

# Rallying-round-the-Flag: The Polish Reaction to the EU Rule of Law Proceedings

Written by Hannah Wagner

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HANNAH WAGNER, OCT 20 2022

The recent anti-democratic reforms in Poland and Hungary are a matter of great concern to many Europeans. The actions of the Polish Law and Justice Party (Prawo i Sprawiedliwość, hereafter “PiS”) and the Hungarian Fidesz not only question the basic foundations of the European Union (EU), but also the functioning of democracy itself. After the end of the Cold War, Fukuyama (1989) predicted “the end of history” and declared the victory of liberal democracy. The developments in the past few years, however, have shown that democracy must be protected to prevail.

Portraying itself as a union founded on democratic principles, democratic backsliding threatens the EU’s foundational values and thereby its credibility. PiS and Fidesz might serve as examples of populist parties in other EU member states (MS). Hence, the EU must counter backsliding attempts and develop effective tools to do so. As Niklewicz (2017) puts it: “If [the EU’s founding values, principles and rules] are neglected, then the whole European project is worthless“ (p. 287).

PiS has succeeded in rolling back many important aspects of Polish democracy. It has taken control over the media and thereby decreased the independence of elections. Further, civil society has been weakened through smear campaigns against non-governmental organisations (NGOs) and a lack of public consultations (Freedom House, 2016; Freedom House, 2018). The reforms in the domain of the rule of law, however, are the most striking and also the one aspect in which PiS has been more successful than Fidesz (Bakke & Sitter, 2020). In the past seven years, the independence of the Polish judiciary has decreased substantially with the government effectively controlling the Constitutional Court and the judicial oversight organ (Freedom House, 2017). After the experience of democratic backsliding in Hungary, the EU has developed the new Rule of Law Framework (RLF), which allows for countering backsliding attempts in a more structured manner. The framework’s first initiation in Poland led to a year-long dispute between the EU and the Polish government. The fact that the dispute is still ongoing and the PiS is still in power, poses the question of the framework’s success in countering PiS’ anti-democratic reforms.

Possible answers for the (lack of) success can be found in the literature on reactions to outside interventions. Research shows that criticism of a whole group, like the Polish nation, by a cultural outsider, i.e. the EU, can lead to undesirable effects (Portela, 2020; Sedelmeier, 2017; Snyder, 2019). If the government is successful in shifting the blame for problems to the intervener, the nation feels attacked from the outside strengthening its feeling of belonging together. This increases the support for its leaders presenting themselves as defending the community against the outside aggressor. This so-called “rally-round-the-flag effect” (subsequently “rally-effect”) was first introduced by Mueller (1970), who applied it to the popularity of United States presidents following international crises. Scholars seem to agree that outside interventions, such as sanctions, are a delicate matter and often instigate a rally effect (Galtung, 1967; Portela, 2020).

Regarding the RLF, the state of the research is less clear. On the one hand, Sedelmeier (2017) states that domestic backlash is less likely for social pressure than for material sanctions (p. 344). He suggests that due to its formality, transparency, flexibility, and impartiality the framework is less likely to lead to increased public support for the government. On the other hand, Niklewicz (2017) points out that the framework was ineffective in preventing

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backsliding in Poland. Moreover, Schlipphak and Treib (2017) demonstrate that the Austrian (2000-2002) and Hungarian (2010) governments have been able to instigate the rally effect as a reaction to the EU's criticism. They extend their findings to the Polish case and argue that all elements necessary for turning around the narrative and obtaining the population's support are present in the Polish case (p. 361). Their conclusion, however, might be premature and outdated given that their article was published before the end of the framework's application to Poland. So far, no elaborate research has been done applying the rally effect to the case of democratic backsliding in Poland.

To close this gap, this thesis aims to answer the question: did the Polish government succeed in instigating the rally effect as a reaction to the Commission's use of the RLF? Making use of a process-tracing methodology, I find that the Polish government was successful in portraying the EU intervention as a threat to the Polish nation as a whole but was unable to provoke a rally effect.

This thesis begins with an overview of the historical development of the EU-Poland rule of law dispute. Subsequently, previous literature and the key concepts are discussed. After an outline of the theoretical framework and methodology, the results are presented. This thesis concludes with a discussion of the findings' implications for the EU and further research.

## **The EU-Poland Rule of Law Dispute**

Before elaborating on previous research, it is first helpful to consider the historical context. The Polish Constitutional Tribunal's (CT) main task is to control the constitutionality of laws and thereby control the legislative. If the CT declares a certain provision to be against the constitution, this provision becomes void. However, this first requires the government to publish the court's ruling. CT judges are elected by parliament and sworn in by the president (Bucholc, 2016).

These institutional features are essential to understand the rule of law crisis that unfolded in Poland in 2015. The old government had introduced a new law, which allowed it to elect five new CT judges to replace those judges whose terms would end shortly after the change in government. President Duda, affiliated with PiS, refused to swear in those judges without waiting for the CT's judgement on the legality of the newly-introduced law. Instead, he took the oath from five other judges who were elected by the new PiS parliamentary majority (Bucholc, 2016). Moreover, the government passed a law paralysing the CT's work, politicised appointments to public media and fired many senior civil servants in public institutions (Freedom House, 2016). This led to a stalemate in which the government refused to publish the CT judgements and the CT refused to follow the laws regarding its functioning and composition that it had itself declared unlawful (Bucholc, 2016).

In 2014, the EU developed a new RLF to counter democratic backsliding attempts (European Commission, 2014). The new mechanism allows for more formal communication between the Commission and the MS that is supposedly breaching the fundamental values of the Union; even when the lack of unanimity in the European Council does not allow for the initiation of the procedure prescribed in the EU treaties (Sedelmeier, 2017, p. 340). The framework consists of three stages and serves as an early-warning tool (European Commission, 2020). First, the Commission assesses whether there is a systematic threat to the rule of law. It issues an opinion on the matter to which the government concerned can respond. Second, the Commission publishes recommendations for concrete measures to be implemented in the MS. Third, the Commission monitors the implementation of the recommendations and can potentially propose the use of Art. 7 TEU (Sedelmeier, 2017, p. 345).

The Polish case is the first application of this new framework. However, it has not prevented the PiS government from continuously breaching EU law (Niklewicz, 2017). The framework's application was initiated by the European Commission in January 2016 as a reaction to the law concerning the appointment of judges to the Polish CT, which had been passed by PiS in December 2015. In March 2016, the Polish CT itself declared this law unlawful. However, the court's decision was not published and over time the judges of the CT have been replaced. The Venice Commission of the Council of Europe (CoE) confirmed the European Commission's concern in March 2016 by stating that the Polish reforms threaten the basic principles of the CoE: democracy, human rights and rule of law (European

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Commission, 2017). Consequently, in June 2016, the European Commission issued a formal opinion on the matter. In July 2016, it triggered step two of the framework and published three recommendations on the topic. These recommendations concerned the lack of an independent constitutional review and legislation regarding court organisation that threatens the judiciary's independence (European Commission, 2017; Kelemen, 2017, p. 229). In July 2017, the Commission announced that it was ready to launch an Art. 7 procedures and a classic infringement procedure against Poland. In August 2017, PiS officially dismissed the Commission's opinion and questioned the EU's competencies to decide over Poland. In December 2017, the Council discussed a proposal to determine a clear risk of a serious breach of the rule of law in Poland and initiated the Art. 7 procedures (European Commission, 2017). Having understood how the disagreement on the appointment of CT judges led the EU to initiate the RLF, it is now time to review the existing literature on democratic backsliding and the backlash to external interference (in Poland) and to introduce the rally effect.

## Previous Research

### *Democratic Backsliding*

As this research is concerned with democratic backsliding, it is important to first define the term *democracy*. Scholars have used many different definitions of this term. Whereas minimalists simply define democracy as a regime where rulers are elected (Przeworski, 2003), I understand democracy as a *liberal democracy*. Merkel (2018) defines *liberal democracy* as being characterised by (1) political rights, such as freedom of expression, association and assembly, (2) checks and balances, the separation of powers between the legislature, the executive, and the judiciary, and (3) the accountability of elected officials (pp. 7-11). This definition combines democracy, rule of law and human rights, three fundamental values of the EU, and is, therefore, suited to be used in an analysis of the EU RLF.

However, Merkel's definition is opposed to the definition of democracy employed by Eastern European populists. Hungarian president Orbán coined the term *illiberal democracy* rejecting the importance of constitutional restraints (Krastev, 2018, p. 56) and giving absolute power to the government (Vachudova, 2020, p. 327). PiS uses a similar definition of democracy and particularly stresses the importance of elections (Sejm, 2016b). This mismatch between the definitions employed by the EU and Poland is important for the analysis. This thesis uses Merkel's definition because it aims to analyse the developments in Poland from the EU's perspective.

*Democratic backsliding* is a similarly broad term. Bakke and Sitter (2020) define democratic backsliding as "a process of deliberate, intended action designed to gradually undermine the fundamental rules of the game in an existing democracy, carried out by a democratically elected government" (p. 2). It is therefore important to stress that the outcome of the process is open-ended. A regime change can happen or not (p. 3). Moreover, at least one of the three dimensions of liberal democracy mentioned by Merkel must be attacked (p. 3). Applying this definition, Bakke and Sitter (2020) show that the Polish case can be classified as *democratic backsliding* because the Polish reforms have fundamentally changed how the Polish state functions and thereby constitute a significant move away from democracy (Bakke & Sitter, 2020, p. 3). Having defined the concepts of democracy and democratic backsliding, it is now possible to consider the existing literature on the backlash to external interference.

### *The Rally-Round-The-Flag Effect*

Before developing the causal mechanism, it is helpful to consider previous research conducted on the backlash to external interference and introduce the theory of the rally effect. Most scholars agree that criticism of a whole group by cultural outsiders can lead to undesirable effects (Galtung, 1967; Portela, 2020; Sedelmeier, 2017; Snyder, 2019). This is the case when international human rights groups denounce domestic practices (Snyder, 2019) and when states impose sanctions (Portela, 2020). By attacking a nation's pride or decreasing the population's living standard, external interference evokes anger and resistance from the targeted group as it fears for its autonomy and security. The government can then present itself as defending the community against outside aggressors and increasing domestic support for its policies (Snyder, 2019).

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This theory is known as the “rally-round-the-flag effect” and was first proposed by Mueller (1970) in an analysis of US presidents’ public support. He explained that “certain intense international events generate a ‘rally round the flag’ effect which tends to give a boost to the President’s popularity rating” (p. 21). Therefore, the whole nation must be concerned which is mostly the case for international events (p. 21). A similar definition has been used by Perrin and Smolek (2009) and Dinesen and Jæger (2013). In the face of a crisis, the media particularly focuses on this topic, and polarisation decreases, as the opposition supports the government to solve the crisis while large parts of the society feel anxiety and lack of security (Turska-Kawa et al., 2022, p. 22). As a result, a stronger collective identity emerges and trust in public institutions increases (Dinesen & Jæger, 2013).

The effect has been applied to US presidents’ popularity, domestic support for political institutions after terror attacks (i.e. Perrin & Smolek, 2009; Dinesen & Jæger, 2013) and democratically backsliding countries (Schlippahk & Treib, 2017). Schlippahk and Treib (2017) demonstrate that democratic backsliding is not a purely internal process, but it triggers reactions from outside actors particularly when the country is an MS of the EU. In its external dimension, democratic backsliding is, thus, inextricably linked to the rally effect. Cianciara (2018) examined the strategies that helped the Polish government to obtain domestic support in their dispute with the EU. However, the rally effect has not yet been explicitly tested for the case of democratic backsliding in Poland – a gap which is closed by this thesis. Using the theoretical lens of the rally effect reveals how the use of language is connected to public support for the government. Further, it enables me to focus on how democratic backsliding is justified and how the different actors portray their actions.

## *The Backlash to the EU’s Interference in Poland*

Previous research on democratic backsliding in Poland, the EU-Poland dispute and its connection with public opinion give indications of what findings to expect. Firstly, the EU initiated the RLF due to the lack of alternative tools, the necessity to prevent a similar situation as in Hungary and favourable party politics (Kelemen, 2017; Niklewicz, 2017). Niklewicz (2017) argues that the Art. 7 procedure was initially not intended for situations where governments deliberately backslide and also the RLF is not taken seriously by the Polish government (pp. 285-286). Secondly, several explanations are available to explain why Poland was the first application of the framework. Despite its introduction in 2014, when democratic backsliding in Hungary was still at its height, the framework was not initiated against Hungary. The main reason for this is Fidesz’s membership in the influential European People’s Party whereas PiS is only a member of the less important European Conservatives and Reformists Group (Kelemen, 2017). Thirdly, PiS had to disregard the Polish constitution for its reforms, while Fidesz’s supermajority allowed for constitutional change and hence compliance with the constitution. Thus, the Commission was presumably met with relatively weak opposition to initiating the framework as a reaction to Polish backsliding attempts.

Scholars disagree on how previous research can be translated to the application of the new RLF. Sedelmeier (2017) suggests that due to its formal, transparent, flexible, and impartial set-up, the framework is less likely to lead to a rally effect. However, Niklewicz (2017) finds that the framework was ineffective in preventing backsliding in Poland. Schlippahk and Treib (2017) identify a rally effect in two similar cases and suggest that all three elements necessary to shift the blame to the EU are present in the Polish case.

Whether PiS succeeds in shifting the blame to the EU largely depends on its strategy. Cianciara (2018) claims that PiS pursued mainly a strategy of escalation before the EU’s launch of the Art. 7 procedure (December 2017). PiS had no intention to solve the conflict with the Commission but focused on securing the support of domestic voters (Cianciara, 2018, p. 61). Simultaneously, it pursued a strategy of de-escalation in its interactions with the EU. This strategy consisted of explaining the intentions of the government and attempting to convince other MS to veto the Commission’s actions. However, this strategy only became more apparent after December 2017 and the escalation strategy prevailed during the implementation of the RLF (Cianciara, 2018, p. 64). PiS’ focus on securing domestic votes is in line with the rally effect’s claim that external interference allows the government to increase its public support.

Poles’ Janus-faced attitude towards the EU makes it difficult to predict how the Polish government’s strategies are reflected in public opinion. Krastev (2018) highlights the paradox that “Eastern Europeans are among the most pro-

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EU publics on the continent, yet they vote for some of the most Euroskeptical governments” (p. 52). He explains this with Poland’s reliance on EU funds but also the historical trauma of foreign invasion, insecurity due to Russian annexations in the neighbourhood and a demographic panic aggravated by the refugee crisis. Krastev (2018) and Cianciara (2018) both highlight PiS’ continued support in the population which stands in opposition to the fact that PiS lost the senate in the 2019 elections (Freedom House, 2020).

The question arises as to how explicit a change in public opinion would be. Mueller (1970) explains that crises only instigate the rally effect if they are intense and sudden. The effects of gradually developing events on public opinion might not be that clear and not result in a sudden peak in support for the government. As the EU framework is a rather gradual and lengthy process (it took 1,5 years from the first opinion until the publication of the Commission’s recommendations), there might not be an explicit peak in public support.

## The Causal Mechanism

Having outlined previous research on the backlash to external interference (in Poland), it is now possible to derive the causal mechanism for the process tracing. To be able to identify whether a rally effect has taken place in Poland, it is important to operationalise the different steps of the process from the cause (democratic backsliding) to the outcome (potential change in public support). Figure 1 shows the causal mechanism. The operationalisation is summarised in Table 1.

*Figure 1. Visualisation of the process (Author’s interpretation)* **Theoretical mechanism** **Predicted observable manifestations**  
(1) Democratic backsliding  
Undermining judicial independence  
Unilateral changes in the scope, remit and competence of the constitutional court or lower courts  
Rules and procedures for judicial review

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Procedures for appointing judges

Personnel purges

Ignoring or unconstitutionally overturning court rulings

Suspending the constitution(2) EU interpretation of judicial reforms Domestic allies: constructing intervention as improving the situation of suppressed domestic groups that had asked for help

Target audience: whole country or actual offenders?

Open, independent, and impartial assessment of the situation(3) Polish government shifts blame to the EU Claims of illegitimacy, sovereignty, double standards

Downplay the relevance of international criticisms

Present domestic political opponents as traitors following the EU(4) Increase in Polish public support for the national government Opposition to the EU action

Support for the governing party

Levels of trust in EU/ domestic institutions/ government

Eurosceptic sentiments among the population *Table 1. Operationalisation of the process (Author's interpretation based on Bakke & Sitter (2020), Dinesen & Jæger (2013) and Schlipphak & Treib (2017)).*

Regarding the first step, the identification of democratic backsliding, this research utilises criteria for democratic backsliding related to rule of law established by Bakke and Sitter (2020, p. 4). According to their research, judicial independence can be undermined in several ways: changing the scope and competencies of courts, changing procedures regarding judicial review and the administration of justice as well as disregarding judgements or suspending the constitution.

Concerning the second step, the EU's language used during the initiation of the RLF, Schlipphak and Treib (2017) highlight strategies that could help the EU to prevent backsliding countries from shifting the blame: the EU should seek domestic allies and present the intervention as having the goal of supporting locally suppressed groups. The intervention should target specific individuals rather than the entire nation and the situation in the backsliding state must be assessed transparently and objectively (pp. 361-362). The EU's potential failure to address those aspects while constructing the initiation might explain the Polish government's success.

In the third step, the Polish government might shift the blame to the EU. Dinesen and Jæger's (2013) definition highlights the importance of language. Citizens do not only show support for their governments in crises but indeed in situations constructed as crises. Hence, the presentation of the event is essential. Schlipphak and Treib (2017) have elaborated on three elements that allow the targeted government to shift the blame to outsiders: the government must be able to construct the external interference as (1) being an external threat, (2) having negative effects on the whole country and (3) being illegitimate (p. 360). Claims of illegitimacy, attacks on sovereignty, the application of double standards and presenting domestic political opponents as traitors following the EU might indicate the successful use of language by the Polish government (Schlipphak & Treib, 2017).

The fourth step, an increase in public support for the Polish government, can be measured using levels of trust in the EU and domestic institutions including the national government and especially support for the governing party (Dinesen & Jæger, 2013). To answer the research question, the next chapter outlines the main features of the process-tracing methodology.

## Methodology

This chapter begins with a justification of the design choice. It then continues with a definition of process tracing and explains the choice of sources and timeframe. This research is deductive and aims to test the rally-effect theory by applying it to Poland. It is a single qualitative case study examining the case of democratic backsliding in Poland. Poland is an exceptional case as it is one of the two democratically backsliding EU MS (Bakke & Sitter, 2020) and the first MS to be subject to the RLF. Hence, it is particularly interesting whether Schlipphak and Treib's (2017) findings regarding the rally effect in Austria and Hungary can be generalised to the Polish case despite the new legal measure. The fact that the Polish PiS party lost the senate in 2019 (Freedom House, 2020), contrary to the Austrian and Hungarian governments' electoral victories following their dispute with the EU, might indicate that PiS was less

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successful at instigating the rally effect.

This research follows Schlipphak and Treib (2017) in their decision to use a process-tracing methodology instead of the quantitative methodologies often employed in similar research (Dinesen & Jæger, 2013; Hatuel-Radoshitzky & Yarchi, 2022; Mueller, 1970; Perrin & Smolek, 2009). Process tracing is comparably better suited to investigate how the use of language contributes to the rally effect as it allows for the combined use of public opinion data and speeches. Another advantage is the methodology's ability to "test the explanatory value of a given theory" (De Ville et al., forthcoming, p. 1). Bennett and Checkel (2014) define process tracing as "the analysis of evidence on processes, sequences, and conjunctures of events within a case" (p. 7). Process tracing is especially useful because it helps to establish causality between the cause (democratic backsliding) and the outcome (potential change in public support) (De Ville et al., forthcoming, p. 6).

The following data is used to observe the manifestations predicted in the operationalisation: the first step of the analysis is built on secondary literature. Official EU statements, retrieved from the Commission's website, are analysed in the second step of the process. Speeches given by Szydło and Kaczyński were retrieved from the Sejm website and the Multimedia Centre of the European Parliament. Surprisingly, only three relevant speeches were delivered by members of the Polish government at the Sejm. These speeches were translated using the online tool DeepL, whose reliability is increasingly recognised by scholars (DeMattee et al., 2022; Takakusagi et al., 2021; Zulfiqar et al., 2018), and then cross-checked by a Polish native speaker. The fourth part of the analysis uses the following public opinion polls to show changes in public support: Standard Eurobarometer 84-88, OECD trust in government indicator and CBOS surveys from February 2016 to May 2017. Overall, quantitative and qualitative evidence from various sources is combined to triangulate the results and increase the research's reliability.

This research focuses on the period from December 2015 until August 2017. December 2015 is the start of the process because the PiS party passed a law concerning the appointment of judges to the Polish Constitutional Tribunal. As a reaction to this, the RLF was initiated (Niklewicz, 2017, p. 282). In August 2017, PiS officially dismissed the Commission's opinion (p. 284). Even though this was not the end of the dispute between the EU and Poland on the rule of law, it seems a suitable endpoint for the process tracing because it signifies the ending of the RLF. In December 2017 the Commission initiated the Art. 7 procedure (Timmermans, 2017b) marking the start of a new chapter in the EU-Poland dispute, which is not covered in this thesis.

## Analysis

### *Democratic Backsliding*

The analysis follows the four steps of the process outlined in the methodology chapter. Having won the presidential elections in May 2015 and the parliamentary elections in October 2015 (Freedom House, 2016), the PiS party introduced several changes in the Polish judicial system. Except for a suspension of the constitution, all elements undermining judicial independence identified above are fulfilled. First, a total of seven amendments to the functioning, composition and procedures of the CT were introduced and the rules and procedure for judicial review were altered (Freedom House, 2017). Second, during the Rule of Law crisis in 2015, both the old and the new government attempted to change procedures regarding the election of CT judges (Bucholc, 2016). The PiS party ignored court rulings by not awaiting the CT's judgement on the matter but instead prevented those judges, lawfully appointed by the previous government, from starting to work (Bucholc, 2016; European Commission, 2016).

Third, with regard to personnel purges, the lowering of the compulsory retirement age for judges led to a replacement of 40% of Supreme Court judges allowing PiS to give the posts to loyal judges. In 2020, a judge who aimed to implement a judgement of the European Court of Justice was suspended (Bakke & Sitter, 2020, p. 7). Fourth, court rulings were ignored or unconstitutionally overturned. For example, the government ignored that the CT ruled certain amendments to a law on the functioning of the CT unconstitutional (Freedom House, 2017). Moreover, the government did not publish CT judgements preventing them from becoming legally binding (Bucholc, 2016). However, there has been no suspension of the constitution and the lack of a supermajority prevented the PiS government from changing the constitution (Bakke & Sitter, 2020, p. 7; Freedom House, 2016). Nonetheless, several

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key characteristics associated with democratic backsliding in the realm of the rule of law can be identified confirming Bakke and Sitter's (2020) classification of Poland as a democratically backsliding country in the set timeframe. This is also reflected in Freedom House's (2020) decision to change Poland's classification from a consolidated to a semi-consolidated democracy.

## *EU Interpretation of Judicial Reforms*

Having identified that the developments in Poland can indeed be classified as democratic backsliding, it is now necessary to analyse how the EU has reacted to the reforms. In January 2016, the EU initiated the RLF to react to the crisis in Poland (Freedom House, 2017). Thereby, the Commission made only limited use of domestic allies to prevent a rally effect. Presenting the intervention as improving the situation of suppressed domestic groups that asked for help, might prevent an increase in public governmental support (Schlippahk & Treib, 2017, p. 361). While the Commission underlines that it bases its assessment on the Polish CT's rulings (European Commission, 2016), it refers less to suppressed Polish groups. The reference to the CT's judgement shows that the Commission trusts the Polish institutions. It does not want to criticise Poland as a whole but rather help the CT to implement its judgement for which it requires a cooperative government. Moreover, the Commission stresses its cooperation with allies: "[o]ur concerns are shared widely – the Venice Commission, the Council of Europe, the United Nations, the Network of the Presidents of Supreme Courts and the Councils for the Judiciary, lawyers associations and NGOs" (Timmermans, 2017a). However, there is no specific mention of Polish groups. While underlining the seriousness of the Commission's concerns, the enumeration of organisations might create the feeling that the whole world is united against Poland which might trigger a rally effect. Hence, the Commission is unsuccessful in integrating domestic Polish allies into its actions against the PiS government.

Official statements are addressed to "the Polish Government", "the Polish authorities" or "the Polish parties concerned" (Timmermans, 2016). When references are made to the actions of specific persons, their positions rather than names are mentioned: "[t]he President of the Republic has in the meantime taken the oath of all five judges" (European Commission, 2016). While ensuring impartiality and objectivity and avoiding personal accusations, this address is not in line with Schlippahk and Treib's (2017) suggestion to target the actual offenders directly instead of the whole country.

The Commission's main focus lies on stressing the open, independent and impartial assessment of the situation. In this regard, the Commission closely follows Schlippahk and Treib's (2017) advice. Firstly, the setting of the RLF itself favours impartiality. The framework was introduced in 2014, hence, before PiS was elected. As a result, the framework was not drafted to suit this specific situation. The formality of the practice and the Commission's impartiality ensure greater legitimacy (Sedelmeier, 2017, p. 346). Secondly, the Commission's cooperation with other international organisations strengthens its position and impartiality. There is strong cooperation between the European Commission and the Venice Commission of the Council of Europe (European Commission, 2016). Thirdly, the Commission's constant stressing of dialogue underlines its openness. In addition to written declarations of being open to dialogue with the Polish government, Timmermans also made an effort to meet with government representatives in person, for example by visiting Warsaw on April 5 and May 24, 2016. Furthermore, the European Parliament invited the Polish prime minister Szydło to a plenary debate (European Commission, 2016).

Through its use of language, the Commission highlights its impartiality and sets a constructive tone for the RLF. Timmermans aims to conduct the framework in a "spirit of cooperation, not confrontation" (Multimedia Centre European Parliament, 2016). The Commission stresses that it respects Poland's sovereignty and "does not wish to involve itself in a political debate in Poland [since] [p]olitical issues in Poland are the business of politicians in Poland, not the European Commission" (Timmermans, 2016). The tone used by the Commission, particularly in the first few months after the initiation of the framework, is conciliatory: the Commission "encourages" and "invites the Polish government to solve the problems identified" (European Commission, 2016). Further, it "welcomes" (Multimedia Centre European Parliament, 2016) that the Polish government followed some of its recommendations. Later, the tone changes slightly. Timmermans does not appear as optimistic and conciliatory as before. He complains about the Polish government turning around the narrative: "I just don't accept people saying that the European Union takes away sovereignty from Poland. No, it creates a sovereignty in Poland that Poland hasn't had for centuries"



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(Timmermans, 2017a) and its unwillingness for dialogue: “[s]o I’ve tried really to have this dialogue but on the other side there is apparently no wish to do so” (Timmermans, 2017a).

Altogether, this shows that the Commission stressed excessively its openness and the impartiality of the RLF. This is underlined through its conciliatory tone. However, the Commission was neither successful in building alliances with Polish groups harmed by the current situation, nor in presenting the proceeding as targeting only the government and not the Polish nation as a whole.

## *Shifting the Blame to the EU*

Building on the two previous sections, this section examines how the Polish government shifted the blame to the EU. The Polish government’s communication with the EU differs from its communication with the Polish public. While the tone towards the EU is cooperative but determined, the EU’s actions are presented as a threat to the Polish people. Here it is important to note that there is also a difference in actors communicating with the Commission and the Polish people: whereas the EU mainly communicates with the official Polish representatives, in particular, prime minister Szydło, Poland’s *de facto* ruler Kaczyński determines the discourse within Poland and displays a less cooperative attitude (Csehi & Zgut, 2021, p. 63). This supports the findings of Cianciara (2018) holding that PiS focused on securing domestic votes and pursued a strategy of escalation during the RLF.

Szydło compliments the EU for its achievements and presents the EU as a role model for Poland and as Poland’s future (Multimedia Centre European Parliament, 2016). The PiS government is open to dialogue but believes that the dispute on the Polish CT is an internal matter that needs to be solved within Poland (Multimedia Centre European Parliament, 2016). Szydło repeatedly stresses the importance her government attributes to communication with the EU: “this is important to me”, and “the government of the Republic of Poland is open to dialogue and to debate” (Multimedia Centre European Parliament, 2016). Nevertheless, she does not want to invest too much time in this dialogue either: “I do not see any grounds for devoting so many words and so much time to Polish affairs” (Multimedia Centre European Parliament, 2016).

Similar to the shift in the tone of the Commission, also the Polish government’s tone becomes less cooperative and more disappointed later in the process. The PiS government blames the Commission for the failure of constructive cooperation because it did not adhere to its own standards, namely “objectivism (and) respect for sovereignty, subsidiarity and national identity” (Goulard, 2016). Cianciara’s (2018) findings show that this development was reversed in December 2017, when the Polish government attempted to control damage and avoid an Art. 7 procedure.

The PiS party’s vision for the future of Europe becomes apparent in several statements. Therein, sovereignty occupies a key role. PiS is in favour of a Europe composed of strong nation-states with an intergovernmental character:

Poland is, was and will be in the European Union ... But being in the European Union makes sense when you are a country ... which is respected not because it agrees to the dictates of others, but because it is a partner.

(Sejm, 2016b)

Csehi and Zgut (2021) argue that Eurosceptic populism in Eastern Europe manifests itself particularly through its critique of the EU’s apparent actions against national sovereignty (p. 56). This is evident in the case at hand: the Commission is presented as Poland’s antagonist which wants to take away its hard-fought sovereignty: “[f]or many years, for decades, we had to fight for the right to express our own opinions, to build our own statehood. We won this, and we will not allow it to be taken away from us” (Multimedia Centre European Parliament, 2016). Thus, while PiS generally respects the EU, this is not necessarily the case for the Commission, which is portrayed as trying to take away Poland’s sovereignty.

As mentioned by Schlipphak & Treib (2017), legitimacy plays an important role in influencing public opinion. PiS

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attempted to shift the focus from the Polish democratic deficit to the European one (Csehi & Zgut, 2021, p. 62). PiS derives the authority for the changes to the Polish judicial system from its victory in the elections: “[t]hese reforms to which the citizens committed us in the elections ... in democratic elections” (Sejm, 2016a). By referring to “the technocrats in Brussels” (Sejm, 2016c), Szydło contrasts PiS’ democratic mandate with the unelected Commission officials. This relates to the concept of Eurosceptic populism, a type of populism where the EU is equated with the corrupt elite, which fails to represent the people and is thus undemocratic (Csehi & Zgut, 2021, p. 55).

The Polish government deliberately attempts to blur the distinction between the Polish government and the Polish people and to present the EU’s intervention as a threat to Poland as a whole. The terms “Polish state”, “Polish government” and “Poland” are used interchangeably, thereby blurring the distinction: “[v]oices which are unfair, voices which judge Poland, the Polish state and also the Polish Government in an unjust way” (Multimedia Centre European Parliament, 2016). By comparing the current situation to historical situations in which Poland was “a besieged fortress” (Buras, 2017), PiS appeals to feelings of horror in the Polish population: “[w]henver there have been attempts to take Polish matters outside the Polish home ... it has always ended very badly for us... From history one needs to draw conclusions” (Sejm, 2016a). Krastev (2018) confirms that the trauma of foreign domination is deeply rooted in Polish society (p. 55). Hence, by presenting the Polish government and the Polish nation as one entity and comparing the EU’s intervention to situations of occupation and siege in the past, PiS presents the EU’s actions as a dangerous threat to all Poles.

The narrative of a threat allows the Polish government to show the necessity for internal unity in particular among the different political parties:

Are we able, ladies and gentlemen, in the face of difficult challenges, in the face of the matter which is most important for Poland today, to be together, despite the differences to which we are entitled, in the name of the democratic choice of the Polish people?

(Sejm, 2016a)

Uniting the political parties in the face of external criticism is a first step in also uniting the Polish people behind the Polish government and thereby creating a rally effect.

Domestic political opponents who refuse to support the government in the matter are presented as traitors and criminals. In particular, Kaczyński criminalises certain actions of the opposition and presents the opposition as undemocratic (wSieci, 2016). The biased media helps him to convey this message. Further, Kaczyński portrays “domestic critics as ‘the worst sort of Poles’, ‘traitors’ who ‘complain about Poland to Brussels’” (Csehi & Zgut, 2021, p. 61). Hence, domestic political opponents are presented as traitors following the EU.

On several occasions, Polish government officials downplay the relevance of the EU’s criticism. Szydło blames the Commission for wrong accusations: “Poland has been unjustly slandered and accused of something which does not take place in our country” (Sejm, 2016a). Kaczyński called the Rule of Law mechanism a “comedy” (in Buras, 2017). The EU’s criticism is dismissed as “groundless” (Goulard, 2016) and as being “based on incorrect assumptions which lead to unwarranted conclusions” (Goulard, 2016).

Overall, the EU’s criticism is presented as unnecessary interference in domestic Polish affairs which the Polish government hopes to deal with rather quickly. Whereas PiS uses a moderate and cooperative tone in its communication with the EU, particularly at the beginning of the process, it domestically rallies the nation around the government and presents the EU intervention as a threat to Polish sovereignty. The next step investigates whether the successful blame-shifting has indeed led to a rally effect, and therefore, a surge in public support for the Polish government.

## *Changes in Public Support*

Having analysed how the Polish government and the European Commission portrayed the issue, it is now possible to

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look at the potential effects on public opinion. The analysis of public opinion survey data does not reveal a rally effect as clear-cut as identified by Schlipphak and Treib (2017) in the cases of Austria and Hungary. Indeed, support rates for PiS have been relatively stable and continued to be high at around 37% between the elections in October 2015 and the end of the RLF.

Eurobarometer data reveals that from autumn 2015 to spring 2016 there was a drastic decline in optimism about the direction in which Poland is going. The number of people who believes that the country is going in the wrong direction continued to increase in 2016. In 2017, Poles' optimism increased again (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b). Between autumn 2015 and spring 2016, there was a drastic decline in satisfaction with the way democracy works in Poland, afterwards, satisfaction increased again and in autumn 2017 the 2015 level was reached again (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b) despite the continuation of the rule of law crisis.

Trust in EU institutions is generally higher in Poland than trust in Polish institutions. However, there is always roughly the same number of people who trust the EU as those who distrust it (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b) showing the polarisation of Polish society. As the key EU actor in the RLF, it is particularly interesting to analyse Poles' trust in the Commission. In the period of 2015 to 2017, the Commission enjoyed generally higher levels of trust than the EU as a whole. Trust in the Commission increased from autumn 2015 to autumn 2016 and then slightly decreased again reaching roughly the level it had before the initiation of the RLF (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b).

Polish institutions enjoy a remarkably low level of trust among the Polish population. Regarding trust in the national government, there is a divergence between Eurobarometer and OECD data. Whereas Eurobarometer data displays barely any change for this indicator in the period from 2015 to 2017 (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b), trust in government increased drastically from 21% in 2015 to 50% in 2017, according to OECD data (OECD, 2022). Similarly, Eurobarometer data reveals even lower levels of trust for the national parliament and the political parties than for the government (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b). This is confirmed by CBOS' (2016a) analysis. Regional and local public authorities are trusted to a similar extent as EU institutions (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b). The distrust in the judiciary increased over time from 50% distrust in spring 2016 to 58% distrust in autumn 2017 (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b) providing potential evidence for the success of the government's smear campaign against judges.

As opposed to Orbán, who benefitted from relatively high levels of Euroscepticism (Schlipphak & Treib, 2017, p. 359), Eurobarometer data confirms Krastev's (2018) finding that Poles are comparably pro-European despite voting for Eurosceptic governments. The fact that more than half of the population believes that more decisions should be taken at the EU level (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b) cannot easily be combined with PiS' focus on sovereignty and intergovernmentalism. One factor influencing Poles' favourable attitudes towards the EU might be the country's net beneficiary status (Csehi & Zgut, 2021, p. 56) and the widespread belief that the EU's voice counts in the world (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b). CBOS data (2016c) confirms that Poles are concerned about the potential negative economic consequences the dispute with the EU might have for their country. The support of a Eurosceptical government can be explained through Poles' historical trauma of foreign invasion (Krastev, 2018) which makes them reluctant to give up sovereignty in the course of European integration.

The continued support for PiS can be mainly explained by the government's internal policies. The Family 500+ programme is generally welcomed by many Poles (CBOS, 2016a) and might be one reason that Poles' financial situation has improved slightly from 2015-2017 (TNS Opinion & Social, 2015; 2016a; 2016b; 2017a; 2017b). Hence, there seems to be a discrepancy between the evaluation of the government's internal and external policies.

While none of the indicators discussed above clearly indicates a rally effect, there is explicit proof of the opposite. For example, thousands protested in front of the Sejm after the opposition was banned from the vote on the budget and PiS lost three voting sessions in December 2016 despite its parliamentary majority (Przybylski, 2016). Furthermore, President Duda vetoed two laws in the summer of 2017 (Timmermans, 2017a) which might indicate disagreement

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within the government.

Overall, the data confirms CBOS' analysis that "extremely deep divisions separate Poles" (2017b). While many Poles do not support the government policy in the rule of law dispute (CBOS, 2016b), they welcome other policies of the government, which balances out the effect on public opinion.

## Conclusion

In light of the analysis, it is now possible to summarise the results and draw conclusions for further research and policymaking. This thesis has shown that the Polish government was successful in presenting the EU's rule of law proceedings as a threat to the Polish nation but was unable to instigate a rally effect. Numerous key elements of democratic backsliding are present in the Polish case: PiS introduced reforms that changed how judges are appointed, leading to a replacement of 40% of Supreme Court judges and the instalment of PiS-loyal judges. The procedural rules of the CT were altered, and its rulings were ignored or simply not published preventing them from becoming legally binding. However, as opposed to the Hungarian case, PiS' lack of a supermajority hindered constitutional change or suspension.

The European Commission employed a conciliatory tone throughout the proceedings and stressed its openness to dialogue and impartiality. Nevertheless, it was unsuccessful in (1) building alliances with Polish groups and (2) conveying the message that the target of its actions is not the Polish nation as a whole but rather the government. The Polish government set out with a cooperative spirit towards the EU which later became less favourable. Domestically, it employed a harsher tone. PiS repeatedly stressed that the Polish people had voted for their policies in democratic elections and PiS, therefore, possessed more legitimacy than the 'technocratic' Commission. PiS forced the opposition to fight together with the government against the 'external threat' and portrayed those politicians who refused to do so as traitors following the EU.

Despite its successful use of language, PiS was unable to instigate a rally effect. Support for the government remained high and stable between 2015 and 2017 without any remarkable peaks. Eurobarometer data reveals a sharp decline in Poles' satisfaction with the way democracy works in their country at the beginning of the rule of law proceedings. Also, no overall anti-EU feeling developed. Trust in EU institutions is continuously higher than trust in the Polish government.

As this research is based on a single case study, the findings cannot easily be generalised to other contexts. Further, being limited to using translated speeches decreases the certainty of the results. I cross-checked my findings with the conclusions drawn by other scholars to increase the validity of the findings and reduce mistakes arising from translation. These scholars were either Polish native speakers or supported by native speakers. Further research should look into the language employed by the Polish government using original Polish speeches. In this thesis, I did not take into account the different variables that influence public opinion. It is up to future quantitative studies to investigate this aspect of the rally effect in the Polish case. Nevertheless, this thesis makes an important contribution to the rallying-round-the-flag literature, as it contrasts with Schlipphak and Treib's (2017) findings for Austria and Hungary and falsifies their prediction for Poland. The RLF did not provoke a rally effect as expected by academia so far. However, given the ongoing EU-Poland dispute, the framework was not successful in stopping democratic backsliding in Poland either. Policymakers could increase the effectiveness of the mechanism by putting a stronger emphasis on building alliances with civil society in the MS concerned. Moreover, the focus should be on targeting the Polish government rather than the entire Polish nation. An effective framework to combat democratic backsliding attempts is essential to safeguard democracy within the Union and maintain the EU's external credibility.

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