

# The EU Response to Democratic Backsliding

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# Democratic Backsliding

- An erosion of democracy, a retreat by a government at power from democratic values to diminish pluralism and constrain criticism and opposition, in order to maintain power.
- Implies moving from democratic to autocratic rule, may be sectoral and/or gradable.
- Root causes vary from country to country.
- Retreat from cooperation with the EU is a side effect.

# Why Does the EU React to the Democratic Backsliding of its Member States?

## Protection of legitimacy

- Internal dimension: not to impair the democratic quality of the EU by the involvement of democratically backsliding MSs in EU decision-making.
- External dimension: practice what you preach.

## Protection of internal market

- For the effective application of Union law by national courts, e.g. to fight corruption.
- To cement mutual trust between the EU Member States.
- To encourage business.

## Protection of peace

- Democratic states foster peaceful dispute settlement and cooperation.

# The EU Toolbox

- 1) Infringement procedure (+ preliminary rulings)
- 2) Article 7 TEU
- 3) EU Justice Scoreboard
- 4) Rule of Law Framework
- 5) Rule of Law Report
- 6) European Rule of Law Mechanism
- 7) Rule of Law Dialogue in the Council
- 8) “Conditionality Regulation” 2020/2092
- 9) Sectoral measures: EPPO, EMFA

# The EU Toolbox – CJEU Proceedings

- 1) Infringement procedure + orders (fines)
- 2) Preliminary rulings

+ procedures before the European Court of Human Rights

# The EU Toolbox – Article 7

- A 'nuclear' option.
- Consists of two stages (mechanisms):
  - 1) preventive
  - 2) sanctioning
- Problems: learning by doing + unanimity.

# The EU Toolbox – EU Justice Scoreboard

- In place since 2013.
- An annual overview by the Commission of all MSs' justice systems.
- Focus on efficiency, quality and independence of justice systems.
- Supportive role: it feeds into the annual Rule of Law Report, the European Semester, the Recovery and Resilience Facility, etc.

# The EU Toolbox – Rule of Law Framework

- In place since 2014.
- Country-specific dialogue between the Commission and the EU MS concerned.
- Consists of 3 stages:
  - 1) Commission assessment
  - 2) Commission recommendation
  - 3) Monitoring of the EU country's follow-up to the recommendation.
- Preventive role: the prevent emerging threats to the RoL to escalate to the point where the mechanisms of Article 7 TEU need to be triggered.



# The EU Toolbox – Rule of Law Report

- 2019 Commission Communication: Strengthening the rule of law within the Union. A blueprint for action:
  - 1) Promoting RoL together with CoE, OSCE, OECD
  - 2) Preventing RoL infringements by MSs, e.g. by means of an annual RoL Report
  - 3) Responding to RoL breaches
- First report published in 2020, since 2022 it contains recommendations.
- A summary of positive and negative developments in all MSs and the EU.
- Points of focus: justice systems, anti-corruption, media pluralism and freedom, other institutional issues linked to checks and balances.

# The EU Toolbox – European Rule of Law Mechanism

- Based on the Rule of Law Report.
- An annual dialogue between the Commission, the Council and the European Parliament, MSs, national parliaments, civil society and other stakeholders on the rule of law.

# The EU Toolbox – Rule of Law Dialogue in the Council

- Introduced in 2020.
- 3 formats:
  - 1) every 6 months the General Affairs Council discusses the RoL situation in five different MSs
  - 2) once a year the ministers hold a discussion on the general RoL situation in the EU
  - 3) twice per year in the Justice Council ministers discuss justice-related RoL issues

# The EU Toolbox – “Conditionality Regulation” 2020/2092

- In force since January 2021.
- A real threat if compared to Article 7, as it requires “only” QMV, if its restrictive conditions are fulfilled.
- Limited scope: can only be proposed if breaches of the RoL principles directly affect or seriously risk affecting the sound financial management of the Union budget or of the financial interests of the Union in a sufficiently direct way.
- Subsidiary character: the Commission can only recur to the regulation if the other Union budget protection tools (e.g. checks and audits or financial corrections, or OLAF investigations) cannot be used more effectively.

# The EU Toolbox – Sectoral Measures

- 1) EPPO
- 2) EMFA
- 3) Other

# Case Study: The EU, Poland and Rule of Law

## 1) CJEU procedures

5 infringement cases: 4 judgments indicating irregularities (5<sup>th</sup> is ongoing).

A number of preliminary rulings.

€557 million in fines, of which the Poland is held to pay €360 million.

## 2) Article 7 TEU

20 December 2017 - 6 May 2024

## 3) “Conditionality Regulation” 2020/2092

15/04/2024 Poland received the first transfer under the National Reconstruction Plan - the largest transfer from the EU in the history of Polish membership.

## 4) Sectoral measures: EPPO, EMFA

Poland to become a member to EPPO soon.

EMFA not yet in force.

# Conclusions

- Should EU try to prevent democratic backsliding of its MSs?
- Can EU prevent democratic backsliding of its MSs?
- Can EU remedy consequences of democratic backsliding of its MSs?
  
- What are the achievements?
- Is good will on the side of the EU enough?
- Is good will on the side of its MSs enough?

# Thank you!