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**HOW TO LOSE A DEMOCRACY IN TEN YEARS: DEMOCRATIC  
BACKSLIDING IN DEMOCRACY PROMOTING INTERNATIONAL  
ORGANISATIONS: The Curious Cases of Poland and Hungary**

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**HOW TO LOSE A DEMOCRACY IN TEN YEARS:  
DEMOCRATIC BACKSLIDING IN DEMOCRACY  
PROMOTING INTERNATIONAL ORGANISATIONS**  
The Curious Cases of Poland and Hungary

M.Sc. Public Administration (Economic & Governance)

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**ABSTRACT**

In an increasingly globalized world, international organizations remain important to coordinate the need for global cooperation and collective action. In order to give adequate responses to a plethora of wicked problems, international organizations need to be given more sovereignty and decision-making powers. This clashes directly with the need of national governments to retain their sovereignty. These clashes can lead to a decrease in legitimacy for the IO and give rise to nationalism, and in the most extreme cases to democratic backsliding. Democracy promoting IOs unintentionally help democratic backsliding in member states when they do not design proper democracy promoting tools and mechanisms. I mix process tracing and discourse analysis to look at the influence of democracy promoting mechanisms of IOs on member states who experience democratic backsliding. I demonstrate my case by looking at the application and results of the conditionality mechanism of the EU on Poland and Hungary. The conditionality mechanism focuses mainly on 1) constitution, 2) rule of law, 3) civil and minority rights, 4) the independence of the judiciary and the media, and 5) the separation of power within government. Of these, I focus on the effects of the conditionality mechanism on 4) the independence of the judiciary and the media. I find that the conditionality mechanism mainly influenced changes in the independence of the judiciary. This influence was also seen back in the resilience and recovery proposals from Hungary and Poland, where both countries pledged to pass legislation to increase the independence of the judiciary. Based on this I argue that the amount of democracy promoting mechanisms does not matter, as long as the impact of the mechanism is strong enough for democracy promotion.

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**LIST OF ABBREVIATIONS**

EC: European Commission

ECJ: European Court of Justice

EP: European Parliament

EU: European Union

ICJ: International Court of Justice

IO: International organization

RoL: Rule of law

RRP: Recovery and resilience program

TEU: Treaty on the European Union

UN: United Nations

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## I. Introduction

On 20 December 2017, the EU did something that it has never done before: it triggered Article 7 in response to the Polish judicial reforms (Commission Decision P8\_TA(2018)0055, 2018). Article 7 is a mechanism in the Treaty on European Union (TEU) that is designed to address serious and persistent breaches of EU values such as human dignity, freedom, democracy, equality, human rights and rule of law breaches. The topic of Article 7 has not been new to the political debate in Brussels, but never before had it passed the vote in the European Parliament. In 2015 the EP asked the European Commission to start working on a proposal to trigger Article 7 in response to Hungary. However, in October it voted against a proposal from the Commission to trigger Article 7 in response to the Hungarian treatment of migrants. Around the same time, a European Citizens' Initiative calling for the triggering of the Article 7 mechanisms against Hungary was also handed in. On the 12th of September 2018, roughly 9 months after triggering the mechanism against Poland, the EP also voted to trigger the mechanism against Hungary.

In the world of today, where globalisation has taken the main stage, international organisations (IOs) are very much needed to address global challenges (Keohane, 2001). Whereas EU is a regional IO, and the UN is a global IO, both share the commonality of having developed complex legal frameworks to govern their operations and ensure that they operate in a manner that is consistent with their universal principles of democracy, freedom, and fundamental freedoms without distinction to race, gender, language, or religion (Hooghe et al., 2019). These frameworks provide a legal basis for mechanisms to uphold their rules and their values, also known as the rule of law. The rule of law refers to the principle that all individuals and institutions are subject to the law and that no one is above the law (Widerstrom, 2021). This makes rule of law a core democratic principle.

The EU's legal system is based on the principle of supremacy, which means that EU law takes precedence over the domestic laws of its member states as instituted in the legal framework via the treaties and democratically adopted policies and regulations by the EU and its member states (Widerstrom, 2021). As a global IO the UN has a legal framework derived from international law, treaties, agreements, and customs. However, the UN's legal system is based on the principle of sovereignty, which means that states are free to act within their own borders without interference from other states. Sovereignty is considered to be a core principle of the UN. For the UN, the International Court of Justice (ICJ) is the primary judicial organ

bearing the responsibility for interpreting and applying international law. The ICJ's role in enforcing the rule of law in the UN has been demonstrated in several case studies, such as the UN Convention on the Law of the Sea and the International Criminal Court. The ICJ has also issued advisory opinions on issues such as the legality of the use of nuclear weapons. On the other hand, for the EU, the European Court of Justice (ECJ) is the main judicial organ which holds the responsibility of interpreting and applying EU law across all member states.

In international organisations, the rule of law is based on several principles, including transparency, accountability, predictability, and fairness (Widerstrom, 2021). These core principles are essential for the operationalisation of the rule of law and thus ensure that IOs operate in a manner that is consistent with their universal principles, such as democracy and human rights. In addition, the rule of law is also crucial in promoting not only accountability and legitimacy but also democracy. When member states adhere to the rule of law, they are likely to be considered as legitimate by their constituents and their counterparts, which in turn enhances their effectiveness and credibility (Eberlein & Newman, 2008). As the world grows increasingly more globalised and intertwined, the functions of IOs change accordingly. As an adequate response to the increasing need and demand for international cooperation, IOs have grown in numbers, size, and power. Especially after the Cold War, during the 90s there was a significant growth in all these components (Zürn, 2004).

This growth of power has not gone unnoticed, as resistance to IOs has also grown. In the context of today's world, where illiberalism and democratic backsliding is rampant, we are increasingly seeing a resistance to IOs and the rule of law (Meyerrose, 2020). From Margaret Thatcher to Boris Johnson to Donald Trump and Marine Le Pen, powerful politicians and elected officials are starting to question the supremacy of IOs and seriously undermine their legitimacy (Zürn, 2004). The opposition comes forth from the ever-existing clash of sovereignty between an IO and a national government (Keohane, 2001). An effective contribution to global coordination and international cooperation, IOs require to gain more decision-making power and encroach on the sovereignty of national governments. This clash of sovereignties has led to an increase of nationalist leaders who are turning their backs to international cooperation (Keohane, 2001). In some cases, the rejection of an IO has gone so far that it has led to democratic backsliding.

IOs associated with democracy have developed democracy promoting mechanisms to prevent democratic backsliding both within their own institutions and among their member

states (Buchanan & Keohane, 2011). Even under the watchful eye of these democracy promoting IOs, there are two ways in which backsliding can happen: 1) the institutional structure within an IO leads to a democratic deficit in the IO itself, or 2) democratic backsliding happens when a member state starts rejecting the rule of law of an IO. Whilst a plethora of literature on opposition to IOs and the results of democratic backsliding exist, there is to a lesser extent on IO mechanisms to prevent democratic backsliding (Meyerrose, 2020). This research aims to provide insight into the democracy promoting mechanisms of IOs, how this contributes to democracy promotion and effects democratic backsliding in member states of IOs. The question that this research aims to answer is as follows:

*What is the influence of democracy promoting mechanisms of IOs on member states who experience democratic backsliding?*

This thesis attempts to formulate an answer by dissecting the anatomy of IO's democracy promoting mechanisms, democracy promotion, and democratic backsliding in member states of IOs and investigates the relationship between these variables. Subsequently, this thesis argues that these variables can be studied among two axes: 1) the independence of the judiciary, and 2) the freedom of media. Further, this thesis argues that the amount of IO's democracy promoting mechanisms is irrelevant for democracy promotion and thus can still lead to democratic backsliding. Instead, this thesis argues that only the magnitude of IO's democracy promoting mechanisms will have a meaningful impact on democracy promotion and thus could then prevent or maybe even rewind democratic backsliding. In addition, this thesis builds on institutionalism along with its assumptions and predictions and thus investigates to test the critics on this theory. In this investigation, this thesis goes through four main phases. The first phase provides an evaluation and assessment of all relevant literature and theories. The second phase offers the design of the investigation. The third phase provides empirical evidence for the investigation. And the last phase evaluates this evidence, followed by a discussion and conclusion.

Understanding the impact of democracy promoting mechanisms of IOs is academically relevant for a number of reasons. Most importantly, the effectiveness of the democracy promoting mechanism is directly relevant to the functioning and legitimacy of IOs (Meyerrose, 2020; Buchanan & Keohane, 2011). Key mechanisms for upholding fundamental values of an IO are critical for maintaining public trust and support for the IO. Furthermore, understanding the impact of democracy promoting mechanisms can help to provide insights into the broader

issue of IO effectiveness and global governance. And lastly, assessing the impact of democracy promoting mechanisms can help inform policy debates about how to address democratic backsliding. By understanding the effectiveness of this mechanism, policymakers can better evaluate the strengths and weaknesses of different approaches to promoting democracy, human rights, and other universal principles internationally.

Not only academically, but also on a societal level it is important for us to answer the question about democracy promoting mechanisms. Understanding how these mechanisms work to protect core universal principles, allows us to hold IOs accountable for infringing these values, and could help us to detect, prevent, mitigate, and maybe even rewind democratic backsliding.

Additionally, ensuring that democracy promotion is effective can have positive implications for public trust and increase the support of IOs, which are deemed essential in overcoming current and future global challenges (Buchanan & Keohane, 2011). Conversely, if a democracy promoting mechanism is considered ineffective or unfair, this might undermine the public support even more. As such, it is of importance to IOs, policy makers, and experts to know how to design these mechanisms. Lastly, democracy promoting mechanisms can help increase accountability and transparency in IOs. Holding countries accountable for their actions helps in promoting transparency and shows the sovereignty of an IO. Through the development of these mechanisms, IOs can be more efficient in regaining their popularity with the public and with decision-makers, while it also can be increased in effectiveness.

## II. Literature Chapter

This chapter discusses a vast variety of literature along with the relevant theories and their implications. To provide context and a better understanding of the relevant literature, relevant theories and their implications, examples are provided together with in-depth descriptions of phenomenon and events. Further, it contains interaction between different scholars who contributed to the relevant subjects through various perspectives. In addition, it contains the theoretical framework in which the investigation is conducted. This chapter in its entirety provides the foundation and justification for the investigation in this thesis.

### II.I Literature review

#### *International organisations are necessary but flawed*

The world has become increasingly interconnected while faced with wicked problems such as climate change, global trade, and security threats. Wicked problems which all require global solutions and collective action. Subsequently from this requirement, the demand for international cooperation has also increased. This demand is supplied by the tremendous worldwide increase of International Organisations (IOs) since the 90s, when the amount of IOs nearly tripled since the 60s. Nonetheless, governments often act in their own interests, values, and preferences (Keohane, 2001). An IO aiming to impose international rules and regulations that go against national interests can be met with resistance from national governments who are looking to protect their domestic policies. In addition to this, the need for international cooperation also exceeds the functional tasks that are managed by IOs (Keohane, 2001). In order address the increasing demand of international cooperation, IOs need to expand their centralization and resources. However, national governments are unwilling to give up their sovereignty and decision-making powers to an IO as they fear exploitation or even tyranny (Keohane, 2001). This very approach to international cooperation is attributed to the anarchy assumption of realism and its prediction that states are seeking for survival (Mearsheimer, 2014). This then results in a lack of tools and skills of the IO to monitor and oversee the implementation of their regulations (Eberlein & Newman, 2008). This gap of capacity then turns into critique on the effectiveness of the IOs and eventually undermines the legitimacy of IOs and other forms of cooperative politics (Eberlein & Newman, 2008).

The challenge for IOs to balance the need for international cooperation and coordination, and the autonomy and sovereignty of national governments is referred to as the international governance dilemma. First coined by Keohane in 2001, the governance dilemma

is a frame to look at the challenges that modern institutions face when governing. Keohane (2001) explains:

“Although institutions are essential for human life, they are also dangerous [...]. At best, institutions allow for potential gains from cooperation, but at worst international interdependence can lead to large scale wars.” (p.1).

In essence, the governance dilemma highlights the ongoing tension between the need for international governance and the desire for national sovereignty (Keohane, 2001). The success of globalization depends on effective governance, but effective institutions are difficult to create (Keohane, 2001).

In this context, Keohane (2001) highlights that the problem of institutional design implicates that first-mover advantages are necessary if innovation in institutions need to arise. Institutional innovators must receive substantial benefits such as control over future policies or the ability to erect possible competitors to join an institution. Otherwise, “latecomers could freeride on the accomplishments of their predecessors, and anticipation of such free riding would discourage institutional innovation” (Keohane, 2001, p. 5). An example in the field of global governance where we can see this dilemma being played out is within the EU where first-mover advantages gain such a benefit. New EU member-states must comply in their entirety, as such give in a part of their sovereignty, to the policies determined by their predecessors. This then results the six founding members by creating the original policies to benefit continuously and cumulatively (Keohane, 2001). Then as a response, new member states start to resist the regulations once set by their predecessors (Keohane, 2001).

On the other side of global governance dilemma, lack of effective governance is once again demonstrated in the G8 and G20 deliberations. Although these IOs are surely characterized with political accountability, they are lacking an enforcement mechanism and thus legitimacy. Their experience of lack of legitimacy – although they do not claim to be leaders in global affairs – results in an informal and flexible modus operandi accordingly (Pundziūtė-Gallois et al., 2015). As such, member states of the G8 and G20 maintain their full sovereignty in this context.

#### *Legitimacy of international organisations*

Globalisation is increasingly salient in political science (Keohane, 2001). Whilst the process is far from completed, it is advanced enough to say that we live in a partially globalized world currently (Keohane, 2001). And even more increased nowadays. Globalisation depends

on effective governance, and effective governance in turn depends on extensive international organisations (Keohane, 2001). Shifting from Keohane's (2001) liberalist approach to a more institutionalist approach, Jun (2016) identifies two levels fundamental to global governance: the national and the international. Institutionalism describes the IOs as institutional entities that are shaped by social structures, norms, and rules and how they alter the world in a variety of ways (Suddaby et al., 2013). The synergy between the national and international levels is created by the elements of 1) individual states, 2) domestic rule of law, 3) international organisations and 4) international rule of law (Jun, 2016). The development and maintenance of rule of law in global governance is a gradual and ongoing process, shaped by a multitude of legal, political, institutional, and historical factors, and created by the interaction between these elements.

The rule of law forms the first dimension for the legitimacy of IOs. A wide range of international treaties and conventions have formed the legal basis for international cooperation and given IOs an international climate to thrive in. International treaties have been developed in various areas, such as trade, human rights, and environment, and have established legal obligations for states to adhere to (Jun, 2016). Additionally, international courts and tribunals have been erected to monitor compliance and resolve disputes between states or hold individuals accountable for violations of international law. Examples include the International Court of Justice (ICJ), the International Criminal Court (ICC), and various ad hoc tribunals established by the UN Security Council. This gives an IO legitimacy in the *normative* sense – an IO has the *right to rule* (Buchanan & Keohane, 2006). An IO mandate is defined and agreed upon by the member states of the IO, which further defines its limits, purpose, scope, and authority.

On the other hand, we have the sociological dimension of legitimacy: an IO is legitimate when it is widely *believed* that it has the right to rule (Buchanan & Keohane, 2006). This perception of legitimacy is important to an IO, for they can only thrive in a democratic setting if they are seen as legitimate by democratic members (Buchanan & Keohane, 2006). The identification that IO legitimacy can be derived from perceptions is a constructivist point of view, whereas constructivism in this context tries to understand both the state and the IO as it focuses on the interactions among them, while predicting that the processes of interaction shape both the “powers and the limits of international organisations in practice” (Hurd, 2011, p. 20).

Whilst the normative legitimacy can help IOs solve problems and shape practices, for the long-term existence of an IO it needs legitimacy from its member states – both national governments and its citizens (Tallberg & Zürn, 2019). This perception of legitimacy can be achieved through multiple methods. For example, composition of member states within an international organization contributes to its legitimacy. Broad and diverse membership, including representation from different regions and interests, can enhance the perception that the organization represents a range of viewpoints and promotes collective decision-making. Other ways include (but are not limited to): expertise, transparency, accountability, good governance, cooperation, and support (Keohane, 2001; Buchanan & Keohane, 2011; Tallberg & Zürn, 2019).

Legitimacy influences whether an IO is relevant for coordinating policies and solving problems, whether it is able to secure compliance, and whether an IO has the capacity to develop rules and norms, because it needs the support from national governments and citizens. Poor legitimacy in an IO can lead to a democratic deficit in global governance (Zürn, 2004).

#### *Opposition to international organisations*

An IO is only as strong as its members who give it legitimacy; therefore, it is important for us to understand what the main criticism is against IOs. Opposition to IOs come from both sides of the political spectrum. Historically, the political left has been the first to challenge the legitimacy of IOs (Hooghe et al., 2019). In the 1970s a coalition of green leaning ideologies formed, which included the trade unionist group; the radical left group with ideologies surrounding participatory democracy, feminism, and rights of minorities; the environmentalist group; and on the fringes the anarchist's group (Hooghe et al., 2019). Their opposition formed around the believe that trade deals that included economic integration, but segmented sovereignty would eventually lead to a world that was subservient to the power of capital (Hooghe et al., 2019). The hunger for capital would cause the segmented sovereignties to weaken unions and environmental legislation in their power to become an economic heavy-weight and would eventually undermine democracy. Trade agreements such as NAFTA, CETA, and TTIP isolate economic gains from social and environmental concerns and have therefore been opposed by the left. But leftists also oppose global IOs, such as the WTO for the same concerns. Whilst they do not reject international cooperation in principle – the left is very much in favor of international cooperation on the topics of labour rights, fair wages, and environmental standards – there are concerns when economic gain is put forward as the main priority. This approach is described as trans-environmentalism within the eco-socialist theory.

This theory predicts that environmental crises are linked to social and political crises (Fraser, 2021). Derived from Marxism, this theory was primarily developed as a criticism to capitalism and in particular (green)-Keynesianism, which assumes states have control over the flows of capital, goods, services, and labour. Economies are increasingly globalised and managed through IOs of which many limit the domestic policy space to control the flow of capital, goods, services, and labour (Meyerrose, 2020). In addition, Fraser (2021) does not offer an assessment of IOs and thus makes no particular predictions.

In the 1980s and 1990s, the critiques shifted to the camp of the neoliberals. Whilst neoliberalism supported IOs, they were opposed to authoritative international government (Hooghe et al., 2019). The most famous opposer is perhaps Margaret Thatcher, who was one of the biggest supporters of the European single market project. However, she believed that the focus of the EU should be to remove barriers to trade and that there was no further role for the EU. This is the opposite of what the leftist wanted from global governance. Whereas the left would have liked seeing an increase in responsibilities for IOs, from being purely economic to also societal, the neoliberals were on the complete opposite end of that. They wanted IOs to stay purely on the topic of economics and to not interfere in other policy areas which they believed should remain within the sovereignty of national governments. Assessing IOs from this point of view stems from liberalism, which assumes that states and IOs should focus on trade liberalization (Stein, 1984).

In recent years the main opposition has shifted mainly to nationalist, who argue that they need to defend national governance against transnational influences (Hooghe et al., 2019). Although this opposition is mainly focused on the topic of immigration, the concerns also to an extent include human rights (like freedom of speech) and economic cooperation. Political figures such as Donald Trump in the US, Marine Le Pen in France, Matteo Salvini in Italy, and Geert Wilders in the Netherlands strongly reject IOs, going as far as saying globalization is the enemy to the sovereignty of national government (Hooghe et al., 2019). Political promises include pulling out of trade agreements and decreasing international cooperation, instead focusing on national policies.

The recent developments in opposition to IOs seem to be more than policy based, but rather a part of a new social cleavage (Hooghe et al., 2019). On the one hand, we have the “winners of globalism”, the people who have benefited from international policies and that have evolved an international identity sometimes referred to as cosmopolitans. On the other

hand, we have those who consider themselves the “losers” of an increasingly globalizing world – the nationalists. They feel left behind by the economic and cultural transformation that has taken place (Hochschild, 2016). The difference between cosmopolitans and nationalists can be distinguished by gender, occupation, and level of education (Hochschild, 2016). This transnational cleavage transcends the political debate of the left and right about the role of the government in a society.

#### *International organisations and legitimacy problems*

The shift in the opposition to IOs has brought about serious discussions surrounding global governance and its claim for legitimacy. Following WWII, there has been a surge in IOs who mainly focused on economic cooperation. These “task specific” IOs were tasked with maintaining a stable world economy and they were legitimated to intervene on the national level on economic policy (also referred to as embedded liberalism) (Hooghe et al., 2019). After the cold war, we started seeing an expansion of “general purpose” IOs, such as the EU and the UN, who embedded themselves more strongly into other areas of domestic policies and extended the rule of law among the states that had subjugated themselves to the IO. Nowadays, the main concern of IOs is to find solutions for highly complex problems (Zürn, 2004). This demand for solutions leads to the development of more complex and sophisticated institutional design. The question of whether an IO is intergovernmental, supranational or transnational has shifted from being either/or to ‘what degree of’ (Zürn, 2004). But the increasing intrusiveness of IOs has led to questions being asked about the legitimacy of IOs. Zürn (2004) refers to legitimacy issue of global governance as having two sides. There is a normative side which refers to the validity of political decisions and their claim to legitimacy. IOs such as the WTO and the UN currently do not meet these standards, for they do not have identifiable decisionmakers that can be held accountable in case of wrong decisions at the international level, the lack of transparency at the level of international decision-making processes, and the advantage that the decisionmakers have over others in terms of information (Zürn, 2004).

On the other side is the descriptive perspective which focuses on the societal acceptance of IOs (Zürn, 2004). According to Zurn the latter is responsible for the increase in right-wing populism and opposition against international institutions and agreements (Zürn, 2004). Zürn (2004) called populism the “achilles heel of international institutions” (p. 285). IOs are an easy target for right wing populist parties as it plays right into their anti-international and pro-nationalization rhetoric. Given the intrusiveness of new IOs into national government, it gives rise to the politicization of institutions (Zürn, 2004). People (are made to) feel like they

have lost their right to decision-making, while still being affected by these decisions that are now taken on an international level. The increased intrusiveness of IOs highlights the democratic deficit in these institutions which leads to resistance in general and thus undermines the effectiveness of the institution (Zürn, 2004).

*Democratic backsliding and international organisations*

Attitude towards loss of national sovereignty has gained great salience over the past decade in the EU and elsewhere (Bechtel et al., 2014). The tensions have expanded from internationalism and the relationship between countries, to conflicts within them. This means international governance is challenged from within its democratic core (Hooghe et al., 2019). To put it even more strongly, “the most acute threat to international governance stems not from its inability to serve non-Western countries, but from its perceived failure to help large numbers of voters at home” (Hooghe et al., 2019, p. 3). There seems to be an ideological pattern behind the delegitimization of IOs – political parties have extensive party programs on how they will deal with IOs and loss of sovereignty (Zürn, 2004). Since the strengthening of IOs in the 90s, there has been a negative reaction in western societies, targeting some of the most prominent IOs such as the EU and the UN (Hooghe et al., 2019). While these IOs started often with the intention of economic benefits, the result was that authority of national states was diffused and the power of IOs increased. Previously, the concern regarding this phenomenon was described by Keohane (2001) as the global governance dilemma. Zürn (2004) said about the future of IOs:

“[...] international governance is now embedded in partisan conflict, and that its future depends on the mobilization of that conflict in the contest for control over national governments. To understand the future of international governance one must pay attention to the ideologies of political leaders and political parties.” (p. 2).

There are various ways in which democratic backsliding can happen. One of the more common ways is through democratically elected leaders who start a gradual erosion of democratic norms and institutions on a national level (Bermeo, 2016). They use their acquired powers to restrict democratic freedoms, usually in the form of attacks on the media, the judiciary, and civil society (Bermeo, 2016). In extreme cases there will be authoritarian tactics such as censorship, propaganda, and the manipulation of elections (Bermeo, 2016). In essence democratic backsliding is the erosion of institutions and their norms as a result from elected governments (Haggard & Kaufman, 2021). For example, in Hungary, Prime Minister Viktor Orbán has been

accused of consolidating his power by undermining the independence of the judiciary, restricting press freedom, and using his party's parliamentary majority to pass laws that curtail civil liberties.

When we introduce IOs to the equation of democratic backsliding, there become two layers on which democratic backsliding can happen. Firstly, democratic deficit can occur in IOs, when they themselves fail to uphold their own democratic principles and norms. This can be for a variety of reasons such as when institutions become too bureaucratic, unresponsive, or corrupt, or when they are subject to undue political influence or pressure. In this context, the UN has been criticized many times for being overly bureaucratic and not responding correctly to member states' needs (such as the human rights abuses in countries like Syria and Myanmar). In the same vein, political trends can contribute to democratic backsliding as well. Some researchers have argued that the rise of populist movements in Europe is (partially) driven by economic inequality and the failure of mainstream political parties to address these issues effectively (Hochschild, 2016). This can lead to a loss of faith in democratic institutions and norms, and an erosion of support for democratic values and practices more broadly (Hochschild, 2016). Prior to Brexit, the EU had been criticized many times for being too bureaucratic and no longer caring about its citizens. When Britain voted to leave, this was a very strong signal towards the EU about the unhappiness in some citizens. During the Brexit negotiations, fear arose that more countries would soon follow Britain and leave the EU.

The second layer is democratic backsliding occurring in member states under the watchful eye of IOs. This takes place through the erosion of international institutions and norms that support democracy (Bermeo, 2016). As mentioned before, when political leaders are elected that challenge the legitimacy of global governance, they use their influence to undermine democratic norms and practices. An example of this is when countries withdraw from international treaties and agreements, such as when Trump pulled the US out of the Paris Climate Change Agreement and withdrew from the United Nations Education, Scientific, and Cultural Organization. Although this example could be explained by the various earlier mentioned approaches, Hooghe et al. (2019) attribute this event to democratic backsliding. Powerful countries can challenge the legitimacy of globally operating IOs or use their influence to undermine democratic norms and practices on the international playing field. Another example of this is when United State (US) president Trump publicly questioned the legitimacy of the World Health Organization (WHO), playing a big role in the increasing distrust towards the IO, especially during the times of the pandemic (Hooghe et al., 2019).

Yet, an alternative way to find an explanation for this and alike events is through the institutional theories of democracy, for which the transition paradigm theory serves as an umbrella and assumes that in the transition of states towards a democracy, the (already existing) institutions develop accordingly (Carothers, 2002). As mentioned earlier in this chapter, institutionalism examines the role of institutions that are entities shaped by social structures, norms, and rules and how they alter the world in a variety of ways (Suddaby et al., 2013). In this context, IOs serve as these shaped institutions. For instance, through institutionalism the previous example is explained differently. Trump's publicly questioning the legitimacy of the WHO during the pandemic was rather a response of Trump to safeguard the sovereignty of the US against the increasing influence of China through the WHO at the expense of US' domestic norms and values, in explicit the strong recommendation by the WHO of wearing a facemask during the pandemic was considered a breach of freedom, which is a core US principle (Novičić, 2021).

As a criticism to the institutional theories of democracy and in particular the transition paradigm theory, Meyerrose (2020) attributes democratic backsliding in member states to the more complex and sophisticated institutional designs of IOs. As a result, IOs are poorly equipped to effectively promote democracy which unintentionally enables democratic backsliding in member states, and in particular new members, because the focus of democracy promoting IOs is not broad enough to address all relevant institutions (Meyerrose, 2020). This thesis investigates exclusively the second layer, democratic backsliding in member states of IOs. To be more specific, the investigation assesses mechanisms developed by IOs to counter democratic backsliding in their member states. Whilst numerous theories have been developed to explain loss of legitimacy in IOs, and separate theories have been developed in an attempt to explain democratic backsliding, there is little theory available that puts the two together. The last paragraph of this chapter discusses democracy promoting by IOs in order to support democratization with the aim to identify mechanisms that IOs develop to counter democratic backsliding.

*Democracy promoting, international organisations, and mechanisms to prevent democratic backsliding*

The existing literature on IOs associated with democracy points out that international democracy promotion has been on the rise and that IOs have at large a positive influence on democracy (Meyerrose, 2020; Poast & Urpelainen, 2015). Democracy promotion became dominant especially during the Cold War as it is heavily associated with liberalism and market

economies – capitalism – to counter communism promotion of the Soviet Union (Meernik, 1996). The vast majority of democracy promotion is by peaceful means, especially after the Cold War. However, there are multiple examples which demonstrate that during the Cold War democracy and communism promotion were conducted by forceful and violent means (Meernik, 1996). After the Cold War, democratization was rapidly expanding since there was no ideological competition after the fall of the Soviet Union, which realists refer to as the shift from a bipolar world hegemony to a unipolar world hegemony (Fukuyama, 1989). In addition, violent conflicts decreased by 40% between 1992 and 2005 as democratic regimes increased (Mack, 2007), this trend is referred to as the democratic peace theory in the field of international relations that assumes that democratic regimes resort to diplomacy rather than violence to resolve conflicts (Russett, 1993). These are just a few of many possible explanations from different perspectives.

However, essential for this thesis remains that there is a clear correlation between the increase of democratization and the increase of IOs (Pevehouse, 2002). This implies the rise of democracy promoting IOs. These IOs can engage in ‘democratization from above’ to support democratic transitions, but these have amassed various outcomes (Sedelmeier, 2014). The result is that the causal mechanisms for IO intervention are not clear (Poast & Urpelainen, 2015). IOs can build capacity and coordination and try to enforce policy but they are unable to directly intervene in conflict (Poast and Urpelainen 2018). Examples of democracy promoting IOs, for instance, are the EU and OSCE who participate in monitoring and assessing the democratic situation in their member states (Dingwerth et al., 2020). Such reports are accompanied with recommendations to address their concerns about democratic backsliding if they find any. These recommendations can be accompanied with dialogues and diplomacy to promote democratic values. One step further is when IOs engage in capacity building, where they provide technical assistance to strengthen democratic institutions (Poast & Urpelainen, 2015). In the most extreme cases, IOs can sanction or even suspend member states with the aim to pressure a state into restoring democratic norms (Sedelmeier, 2014). This last option is rare and highly controversial, as it can lead to criticism and backlash against the IO (Sedelmeier, 2014). As previously mentioned, the transition paradigm theory derived from institutionalism, assumes that (already existing) institutions in a state that transitions towards democracy develop accordingly (Carothers, 2002), implying that democracy is maintained. Yet, completely neglecting the possibility of a state transitioning towards an illiberal or

minimalist democracy, and thus does not account for IO democracy promoting mechanisms to prevent democratic backsliding.

The influence of IOs on the democratization process consists on two levels, they can pressure to consolidate democracies and they can pressure to prevent authoritarian reversal (Poast & Urpelainen, 2015). Whilst IOs can promote democratic consolidation, they have little influence on the prevention or reversal of authoritarian rule (Poast & Urpelainen, 2015). Meyerrose (2020) confirms this line of argument as she attributes this phenomenon to the poor equipment – as in democracy promoting mechanisms – of IOs. One explanation for this is that IOs are more powerful during accession stages of prospective member states, but this power sizzles down once a member is consolidated (Poast & Urpelainen, 2015). Poast and Urpelainen (2015) claim that “democratic consolidation depends on the institutionalization of democratic rule, and supporting this process is the causal mechanism that allows IOs to be effective” (p. 109). In turn, Meyerrose (2020) further expands this claim by arguing that democracy promotion is applied insufficiently to all relevant institutions (Meyerrose, 2020).

While IOs have been increasing their democratization efforts, at the same time we see that there is a sharp rise of illiberalism and democratic backsliding in democracies (Meyerrose, 2020). In addition, building on the argument put forth by Poast and Urpelainen (2015), Meyerrose (2020) finds that democracy promoting IOs are designed in such a way that they unintentionally enable backsliding among member states, especially new democracies.

## **II.II Theoretical Framework**

As highlighted in the previous section, IOs are demanded and necessary, but can also unintentionally lead to democratic backsliding, be it through loss of legitimacy or through insufficient democracy promotion. To formulate an answer to the question central to this thesis about the relationship between IO’s democracy promoting mechanisms, democracy promotion, and democratic backsliding of member states, this thesis takes a closer look Meyerrose’s (2020) findings, in order to determine the theoretical framework.

Meyerrose (2020) further expands the critique to the transition paradigm theory, which serves as an umbrella for all other institutional theories of democracy (Carothers, 2002). The transition paradigm contains five core assumptions. Firstly, “any country in transition is moving *away* from dictatorial rule can be considered a country in transition *toward* democracy” (Carothers, 2002, p. 6). Secondly, the process of democratization is divided into a set of phases. The first phase of the transitioning process is the “opening” phase characterised with cracks in

the dictatorial rule (Carothers, 2002, p. 6). Followed by the second phase, the “breakthrough” is identified by the “collapse of the regime and the rapid emergence of a new, democratic system, with the coming to power of a new government through national elections and the establishment of a democratic institutional structure, often through the promulgation of a new constitution” (Carothers, 2002, p. 6). Hereafter comes the third phase, which Carothers (2002) identifies as the “consolidation” phase, a “slow but purposeful process in which democratic forms are transformed into democratic substance through the reform of state institutions, the regularisation of elections, the strengthening of civil society, and the overall habituation of the society to the new democratic rules of games” (p. 6). The fourth phase assumes that rooted factors in newly transitioning countries, such as their level of economy, history of politics, legacies of their institutions, ethnography, sociocultural customs, or other foundational features, will not be of major influence to the transition process (Carothers, 2002). Lastly, the fifth phase assumes the transition process to democracy consists of further developing into a coherent, functioning state (Carothers, 2002). The Transition Paradigm Theory, therefore, rather assumes that redesigning state institutions, such as the “creation of new electoral institutions, parliamentary reform, and judicial reform,” is an adjustment of already functioning states (Carothers, 2002, p. 8).

In turn, Meyerrose (2020) argues that IOs usually serve as a catalysator in a state’s transition to democracy, however, unintentionally also create a foundation for the erosion of democracy and backsliding in the future, especially for new democracies. This foundation is created by IOs “failing to support and even stunting democratic institutional development” (Meyerrose, 2020, p. 1548). Referring to Huntington (1968), she highlights that the success of democracy depends on the institutional strength which organise “mass participation, aggregate societal interests, and enable the state to both govern effectively and, critically, limit itself” and these institutions include “developed political parties, strong legislatures, independent judiciaries, and general state capacity” (Meyerrose, 2020, p. 1548). Meyerrose (2020) further argues that IOs associated with and in support of democracy focus too much on elections and elites, and thus fail to support other vital democratic institutions. This leaves a narrow space for states that are susceptible to democratic backsliding. While referring to a vast range of old and recent literature, Meyerrose (2020) clearly identifies a set of phenomenon that describe and lead to democratic backsliding due to IOs structural designs which she divides in three main categories: 1) the *democratic outcomes of IOs*, 2) *increasing executive power*, and 3) *limiting domestic policy space*. For 1) democratic outcomes of IOs, Meyerrose (2020) highlights the distinction between the *emphasis on executive* and the *emphasis on elections*.

IOs and states mainly interact through executives, and therefore IOs democracy promotion is tremendously located on executives, and thus their election. Subsequently, she argues that the “resulting combination of factors – strong executive surrounded by weak institutions – makes backsliding more likely” (p. 1552). For 2) increasing executive power, Meyerrose (2020) describes that IOs promote democracy by “altering elites’ incentives to comply with or maintain democratic institutions (p. 1555). She argues that this leads to IOs providing “both incentives and opportunities for executives, who are rational actors concerned with maintaining office, to manipulate institutions to their advantage; this in turn makes backsliding more likely” (Meyerrose, 2020, p. 1555). Because the incentives that executives have refrains them from election manipulation to maintain power; rather, executives find resort in tactics that are more subtle, such as “strategically manipulating” elections through interference with nonelectoral institutions (Beaulieu & Hyde, 2009, p. 403).

Lastly, Meyerrose (2020) describes 3) limiting domestic policy space as “the universe of policy alternatives political actors can feasibly debate, adopt varying positions on, and implement” (p. 1557). She highlights that purposeful policy space is crucial for the development of institutions, the conditions for effective governing, and its influence on politicians to appeal to the electorate (Meyerrose, 2020). Drawing on historical examples, Meyerrose (2020) argues here that limitations to policy space leads to underdeveloped institutions where elections take place in an ideological void. Parties then turn to uncontroversial issues or populism along with campaign on valence issues “on which all parties declare the same objective but dispute each other’s competence in achieving the desired policy” (Kitschelt et al., 1999, p. 137). A phenomenon that Meyerrose (2020) relates with this chain reaction is that the EU sets up significant constraints to policy making on its prospective and member states. For example, the direct influence that the EU has over monetary policies gives tremendous limitations to national policies of budgetary matters (Katsanidou & Otjes, 2016). However, in turn this phenomenon can also trace back to the second category – increasing executive power – identified by Meyerrose (2020), because membership to the EU also increases executive power due to the supranational decision-making power of the executive in the European Council. This demonstrates that the categories as identified are not necessarily sequential and thus can occur simultaneously or as response to each other.

Dimension	Description
1. IOs and democratic outcome	1.1 Emphasis on executive 1.2 Emphasis on elections
2. Increase executive power	2.1 Democracy related financial assistance to state 2.2 Redistribute power between domestic governmental institutions 2.3 Membership conditionality requires countries to develop an extensive bureaucracy to facilitate preparations for membership
3. Limiting domestic policy space	3.1 Economic interdependence affects state policies 3.2 Specify policy requirements for prospective and current member states 3.3 The domestic policy space is critical for developing representative institutions and institutional checks on executive power in new democracies 3.4 Economic globalization has limited the range of economic policy appeals political actors can make 3.5 Policy requirements also infringe on one of the primary roles of legislatures: proposing, drafting, and implementing legislation 3.6 The domestic policy space is linked to state fiscal capacity and, particular, state's ability to govern effectively and provide public goods 3.7 IOs restrict the economic and fiscal policy options available to states by limiting tariffs, public spending, and government deficits 3.8 The more IOs with policy requirements a state is a member of, more policy constraints it faces

*Table 1. Dimensions of IO design that lead to democratic backsliding derived from Meyerrose (2020).*

The emphasis placed on democracy promotion by IOs has been increasingly related to the increase in democratic backsliding in member states. Democratic backsliding takes place after democratically elected officials impose policies to reduce or eliminate institutional safeguarding on checks and balances subsequently leading in illiberal or diminished forms of democracy, instead of autocracy (Bermeo, 2016). Although this phenomenon has been identified by scholars, for instance Meyerrose (2020), systematic theories to study this phenomenon do not exist (Waldner & Lust, 2018). Meyerrose (2020) makes a distinction between democratic backsliding and democratic breakdown. Whereas democratic breakdown is a process towards autocracy, democratic backsliding is rather a regime process that leads to a minimalist or illiberal form of democracy (Meyerrose, 2020). However, both phenomena enjoy extensive similarities in the transitional process. Referring to the two modes of democratic breakdown identified by Maeda (2010), Meyerrose (2020) defines democratic backsliding as the erosion or elimination of the “constitution, rule of law, civil and minority

rights, the independence of the judiciary and the media, and the separation of power within government (p. 1551). From this perspective one could argue that both phenomena are a phase of a reversed Transition Paradigm. Whereas democratic backsliding occurs initially, the extensive form of this process could be identified as democratic breakdown. Thus, when first democratic backsliding occurs and subsequently democratic breakdown takes place, this could lead to a country moving *away* from democratic rule and is in transition *toward* dictatorial rule – a reversed Transition Paradigm Theory.

However, Bermeo (2016) highlights several distinctions between democratic breakdown and democratic backsliding. First, there is a difference in pace. Whereas a democratic breakdown could occur all in a sudden, for instance via a coup d'état, democratic backsliding rather occurs gradually (Bermeo, 2016). Secondly, there is a difference in response. Bermeo (2016) highlights that “opponents of backsliding are more likely to be successful if they recognize that current trends are not random events but rational responses to local and international incentives” (p. 15). The third distinction Bermeo (2016) identifies as *vexing ambiguity*. She refers this to the “forms of democratic backsliding that are legitimated through the very institutions that democracy promoters have prioritized: national elections, voting majorities, in legislature and courts, and the *rule* of laws that majorities produce” (p. 15). As a result, outside pressure will be seen as a threat to the country’s sovereignty (Bermeo, 2016), because the rule of laws produced by majorities occurred in democratic context after all. The last distinction Bermeo (2016) identifies, implies a *better mix*. The mix of democratic backsliding is preferred over the mix of the past. A particular set of institutions or ideologies can correct another when change is gradual and ambiguous, preserving diverse landscapes (Bermeo, 2016). “As long as some electoral competition takes place, power can be clawed back” and “when civil societies is allowed some space, countermobilization can occur” (Bermeo, 2016, p. 17).

These distinctions indicate that although the characteristics of democratic breakdown and democratic enjoy extensive similarities, the magnitude of these characteristics play a major role in defining such an event as breakdown or backsliding. Additionally, this also implies that the characteristics of democratic breakdown extrapolated by Meyerrose (2020) as characteristics of democratic backsliding are suitable to assess democratic backsliding of member states of IOs. As mentioned previously, these characteristics are the erosion or elimination of 1) constitution, 2) rule of law, 3) civil and minority rights, 4) the independence of the judiciary and the media, and 5) the separation of power within government. Subsequently, the focus of this investigation will be solely on the fourth characteristics, which

is the erosion or elimination of the judiciary and the media, due to data limitations in the scope of this research. This will be explicitly elaborated in the next chapter. The following hypotheses are derived from above-mentioned implications:

*H1: The IO's democracy promoting mechanism will improve the judicial independence in a member state where democratic backsliding occurred.*

*H2: The IO's democracy promoting mechanism will improve the media freedom in a member state where democratic backsliding occurred.*

### **III. Research design**

This chapter contains the design of the investigation in this thesis. Build upon the theoretical framework from the previous chapter, this chapter provides a foundation for systematically approaching, ordering, and assessing the data extracted from sources. The extracted data contains information necessary to answer the question central to this paper. In addition, this chapter is of essence for peers, professors, scientists, and all others that would want to repeat the investigation in this thesis. Therefore, this chapter is crucial for reliability and validity. It should measure what it supposed to measure for accuracy, and it should offer the same outcomes every time the measurement is conducted.

#### **III.I Case selection**

When selecting a case for this study, several conditions should be considered. First, the case should be relevant to the research question and objectives. In this case, the research question is focused on democracy promoting mechanisms in IOs that specifically address democratic backsliding. Second, the case should have sufficient data available for analysis. In this study, data will be collected through various methods such as case studies, comparative analysis, and document analysis. Therefore, the selected cases should have relevant data available for each of these methods. Third, the case should be representative of the larger population or phenomenon being studied. Fourth, the case should provide sufficient variation and contrast to allow for meaningful comparison and analysis.

IOs can be linked to democracy in various ways. Firstly, we have the IOs that mention explicitly that they are committed to promoting and supporting democracy. Examples include the EU and the African Union, who in their official documents refer to democracy, human

rights, and rule of law (Meyerrose 2020). There are also IOs that have been created with a different purpose, like political or economic, that have also been linked to democracy (Poast and Urlepainen 2018). A bigger variation then can be found in the IO capacity to influence national policies. Here we can split up IOs in three categories: minimalist, intermediate, and interventionalist. Minimalist IOs can only make non-binding decisions, intermediate IOs have formal procedures and can make binding decisions, and interventionalist IOs powers are codified to the point where they are able to sanction states when necessary (Boehmer et al. 2004). For this study, I will only consider interventionalist IOs, as these IOs have the power to implement these mechanisms in member states. First, and foremost, the interventionalist IO with the most established rules and regulations around rule of law mechanisms is the European Union. The EU is a significant international organization, comprising 27 member states and a population of over 440 million people. The EU is often considered a model of regional integration, with a complex system of governance that involves various institutions and policy areas. The EU would be classified as an interventionalist IO, as it not only has the clear mechanisms that can influence state behaviour, but it also has recently adopted legislation that concerns itself with when member states do not adhere to the EU's codified rules. As such, studying the EU provides insights into the role of international organizations in promoting democracy and human rights, and the challenges of balancing national sovereignty with supranational governance. As such, there will also be enough data to do a media and document analysis of this case.

The strongest legislation that the EU has passed as part of its democracy promoting mechanisms, is the rule of law conditionality mechanism (hereafter referred to as rule of law mechanism, RoL mechanism, or the conditionality mechanism). The RoL mechanism in the EU is in particular applied to two countries: Hungary and Poland. More specifically, in these cases the EU has applied a mechanism called Article 7. Article 7 of the EU Treaty provides a mechanism for addressing and sanctioning member states that violate EU values, including democracy, human rights, and the rule of law. Article 7 has been invoked against both Hungary and Poland in recent years, making them relevant cases for exploring the effectiveness of this mechanism. The use of Article 7 also raises questions about the limits of EU power, the tensions between national and EU-level governance, and the challenges of promoting democratic norms in the face of national opposition. In addition, the rule of law mechanism of the EU provides an additional mechanism for promoting the rule of law within the EU, beyond the use of Article 7. The mechanism, called the conditionality mechanism, was introduced in 2019 in response

to concerns about the erosion of the rule of law in some EU member states. I will focus on the conditionality mechanism, as this mechanism is relevant for exploring the effectiveness of a more preventive and proactive approach to promoting the rule of law, and for understanding the challenges of balancing the promotion of democracy and the rule of law with national sovereignty and democratic legitimacy.

The conditionality mechanism has been applied to two countries in specific in the EU. Hungary and Poland have been the focus of significant concerns about democratic backsliding and the erosion of the rule of law in recent years. Both countries have seen a range of measures that have been criticized for limiting the independence of the judiciary, curtailing the freedom of the media, and restricting civil society. Studying these cases provides insights into the factors that contribute to democratic backsliding, the challenges of promoting democratic norms in the face of domestic opposition, and the effectiveness of EU mechanisms for addressing violations of democratic values. In this study, the selected cases of Hungary and Poland should be representative of the democracy promoting practices of the EU. Hungary and Poland have similarities in terms of their democratic backsliding tendencies, but also have differences in terms of their political contexts, level of EU integration, and specific challenges to the rule of law. Therefore, these two countries are suitable cases.

### **III.II Methodology**

With this deductive research, I set out to test Meyerrose's (2020) theory by answering the research question. To answer the research question, this paper will use a mix of qualitative methods, namely process tracing and discourse analysis. I opted for a qualitative approach, as it can tell us more about the *how* of the conditionality mechanism and its effect on democratic backsliding. To limit the scope of this research, I start by cross-referencing Meyerrose's (2020) characteristics for democratic backsliding with the EU rule of law assessment reports. As mentioned previously, these characteristics are the erosion or elimination of 1) constitution, 2) rule of law, 3) civil and minority rights, 4) the independence of the judiciary and the media, and 5) the separation of power within government. The rule of law country reports of the European Commission assesses whether a country is in compliance with the rule of law of the EU. More importantly, this report also shows us what the EU uses as a framework to assess the rule of law, thus we can see what the focus is for the EU. In table 2 we see the dimensions that the EU focuses on when assessing rule of law. Due to time limits this thesis will only focus on 4) the independence of judiciary and the media. I do this because this component is both mentioned by Meyerrose as well as the EU, therefore it covers the topic of democratic

backsliding, and as such the rule of law breaches as well. As mentioned earlier, this is also the reason why I only have hypotheses on these topics.

Dimension	Description
Justice system	<ol style="list-style-type: none"> <li>1. Independence</li> <li>2. Quality</li> <li>3. Efficiency</li> </ol>
Anti-corruption framework	<ol style="list-style-type: none"> <li>1. Institutional framework capacity to fight corruption</li> <li>2. Prevention</li> <li>3. Repressive measures</li> </ol>
Media pluralism and freedom	<ol style="list-style-type: none"> <li>1. Media regulatory authorities and bodies</li> <li>2. Transparency of media ownership and governmental interference</li> <li>3. Framework for journalists' protection</li> </ol>
Other institutional issues related to checks and balances	<ol style="list-style-type: none"> <li>1. Process for preparing and enacting laws</li> <li>2. Independent authorities</li> <li>3. Accessibility, judicial review, and administrative decisions</li> <li>4. Enabling framework for civil society</li> </ol>

*Table 2. EU dimensions when assessing the rule of law derived from the annual rule of law report.*

Now that I have established that my study will focus on independence of the judiciary and media, I continue with my empirical chapter. I will use process tracing on the topics of the independence of the judiciary and the media, where I will look at the situation before and after the introduction of the conditionality mechanism. Process tracing is a methodology for tracing causal mechanisms to connect causes and their effects (Beach, 2016)

Before	After
Conditionality mechanism	
Media pluralism and freedom in Hungary	Media pluralism and freedom in Hungary
Independent judiciary in Hungary	Independent judiciary in Hungary
Media pluralism and freedom in Poland	Media pluralism and freedom in Poland
Independent judiciary in Poland	Independent judiciary in Poland

*Table 3. Overview of comparisons to be made in process tracing.*

I opted for process-tracing, as I believe it would give me the best understanding for what the effect has been of the conditionality mechanism on the state of the judiciary and the

media in Hungary and Poland. This is because process tracing forces you to dive deeply into a subject and to dissect the mechanism that leads from cause to outcome (Beach, 2016). It also gives a stronger evidence-based inference about the causal relationship (Beach, 2016). This is perfect for this case study, as we are looking at the presence and absence of the conditionality mechanism, and what it has changed in the domestic policy spheres on judiciary and media. The reason why I have to gather my data this way, is because there is not yet a country report for the year 2023. This means that the EU themselves have not yet reported about everything that has changed in Hungary and Poland. As a result, I will have to do this comparison myself.

The data for the process tracing comes from the RoL country reports from 2022, the EC expert opinions and press releases, and the RRP's from Hungary and Poland. Additional reports, such as the Freedom House and the Bertelmann Stiftung country reports will be used to give further context to the data. I will also use academic and journalistic sources that are deemed relevant to measure the outcome of the conditionality mechanism.

I then move to the second part of my research, where I analyse the data that I have acquired through the process tracing. To answer my research question fully, I need to take a closer look at what the EU has changed in its democracy promoting process. To do this I will use discourse analysis to look into the ideas and concepts of RRP's. A discourse analysis "explores the ways in which discourses give legitimacy and meaning to social practices and institutions" (Halperin & Heath, 2020, p. 335). I do this by first making a framework combining the EC's indicators for democratic backsliding, with Meyerrose's (2020) indicators for democracy promotion. The combination of the EU dimensions with Meyerrose's (2020) indicators can be found in table 4. This way I can see how the EC conceptualizes democracy promoting in the specific case of rule of law breaches and therefore democratic backsliding. This part of my study tries to see to what extent the EU changed its democracy promoting and what the effect of this was on the policy changes in Poland and Hungary. Thus, my method of analysis is a comparative analysis. I compare the content of the RoL country reports to the recovery and resilience plans (RRP) of Hungary and Poland. The reason why I do this, is because through the conditionality mechanism, the EU has tied financial aid to democracy promoting. The RRP's are the first reports to come out after the triggering of the conditionality mechanism that withhold a substantial amount of financial aid to both countries. This way both Hungary and Poland are incentivised to comply with the EU rule of law in order to receiving financial aid. This comparison will be done with the set of indicators as seen in table 4. Designing the study this way helps focus the study more on the topics that are considered

important for this case. What does the EU consider as breaches to rule of law? How does the EU respond to these breaches? And did Hungary and Poland adopt any of the recommendations made by the EU? I try to answer these questions so I can formulate a final answer to my research question.

Dimension	Indicator	Present or absent
Judicial independence	<ol style="list-style-type: none"> <li>1. Democracy promotion by IO is heavily concentrated on executives</li> <li>2. Horizontal checks on government power and institutions that constrain elected officials' power, including independent judiciaries, which can block executives seeking to increase their power</li> <li>3. IOs can increase executive power relative to other domestic institutions</li> <li>4. IOs provide both incentives and opportunities for executives, who are rational actors concerned with maintaining office, to manipulate institutions to their advantage; this in turn makes backsliding more likely</li> <li>5. Foreign aid provides resources outside the national budget, allowing executives to pursue projects without legislative approval, which shifts "the balance of power within countries in ways that distort the constitutionally established system of checks and balances"</li> <li>6. The domestic policy space is critical for developing representative institutions and institutional checks on executive power in new democracies</li> <li>7. Legislatures, which play a critical role in providing horizontal accountability, are unable to check executive power. Indeed, in addition to the judiciary, legislatures are the main institutional check on executive power</li> </ol>	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> <li>6.</li> <li>7.</li> <li>8.</li> </ol>
Media freedom	<ol style="list-style-type: none"> <li>1. IOs can increase executive power relative to other domestic institutions</li> <li>2. Executives have incentives to refrain from manipulating elections to maintain power; instead, they resort to more subtle tactics, such as "strategically manipulating" elections by interfering with nonelectoral institutions</li> <li>3. The domestic policy space is critical for developing representative institutions and institutional checks on executive power in new democracies</li> </ol>	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>

*Table 4. Presence or absence of indicators for analysis*

## IV. Empirical Chapter

### IV.I History of Hungary backsliding

Democratic backsliding in Hungary has been a concern for several years. The process began after the Fidesz party, led by Viktor Orban, came to power in 2010 (Agestam, 2018). In 2011 Hungary passed a new "illiberal" constitution, referred to as the Fundamental Law

(Halmai, 2020). Since then, the Hungarian government has implemented a series of measures that have been criticized for undermining democratic institutions, such as the judiciary, the media, and civil society.

The changes made to the constitution gave the ruling party more power over the judiciary, the media, and civil society (Halmai, 2020). Some of the changes that Hungary has made to its judiciary include the undermining of the independence of the judiciary, reducing the number of judges, and restricting judicial review. The Hungarian government has passed a number of laws that have eroded the independence of the judiciary. For example, it has increased political control over the appointment of judges and prosecutors and reduced the role of the National Judicial Council, which was previously responsible for overseeing the judiciary (Halmai, 2020). The government also took control of the public media, creating a media landscape that is highly favorable to the ruling party (Bugaric, 2016; Halmai, 2020). The government has been accused of intimidating and harassing critical journalists and media outlets, leading to a climate of self-censorship. The government has also targeted civil society organizations that receive funding from abroad, claiming that they are working against the interests of Hungary. The government passed a law that required these organizations to register as "foreign agents," and has launched investigations and audits of their activities. In addition, the government has made changes to the electoral system that have been criticized for giving the ruling party an unfair advantage. These changes include redrawing electoral districts to favor Fidesz, reducing the number of MPs in Parliament, and introducing a new electoral system that favors larger parties (Agestam, 2018). In addition, the government has been criticized for limiting the rights of refugees and migrants, as well as members of the LGBTQ+ community (Bugaric, 2016).

Hungary used to be a success story for the EU: a once communist government was on its way to successfully be transformed into a democratic government aligned with the EU values. However, with the rise of the Fidesz party, the democracy was quickly turned into an authoritarian regime (Bugaric, 2016). As a result, the Hungarian constitution is in direct conflict with the European values such as Rule of Law and human rights as underlined by Article 2 of the TEU (Bugaric, 2016).

#### **IV.II EU reaction to Hungary**

The European Union has repeatedly expressed concern about the state of democracy in Hungary (European Parliament, 2018). In 2018, the European Parliament voted in favor of triggering Article 7 against Hungary, citing concerns over the erosion of the rule of law,

independence of the judiciary, freedom of expression and academic freedom (European Parliament, 2018). The procedure involves a series of steps, starting with a formal warning and then moving on to a vote of the European Council to determine whether there is a clear risk of a serious breach of EU values (European Parliament, 2018). If this is the case, sanctions can be imposed, including suspension of a member state's voting rights in the Council. However, the process of triggering Article 7 against Hungary has been complicated by the need for unanimity among member states (European Parliament, 2018).

For the EU it is a unique historical situation: for the first time since her establishment the EU is confronted with a member state sliding into an authoritarian illiberal political regime to the point that Article 7 had to be triggered (Bugarcic, 2016). Nevertheless, the resolution was too late. By this point, Hungary had already been backsliding into authoritarianism for several years (Halmai, 2020). It was also too little, due to the unanimity condition of Article 7, the EU could name and shame Hungary but was unable to implement any corrective measures of the procedure (Halmai, 2020). As such, the EU started looking at other alternatives to uphold the European values.

On the 18<sup>th</sup> of September 2022, the European Commission handed in a proposal to the Council (European Commission, 2022b). In this proposal, the Commission suggested to include budget protection measures under the conditionality regulation, to protect the EU budget against the principles of the rule of law in Hungary (European Commission, 2022b). This was a specific application of the general regime for the protection of the EU budget (Regulation 2020/2092, 2020). The guidelines on the general regime of conditionality (“the rule of law conditionality mechanism”) were adopted on March 2, 2022 as part of a broader effort to strengthen the rule of law in the EU and ensure that all member states respect the fundamental values enshrined in the EU treaties. Under the rule of law mechanism, the European Commission is responsible for monitoring and assessing the situation in each member state and identifying any potential threats to the rule of law (Regulation 2020/2092, 2020). The mechanism allows the Commission to engage in a dialogue with the member state concerned and, if necessary, issue recommendations for corrective action (Regulation 2020/2092, 2020). In cases where a member state fails to address the concerns identified by the Commission, the mechanism provides for a range of possible sanctions, including the suspension of EU funding or the loss of voting rights in EU institutions. Hungary is the first case under the regulation (European Commission, 2022b). Under these guidelines, the Council decided to suspend €6.3 billion given only partial remedial action by Hungary, citing corruption

and public procurement concerns (European Council/Council of the EU, 2022; European Parliament, 2022).

#### **IV.III Independent Judiciary**

Before the conditionality mechanism, the state of the independence of the judiciary was one of the biggest worries of the EU in Hungary. One of the first things Fidesz did, was to take control of the constitutional court (Agestam, 2018). Fidesz changed the nomination procedure of judges, making it easier for their candidates to take their seats in the constitutional court and increased the size of the constitutional court from eight to 15 members (Agestam, 2018). Having taken control of the constitutional court, they next turned to the judiciary. Whereas previously local and regional court judges were appointed by the National Council of Judges (OBT), Fidesz set up their own institution, the National Judicial Office (OBH), that started taking over the tasks from the OBT (Agestam, 2018). Furthermore, the government lowered the retirement age for judges to 62 years, which resulted in 250 judges being forced into retirement and immediately new appointments being made by the OBH (Agestam, 2018). The constitutional court ruled the forced retirement as unconstitutional and the regulation was annulled. However, over 200 of the retired judges were not reinstated and the newly nominated judges could remain thus Fidesz got to keep the loyalty from the local and regional courts (Freedom House, 2013). After the critiques from the EU, Fidesz backtracked some of the legislation. For example, some of the powers of the OBH were transferred back to the independent OBT. In addition, the OBH could only propose amendments to judicial law with the approval of the OBT (Freedom House, 2013). As part of the Implementing Decision of 15 December 2022, the Council requested Hungary to implement reforms on 17 remedial measures as laid out in the guidelines (European Commission, 2022a).

Hungary replied to this request in the form of multiple letters (Council Implementing Decision (EU 2022/2506, 2022). In it they outlined an extensive set of reforms and investments to address the challenges outlined in country-specific recommendations addressed to Hungary under the European Semester (European Commission, 2022c). Specifically on the topic of strengthening the rule of law, Hungary committed to reinforcing the fight against corruption, promoting competitive public procurements and strengthening the independence of the judiciary (Council Implementing Decision (EU 2022/2506, 2022). In particular, the Fidesz government committed to increase the power of the OBT and to shield the Supreme Court from the risks of political influence (Recovery and Resilience Plan Hungary, 2023). They furthermore also removed the role of the Constitutional Court from reviewing final decisions

by judges at the request of public authorities (Recovery and Resilience Plan Hungary, 2023). Another very important measure was that they promised to safeguard the possibility of national courts to refer cases to the Court of Justice of the European Union.

The Hungarian government remained positive about their response. Justice Minister Judit Varga stated “The Hungarian Government has put a comprehensive package of measures on the table to address all the Commission’s concerns. The Hungarian Government remains open to a constructive dialogue with the Commission” (Euractiv, 2022). And the Commission as well came to the conclusion that the measures were adequate enough to protect the judicial independence and financial interests of the EU, if they were implemented before any Recovery and Resilience Funds (RRF) (European Commission, 2022c). Nevertheless, whilst accepting the measures that Hungary has committed to taking, the Commission wants further steps that will fully eliminate further risks in Hungary (European Commission, 2022c). As a result, the Commission has decided to maintain the proposal as set out on 18 September 2022, and withhold the money from Hungary for now (European Commission, 2022c).

Before Conditionality Mechanism	After Conditionality Mechanism
<p>Fidesz controlled the nomination process to the Constitutional Court, simultaneously increasing the court, to immediately be able to nominate 7 new members</p> <p>As the Constitutional Court remained independent, Fidesz reduced the Court’s powers and added a new judicial institution, the National Judicial Office (OBH) was created, with authority to nominate judges</p>	<p>Reforms increasing the powers of the National Judicial Council to limit undue influence and arbitrary decisions in the administration of courts, amending the functioning of the Supreme Court to shield it from risks of political influence</p> <p>Removing the role of the Constitutional Court in reviewing final decisions by judges at the request of public authorities and safeguarding the possibility of national Courts to refer preliminary questions to the Court of Justice of the European Union</p>
<p>Constitutional court would not contest unconstitutional legislation (Before the constitutional court challenged Fidesz often) After Fidesz created OBH, they forced the retirement of judges to be able to appoint new loyal judges</p>	<p>Reforms establishing new independent bodies equipped with the appropriate tools and capacity to act, possibility to challenge in court the decisions of investigative authorities or prosecutors not to investigate or prosecute corruption and corruption-related practices</p>

*Table 5. The judicial independence before and after the conditionality mechanism in Hungary*

#### **IV.IV Media Freedom**

Fidesz has relied heavily on the media to continue their domination in the Hungarian political sphere. The takeover of the Hungarian media followed quite similarly the same pattern of the institutional takeover (Agestam, 2018). Quite quick after coming to power, in 2010 proposals were presented for new media legislation that would increase the governments control over media (Agestam, 2018). Whilst there was already an existing media institution that regulated in Hungary, the Media Authority, the Fidesz government introduced a new body which had authority over the Media Authority, namely the Media Council (Agestam, 2018). The president of this authority was directly appointed by Prime Minister Orbán and its members were elected by two thirds majority in Parliament (Agestam, 2018). With this appointment process, Fidesz managed to control the national media regulators. After having won political control over the public media through regulatory measures as well as mergers and acquisitions, the government also successfully installed its cronies throughout Hungary's private media market as well. (Bertelsmann Stiftung, 2022a). In 2014 legislation was introduced that limited the criticism of public and political figures, resulting in the reduction of criticism towards the government overall (Agestam, 2018). The Media Council then initiated a restricting process, which ultimately led to over 1000 employees being laid off, a move that was critiqued abroad as a purge in the state media (Agestam, 2018). In 2016, Hungary's largest independent daily newspaper, Népszabadság, closed citing financial reasons (Freedom House, 2022). However, this was announced right after the newspaper had run a number of articles covering the corruption of several Fidesz members (Agestam, 2018). Similarly, in 2020 the Media council revoked the publishing license of the country's largest independent radio station, Klubrádió, further decreasing the plurality in the media landscape in Hungary (Freedom House, 2022).

Opposition-aligned media remains to exist in Hungary, but the media landscape is dominated by government-controlled media (Freedom House, 2022). We find that the Conditionality Mechanism had little to no effect on the Hungarian media landscape. Whilst the restrictions of the media in Hungary remain an important topic in European debates, no mention of adapting the media regulation has been made from the European Commission in the Conditionality Mechanism (OSCE, 2022a; European Commission, 2022a). As such, from the Hungarian response there have also not been made any promises to change (Council Implementing Decision, 2022). In fact, we find that since the Conditionality Mechanism, the media landscape has even further slipped into control of the Fidesz government. Unrelated to

the Conditionality Mechanism, but under the influence of the outbreak of the COVID-19 pandemic and the Russia-Ukraine war, the OSCE found that Fidesz further solidified their control on the media (OSCE, 2022a). In 2020 the government introduced the “scaremongering” law which was set up to fight false information and news about the pandemic, but which had the effect of limiting journalists in their work (Freedom House, 2022). In 2021 a team of international journalists found that the Hungarian authorities were surveilling independent journalists with the Israeli-made spyware, Pegasus (Freedom House, 2022). As such, the media landscape in Hungary remains in a tight chokehold of the government.

Before Conditionality Mechanism	After Conditionality Mechanism
Creation of the Media Council, with authority over existing media regulation institutions	No mention of media laws in the Commission or Hungarian remedial documents
Nomination process of the Media Council is in the hands of the incumbent party	However, media control has taken a turn for worse with the introduction of the “scaremongering” law in the aftermath of the pandemic
Use Media Council to target government critical media, force them to pay fines and revoke or refuse to give broadcasting rights	

*Table 6. The media before and after the conditionality mechanism in Hungary*

#### **IV.V Hungary reaction to EU**

The Hungarian government remarked that they felt unfairly targeted, and whilst they did not have the power to stop the legislation, they threatened instead to block the multiannual and relief fund together with Poland (Borger, 2022). Eventually a compromise was reached, where Hungary agreed to not block the funds and in return the EU would first let the European Court of Justice (ECJ) rule on the legality of the Conditionality Mechanism before implementing it (Borger, 2022). However, in February 2022 the ECJ ruled that the mechanism was legal, and the EU started its implementation. In total, together with Poland, Hungary issued twenty pleas against the conditionality mechanism, but they were all dismissed by the ECJ (Borger, 2022). As such, when the Conditionality Mechanism was adopted, Hungary had to submit a remedial response. For their remedial response, the Hungarian government has worked closely with the European Commission and the OECD to reach an agreement that would fulfill the requirements of the Commission (European Commission, 2022c). Despite the anti-EU rhetoric that the Hungarian government has embarked on in recent years, Hungarian

officials do claim that they remain open for a constructive dialogue with the EU (Euractiv, 2022). Given that the €6.3 billion is a significant amount for the Hungarian economy, the Hungarian government has, albeit begrudgingly, committed to adopting remedial measures in line with the Commission recommendations (European Council/Council of the EU, 2022). Nevertheless, the Commission found that the remedial measures adopted by Hungary were not sufficient enough to address the breaches of the Rule of Law, and has therefore chosen to uphold the decision taken (European Council/Council of the EU, 2022).

Pew Research Center found that even after the Conditionality Mechanism was announced, the public opinion on the EU in Hungary remained high at 69% (Fagan & Gubbala, 2022). Being favorable to the EU is associated with ideological leanings, and in the case of Hungary we see that 86% of left-leaning versus 38% of right-leaning citizens have a positive view of the EU (Fagan & Gubbala, 2022). Nonetheless, the Hungarian people still see the EU as intrusive (42%) and as inefficient (41%) (Clancy 2022b). A caveat here is that supporters of Fidesz are less likely to hold a favorable opinion of the EU (Fagan & Gubbala, 2022). Nevertheless, the favorable opinion towards the EU has less to do with the Conditionality Mechanism and shifting public opinion than with the Russian invasion of Ukraine (Fagan & Clancy, 2022).

#### **IV.I History of Poland backsliding**

Just like Hungary, Poland was once considered a regional leader when it came to the process of democratization in post-communist countries in the EU (Bernhard, 2021). But, also just like Hungary, the topic of democratic backsliding in Poland has been a topic of increasing concern in recent years. After the Law and Justice Party (PiS) came to power in 2015, the Polish government has implemented a series of measures that have raised concerns about the erosion of democratic institutions and the rule of law.

One of the key areas of concern is the judiciary. The Polish government has implemented controversial reforms that have been criticized for undermining the independence and impartiality of the judiciary. These reforms include changes to the composition and functioning of the Constitutional Tribunal, the Supreme Court, and the National Council of the Judiciary (Ost, 2016). Critics argue that these changes have increased political control over the judiciary, weakened checks and balances, and undermined the separation of powers. Furthermore, the Polish government has also passed laws that have raised concerns about media freedom (Ost, 2016). It has introduced measures that allow for greater political influence and control over public media, leading to concerns about the pluralism and independence of

the media landscape (Ost, 2016). The government has also imposed restrictions on journalists and media organizations critical of its policies, leading to concerns about freedom of expression. Additionally, the government has enacted legislation that has had an impact on civil society organizations (Ost, 2016). It has introduced regulations that impose reporting requirements and funding restrictions on NGOs, which some argue can hinder the activities of independent civil society organizations. The government has also been criticized for limiting the rights of minorities, including the LGBTQ+ community, and cracking down on civil society groups (Ost, 2016). Perhaps in a more concerning fashion than in Hungary, these changes in Poland have been extremely rapid and in quick succession right after each other. On the 28<sup>th</sup> of December 2016, PiS introduced a law stripping the Constitutional court of its right to assess the constitutionality of the legislative agenda; on the 29<sup>th</sup> of December the Parliament voted on the repoliticization of the civil service and increased governmental control on media; on the 30<sup>th</sup> of December the party introduced a new bill that expanded the surveillance powers of the government on the internet (Ost, 2016). Whilst the history of Poland's backsliding does not go as far back as Hungary, the speed with which they are catching up is certainly alarming.

Not every case of democratic backsliding leads to a full-blown authoritarian system; in certain cases, it only leads to weakened democratic institutions and thus a reduction in the overall quality of a democracy (Bernhard, 2021). As such is also the case of Poland, where we cannot speak of an authoritarian regime, but certainly the rapid decline in the quality of democracy is worrisome (Bernhard, 2021). The situation in Poland continues to be a subject of debate and concern, with ongoing discussions and actions at both domestic and EU levels to address the issues of democratic backsliding and uphold democratic norms and values in the country.

#### **IV.II EU reaction to Poland**

The European Union has expressed concerns about the situation in Poland and has initiated the Article 7 procedure, similar to the case of Hungary, citing concerns over the rule of law and democratic principles (Commission Decision P8\_TA(2018)0055, 2018). However, the process has faced challenges in unanimity among member states, especially on the next step which is to determine whether a clear risk of a serious breach of the EU common values has taken place. The European Parliament has tried to avoid voting on the existence of such a breach (European Parliament 2022). Nonetheless, on the 12<sup>th</sup> of September 2018, the EP voted to launch the Article 7 proceedings against Poland (Oleart & Theuns, 2022).

The 22<sup>nd</sup> of December 2022 marked a new escalation in the relationship between Poland and the EU, when the European Commission decided to launch an infringement procedure against Poland as part of the Rule of Law mechanism (European Commission, 2021). What might have been seen as an extreme reaction, had in fact been slowly building up over time after various judicial disputes between the EU and Poland. The long-running legal battle between the EU and Poland started when in 2017 a Polish judge, Igor Tuleya, was suspended for issuing a verdict that was critical of the PiS (Buras, 2022). Tuleya took his case to the highest European court, where the ECJ eventually ruled that not only was Tuleya unfairly dismissed, in fact the whole Polish disciplinary system for judges in Poland was not compatible with EU law (Buras, 2022). The court found that whilst European courts need to be able to guarantee judicial review by an independent and impartial tribunal under Article 279 of the TFEU, this was not the case in Poland (European Commission, 2021; Buras, 2022). The ECJ instructed the Polish court to revoke the suspension of Tuleya and ordered the Polish government to suspend the disciplinary chamber for judges (Buras, 2022).

Controversially, as a response to the ECJ ruling, in October 2021 the Polish Constitutional Court ruled that the Polish constitution takes precedence over EU law (Kość & Bayer, 2021). This was seen as an outright declaration of war against everything the EU stood for in Brussels (Buras, 2022). With this move, the Polish disregarded the EU court, the EU laws, and the protection of Rule of Law in Europe. The Commission decided to withhold billions of funds from the pandemic recovery fund and to fine Poland €1 million daily for every day that it did not revoke the ruling (European Commission, 2021). The following replies by Poland either ignored the concerns raised by the Commission, or rejected them (European Commission, 2021). As such the Commission decided to refer the case to the ECJ and to launch an infringement procedure against Poland that is still ongoing to this day (Formal Notice Art. 258 TFEU INFR(2021)2261). As of February 2023, the daily fine for Poland was still ticking and now amounts to €476 million (Camut, 2023).

#### **IV.III Independent Judiciary**

Judicial reforms were one of the first issues that the PiS party tackled after their elections in 2015. This was done in two steps: 2015-2016 PiS focused their reforms on the Constitutional Tribunal in 2017-2018 they increased their efforts to encompass the justice system (Radajewski, 2019). In the case of Poland, some political context is necessary to fully understand the scope of the judicial reforms. Since the collapse of the social system in 1989, Poland has not had a thorough verification of the judicial corps (Radajewski, 2019). As a result,

as many as one third of the Supreme Court of Poland was still filled with judges who were appointed during the socialist era (Radajewski, 2019). Lots of political groups campaigned with the promise to completely change the judicial system, including the PiS who ran on the promise to de-communize the Polish judiciary (Radajewski, 2019). The judicial system in Poland consists of the National Council of the Judiciary and the Supreme Court. The National Council is in charge of safeguarding the independence of the courts and the judges and to submit the candidates for judges in all of the courts of Poland (Radajewski, 2019). The Supreme Court is the highest court in Poland and plays a role in the disciplining of the judiciary (Radajewski, 2019).

The first reform that the PiS made was to take the power to appoint new judges from the National Council and give that power to the Polish parliament's lower house (Radajewski, 2019). When the members of the National Council argued against this, the PiS went ahead and shortened the term of office for the currently sitting members, thus forcing them into early retirement (Radajewski, 2019).

A few months later, in 2017, also followed the reforms of the Supreme Court. The new Act on the Supreme court radically changed the organizational structure and changed the rules for disciplining judges. These decisions all fell within the scope of regulatory freedom, thus they were not considered to be controversial, however, the PiS also introduced lay judges into the Supreme Court system (Radajewski, 2019). Lay judges are introduced to a court system to oversee the judicial process, and the PiS introduced lay judges to take part in the examination of extraordinary complaints (Radajewski, 2019). These lay judges did not have to have legal backgrounds or educations but were instead appointed by the Polish Senate (Radajewski, 2019). It is important to note here that lay judges do not have the same measures to ensure independence as judges would have, thus raising doubts about the independence of a court (Radajewski, 2019).

These questions were also raised at the European Commission, who had deep concerns about the independence of the Polish judiciary (European Commission, 2023). Since launching the infringement procedures, the ECJ found that the Polish disciplinary regime for judges is not compatible with EU law and has suspended the powers of the Supreme Court's disciplinary chamber (European Commission, 2023). Nonetheless, the real changes were made when Poland submitted its RRP for the European Recovery Fund. In their plan, Poland commits to reforming the disciplinary regime for judges and strengthening some of the aspects of the

independence of the judiciary (European Commission, 2023). The PiS also committed to dismantling the Supreme Court disciplinary chamber and to review the cases of the judges who have already been affected by the disciplinary chamber (European Commission, 2023).

Before Infringement Procedure	After Infringement Procedure
<p>Reforms to the National Council of the Judiciary, including giving the power to appoint new judges to the lower house of the Polish parliament</p> <p>Shortening the term for sitting judges and forcing them into retirement, thus creating new openings in the judicial system that can be filled up with appointments from the political sphere</p>	<p>Strengthening some of the aspects to guarantee the independence of the courts</p>
<p>Introducing lay judges to oversee the judicial process, these lay judges did not have to come from a legal background but were considered as powerful as the judges themselves</p> <p>Especially in the disciplinary chamber meant to discipline and oversee the decision of judges; this created a work environment for judges where they were no longer able to remain independent without the fear of facing repercussions from the disciplinary chamber</p>	<p>Reform the disciplinary regime for judges, including the dismantling of the Supreme Court disciplinary chamber</p> <p>Reviewing the cases of the judges who have been affected by the decisions of the disciplinary chamber</p>

*Table 7. The judicial independence before and after the conditionality mechanism in Poland*

**IV.IV Media Freedom**

After coming to power in 2015, the PiS moved quite rapidly to reform the Polish media landscape (Freedom House, 2017). They did this by adding an amendment to the new media law in Poland, which had gone into effect January of that year. The amendment ended the mandates of all the Polish public television and radio, thus resulting in a series of dismissals in the public media channels (Freedom House, 2017). These empty posts were then filled with successors who were appointed by the treasury minister (Freedom House, 2017). This way the PiS quickly filled key positions in public broadcasting with their cronies. The fast-tracked media legislation gave the government greater control over public broadcasters and effectively politicized the Polish media sphere. While the media landscape in Poland consists mostly of privately owned companies, state-owned companies have directed all their advertising spending on pro-government media, thus effectively penalizing privately owned media companies if they were not outspoken progovernment (Freedom House, 2017). In addition, the government increased their spending on public broadcasts (Bertelsmann Stiftung, 2022b).

The EU and other advocacy groups have criticized Poland frequently for increasing the government's hold over public media. During the 2020 presidential elections, the OSCE election assessment mission found that while the election was technically pluralistic, the campaign and treatment was not equal amongst all candidates (OSCE, 2022b). The OSCE also reported an increase in hate speech and defamation from the progovernment voices (OSCE, 2022b). The World Press Freedom Index shows that Poland fell from rank 18 in 2015 to rank 66 in 2022 (Reporters without Borders, 2015; Reporters without Borders, 2022).

Since 2015, the gap between public media and private media has only grown in Poland, with public media being extremely progovernment and private media having more pluralistic views (Bertelsmann Stiftung, 2022b). While campaigning in 2019, the PiS promised that they would make further changes to the public media and in 2020 PiS reiterated their intention to "Repolonize" the Polish media (Bertelsmann Stiftung, 2022b). In November 2020, state-owned oil company Orlen bought the newsagent firm Ruch, which controlled one-fifth of the media market in Poland (Bertelsmann Stiftung, 2022b). Later that year, Orlen also bought Polska Press, which included 140 regional newspapers and another 500 internet portals (Bertelsmann Stiftung, 2022b).

In the annual Rule of Law report, the Commission recommends that in their RRP Poland includes measures that strengthen the rules surrounding the independence of public media and take into account European standards (Commission Staff Working Document, 2022b). Regardless of this, there are no media reforms mentioned in the RRP of Poland (European Commission 2022d). Outside of the RRP, Poland did pass some reforms to introduce pluralism back into national media, but the Commission remains concerned about media pluralism in Poland (Commission Staff Working Document, 2022b).

#### **IV.V Poland reaction to EU**

Poland has been critical of the EU's rule of law mechanism and has expressed concerns about its implementation. The Polish government has argued that the mechanism is politically motivated and unfairly targets Poland, while downplaying or denying any significant rule of law issues in the country. Together with Hungary, the Polish government felt unfairly targeted by the EU and they threatened to block the multiannual and relief fund (Borger, 2022). In cooperation with Hungary, Poland issued twenty pleas against the conditionality mechanism, which were all rejected by the ECJ (Court of Justice of the European Union, 2022; Borger, 2022). As soon as the ECJ ruling came out, the initial reaction from the Polish government was hostile. The Polish Prime Minister Mateusz Morawiecki said that "bureaucratic centralism is

unfortunately progressing in Brussels but it has to be stopped." and the Polish deputy Justice Minister said that the ruling was an attack on the sovereignty of Poland (Deutsche Welle, 2022). The leader of PiS, Jaroslaw Kaczynski, claimed that Brussels was more dangerous for Poland than Russia even (Buras, 2022). However, the potential loss of the recovery fund would have dire effects on the Polish economy and continuing to block EU funds would send a strong message to the markets (Buras, 2022). PiS cannot afford further economic deterioration, especially not after the pandemic, the Russia-Ukraine war, and the energy crisis (Buras, 2022). And especially with the new parliamentary elections looming in 2023. As such, PiS had to submit a remedial response to the EU to be able to claim financial support.

In order to access more than €35 billion in European Union aid, the Polish opposition agreed to work together with PiS to roll back some of the judicial reforms (Martewicz & Skolimowski, 2022). In their RRP, Poland agreed to strengthening the independence of the judiciary (European Commission, 2022d). Whilst they did not abolish the controversial disciplinary regime for judges, they agreed to reform it and to remedy the situation of the judges who had been previously affected by it (European Commission, 2022d). Poland also promised to increase their quality of lawmaking, by introducing impact assessments and public consultations (European Commission, 2022d). All of this is to be overseen by a committee including social partners, who will monitor the effective implementation of these plans (European Commission, 2022d). The European Commission made an initial positive assessment of the Polish RRP, but this does not mean that Poland will start receiving EU funding immediately,

## V. Analysis

For the analysis we will look at the presence of the indicators from table 4 in the RRP of Hungary and Poland. The presence of these indicators will mean that the presence of the EU unintentionally leads to democratic backsliding, while the absence of these indicators means that the EU has, through the conditionality mechanism, managed to take away some of the factors that lead to democratic backsliding.

### V.I Hungary

We start with looking at our first hypothesis: *The IO's democracy promoting mechanism will improve the judicial independence in a member state where democratic backsliding occurred.* We will see if this hypothesis holds true, by looking if the indicators from table 3 are absent or present in the case of Hungary. When the indicators are present, it means that the EU is unintentionally causing democratic backsliding in Hungary because of the presence of certain institutional designs. The opposite holds true for when an indicator is absent, it means the EU has adapted its mechanisms accordingly, and the democratic backsliding can no longer be attributed to the EU. Our first indicator is that the promotion of democracy is heavily concentrated on executives. Whilst, this holds true – the indicator is present – the focus has definitely shifted. The executive is still the main focus of the EU, however, secondly the EU has put a strong focus on the independence of the judiciary. Nonetheless, democracy promotion remains heavily concentrated on the executives. The second indicator shows if there are horizontal checks on governmental power, including independent judiciaries. These are still absent, but are in the process of being reinstated with help from the EU. The third indicator is whether the IO increases the power of the executive over the power of other domestic institutions. This indicator is absent. We see in the RRP that Hungary has dedicated itself to increase the independence of the judiciary, including reforming their functioning of the supreme court and assigning new powers to the National Judicial Council. With these changes, the power of the judiciary is restored and the executive is no longer the most powerful. The fourth indicator is about whether IOs provide incentive for executives to manipulate institutions to their advantage. This indicator is absent. In fact, the EU now gives a very strong incentive for the executive to decrease their manipulation of institutions, in particular the judiciary. Institution manipulation makes backsliding more likely, so by tackling this problem, the EU decreases the likelihood of further democratic backsliding in Hungary. The fifth indicator is also absent. The conditionality mechanism makes it so that foreign aid is now tied to rule of law. Executives no longer have the power to pursue projects

without legislative approval. Thus, the balance of power is no longer skewed towards the executive, but is restored. By giving the judiciary an equal playing field, the system of checks and balances is restored, and the executive is unable to pass any legislation without approval. The sixth indicator regarding the domestic policy space is thereby also restored and absent. As mentioned before, the introduction of an independent judiciary restores the institutional checks on the power of the executives. This goes hand-in-hand with the seventh indicator, which is now also absent. With the introduction of judicial independence, there is once again a system in place for horizontal accountability. The judiciary is once again able to perform institutional checks on the executive power. We see now that 6 out of 7 indicators are absent. We can therefore conclude that it holds true that the conditionality mechanism improved the independence of the Hungarian judiciary to the point where the EU is no longer contributing unintentionally to democratic backsliding in Hungary.

For our second hypothesis then we turn our attention to the freedom of the media. In particular we see if: *The IO's democracy promoting mechanism will improve the media freedom in a member state where democratic backsliding occurred.* Once again, we look at the presence and absence of the indicators. Firstly, we look again if the EU increases the executive power in relation to the freedom of media. This indicator is present, because whilst the EU has increased the power of the judiciary, it did not increase the power of other domestic institutions such as media freedom. Furthermore, in the RRP of Hungary there is no mention about any regulatory changes made to increase the freedom of the domestic media. The second indicator, the incentive to manipulate elections through subtle tactics, therefore also remains present. When we cannot guarantee the freedom of the media, we can also not assume there will be no interference with elections, and the executive will not use the media to strategically manipulate elections. The media institutions remain firmly in the grasp of the executive. The third indicator also remains present. The domestic policy space for developing representative institutions that can perform institutional checks on executive power remains in the hands of the executive power. This means that the freedom of the media cannot be guaranteed and therefore they are unable to check the power of the executives. By not addressing the media freedom, the EU unintentionally contributes to a climate for democratic backsliding in Hungary. Whilst solving the independence of the judiciary is already a big step forward, the question remains whether its enough to halt or slow down democratic backsliding, or whether the executive power in Hungary will get find other ways to consolidate their power. Therefore, we can say that the conditionality mechanism had no influence on the freedom of media in Hungary. Our second

hypothesis then proves to be false. In table 8 we can find an overview of the presence and absence of the indicators. This gives us an overview to see in which ways the EU has halted democratic backsliding and unintentionally allowed for democratic backsliding in Hungary.

Dimension	Indicator	Present /yes or absent/ no
Judicial independence	<ol style="list-style-type: none"> <li>1. Democracy promotion by IO is heavily concentrated on executives</li> <li>2. Horizontal checks on government power and institutions that constrain elected officials' power, including independent judiciaries, which can block executives seeking to increase their power</li> <li>3. IOs can increase executive power relative to other domestic institutions</li> <li>4. IOs provide both incentives and opportunities for executives, who are rational actors concerned with maintaining office, to manipulate institutions to their advantage; this in turn makes backsliding more likely</li> <li>5. Foreign aid provides resources outside the national budget, allowing executives to pursue projects without legislative approval, which shifts "the balance of power within countries in ways that distort the constitutionally established system of checks and balances"</li> <li>6. The domestic policy space is critical for developing representative institutions and institutional checks on executive power in new democracies</li> <li>7. Legislatures, which play a critical role in providing horizontal accountability, are unable to check executive power. Indeed, in addition to the judiciary, legislatures are the main institutional check on executive power</li> </ol>	<ol style="list-style-type: none"> <li>1. Yes</li> <li>2. Yes</li> <li>3. No</li> <li>4. No</li> <li>5. No</li> <li>6. No</li> <li>7. No</li> </ol>
Media freedom	<ol style="list-style-type: none"> <li>1. IOs can increase executive power relative to other domestic institutions</li> <li>2. Executives have incentives to refrain from manipulating elections to maintain power; instead, they resort to more subtle tactics, such as "strategically manipulating" elections by interfering with nonelectoral institutions</li> <li>3. The domestic policy space is critical for developing representative institutions and institutional checks on executive power in new democracies</li> </ol>	<ol style="list-style-type: none"> <li>1. Yes</li> <li>2. Yes</li> <li>3. Yes</li> </ol>

*Table 8. Presence and absence of democracy promoting tools that can (involuntarily) lead to democratic backsliding in Hungary*

## V.II Poland

We again start by looking at our first hypothesis: *The IO's democracy promoting mechanism will improve the judicial independence in a member state where democratic backsliding occurred.* In this case, we look at if the conditionality mechanism of the EU has improved the judicial independence of Poland. Our first indicator is that democracy promotion is heavily concentrated on executives. In the RRP we see that the focus has shifted from the executive, to the independence of the judiciary. This does not mean that the executive has shifted completely out of focus for the EU, however, this does show that the democratic backsliding of Poland has become so severe that the EU has had to change its shift and start including the judiciary. However, the EU still supports democracy through economic assistance to nudge the executive to pass institutional reforms. Therefore, we see that while the focus of the EU has shifted to the judiciary, the PiS still remains as the main intermediary between the EU and the Polish government. The second indicator also holds true. The EU did indeed nudge Poland to include horizontal checks on governmental power. Or rather, the EU nudged Poland to turn back legislation that had previously removed these constraints. By strengthening the independence of the judiciary, Poland has once again introduced a checks-and-balances system that can block executives who are seeking to increase their power. The third indicator is regarding the incentives that IOs provide for executives to maintain office as compared to other domestic institutions. This indicator is now also absent. By tying the independence of the judiciary to receiving financial aid from the EU, the EU has created a strong incentive for PiS to give more power back to the judiciary. Whilst there is still a strong incentive for PiS to remain in power, the incentive now also includes the judicial independence. The fourth indicator is regarding the incentive for executives to manipulate institutions to their advantage. This indicator is also absent, for much the same reasons as the absence of the third indicator. However, the question remains if PiS will now focus its efforts towards other domestic institutions to remain in power. The fifth indicator is absent. This indicator is regarding foreign aid (outside of the national budget), which allows executives to pursue projects without getting prior legislative approval. By increasing the judicial independence, the PiS is no longer able to pass legislation without receiving legislative approval for their policies. In this case, the balance of power between the executive and the legislative is restored in Poland. The sixth indicator is regarding the domestic policy space and the ability to develop institutions that can perform institutional checks on executive power. This indicator is absent, as the balance of power is no longer skewed towards the executives. With the introduction of judicial independence, there is once again an established system for checks-and-balances in Poland. The final indicator is

regarding legislatures that provide horizontal accountability. This indicator is absent, considering that the EU has now given strong incentives for PiS to implement institutional checks on their power.

Taking in all these indicators for the independence of the judiciary, we can conclude that our first hypothesis holds true. The conditionality mechanism did indeed improve the judicial independence in Poland. However, the question remains how many of these indicators will remain absent, and if the EU has managed to find a long-term solution for the independence of the judiciary in Poland.

Moving on to our second hypothesis, we will take a look at whether the conditionality mechanism improved the media freedom in Poland. Our second hypothesis was:

*The IO's democracy promoting mechanism will improve the media freedom in a member state where democratic backsliding occurred.* Interestingly, while the media freedom situation in Poland was a significant portion of the rule of law country report of Poland, there is no mention of media freedom in Poland's RRP. In this case we can conclude that all three indicators for media freedom remain present. The EU continues to put the focus on the executive power. Whilst we saw that part of this focus had shifted to the judiciary, this focus seems to not be on other domestic institutions that the EU themselves had flagged as an important element for the rule of law. This means that the PiS is still free to continue "strategically manipulate" elections, through media manipulation. The third indicator also remains present in Poland. The domestic policy space is critical for developing representative institutions, and in this case, the EU has disregarded the domestic media policy space. This means that PiS is still free to take advantage of the media in Poland, and the media freedom in Poland remains problematic. In this case, the hypothesis is proven false. The conditionality mechanism did not improve media freedom in Poland. This is interesting in particular, because the EU had flagged media freedom as one of its concerns regarding Poland's democratic backsliding. Despite that Poland never made a reference to media freedom in their RRP, the EC still approved the RRP for Poland. Which means, if the RRP is also voted and accepted by the EP, Poland has turned back democratic backsliding enough to start receiving EU funding again.

In table 9 we see an overview of the presence and absence of indicators. Here we see indeed, that most of the indicators for judicial independence are gone. This means that the EU has changed their institutional design in such a way, that on the topic of judicial independence, they are no longer unintentionally contributing to Poland's democratic backsliding. However,

we see that all the indicators for media freedom are still present. This means that these institutional factors are still present in the EU regarding Poland's media freedom.

Dimension	Indicator	Present /yes or absent/ no
Judicial independence	<ol style="list-style-type: none"> <li>1. Democracy promotion by IO is heavily concentrated on executives</li> <li>2. Horizontal checks on government power and institutions that constrain elected officials' power, including independent judiciaries, which can block executives seeking to increase their power</li> <li>3. IOs can increase executive power relative to other domestic institutions</li> <li>4. IOs provide both incentives and opportunities for executives, who are rational actors concerned with maintaining office, to manipulate institutions to their advantage; this in turn makes backsliding more likely</li> <li>5. Foreign aid provides resources outside the national budget, allowing executives to pursue projects without legislative approval, which shifts "the balance of power within countries in ways that distort the constitutionally established system of checks and balances"</li> <li>6. The domestic policy space is critical for developing representative institutions and institutional checks on executive power in new democracies</li> <li>7. Legislatures, which play a critical role in providing horizontal accountability, are unable to check executive power. Indeed, in addition to the judiciary, legislatures are the main institutional check on executive power</li> </ol>	<ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> <li>3. No</li> <li>4. No</li> <li>5. No</li> <li>6. No</li> <li>7. No</li> </ol>
Media freedom	<ol style="list-style-type: none"> <li>1. IOs can increase executive power relative to other domestic institutions</li> <li>2. Executives have incentives to refrain from manipulating elections to maintain power; instead, they resort to more subtle tactics, such as "strategically manipulating" elections by interfering with nonelectoral institutions</li> <li>3. The domestic policy space is critical for developing representative institutions and institutional checks on executive power in new democracies</li> </ol>	<ol style="list-style-type: none"> <li>1. Yes</li> <li>2. Yes</li> <li>3. Yes</li> </ol>

*Table 9. Presence and absence of democracy promoting tools that can (involuntarily) lead to democratic backsliding in Poland*

## VI. Conclusion

This study set out to see if what the effect is of democracy promotion mechanisms of IOs on democratic backsliding in their member states. In particular, I looked at the conditionality mechanism of the EU. I started looking at first for all the possible explanations for democratic backsliding in IOs. Through my literature review I identified several theories that concern themselves with this topic. In an increasingly globalized world, IOs are necessary if we want to tackle the wicked problems of modern society. But to address the increasing globalization, IOs need to increase their sovereignty. This has become a delicate topic for national governments, who act as rational actors in their own interests and preferences (Keohane, 2001). When an IO is not given enough capacity to solve cooperation problems, they lack the tools needed to monitor and implement their regulations (Eberlein & Newman, 2008). This gap in capacity is turned into critique for IOs and undermines their legitimacy (Eberlein & Newman, 2008). This battle between international governance and national sovereignty is ongoing (Keohane, 2001). With the increase of IOs and their power, we therefore also see an increase in opposition to IOs. This opposition comes in multiple forms, but in recent years mainly comes from nationalists (Hooghe et al., 2019). What started as criticism towards the policy of IOs, has now been imbedded into our society as a cleavage (Hooghe et al., 2019). Nationalists have approached globalization with a us vs. them rhetoric, to further the cleavage in societies (Hochschild, 2016). At the same time, IOs have become more intrusive and have embedded themselves into the domestic policy space of national governments (Zürn, 2004). This intrusiveness, in combination with the nationalist rhetoric, has led to an increase of populism and opposition against IOs (Zürn, 2004). Citizens increasingly felt like they were heavily affected by decisions taken on a global level, while having lost their right to decision-making (Zürn, 2004). This democratic deficit looped back into the negative attitudes towards IOs and undermined their legitimacy further (Zürn, 2004).

Whilst the democratic deficit is one way to look at democratic backsliding in IOs, another way is to look at the democratic backsliding in national governments who are a member of an IO. Democratic backsliding is the gradual erosion of democratic norms and institutions (Bermeo, 2016). Democratically elected leaders will use populism and the us vs. them rhetoric to rebel against the rule of law of the democracy promoting IO. Here we see that indeed, policies on dealing with IOs and loss of sovereignty have taken over national political discussions (Zürn, 2004). Leaders of democracies challenge the legitimacy of IOs and use their influence to undermine democratic norms and practices (Hooghe et al., 2019). This battle for

upholding the rule of law has led IOs to create mechanisms of democracy promotion to uphold the rule of law in member states.

Democracy promotion is not a new phenomenon, it has been on the rise since the Cold War (Meernik, 1996). It was especially used to counter communism, and is therefore heavily associated with liberalism and market economies (Meernik, 1996). However, Meyerrose (2020) puts forward the theory that democracy promotion in IOs unintentionally leads to democratic backsliding in member states. This theory has led me to my research question, namely: *What is the influence of democracy promoting mechanisms of IOs on member states who experience democratic backsliding?*

I aimed to answer this question by taking the EU as a case study. The EU is one of the most intrusive IOs, having extensive rules and mechanisms to make member states adhere to its rule of law. However, the EU has also been increasingly having to deal with democratic backsliding in its member states. Two of the most extreme cases are Hungary and Poland. These cases have been so extreme, that the EU has had to go to extreme measures as well: it triggered article 7 of the TEU. This proved to be a controversial decision, but still it lacked the executive power to bring Hungary and Poland back to the rule of law. As an alternative, the EU introduced a new democracy promoting mechanism. The rule of law mechanism (or conditionality mechanism) ties financial aid to rule of law. In practice, this conditionality mechanism has been applied to the state aid received by Hungary and Poland as part of the covid care package, namely the recovery and resilience program. As such, I attempted to design research that would see what the effect of the democracy promotion in the EU was on the democratic backsliding in Hungary and Poland. Because democratic erosion can happen on multiple levels, I had to focus the scope of the study. I did this by cross-referencing the characteristics of democratic backsliding as categorized by Meyerrose (2020), with the RoL reports of the European Commission. This showed that the main focus of the EU when talking about rule of law erosion, was category 4) the independence of the judiciary and the media. As such, I focused my study on these two factors. To gather my empirical data, I used process tracing focused on these two factors. I looked at the situation before and after of the judiciary and the media, taking the conditionality mechanism as a critical juncture. I did this twice, once for Hungary and once for Poland. To analyse my data, I went back to Meyerrose (2020) and made indicators based on her framework. These indicators show the presence or absence of certain IO behaviour that according to Meyerrose unintentionally leads to democratic backsliding in member states (Meyerrose 2020). I then used discourse analysis to identify of

these state behaviours were still present after the introduction of the conditionality mechanism. Since the conditionality mechanism has only been applied in the case of RRP, I used the RRP country reports for this.

What is interesting to see is that the EU heavily focused its attention in both cases on judicial independence, and not on the freedom of media. We see that in the case of Poland and Hungary, the conditionality mechanism brought the most changes to the independence of the judiciary. In this case, the EU limited its own role in contributing to democratic backsliding in these countries. Despite being discussed in the RoL reports, the RRP made no mention about media. There are two possible explanations for this. Firstly, we take it back to the sovereignty of IOs. Whilst the EU might be one of the most intrusive IOs, its capacity in the domestic policy space is still limited. The EU cannot outright make legislation of the media (and other aspects) in member states. We saw already in the theoretical framework, that infringing on domestic sovereignty can lead to more resistance towards an IO (Zürn, 2004). In this case, it might have been a strategic choice of the EU to focus only on the area where it already has sovereignty, without trying to increase its own power. This offers also a potential explanation to why Article 7, despite being triggered did not have the same impact as the conditionality mechanism. The scandal that article 7 brought, also brought a lot of serious questions about the legitimacy of the EU (Sedelmeier, 2014).

Instead, the EU focuses on the rule of law and the independence judiciary as an overall mechanism for rule of law in a country. Perhaps in the hopes that this will on the long-term also affect other areas of political backsliding. We see indeed, that a lot of importance has been given to the restoration of the checks-and-balances system that keeps the power of the executive in check. Depending on the domestic policy space, these checks can have spillovers into other areas, such as the freedom of the press. In the case of the judiciary, we see that the EU did have a positive impact on reducing democratic backsliding, by changing some of its state behaviour. By creating a level playing field between the executive and the judiciary – to the extent that they were able, they managed to convince Poland and Hungary to implement policies to increase judicial independence.

Unfortunately, the RRP reports are only policy suggestions done by the countries and not actual implemented policy. Interesting to note however, is that the RRP of Poland received positive feedback from the EC (Commission Staff Working Document, 2022b). This means it will now go to the EP and once it is passed there, Poland can start implementing these reforms

and receive EU funds again. The RRP for Hungary however, received a negative advice and thus Hungary has been sent back to the drawing table.

Meyerrose's (2020) theory suggests that democratic backsliding can sometimes be an unintentional consequence of democracy promoting IOs. One of the reasons she gives for this is that IOs are more powerful during the accession stage than when a membership is consolidated (Poast & Urpelainen, 2015; Meyerrose, 2020). This holds true for the case of Hungary and Poland. During the accession stage, the countries had to make more efforts to adhere to the very strict rules of the EU, including the rule of law. It is also during this stage, where they agree to give up some of their sovereignty and accept the EU rule of law as above their constitution. The reason for this is clear: during the accession stage, if it is not up to the EU's liking, they can reject a membership. However, once a member is consolidated, the EU no longer has the power to exclude them. If democracy promoting mechanisms are not specifically designed in such a way that they do not unintentionally lead to democratic backsliding, we see that they indeed do result in democratic backsliding (Meyerrose, 2020). One could argue that the conditionality mechanism of the EU is the response to this. By introducing the conditionality mechanism, the EU applies democracy promotion to all relevant institutions. All three dimensions of Meyerrose remain present in the institutional design of the EU, namely: 1) IOs and democratise outcomes; 2) increase executive power, and; 3) limiting domestic policy space (Meyerrose, 2020). However, specifically on the case of the EU and the judicial independence, we see that some of these factors have been eliminated by the conditionality mechanism. Meyerrose (2020) argues that, amongst others, that IOs enable democratic backsliding unintentionally in member states that are new democracies by focusing merely on executive power and elections. She argues that democracy promoting mechanisms are required to enable the development of the surrounding institutions relevant for liberal democracy as well, because Huntington (1986) says all institutions are relevant for democracy. Based on the results of this study, I counterargue that the amount of democratic promoting mechanisms does not matter, as long as the impact of the mechanism is strong enough for democracy promotion.

## **VI.II Limits of study**

Validity and reliability are important for any research and their conditions need to be met in order to have a satisfactory thesis. For validity, the indicators need to be suitable for the concept that I am trying to measure. In this case, the concept is democracy promotion. Democracy promotion is a concept that can encompass a multitude of instruments and tools;

thus, it is important to narrow it down. For my study, I have narrowed down democracy promotion to the conditionality mechanism of the EU. This is a suitable fit, as the EU is considered an interventionalist IO and therefore it has the power to apply the conditionality mechanism. Furthermore, the EU also documents in detail what it considers as rule of law breaches and what it expects of member states to fix or prevent these breaches. By applying Meyerrose's (2020) framework on this, I end up with a set of indicators that can measure the absence or presence of a democracy promoting tool. However, this study is focused in particular on judicial independence and the media. This is for a number of reasons. First of all, measuring all the areas of democratic backsliding would have been too big for the scope of this research. Second, I chose to focus on these two topics particularly because they were both mentioned by Meyerrose and by the EU. Thirdly, despite the multiple areas of democratic backsliding, the RRP's only mentioned the changes made to the judiciary. Despite the results of the process tracing showing us that some changes were made to media laws, these changes I did not see back in the RRP's of the countries.

For the reliability it is important that the indicators should be measured accurately. This can be tested by repeating the study and getting consistent results (Halperin & Heath, 2017). In this case, we cannot be sure of the reliability as the study is not repeated, however, the study can be repeated because of the operationalization. Of course, discourse analysis is subjective, because it concerns itself with the interpretation of language. However, I try to make the subjectivity as small as possible by providing a set of indicators and only looking at presence and absence of language. It is my believe therefore that any researcher doing this study would find results that are consistent with my results. A bigger shortcoming is that the generalizability of the study is very low, because it is so specific. I focus on a specific conditionality mechanism, with specific countries, and specific areas of democratic backsliding. However, I do argue that the conditionality mechanism of the EU is one of the most extensive mechanisms for democracy promotion in an IO. The countries and specific areas of democratic backsliding are also all chosen with the utmost care to try and identify the most relevant cases for this research. Despite these shortcomings, overall, I find the validity and reliability of this research satisfactory.

### **V.III Policy recommendations and future research**

As mentioned before, I argue that the amount of democracy promoting mechanisms does not matter, as long as the impact of the mechanism is strong enough for democracy promotion. I argue this based on that the EU managed to get results by putting their focus on

the independence of the judiciary. I would therefore recommend that democracy promoting policy focusses on strong legislature in the area of judicial independence. This should be given particular attention, as the weaker legislature is, the more susceptible a democratic backsliding a country is (Haggard and Kaufman, 2021). Nonetheless, within IOs it is important to find a balance between the member states, especially if a policy decision requires unanimity. We see this back in the inability of the EU to use Article 7 to its full potential. Member states with a weaker commitment to liberal democracy are reluctant to support sanctions against governments (Sedelmeier, 2014). The conditionality mechanism was a way for the EU to work around it, and I would argue that so far it has been effective for democracy promotion. I would therefore recommend that future policy focuses mostly on restoring the checks-and-balances in a backsliding democracy. If we want to tackle democratic backsliding on a global level, we need to give defending and promoting democracy a higher priority as a policy objective in our IOs. Best practices right now include reporting and tracking democratic backsliding, supporting political and civil organizations, and using diplomatic appeals to identify reasons (Haggard and Kaufman, 2021). Whilst these are still necessary for the reporting and tracking of democratic backsliding, they are not enough to wane countries off of it. I recommend that these tactics are used in combination with legislation that increases the national checks-and-balances. In particular the judiciary should be

An area of interest for future research is to include other indicators of democratic backsliding and democracy promotion in studies such as this one. Because this study looks only at the independence of the judiciary and the media, it remains limited. It would be interesting to see if the conditionality mechanism had any influence on other areas of democratic backsliding. In particular, it could be argued that civil society can play a role as well in the democracy promotion in a country. Furthermore, the role of grassroots movements should be studied more to see the influence of a bottom-up approach to democracy promotion. And lastly, a longitudinal study should be done to track the results of democracy promoting mechanisms over time, especially to see if the results are sustainable on the long term and if it leads to actual changes in a democracy. This will be particularly interesting in this case to see if the increase in judicial independence leads to spillovers in other policy areas as well and to a decrease in democratic backsliding overall.

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