prevention. Scheppele (2018) argues that education initiatives and empowering citizens to recognise and resist RoLB are important in the fight against it. Better legal design at EU level that allows for clear, unpoliticised and concise action early on in the process would overcome the current issues present in the Council (unanimity) while still addressing the full issue instead of a part of it (as happens through infringement procedures). Effectively implementing a broader trajectory in which new methods are used in combination with the old ones, would enable the EU to prevent backsliding situations from escalating (Maurice, 2023). Making the Rule of Law Report recommendations binding and enforceable for example, could result in short-term changes that improve the rule of law in all of Europe. This also overcomes the criticism that financial conditionality could transform into 'just another step in the list of sanctions' that is only activated because it is in the list, without ensuring active enforcement and follow-up on results (Soler, 2024).

This holistic strategy could also address general criticisms and inherent shortcomings of financial conditionality. Withholding funds, especially cohesion funds destined for poorer MSs, play an important role in investment and development. Taking these funds away might influence the living conditions and available facilities for citizens more than the conduct of the government. To make this point more concrete, the opposition Mayor of Gdansk, Aleksandra Dulkiwicz, told the newspaper *Rzeczpospolita* that taking away EU funds does indeed have a "concrete impact on the lives of our inhabitants" and that all of Gdansk's investment plans "may collapse due to the incomprehensible ideology of the government's eternal war with European institutions" (Notes from Poland, 2022). This figures in a larger debate on the possible creation of a multi-speed Europe where a separation emerges between an integrated central group of EU countries with a buffer zone of less-developed semi-autocratic states at the periphery. This development would neither be in the interests of the Union (Pech & Scheppele, 2017). Other detractors of financial conditionality underscore the political nature of the mechanism, mentioning the issues the EU had when Viktor Orban blocked EU aid for Ukraine as long as Hungary did not get access to blocked funds (Soler, 2024).

Another interesting element that emerged in the literature review is that the EU seems to be almost exclusively concerned about RoLB at the expense of other forms of backsliding. In the

case of Poland, media freedom and pluralism is one of the areas that has been somewhat forgotten by EU regulations. The reason why it was included in the analysis is exactly this. Media play an immensely important role in shaping the public's opinions and behaviours and informing them about how they are governed. The lack of EU focus on this issue is therefore rather concerning, especially as the statistics for Poland are oftentimes in higher risk categories. A possible reason for this disproportionate focus on the rule of law could be the fact that the rule of law is more explicitly referred to as a fundamental principle of the EU (Zamecki & Glied, 2020). Instead of including media freedom and pluralism in rule of law sanctions, the EU might be trying to prevent the politicization of media outlets with the new Media Freedom Act. It is, however still too early to assess the effectiveness of this initiative.

Whether these conditions are met in the new conditionality regulation remains to be seen. The Commission tried to activate the mechanism against Poland in 2021 but ceased the procedure after initial communications. The Polish responses to the Commission's questions are not publicly available, so it is unclear why the Commission stopped the procedure (Pech et al., 2023). If the Commission does move forward with the conditionality mechanism as it stands now and does not implement any other measures to counteract RoLB, disappointing results are likely. In the case of Poland, a different hypothesis most likely explains the recent improvements in the rule of law, a hypothesis in line with the Commission's strategy according to Riegert (2023). The newfound engagements between the Commission and the Polish government and the recently released €5.1 billion in pre-financing for REPowerEU projects were naturally sparked by the comeback of Donald Tusk as Poland's Prime Minister. This development confirms Pech's (2022) theorising and Stanley's (2019) findings on the ideologically-oriented east-west divide regarding rule of law development and indicates that an imperfect rule of law (as it is in so many EU countries) can seriously deteriorate when the wrong leaders assume office, but can also improve by a change of elections.

## 8. Conclusion

RoLB is an issue that more and more EU MSs seem to have problems with. In Poland, especially since the 2015 election of the far-right PiS government, these problems gave rise to significant changes in the balance between the executive and judicial powers (Adamska-Gallant, 2022). Next to the various changes to the judiciary branch, the PiS government enlarged its sphere of influence over the public media and disadvantaged the viability of local and private media (Klimkiewicz, 2023). As these are serious breaches of the rule of law, and as the rule of law is one of the foundational values of the EU, EU authorities launched various procedures to try and counteract this backsliding but without much success.

Besides the regular tools used by the EU, such as the Rule of Law Framework, Mechanism, and Report, the multiple rule of law recommendations sent to Poland did not create any change. Neither did the activation of Art. 7 TEU, which is the EU's primary tool to prevent and sanction RoLB. As none of these measures had any effects, the EU decided to instead withhold funds destined for Poland and to make a new piece of legislation that legalises precisely this: the Council regulation on a general regime of conditionality for the protection of the Union budget, or conditionality regulation for short.

This thesis analysed the effectiveness of withholding funds to counter RoLB based on the withheld funds from Poland. This was done using various data from the WJP, the V-Dem dataset, RWB and Freedom House. The results of this analysis showed that, after eight years of the PiS government's erosion of the rule of law, the regime responded very minimally to the pressures of the EU, predicting disappointing results for the application of the actual conditionality mechanism. Although it is very reasonable and justified to withhold EU funds when a MS refuses to abide by EU law, this withholding does not rectify the problem. In other words, the EU should not finance MSs that do not respect its laws, but it is not solving any problems by withholding funds. On the contrary, it might create problems as some MSs depend on, for example, Cohesion Funds for investment and development (Notes from Poland, 2022). To solve this problem, the EU should ensure a consistent and to-the-point application of the new mechanism with necessary additional support measures that utilise a combination of preventive and corrective (not necessarily sanctioning) measures to ensure the rule of law is reinstated. Whether this will happen in the future remains to be seen. The first attempt to activate the mechanism does, however, not root well, as the procedure was put on hold for unclear reasons.

Looking ahead in the case of Poland, things seem to be looking better. With the newly elected centre-left government led by Donald Tusk, various PiS reforms seem to be on the path to being reversed. In February 2024, the Commission announced Poland had reached the three ‘super milestones’ on which the payout of the RRF depended. Next to the replacement of the Disciplinary Chamber (which at that point had been transformed into the Chamber of Professional Liability, a PiS change the EU wholly ignored) and the guarantee that judges will not be at risk of disciplinary liability for applying EU law, opened the door for the payout (Baccini, 2024). As for the Cohesion Funds, these were unfrozen in response to changes made to the disciplinary regime, the Polish Human Rights Ombudsman and the installation of a system to track inappropriate public spending. In addition to that, Poland has also requested membership in the European People's Prosecutor Office (EPPO) (Liboreiro, 2024). The latest development in this area was the ending of the Art. 7 procedure against Poland. After a more than seven-year-long procedure, the Commission decided Poland was no longer seriously risking breaching the rule of law and ceased the procedure (Notes from Poland, 2024). When these changes will affect the justice system and whether the new government will also undo other laws created by the PiS regime, such as the changes to the media system, remains to be seen. It is, however, hard to deny that the new government is taking significant steps in the right direction.

Zooming out and looking at the future of the broader rule of law of the European Union, many questions remain. The EU had thought of fixing the problem of democratic erosion and RoLB in CEE countries by introducing accession conditionality, such as the Copenhagen criteria. However, today, it is clear that the EU did not succeed in banishing these woes. Countries with authoritarian backgrounds still experience backsliding, and a turn of elections can give rise to detrimental consequences, also in the West. The big question then becomes: can the EU enforce values? Is the enforcement of values a fundamental boundary to EU power? If yes, is the very existence of the EU threatened if it cannot ensure MSs respect its laws? Ambiguous procedures, a lack of political will and the final sovereign power of the MSs hamper the full development of the Union and create distrust and disappointment among its citizens. Whether the next Commission will be committed to upholding these values remains to be seen. What is, however, already set in stone is that on the 1<sup>st</sup> of July 2024, Hungary will assume the new presidency of the Council. The future development of the Union thereby lies in new hands, hands and minds which have “known, in a not so distant past, what totalitarian regimes are” (European Commission, 2011).

## 9. List of acronyms

CEE countries	Central and Eastern European countries
CFREU	Charter of Fundamental Rights of the European Union
CMPF	Centre for Media Pluralism and Media Freedom
CP regulation	Common Provisions Regulation
CVM	Cooperation and Verification Mechanism
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ENCJ	European Network of Councils of the Judiciary
EP	European Parliament
ESIF	European Structural and Investment Funds
EU	European Union
MFF	Multiannual financial framework
MS	Member state
NBC	National Broadcasting Council
NCJ	National Council of the Judiciary
NMCA	National Media Council Act
PiS	Prawo i Sprawiedliwość (Law and Justice party)
RoLB	Rule of law backsliding
RRF	Recovery and Resilience Facility
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on the European Union
WJP	World Justice Project



## 10. Annex

Table 1: Rule of law backsliding indicators (World Justice Project, 2023<sup>20</sup>)

	Constraints on government powers	Absence of corruption	Open government	Fundamental rights	Order and security	Regulatory enforcement	Civil justice	Criminal justice
<b>Austria</b>	0.84	0.80	0.70	0.84	0.91	0.80	0.74	0.79
<b>Belgium</b>	0.82	0.79	0.76	0.84	0.82	0.79	0.74	0.71
<b>Bulgaria</b>	0.51	0.45	0.57	0.61	0.78	0.53	0.54	0.44
<b>Croatia</b>	0.58	0.57	0.61	0.68	0.84	0.56	0.56	0.51
<b>Cyprus</b>	0.66	0.65	0.60	0.72	0.81	0.66	0.62	0.68
<b>Czech Republic</b>	0.74	0.66	0.69	0.78	0.89	0.71	0.69	0.70
<b>Denmark</b>	0.95	0.96	0.86	0.92	0.93	0.88	0.86	0.83
<b>Estonia</b>	0.83	0.81	0.81	0.83	0.90	0.81	0.81	0.75
<b>Finland</b>	0.92	0.89	0.86	0.90	0.92	0.87	0.81	0.84
<b>France</b>	0.72	0.75	0.75	0.74	0.79	0.75	0.69	0.63
<b>Germany</b>	0.86	0.82	0.79	0.86	0.89	0.84	0.83	0.78

<sup>20</sup> For all data see World Justice Project (2023): <https://worldjusticeproject.org/rule-of-law-index/global/2023/Poland>

<b>Greece</b>	0.67	0.56	0.61	0.65	0.72	0.55	0.58	0.50
<b>Hungary</b>	0.37	0.50	0.45	0.55	0.90	0.45	0.45	0.45
<b>Ireland</b>	0.83	0.82	0.79	0.82	0.95	0.82	0.73	0.72
<b>Italy</b>	0.71	0.65	0.63	0.73	0.75	0.64	0.58	0.64
<b>Latvia</b>	0.71	0.68	0.72	0.77	0.86	0.71	0.69	0.68
<b>Lithuania</b>	0.76	0.72	0.75	0.78	0.89	0.76	0.79	0.69
<b>Luxemburg</b>	0.82	0.85	0.82	0.85	0.95	0.87	0.78	0.73
<b>Malta</b>	0.64	0.68	0.64	0.74	0.91	0.59	0.60	0.63
<b>Netherlands</b>	0.85	0.87	0.83	0.84	0.85	0.85	0.84	0.74
<b>Poland</b>	0.53	0.72	0.58	0.61	0.86	0.63	0.61	0.58
<b>Portugal</b>	0.76	0.71	0.64	0.76	0.78	0.60	0.65	0.56
<b>Romania</b>	0.61	0.56	0.63	0.67	0.83	0.59	0.63	0.52
<b>Slovakia</b>	0.67	0.53	0.69	0.73	0.90	0.62	0.55	0.58
<b>Slovenia</b>	0.65	0.67	0.66	0.75	0.89	0.65	0.67	0.56
<b>Spain</b>	0.72	0.73	0.70	0.79	0.83	0.69	0.65	0.66
<b>Sweden</b>	0.86	0.90	0.84	0.87	0.92	0.83	0.82	0.79

CEE countries

Table 3: Factors of the rule of law (World Justice Project, 2024)

Factor	Indicators
Constraints on government powers (World Justice Project, 2024)	<ul style="list-style-type: none"> <li>• Government powers are effectively limited by the legislature</li> <li>• Government powers are effectively limited by the judiciary</li> <li>• Government powers are effectively limited by independent auditing and review</li> <li>• Government officials are sanctioned for misconduct</li> <li>• Government powers are subject to non-governmental checks</li> <li>• Transition of power is subject to the law</li> </ul>
Absence of corruption (World Justice Project, 2024)	<ul style="list-style-type: none"> <li>• Government officials in the executive branch do not use public office for private gain</li> <li>• Government officials in the judicial branch do not use public office for private gain</li> <li>• Government officials in the police and the military do not use public office for private gain</li> <li>• Government officials in the legislative branch do not use public office for private gain</li> </ul>
Open government (World Justice Project, 2024)	<ul style="list-style-type: none"> <li>• Publicized laws and government data</li> <li>• Right to information</li> <li>• Civic participation</li> <li>• Complaint mechanisms</li> </ul>
Fundamental rights (World Justice Project, 2024)	<ul style="list-style-type: none"> <li>• Equal treatment and absence of discrimination</li> <li>• The right to life and security of the person is effectively guaranteed</li> <li>• Due process of law and rights of the accused</li> <li>• Freedom of opinion and expression is effectively guaranteed</li> <li>• Freedom of belief and religion if effectively guaranteed</li> <li>• Freedom from arbitrary interference with privacy is effectively guaranteed</li> <li>• Freedom of assembly and association if effectively guaranteed</li> <li>• Fundamental labour rights are effectively guaranteed</li> </ul>

Order and security (World Justice Project, 2024)	<ul style="list-style-type: none"> <li>• Crime is effectively controlled</li> <li>• Civil conflict is effectively limited</li> <li>• People do not resort to violence to redress personal grievances</li> </ul>
Regulatory enforcement (World Justice Project, 2024)	<ul style="list-style-type: none"> <li>• Government regulations are effectively enforced</li> <li>• Government regulations are applied and enforced without improper influence</li> <li>• Administrative proceedings are conducted without unreasonable delay</li> <li>• Due process is respected in administrative proceedings</li> <li>• The government does not expropriate without lawful process and adequate compensation</li> </ul>
Civil justice (World Justice Project, 2024)	<ul style="list-style-type: none"> <li>• People can access and afford civil justice</li> <li>• Civil justice is free of discrimination</li> <li>• Civil justice is free of corruption</li> <li>• Civil justice is free of improper government influence</li> <li>• Civil justice is not subject to unreasonable delay</li> <li>• Civil justice is effectively enforced</li> <li>• Alternative dispute and resolution mechanisms are accessible, impartial and effective</li> </ul>
Criminal justice (World Justice Project, 2024)	<ul style="list-style-type: none"> <li>• Criminal investigations system is effective</li> <li>• Criminal adjudication system is timely and effective</li> <li>• Correctional system is effective in reducing criminal behaviour</li> <li>• Criminal system is impartial</li> <li>• Criminal system is free of corruption</li> <li>• Criminal system is free of improper government influence</li> <li>• Due process of the law and rights of the accused</li> </ul>

Annex 1: Codebook V-Dem indicators (V-Dem Codebook, 2024)

<b>Judicial constraints on the executive</b> (V-Dem Codebook, 2024)											
<ul style="list-style-type: none"> <li>To what extent does the executive respect the constitution and comply with court rulings, and to what extent is the judiciary able to act in an independent fashion?</li> <li>Scoring: 0-1, low to high</li> </ul>											
<b>Executive oversight</b> (V-Dem Codebook, 2024)											
<ul style="list-style-type: none"> <li>If executive branch officials were engaged in unconstitutional, illegal, or unethical activity, how likely is it that a body other than the legislature, such as a comptroller general, general prosecutor, or ombudsman, would question or investigate them and issue an unfavourable decision or report?</li> <li>Scoring: 0-1, extremely unlikely – certain or nearly certain</li> </ul>											
<b>Executive respects constitution</b> (V-Dem Codebook, 2024)											
<ul style="list-style-type: none"> <li>Do members of the executive (the head of state, the head of government, and cabinet ministers) respect the constitution?</li> <li>Scoring</li> </ul> <table border="1" data-bbox="370 1066 1347 1718"> <tr> <td>0</td> <td>Members of the executive violate the constitution whenever they want to, without legal consequences</td> </tr> <tr> <td>1</td> <td>Members of the executive violate most provisions of the constitution without legal consequences, but still must respect certain provisions.</td> </tr> <tr> <td>2</td> <td>Somewhere in between (1) and (3). Members of the executive would face legal consequences for violating most provisions of the constitution, but can disregard some provisions without any legal consequences</td> </tr> <tr> <td>3</td> <td>Members of the executive rarely violate the constitution, and when it happens they face legal charges</td> </tr> <tr> <td>4</td> <td>Members of the executive never violate the constitution.</td> </tr> </table>		0	Members of the executive violate the constitution whenever they want to, without legal consequences	1	Members of the executive violate most provisions of the constitution without legal consequences, but still must respect certain provisions.	2	Somewhere in between (1) and (3). Members of the executive would face legal consequences for violating most provisions of the constitution, but can disregard some provisions without any legal consequences	3	Members of the executive rarely violate the constitution, and when it happens they face legal charges	4	Members of the executive never violate the constitution.
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3	Members of the executive rarely violate the constitution, and when it happens they face legal charges										
4	Members of the executive never violate the constitution.										
<b>Executive bribery and corrupt exchanges</b> (V-Dem Codebook, 2024)											
<ul style="list-style-type: none"> <li>How routinely do members of the executive (the head of state, the head of government, and cabinet ministers), or their agents, grant favors in exchange for bribes, kickbacks, or other material inducements?</li> <li>Scoring: 0-4, it is routine and expected – it never, or hardly ever, happens</li> </ul>											

<b>Equality before the law and individual liberty index</b> (V-Dem Codebook, 2024)											
<ul style="list-style-type: none"> <li>To what extent are laws transparent and rigorously enforced and public administration impartial, and to what extent do citizens enjoy access to justice, secure property rights, freedom from forced labor, freedom of movement, physical integrity rights, and freedom of religion?</li> <li>Scoring: 0-1, low – high</li> </ul>											
<b>Judicial reform</b> (V-Dem Codebook, 2024)											
<ul style="list-style-type: none"> <li>Were the judiciary’s formal powers altered this year in ways that affect its ability to control the arbitrary use of state authority?</li> <li>Clarification: creation/removal of constitutional review, increasing/decreasing access to judiciary, increasing/decreasing judicial remedies</li> <li>Scoring</li> </ul> <table border="1"> <tr> <td>0</td> <td>The judiciary’s ability to control arbitrary power was reduced via institutional reform</td> </tr> <tr> <td>1</td> <td>There was no change to the judiciary’s ability to control arbitrary power via institutional review.</td> </tr> <tr> <td>2</td> <td>The judiciary’s ability to control arbitrary power was enhanced via institutional reform.</td> </tr> </table>		0	The judiciary’s ability to control arbitrary power was reduced via institutional reform	1	There was no change to the judiciary’s ability to control arbitrary power via institutional review.	2	The judiciary’s ability to control arbitrary power was enhanced via institutional reform.				
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1	There was no change to the judiciary’s ability to control arbitrary power via institutional review.										
2	The judiciary’s ability to control arbitrary power was enhanced via institutional reform.										
<b>Judicial purges</b> (V-Dem Codebook, 2024)											
<ul style="list-style-type: none"> <li>Judges are sometimes removed from their posts for cause, as when there is strong evidence of corruption; however, some judges are removed arbitrarily, typically for political reasons. With this distinction in mind, please describe the removal of judges that occurred this calendar year.</li> <li>Scoring</li> </ul> <table border="1"> <tr> <td>0</td> <td>There was a massive, arbitrary purge of the judiciary.</td> </tr> <tr> <td>1</td> <td>There were limited but very important arbitrary removals</td> </tr> <tr> <td>2</td> <td>There were limited arbitrary removals</td> </tr> <tr> <td>3</td> <td>Judges were removed from office, but there is no evidence that the removals were arbitrary.</td> </tr> <tr> <td>4</td> <td>Judges were not removed from their posts.</td> </tr> </table>		0	There was a massive, arbitrary purge of the judiciary.	1	There were limited but very important arbitrary removals	2	There were limited arbitrary removals	3	Judges were removed from office, but there is no evidence that the removals were arbitrary.	4	Judges were not removed from their posts.
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2	There were limited arbitrary removals										
3	Judges were removed from office, but there is no evidence that the removals were arbitrary.										
4	Judges were not removed from their posts.										
<b>Government attacks on the judiciary</b> (V-Dem Codebook, 2024)											
<ul style="list-style-type: none"> <li>How often did the government attack the judiciary’s integrity in public?</li> </ul>											

<ul style="list-style-type: none"> <li>• Clarification: e.g. allegations of corruption, incompetence of other politically motivated statements</li> <li>• Scoring: 0-4, attacks were carried out on a daily or weekly basis – there were not attacks on the judiciary’s integrity</li> </ul>
<b>Judicial accountability</b> (V-Dem Codebook, 2024)
<ul style="list-style-type: none"> <li>• When judges are found responsible for serious misconduct, how often are they removed from their posts or otherwise disciplined?</li> <li>• Scoring: 0-4, never – always</li> </ul>
<b>Judicial corrupt decision</b> (V-Dem Codebook, 2024)
<ul style="list-style-type: none"> <li>• How often do individuals or businesses make undocumented extra payments or bribes in order to speed up or delay the process or to obtain a favorable judicial decision?</li> <li>• Scoring: 0-4, always – never</li> </ul>
<b>High Court independence</b> (V-Dem Codebook, 2024)
<ul style="list-style-type: none"> <li>• When the high court in the judicial system is ruling in cases that are salient to the government, how often would you say that it makes decisions that merely reflect government wishes regardless of its sincere view of the legal record?</li> <li>• Scoring: 0-4, always – never</li> </ul>
<b>Lower Court independence</b> (V-Dem Codebook, 2024)
<ul style="list-style-type: none"> <li>• When judges not on the high court are ruling in cases that are salient to the government, how often would you say that their decisions merely reflect government wishes regardless of their sincere view of the legal record?</li> <li>• Scoring: 0-4, always – never</li> </ul>
<b>Compliance with the High Court</b> (V-Dem Codebook, 2024)
<ul style="list-style-type: none"> <li>• How often would you say the government complies with important decisions of the high court with which it disagrees?</li> <li>• Scoring: 0-4, never – always</li> </ul>
<b>Compliance with the judiciary</b> (V-Dem Codebook, 2024)
<ul style="list-style-type: none"> <li>• How often would you say the government complies with important decisions by other courts with which it disagrees?</li> <li>• Scoring: 0-4, never – always</li> </ul>

<b>Access to justice for men</b> (V-Dem Codebook, 2024)
<ul style="list-style-type: none"><li>• Do men enjoy secure and effective access to justice?</li><li>• Scoring: 0-4, secure and effective access to justice for men is non-existent – secure and effective access to justice for men is almost always observed</li></ul>
<b>Access to justice for women</b> (V-Dem Codebook, 2024)
<ul style="list-style-type: none"><li>• Do women enjoy equal, secure, and effective access to justice?</li><li>• Scoring: 0-4, secure and effective access to justice for women is non-existent – secure and effective access to justice for women is almost always observed</li></ul>



Table 20: V-Dem data on judicial independence and functioning of the judiciary in Poland (V-Dem Institute, 2024<sup>21</sup>)

Indicator	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Judicial reform	1.1	1.1	1.1	0.48	0.02	0.04	0.06	0.23	0.48	0.29	0.38	0.38
Judicial purges	3.55	3.55	3.55	3.01	3.00	2.72	1.77	1.97	1.88	1.36	1.73	1.65
Government attacks on the judiciary	3.91	3.91	3.91	2.28	0.17	0.31	0.04	0.04	0.12	0.04	0.52	0.60
Judicial accountability	2.87	2.87	2.87	2.87	2.87	2.87	2.71	2.71	2.71	2.71	2.71	2.63
Judicial corrupt decision	3.56	3.56	3.56	3.56	3.56	3.56	3.56	3.56	3.56	3.31	3.31	3.31
High Court independence	3.65	3.65	3.65	3.26	2.86	2.19	1.50	1.50	1.38	1.38	1.38	0.99
Lower Court independence	3.71	3.71	3.71	2.94	3.53	3.10	2.64	2.64	2.52	2.52	2.52	2.50
Compliance with the High Court	3.44	3.44	3.44	3.11	2.40	2.68	2.48	2.48	2.57	2.39	2.57	2.57
Compliance with the judiciary	3.36	3.36	3.21	2.94	2.74	2.56	2.50	2.35	2.50	2.40	2.51	2.51

<sup>21</sup> For all data see V-Dem institute (2024): [https://v-dem.net/data\\_analysis/Yearcomp2Graph/](https://v-dem.net/data_analysis/Yearcomp2Graph/)

Access to justice for men	3.54	3.47	3.47	3.47	3.24	3.04	2.83	2.83	2.67	2.58	2.58	2.66
Access to justice for women	3.62	3.53	3.59	3.59	3.29	2.93	2.78	2.89	2.70	2.61	2.61	2.78

## 11. Bibliography

Adamska-Gallant, A. (2022). Backsliding of the rule of law in Poland – a systemic problem with the independence of courts. *International Journal for Court Administration*, 13(3), 1-8.

Article 19. (2021). *Poland: access to public information must not be constrained*. Retrieved from: <https://www.article19.org/resources/poland-access-to-public-information-must-not-be-constrained/>

Article 19. (2022). *Poland: fears for media pluralism as Polska Press trial begins*. Retrieved from: <https://www.article19.org/resources/pkn-ornen-media-purchase-violates-eu-merger-rules/>

Baccini, F. (2024). *EU Commission unblocks payments from Poland's NRRP and Cohesion Funds*. EUnews: <https://www.eunews.it/en/2024/02/29/eu-commission-unblocks-payments-from-polands-nrrp-and-cohesion-funds/>

Bafoil. (2021). *The politics of destruction. Three contemporary configurations of hallucination: USSR, Polish PiS party, Islamic State*. Palgrave Macmillan: London, United Kingdom.

Bari, M. E. (1993). Importance of an independent judiciary in a democratic state. *Dhaka University Studies Part F*, 4(1).

Bartels, L. (2005). *Human rights conditionality in the EU's international agreements*. Oxford University Press: Oxford, United Kingdom.

Bedner, A. (2010). An elementary approach to the rule of law. *The Hague Journal on the Rule of Law*, 2(1), 48-79.

Bergling, P., Wennerström, E. O., & Sannerholm, R. Z. (2010). Rule of law in public administration, problems and ways ahead in post-conflict peacebuilding. *The Hague Journal on the Rule of Law*, 2(2), 171-202.

Berman, S. (2018). A discussion of Steven Levitsky and Daniel Ziblatt's *How Democracies Die*. *Perspectives on Politics*, 16(4), 1092-1094.

Bertelsmann Stiftung Transformation Index. (2024). *The transformation index*. Retrieved from: <https://bti-project.org/en/?&d=D&cb=00000>.

- Bienvenu, H. (2023). *Visa corruption scandal rocks Poland*. Le Monde: [https://www.lemonde.fr/en/international/article/2023/09/21/visa-corruption-scandal-rocks-poland\\_6138256\\_4.html](https://www.lemonde.fr/en/international/article/2023/09/21/visa-corruption-scandal-rocks-poland_6138256_4.html)
- Blauberger, M. & Van Hüllen, V. (2021). Conditionality of EU funds: an instrument to enforce EU fundamental values? *Journal of European Integration*, 43(1), 1-16.
- Bohle, D. & Greskovits, B. (2012). *Capitalist diversity on Europe's periphery*. Cornell University Press.
- Blackall, D., & Tenkate, S. (2008). Media and the rule of law: a changing terrain. *Precedent January/February*, 84, 22-26.
- Blumer, E. (2017). *Judicial appointments. International IDEA constitution-building primer*. International IDEA Institute for Democracy and Electoral Assistance: <https://www.idea.int/sites/default/files/publications/judicial-appointments-primer.pdf>
- Bugaric, B. (2015). The rule of law derailed: lessons from the post-communist world. *The Hague Journal on the Rule of Law*, 7, 175-197.
- Buras, P. (2022). *The final countdown: the EU, Poland, and the rule of law*. European Council on Foreign Relations: <https://ecfr.eu/article/the-final-countdown-the-eu-poland-and-the-rule-of-law/>
- Bustos Gisbert, R. (2022). Judicial independence in European Constitutional Law. *European Constitutional Law Review*, 18(4), 591-620.
- Camut, N. (2023). *Is Poland's election fair? Pro-government media bias casts a shadow over vote*. Politico: <https://www.politico.eu/article/poland-election-fair-pro-government-media-bias-tvp-telewizja-polska-cast-shadow-vote/>
- Ciepielewska-Kowalik, A. (2020). (Un)intended consequences of the 2016 educational reform on early childhood education and care in Poland. The story of a few applications that led to significant disorder. *Policy Futures in Education*, 18(6), 806-823.
- Closa, C. (2020). Institutional logics and the EU's limited sanctioning capacity under Article 7 TEU. *International Political Science Review*, 42(4), 501-515.

Commission v. Poland, C-192/18 Court of Justice of the European Union. 1 (Court of Justice of the European Union 2019). <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-11/cp190134en.pdf>

Consolidated version of the Treaty on the European Union, signed 13 December 2007 (entered into force 1 December 2009).

Council of Europe. (2020). *The functioning of the democratic institutions in Poland*. Retrieved from: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28330&lang=en>.

Council Regulation 2021/1060 laying down common provisions on the European Regional Development Fund, the European Social Fund the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (2021). *Official Journal of the European Union*, L 231/159.

Council regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget (2020). *Official Journal of the European Union*, L 433 I/1.

Court of Justice of the European Union. (2022). *Press release No 201/22*. Retrieved from: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-12/cp220201en.pdf>

Cremona, M. (2005). EU enlargement: solidarity and conditionality. *European Law Review*, 30(1), 3-22.

Curia. (2021). *Ordonnance de la vice-présidente de la cour*. Retrieved from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=247201&pageIndex=0&doclang=fr&mode=lst&dir=&occ=first&part=1&cid=6793273>

Duncan, A., & Macy, J. (2020). The collapse of judicial independence in Poland: a cautionary tale. *Bolch Judicial Institute*, 104(3), 40-50.

European Commission. (2011). *José Manuel Durao Barroso president of the European Commission statement by President Barroso at the press conference following the meeting of the European Commission with the Hungarian presidency joint press conference with Viktor Orban, prime minister of Hungary Budapest, 7 January 2011*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_11\\_4](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_11_4)

European Commission. (2013). *Speech: safeguarding the rule of law and solving the “Copenhagen dilemma”: towards a new EU mechanism*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_13\\_348](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_348)

European Commission. (2018). *Communication from the commission to the European Parliament, the European Council and the Council. A new modern multiannual financial framework for a European Union that delivers efficiently on its priorities post-2020. The European Commission’s contribution to the Informal Leaders’ meeting on 23 February 2018*. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0098&from=ro>

European Commission. (2020a). *Rule of Law Report 2020*. Retrieved from: [https://commission.europa.eu/document/download/0202c616-e7e6-4378-9961-512c56d246c5\\_en?filename=rule\\_of\\_law\\_mechanism\\_factsheet\\_en.pdf](https://commission.europa.eu/document/download/0202c616-e7e6-4378-9961-512c56d246c5_en?filename=rule_of_law_mechanism_factsheet_en.pdf)

European Commission. (2020b). *Proposal for a regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the member states*. Retrieved from: <https://data.consilium.europa.eu/doc/document/ST-8356-2018-INIT/en/pdf>

European Commission. (2021). *Shaping Europe’s digital future: media freedom and pluralism*. Retrieved from: <https://digital-strategy.ec.europa.eu/en/policies/media-freedom>

European Commission. (2022a). *Rule of law conditionality regulation*. Retrieved from: [https://commission.europa.eu/strategy-and-policy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation\\_en](https://commission.europa.eu/strategy-and-policy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation_en)

European Commission. (2022b). *Rule of Law Mechanism*. Retrieved from: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en)

European Commission. (2022c). *Cooperation and Verification Mechanism for Bulgaria and Romania*. Retrieved from: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en)

European Commission. (2023a). *Rule of law framework*. Retrieved from: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework_en)

European Commission. (2023b). *Rule of law: Commission launches infringement procedure against Poland for violating EU law with the new law establishing a special committee*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3134](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3134)

European Commission. (2023c). *Rule of law: Commission launches infringement procedure against Poland for violations of EU law by its Constitutional Tribunal*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_7070](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7070)

European Commission. (2023d). *2023 Rule of Law Report*. Retrieved from: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2023-rule-law-report\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2023-rule-law-report_en)

European Commission. (2024a). *EU Justice Scoreboard*. Retrieved from: [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en)

European Commission. (2024b). *Poland's efforts to restore rule of law pave the way for accessing up to €127 billion in EU funds*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_1222](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1222)

European Court of Human Rights. (2023). *Case of Walesa v. Poland*. Retrieved from: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-229366%22%5D%7D>

European Network of Councils for the Judiciary. (2024). *ENCJ votes to expel Polish council for the judiciary (KRS)*. Retrieved from: <https://www.encj.eu/node/605#:~:text=On%2028%20October%202021%2C%20the,from%20p%20articulation%20in%20ENCJ%20activities.>

European Parliament. (2016). *EU mechanism of democracy, the rule of law and fundamental rights*. Retrieved from: [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.pdf)

European Parliament. (2024). *Multimedia Centre*. Retrieved from: [https://multimedia.europarl.europa.eu/en/topic/rule-of-law\\_18008](https://multimedia.europarl.europa.eu/en/topic/rule-of-law_18008)

EUR-lex. (2022). *Rule of law*. Retrieved from: <https://eur-lex.europa.eu/EN/legal-content/glossary/rule-of-law.html#:~:text=Under%20the%20rule%20of%20law,of%20independent%20and%20impartial%20courts.>

Feldman, M. A. & Watson, M. (2002). Enlarging the EU: accession requirements and the Central European candidates. In *Into the EU*. International Monetary Fund: Washington D.C., United States of America.

Freedom House. (2024). *Freedom in the world 2024: Poland*. Retrieved from: <https://freedomhouse.org/country/poland/freedom-world/2024>

Gajda-Roszczyńska, K., & Markiewicz, K. (2020). Disciplinary proceedings as an instrument for breaking the rule of law in Poland. *The Hague Journal on the Rule of Law*, 12(3), 451-483.

Ginsburg, T. (2018). Democratic backsliding and the rule of law. *Ohio Northern University Law Review*, 44(3), 351-369.

Gora, A., & De Wilde, P. (2022). The essence of democratic backsliding in the European Union: deliberation and rule of law. *Journal of European Public Policy*, 29(3), 342-362.

Grabbe, H. (2023). *How can the EU keep its credibility for accession conditionality to work?* Bruegel: <https://www.bruegel.org/newsletter/how-can-eu-keep-its-credibility-accession-conditionality-work>

Grabowska-Moroz, B. (2022). How was the “rule of law” dismantled in Poland and what does it mean for the EU? The decision of the Polish Constitutional Tribunal of 7 October 2021 (K 3/21) – the European game changer or a quasi-judicial bluff? *La Unión Europea y el reto del Estado de Derecho* (edited by Susana Sanz Caballero), Thomson Reuters Aranzadi, 277-294.

Grabowska-Moroz, B., & Sniadach, O. (2021). The role of civil society in protecting judicial independence in time of rule of law backsliding in Poland. *Utrecht Law Review*, 17(2), 56-69.

Guzek, D., & Grzesiok-Horosz, A. (2022). Political will and media law: a Poland case analysis. *East European Politics and Societies*, 36(4), 1245-1262.

Gwiazda, A. (2021). Right-wing populism and feminist politics: the case of Law and Justice in Poland. *International Political Science Review*, 42(5), 580-595.

Hirschl, R. (2006). The new constitution and the judicialization of pure politics worldwide. *Fordham Law Review*, 75(2), 721-754.

Human Rights Watch. (2011). *Hungary: media law endangers press freedom*. Retrieved from: <https://www.hrw.org/news/2011/01/07/hungary-media-law-endangers-press-freedom>



International Press Institute. (2022). *Poland: elections to PiS' controversial regulator underscore media capture challenges*. Retrieved from: <https://ipi.media/poland-elections-to-pis-controversial-regulator-underscore-media-capture-challenges/>

Kapidzic, D. (2020). The rise of illiberal politics in Southeast Europe. *Southeast European and Black Sea Studies*, 20(1), 1-17.

Kelly, J. F. W. (2016). An independent judiciary: the core of the rule of law.

Klimkiewicz, B. (2023). Monitoring media pluralism in the digital area. Application of the media pluralism monitor in the European Union, Albania, Montenegro, Republic of North Macedonia, Serbia & Turkey in the year 2022. Centre for Media Pluralism and Media Freedom: [https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland\\_results\\_mpm\\_2023\\_cmpf.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/75733/Poland_results_mpm_2023_cmpf.pdf?sequence=1&isAllowed=y)

Kochenov, D. (2017). *Busting the myths nuclear: a commentary on Article 7 TEU*. EUI Working paper. Retrieved from: [https://cadmus.eui.eu/bitstream/handle/1814/46345/LAW\\_2017\\_10.pdf?sequence=1&utm\\_source=mandiner&utm\\_medium=link&utm\\_campaign=mandiner\\_202110](https://cadmus.eui.eu/bitstream/handle/1814/46345/LAW_2017_10.pdf?sequence=1&utm_source=mandiner&utm_medium=link&utm_campaign=mandiner_202110)

Kochenov, D. (2023). Article 7-8 TEU. In M. Kellerbauer, M. Klamert and J. Tomkin (Eds.), *The EU treaties and the Charter of Fundamental Rights – A Commentary* (2nd ed., pp. 88-98). Oxford University Press: Oxford, United Kingdom.

Kölling, M. (2017). Policy conditionality – a new instrument in the EU budget post-2020? *Swedish Institute for European Policy Studies, European Policy Analysis*, 1-7.

Kochenov, D. & Pech, L. (2016). Better late than never? On the European Commission's rule of law framework and its first activation. *Journal of Common Market Studies*, 54(5), 1062-1074.

Lacny, J. (2021). The rule of law conditionality under regulation No. 2092/2020 – Is it all about the money? *The Hague Journal on the Rule of Law*, 13(1), 79-105.

Law teacher. (2021). *Dicey and the rule of law*. Retrieved from: <https://www.lawteacher.net/free-law-essays/constitutional-law/dicey-rule-of-law-8355.php#citethis>

Levitsky, S., & Ziblatt, Z. (2018). *How democracies die*. Penguin Random House: United Kingdom.

Liboreiro, J. (2023). *Poland gets EU greenlight for first payment of recovery funds, worth €5.1 billion*. Euronews: <https://www.euronews.com/my-europe/2023/11/21/poland-gets-eu-greenlight-for-first-payment-of-recovery-funds-worth-5-billion>

Liboreiro, J. (2024). *Breaking down the €137 billion in EU funds that Brussels has unfrozen for Poland*. Euronews: <https://www.euronews.com/my-europe/2024/02/29/breaking-down-the-137-billion-in-eu-funds-that-brussels-has-unfrozen-for-poland>

Liboreiro, J., & Mc Mahon, M. (2022). *Brussels approves Poland's €35-billion recovery plan despite lingering rule of law concerns*. Euronews: <https://www.euronews.com/my-europe/2022/06/01/brussels-approves-poland-s-35-billion-recovery-plan-despite-lingering-rule-of-law-concerns>

Lindberg, S. I. (2018). *The nature of democratic backsliding in Europe*. Carnegie Europe: <https://carnegieendowment.org/research/2018/07/the-nature-of-democratic-backsliding-in-europe?lang=en&center=europe>

Lord Bingham. (2007). The rule of law. *Cambridge Law Journal*, 66(1), 67-85.

Marcisz, P. (2022). A chamber of certain liability. A story of latest reforms in the Polish Supreme Court. *Verfassungsblog*. Retrieved from: <https://verfassungsblog.de/a-chamber-of-certain-liability/>

Maurice, E. (2023). *The rule of law: the uncertain gamble on conditionality*. Fondation Robert Schuman: <https://www.robert-schuman.eu/en/european-issues/660-the-rule-of-law-the-uncertain-gamble-on-conditionality>

McLachlin, B. (2012). *The relationship between the courts and the media. Remarks of the Right Honourable Beverly McLachlin, P.C. Chief Justice of Canada*. Supreme Court of Canada: <https://www.scc-csc.ca/judges-juges/spe-dis/bm-2012-01-31-eng.aspx>

Mikuli, P. & Pach, M. (2022). Disciplinary liability of judges. The Polish case. In P. Mikuli and G. Kuca (Eds.), *Accountability and the law. Rights, authority and transparency of public power* (pp. 63-79). Routledge: London, United Kingdom.

Norris P., & Ingelhart, R. (2018). *Cultural backlash: Trump, Brexit and the rise of authoritarian populism*. Cambridge University Press: New York, United States of America.

Notes from Poland. (2022). *EU withholding billions in cohesion funds from Poland over rule-of-law concerns*. Retrieved from: <https://notesfrompoland.com/2022/10/17/eu-withholding-billions-in-cohesion-funds-from-poland-over-rule-of-law-concerns/>

Notes from Poland. (2024). *EU closes Article 7 rule-of-law proceedings against Poland after seven years*. Retrieved from: <https://notesfrompoland.com/2024/05/29/eu-closes-article-7-rule-of-law-proceedings-against-poland-after-seven-years/>

OECD (2015), *Open Government Data Review of Poland: Unlocking the Value of Government Data*. OECD Digital Government Studies. OECD Publishing: Paris, France.

Pech. (2022). The rule of law as a well-established and well-defined principle of EU law. *The Hague Journal on the Rule of Law*, 14(2), 107-138.

Pech, L. (2019). How to address rule of law backsliding in Romania.

Pech, L. & Grogan, J. (2019) *Article 7 EU*. DEM-DEC. <https://www.democratic-decay.org/article-7-eu>

Pech, L., Kochenov, D., Scheppele, K. L. (2017). The European Commission's activation of Article 7: better late than never? Constitutional blog: on matters constitutional.

Pech, L., Wojcik, A., Wachowiec, P. (2023). *The case for activating the rule of law conditionality regulation in respect of Poland*. The Greens/EFA in the European Parliament: <https://extranet.greens-efa.eu/public/media/file/10221/8557>

Pech, L., & Scheppele, K. L. (2017). Illiberalism within: rule of law backsliding in the EU. *Cambridge yearbook of European Legal Studies*, 19, 3-47.

Polish Constitutional Tribunal. (2021). *Assessment of the conformity to the Polish Constitution of Selected provisions of the Treaty on European Union*. Ref. No. K 3/21. Retrieved from: <https://trybunal.gov.pl/en/hearings/judgments/art/11662-ocena-zgodnosci-z-konstytucja-rp-wybranych-przepisow-traktatu-o-unii-europejskiej>

Priebus, S. (2022). The Commission's approach to rule of law backsliding: managing instead of enforcing democratic values? *Journal of Common Market Studies*, 60(6), 1684-1700.

PubAffairs Bruxelles. (2024). *Commission disburses REPowerEU pre-financing payments to Hungary, Lithuania and Poland under the Recovery and Resilience Facility*. Retrieved from: <https://www.pubaffairsbruxelles.eu/eu-institution-news/commission-disburses-repowereu->

[pre-financing-payments-to-hungary-lithuania-and-poland-under-the-recovery-and-resilience-facility/](#)

RECONNECT. (2020). *What is RECONNECT?* Retrieved from: <https://reconnect-europe.eu/project-info/>

Reporters Without Borders. (2024). *Poland*. Retrieved from: <https://rsf.org/en/country/poland>

Riegert, B. (2023). *Rule of law: EU reprimands Poland and Hungary*. DW: <https://www.dw.com/en/rule-of-law-eu-reprimands-poland-and-hungary/a-66165982>

Sacher, M. (2019). Macroeconomic conditionalities: using the controversial link between EU cohesion policy and economic governance. *Journal of Contemporary European Research*, 15(2), 179-193.

Sadurski, W. (2020). Constitutional design: lessons from Poland's democratic backsliding. *Constitutional Studies*, 6, 59-79.

Salati, C. (2019). The Copenhagen dilemma still unsolved: could citizens help in addressing rule of law backsliding? The case of Romania. *International Journal of Rule of Law, Transitional Justice and Human Rights*, 10(10), 31-44.

Scheppele, K. L. (2018). Autocratic Legalism. *University of Chicago Law Review*, 85(2), 545-584.

Schmitte, P. C., & Karl, T. L. (1991). What democracy is ... and is not. *Journal of Democracy*, 2(3), 75-88.

Sedelmeier, U. (2024). Is there an east-west divide on democracy in the European Union? Evidence from democratic backsliding and attitudes towards rule of law interventions. *Journal of European Public Policy*, 31(3), 825-849.

Skora, M. (2023). *How to improve the EU's rule of law toolbox*. Friedrich Ebert Stiftung: <https://library.fes.de/pdf-files/bueros/bruessel/20380.pdf>

Soler, P. (2024). *EU auditors: rule-of-law budget protections only partial success*. Euobserver: <https://euobserver.com/rule-of-law/ar47581550>

Stanley, B. (2019). Backsliding away? The quality of democracy in Central and Eastern Europe. *Journal of Contemporary European Research*, 15(4), 343, 353.

- Statista. (2014). *Corruption perception index score of Poland from 2012 to 2023*. Retrieved from: <https://www.statista.com/statistics/869360/corruption-perception-index-poland/>
- Stein, R. (2009). Rule of law: what does it mean. *Minnesota Journal of International Law*, 18(2), 293-303.
- Tarasova, E. (2021). The one that got away? How Poland is sidelining the EU's anti-authoritarianism measures. *The Brussels Insider*. Retrieved from: <https://europedebate.ie/2021/01/15/one-got-away-poland-sidelining-eus-anti-authoritarianism-measures/>
- Transparency International. (2023). *Poland Corruption Index*. Retrieved from: <https://tradingeconomics.com/poland/corruption-index>
- UK Parliament. (2024). *Poland: the Law and Justice government and relations with the EU, 2015-2023*. House of Commons Library: <https://commonslibrary.parliament.uk/research-briefings/cbp-9868/>
- Velasco-Rivera, M. (2021). Poland—Another episode of “rule of law backsliding”—Judgment P 7/20 and a threat to the integrity of the EU legal order. *European University Institute*, 153-156.
- Von Bogdandy, A. & Lachny, J. (2020). Suspension of EU funds for member states breaching the rule of law – a dose of tough love needed? *Max Planck Institute for Comparative Public Law & International Law (MPIL)*.
- V-Dem Institute. (2024). *Codebook*. Retrieved from: [https://www.v-dem.net/documents/38/v-dem\\_codebook\\_v14.pdf](https://www.v-dem.net/documents/38/v-dem_codebook_v14.pdf)
- Wiacek, M. (2021). Constitutional crisis in Poland 2015-2016 in the light of the rule of law principle. In A. Von Bogdandy, P. Bogdanowicz, I. Canor, C. Grabenwarter, M. Taborowski and M. Schmidt (Eds.), *Defending checks and balances in EU member states* (pp. 15-34). Springer: New York City, United States of America.
- Wojcik, A. (2022). *A fragmented response to media freedom at risk in the Union*. Verfassungsblog: <https://verfassungsblog.de/a-fragmented-response-to-media-freedom-at-risk-in-the-union/>

World Justice Project. (2023). *WJP Rule of law index*. Retrieved from: <https://worldjusticeproject.org/rule-of-law-index/global/2023/Constraints%20on%20Government%20Powers/>

World Justice Project. (2024). *Factors of the rule of law*. retrieved from: <https://worldjusticeproject.org/our-work/research-and-data/factors-rule-law>

Yates, A. W. (2013). Using inherent judicial power in a state-level budget dispute. *Duke Law Journal*, 62, 1463-1502.

Zamecki, L., & Glied, V. (2020). Article 7 process and democratic backsliding of Hungary and Poland. Democracy and the rule of law. *Online Journal Modelling the New Europe*, 34, 57-85.

Zoll, F., & Wortham, L. (2018). Judicial independence and accountability: withstanding political stress in Poland. *Fordham International Law Review*, 42(3), 874-948.