

The resilience of the European Union's values: article 2 TEU and subnational gender dissidence in Poland

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Abstract: The values of the European Union (Art. 2, TEU) protect Member States against democratic backsliding with a strong focus on the rule of law. In Poland, the Law and Justice (PiS) party, in power from 2015-2023, threatened the rule of law and gender equality, while advocates for gender equality fought to safeguard these principles. Using this example, this article explores structural and social-normative factors that enable or hinder gender concerns' access to the EU, starting at the subnational level. Gender representation and policies in Poland's 2018 local elections and their bottom-up translatability to EU institutions show that the resilience of EU values depends on national provisions. Furthermore, the role of the European Commission and the Court of Justice of the European Union in supporting gender equality and the rule of law display how bottom-up dissidence and top-down EU approaches interact in developing resilience against democratic backsliding in EU Member States. These dependencies show that Member States have a responsibility in providing the conditions for gender dissidence to flourish. This can be achieved through the promotion of educational diversity and the development of legal frameworks that allow traditional gender norms to be challenged at the local, regional, and national levels.

Keywords: subnational dissidence, multilevel governance, European Union, gender equality, rule of law, Poland

Introduction

The conversation about threats to democracy worldwide is currently at a pinnacle. Democratic backsliding, defined as the „deliberate, intended action designed to gradually undermine the fundamental rules of the game in an existing democracy, carried out by a democratically elected government” (Bakke & Sitter 2022), constitutes an example. The resilience against democratic backsliding resonates with the core values of the European Union (EU), today fortified in Articles 2 of the Treaty on European Union (TEU), the Charter of Fundamental Rights of the EU (CFR), and the Copenhagen Criteria. In 1951, the Schuman Plan stated:

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The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe [...]. The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible (Schuman, 1950).

The individuals¹ shaping this new war-preventing entity were impacted by the Second World War, its preceding rise of nationalism and protectionism. Member countries of the European Coal and Steel Community (ECSC) would collectively delegate sovereignty to a High Authority, known today as the European Commission. A complex system of supranational governance was developed with the goals of „eliminating the barriers which divide Europe” (European Economic Community, 1957) and „improving the living and working conditions of their peoples” (ibid.). Its founding principles – liberty, democracy, respect for human rights and fundamental freedoms, as well as the rule of law – gained importance as the block set itself apart from communist Eastern Europe with the normative aspiration to be a Union of democratic Western Europe (Manners, 2002). These values were embraced by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, and Slovenia when they joined the EU in 2004, as well as by Romania, and Bulgaria in 2007. To implement these principles, the Union’s system was designed to connect the European level with national and subnational governance levels endowing individuals with participatory agency against authoritarian governments while protecting their democratic, fundamental rights². But does this framework also work when states are affected by democratic backsliding and threaten Union values as well as those communities that support them?

This article will answer this question by using the example of the Republic of Poland and the policies of the democratically elected Law and Justice party (Prawo i Sprawiedliwość, PiS), which was in power from 2015-2023. Under the leadership of the PiS misogynist, homophobic policies targeted at excluding marginalized groups were implemented, and core principles of democratic government such as the rule of law were threatened. After years that were characterized by democratic backsliding, the Polish electorate finally outvoted the PiS on October 15, 2023, when

¹ Among them Konrad Adenauer, Walter Hallstein, Jean Monnet, Robert Schuman, Paul-Henri Spaak, Altiero Spinelli, and Alcide de Gasperi.

² The Union’s fundamental rights oblige Member States to adhere to human rights when implementing Union law (Art. 51, Charter of Fundamental Rights of the EU; Pernice, 2008). Although Poland signed the Charter of Fundamental Rights of the EU with an opt-out protocol, the CJEU held that in instances where a legislative file, judicial case, or factual situation falls within the scope of binding EU law, the Charter of Fundamental Rights of the EU is applicable and may be invoked before national authorities, including the opt-out provisions of the Charter for Poland (C-411/10) (CJEU, 2011).

Poland saw the highest turnout (74.4%) in a parliamentary election since the end of the Cold War. The three main opposition parties, the liberal, catch-all Civic Coalition (Koalicja Obywatelska)³, the liberal-conservative Third Way (Trzecia Droga)⁴, and the social-democratic New Left (Nowa Lewica)⁵ altogether won 248 seats in the 460-member Sejm, which now comprises the highest number of Polish female politicians ever (29.6 percent of all MPs). A growing number of Poles support same-sex civil partnership, marriage, and adoption (Notes from Poland, 2023a, 2023b).

Using women's rights and gender advocacy in Poland as an example of EU law-aligned subnational dissent operating in a national context of democratic backsliding, this article scrutinizes a) how gender concerns translate into the European level and b) how the EU does protect them. National dissidents, in such context, are considered actors that operate within the legal framework of the EU and advocate for the resilience of its policies and values. Gender concerns constitute the respective example. In order to scrutinize the bottom-up and top down dynamics that inform gender dissidence, this article, first, contextualizes social norms within Multilevel Governance (MLG) theory to set the framework for the analysis of the impact social norms for the fluidity of gender concerns. This is followed, second, by an analysis of the bottom structures in which social norms were or were not able to transfer to the Union level. This will be done by looking at gender concerns in Poland and their translatability to the European level will be examined via the Committee of the Regions (CoR), the institution specifically established to represent subnational authorities by the Treaty of Maastricht in 1992. Its composition before the 2023 Polish Parliamentary elections will be considered since this marks the time when advocacy for gender concerns together with the fight for the rule of law took place in a national environment characterized by democratic backsliding. Regulatory factors that condition access to the CoR will be examined. A second bottom-up consideration will be given to female representation at the Polish local elections in 2018 in the third section. It will also elaborate on qualitative considerations of the role of gender equality and LGBTIQ+ policies by looking at Polish parties' attention to the topics during the local elections. These elections determine female presence on the subnational level informing the composition of the CoR, whose composition will be analysed in the fourth section. The fifth section scrutinizes the top-down approach by the European Commission and

³ The catch-all Civic Coalition was formed as an opposition group to the PiS before the local elections in 2018. It comprises several parties: The Civic Platform, Modern, the Polish Initiative, The Greens, AGROunia, Yes! For Poland, and the Independents. It holds 157 seats in the Sejm.

⁴ The Third Way is electoral coalition comprising the liberal-centrist Poland 2050 and the conservative PSL (Polskie Stronnictwo Ludowe, Polish People's Party). It was created in April 2023 and holds 64 seats in the Sejm.

⁵ The pro-European New Left was formed in 2021. It is a merger of the Democratic Left Alliance and Spring, which focused on women's rights, education, civic participation, and the EU, holding 18 Sejm seats.

the CJEU to assess qualitative commonalities with Polish dissident groups. Finally, context-based synergetic relationships between subnational actors and the European Union are found to be decisive in safeguarding Union values, policies, and laws. The conclusion offers policy perspective to safeguard gender dissidence as part of the Article 2 TEU values.

1. Social norms and multilevel governance

Judith Butler corroborates that a „norm operates within the social practices as the implicit standard of normalization.” (Butler, 2004, p. 41). Butler depicts an implicit standard of behaviour, a kind of conformism with social expectations. In the same vein, we understand gender as „the apparatus by which the production and normalization of masculine and feminine take place along with the interstitial forms of hormonal, chromosomal, psychic, and performative that gender assumes.” (Butler, 2004, p. 42) Every time we think and speak about the masculine and the feminine, we affirm and normalise the gender binary and thus fortify corresponding limiting gender norms. Gender norms can have consequences for political participation. In a society where stereotypical gender roles persist, women and LGBTIQ+ persons are excluded from exercising their full political participation. Limited participation in the political realm, impacts the private space, for example via laws that affect family life, education, elections, and political participation and vice versa. Hence, in an EU context, social norms can impact the accessibility to policymaking already at the subnational level with consequences for the national and supranational levels of governance calling for the inclusion of social norms when thinking about the multilevel structure of the Union.

MLG theory holds that the multilevel dynamics between EU institutions and subnational actors blur the strict distinction between the national and international arenas of policymaking. Scholars of MLG examine the EU as a dynamic polity whose foundational political consensus changes over time without the power of Member State representatives being dissolved by supranational institutions (Hooghe, 1995; Hooghe & Marks, 1996; Hooghe & Marks, 2001; Marks & McAdam, 1996). The EU is considered a multi-layered polity with new policy networks beyond, but not without, the state that enhances intergovernmental bargaining (Aalberts, 2004; Callanan, 2011; Coen & Richardson, 2009; Jeffrey, 2000; Marks et al., 1996; Richardson, 2007, 2015; Risse-Kappen, 1996; Tatham, 2015; Tatham & Thau, 2014).

Amongst others, MLG found that constitutional determinants, such as levels of decentralization and institutionalized access channels, determine the impact of subnational actors (Blatter et al., 2010; Jeffrey, 2000; Loughlin, 2007). Jeffrey states that constitutional factors, hence legal/structural parameters, ultimately entail ramifications for political behavioural practice and provide the framework for subnational actors to be *potentially* strong. Actors are empowered *through* the state, leading to a variety of regional power configurations (2000). At all governance

levels, political impact varies dependent on whether action and ideas are anchored in political institutions or not. As such, gender concerns must translate into the agenda-setting public sphere that implements concrete policies, acting within the institutionalized policymaking process. Hannah Arendt reminded us in *Crises of the Republic: Lying in Politics, Civil Disobedience, on Violence, Thoughts on Politics and Revolution* that civil disobedience has to „always present and to be reckoned with in the daily business of government” (Arendt, 1972, p. 101). Yet, such access-providing, institutionalizing mechanisms – for example quota regulations – are not independent of social norms while the gender cause is ultimately affected by social them. Therefore, social norms and structural provisions correlate in the EU’s multilevel system and impact the resilience of European values, specifically those that aim a preventing democratic backsliding such as Article 2 TEU:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 2 TEU institutionalizes, safeguards, and encourages gender dissidence in the EU’s Member States (as long as such disobedience does not violate Art. 2 TEU), limits authoritarian governments and empowers those that protect the Union’s values. It ensures that Art. 2 TEU-compliant nationals of EU Member States can participate in the democratic decision-making processes of their respective states by emphasizing democracy, the rule-of-law, minority rights and equality between men and women. Taken together, these principles allow for dissent. They also constitute the rationale of and are reinforced by the Charter of Fundamental Rights of the EU (European Union, 2012).

If we enhance the starting point of MLG that found that subnational influence takes place through the state and if we add to this reasoning that social norms operate on the subnational level that provides access to politics, this combined approach considers both political structure and social parameters to assess whether Polish gender concerns could access the subnational and supranational policymaking spheres.

2. Access to the Committee of the Regions

The CoR is an advisory body that must be consulted by the Council, the Commission, and the Parliament prior to deciding on matters pertaining to local and regional government, such as employment and social affairs (Art. 153 TFEU), education, vocational training and youth (Art. 165 TFEU), culture (Art. 167 TFEU), public health (Art. 168 TFEU), trans-European transport, telecommunications and

energy networks (Art. 172 TFEU), as well as economic and social cohesion (Art. 175, 177, 178 TFEU). Article 153 TFEU stipulates „equality between men and women with regard to labour-market opportunities and treatment at work,” while Article 8 TFEU, concerning the entirety of the Union's activities, postulates the elimination of inequalities and the promotion of equality between men and women.

The CoR normally decides by majority vote unless otherwise determined by its rules of procedure (CoR, 2021). As of December 29, 2022, the CoR is comprised of 329 members and 329 alternate members, whose allocation is determined according to the population size of each Member State (Council of the European Union, 2019). Members, appointed for five years (the current period ends on January 25, 2030), must perform Committee duties independently and only in the Union's interest once membership at the CoR is confirmed (Art. 300, 4 TFEU). To ensure democratic answerability directly located at the subnational level, members and alternate members must represent regional or local bodies by way of electoral mandates or political accountability to a directly elected assembly (Art. 300, 3 TFEU).

In most Member States, as in Poland per statutory law, national lists nominating CoR members are drawn up by associations of regional and local authorities (Sejm, 2005; Joint Commission, 2022, CoR, n.d.-a). A Joint Commission of Government and Local Self-Government and Representatives (Komisja Wspólna Rządu i Samorządu Terytorialnego) coordinates the process leading to common positions of the national level and local government (Joint Commission, 2022) and opines on national, supranational, or international policies that affect subnational units. It is composed of national government and local government representatives. The government side is comprised of the minister responsible for public administration and 11 representatives appointed and recalled by the Polish Council of Ministers. They are matched by an equal number of local government representatives (Joint Commission, 2022).

CoR candidates must represent a) councillors of a commune, county, or voivodship, b) a commune head, mayor, or city president, and c) members of the county boards or the voivodship board.⁶ Once the full list is comprised, the Joint Commission consents and the Prime Minister formally concurs. After that, the Commission for European Affairs of the Polish Parliament opines, and the national government puts forward a list of 21 candidates and 21 alternates to the Commission (Council of the European Union, 2019). Thereafter, the Council of the EU, which

⁶ They are chosen by various local government corporations. The Union of the Voivodships of the Republic of Poland designates 10 members and the same number of deputy members. The Association of Polish Counties selects 3 members and 3 deputies. Associations representing communes chose 8 members and 8 deputies in total (Union of Polish Metropolises [2+2], the Association of Polish Cities [3+3], the Union of Small Polish Towns [1+1], and the Union of Rural Communes of the Republic of Poland [2+2]). (Sejm, 2005, nr. 90 poz. 759, Art. 20)

votes unanimously on national membership lists that it received from the Commission (Art. 300, 5 TFEU; Art. 305 TFEU) (CoR, n.d.-b).

This multilevel process operates at the national, regional, and local levels, allowing for potential access to European governance by dissident voices at subnational levels. However, ultimate authority partially remained centralized, as the Prime Minister's consent is required albeit only formally. Moreover, the formal process involving Poland's subnational representatives at the CoR lacks gender-sensitive provisions (CoR, n.d.-a). This structural absence effectively limits gender dissidents' participation in EU policymaking. With Jeffrey, one can corroborate that subnational dissidence is not only potentially strong but also weakened through the state. Such national regulations ultimately influence the resilience of European Union values, which is hampered in the case of Poland. Therefore, the following section shall examine if and in how far gender parity (quantitatively) and gender-related policies such as non-binary concerns (qualitatively) were topics of the 2018 local elections.

3. Bottom-up: the Polish local elections in 2018

In 2011, Poland was the first Eastern European country to introduce a statutory quota of no less than 35% female and male candidates respectively for the European Parliament (EP), the Sejm, and all local elections that follow the proportionality method to municipality councils with more than 20,000 residents, councils of cities with county status, county councils, and voivodship assemblies (Cichosz & Tomczak, 2019). Municipalities with fewer than 20,000 inhabitants and the Senate operate with single-mandate districts, where quotas are not applied but either one female or one male candidate is suggested. Whereas the quota has increased the number of female candidates in local elections over the years (1998: 20%, 2002: 25%, 2006: 29%, 2010: 30%, 2014: 38%, 2018: 45.8%) (Druciarek et al., 2019), it must be considered that female candidatures had already risen before the introduction of the quota system, albeit slowly.

The overall share of female candidatures is not a sufficient indicator for the evaluation of access-providing mechanisms since list positions play an important role in voter preferences. The likelihood of winning constituted the main factor for list composition, except at the voivodship level, where women's candidacies were systematically addressed. The extent to which society associates female political presence with success played a crucial role in shaping the impact of dissident voices. In the 2018 elections, female political presence was not perceived as a marker of success. Druciarek et al. (2019) have shown that due to stereotypical role allocation the anticipated female likelihood of winning was low, and the subsequent female impact on political decision-making was limited. Women were perceived as potentially weaker politicians. This confirms the severe impact of social norms. In this specific

case they limit gender dissidence and the subsequent institutionalization into the policymaking realm. Table 1 confirms this.

Table 1. Female representation in the 2018 Polish local elections in percent

	Regional Assemblies	Counties	Cities (County Status)	Municipalities >20,000	Single Mandate Municipalities <20,000
Candidates	45.80	46.10	45.90	45.90	35.20
List Position 1	26.30	24.00	26.00	27.50	35.20
Elected Women	28.80	23.80	26.80	27.50	31.20

Source: author’s representation, data based on Druciarek et al. (2019)

In 2018, women in all local units except municipalities with fewer than 20,000 inhabitants comprised more than 40% of the candidates, but fewer than 30% held number 1 position. Single-mandate municipalities represent the exception, with a female share of 35.20% in the respective category. Regarding elected women, numbers are similar. Single-mandate municipalities outperform these other districts, which Druciarek et. al. (2019) attribute to more direct interaction with the electorate and less dependency on party politics (networking) and financial resources. Both of these are often less accessible for women, owing to their continued occupation of traditional social roles. The impact of stereotypical social roles might also explain why only a few women ran for the offices of city presidents (17.3%), mayors (18.1%), and head of commune (18.3%), with outcomes of 10.3%, 10.7%, and 12.9% respectively. This means that the higher up the level of governance, the more difficult it is for gender dissidence to succeed. Overall, the share of elected women in 2018 represents an increase since 2010, but only at a very slow pace. As stereotypes continue to determine women’s participation in leading local political positions, the translatability of gender dissidence into institutionalized political action is negatively affected, reducing the likelihood of its permanent presence in the political discourse with a significant variation between political parties. The Green Party (46%) and the former conservative-liberal Together Party (53%) accounted for the highest share of female number 1 positions on electoral lists, while the governing PiS (19%), the right-wing populist and Eurosceptic KUKIZ’15 (18%), and the centre-left Democratic Left Alliance (SLD, 14%) represent the smallest shares.

In addition to the above considerations, party politics can actively question stereotypes even if party politicians are predominantly male. Research has shown that male politicians can represent women’s interests (Klāy et al., 2024) although one could ask in how far interest-definition is already at least partially determined

by the social realities of each context. Indeed, in the 2018 local elections, the rearward direction of government policies was challenged by the biggest opposition coalition, the Civic Coalition. The Civic Coalition addressed same-sex partnerships, sexual orientation, combatting stereotypes in the workplace, the closure of the pension gap between men and women, the equitable distribution of roles in childcare, promoting paternity leave and the guarantee of two months of paid parental leave, a fourteen-day unpaid care leave as well as combatting violence against women (Civic Coalition, 2019; 2023). While the Civic Coalition's focus cantered on women's rights and overcoming gender stereotypes, LGBTQIA+ concerns were not prominently addressed. In addition to the Civic Coalition, only the agrarian *Polskie Stronnictwo Ludowe's* (Polish People's Party, PSL) *Women's Declaration* addressed women's candidatures. However, instead of overcoming the binary and gender stereotypes, the PSL confirmed gender stereotypes by attributing care and maternity to the female. Consequentially, the gender binary informed the local election campaigns both quantitatively and qualitatively. This intensifies the consequences of gender stereotypes in the private sphere, aggravating the ramifications for institutionalized political representation in the public sphere because of social norms that impact both realms and locate the female in traditionally private realm. The existing 35% quota was rarely achieved because of access limiting gender norms. Gender-sensitive policies certainly help in raising awareness for the topic of gender equality but they cannot entirely do away with social norms. Given the connection of the local level to the composition of the CoR, the national deficiency will ultimately be replicated on the Union level, echoing Zweifel's findings that national democracy deficits are mirrored in the EU (Zweifel, 2014), extending the findings to public and private realms. Hence, gender stereotypes negatively impact participation through national and subnational governance levels to the European level. Bottom-up advocacy for European values in Poland was stalled by social norms.

4. The Committee of the Regions and gender equality

The Treaties do not make gender equality a prerequisite for CoR designations. Hence, there is a dependency on national provisions. Table 2, which demonstrates female representation in the CoR in each national delegation, displays that only seven (25.93%: Sweden, Finland, Ireland, the Czech Republic, Lithuania, Estonia, and Latvia) of the 27 Member States include the criterion of gender equality in the CoR nomination process (CoR, n.d.-b). It is noteworthy that such a formal requirement does not necessarily translate into gender balance at the CoR. Practice may diverge from procedural provisions and put on view a dependency on the national selection framework.

Very noticeable differences in female representation exist between Member States. Ireland (55.56%), Sweden (50%), and France (50%) rank top three in the

membership category. Considering the average share of the aggregate delegations (members and alternates), Sweden (70.59%), Luxembourg (54.55%), and Finland (50%) rank top three. France, the Netherlands, and Luxembourg belong to the top categories but do not explicitly mention gender representation as a decisive criterion for CoR membership designation while only seven of all EU Members (the Czech Republic, Estonia, Finland, Ireland, Latvia, Lithuania, Sweden) implemented gender-sensitive selection processes, yet without the anticipated representational results in 4 of these countries (Czech Republic, Latvia, Lithuania, Estonia). This underscores the importance of gender norms: they may impede gender equality despite policies that support respective goals. As of December 13, 2023, the Polish CoR delegation of twenty members contained three women. (One open position was to be filled.) Poland belongs to the worst-performing third of states in all categories examined. In the category of female CoR members, Poland (10%) performs the best in the group of the lowest ranking third of states, followed by Greece (8.33%), Portugal (8.33%), Estonia (0%), Croatia (0%), Malta (0%), and Slovakia (0%). The Polish tally falls short compared to the EU27 average of 22.21% in the category of female CoR members. Looking at local and regional elected officeholders in all Member States, 30% are women (CoR n.d.-c), a number neither Polish CoR members nor the average of the Union achieves.

Qualitatively, gender equality plays a role when the CoR opines on Union policies. The CoR strives to embrace gender-related behaviour in its Code of Conduct and elevate the visibility of gender equality via gender-mainstreaming and awareness-raising measures, such as developing the Committee into a platform for exchanging best practices and working closely together with national delegations (CoR, 2019). In the *Strategy for a Gender Balance in Members' Participation in the CoR*, the CoR's target – gender parity – exceeds the 2011 Polish 35% quota for national and subnational elections.

The CoR Strategy recommends only accepting female nominations until parity at the presidential level is reached and appeals to the nominating bodies of Member States to solely submit gender-balanced lists (CoR, 2019). So far, the Council supports a 40% quota but has not recommended binding measures (Council of the European Union, 2015).

Table 2. Female members in the CoR (by Member State with the highest female share in the membership category)

Country	Members (M) & Alternates (A)	M	Female M	Relative Share of Female M	A	Female A	Relative Share Female A	Female President*	Total Female M	Female Share Total	Gender- Sensitive Selection
Ireland	9	9	5	55.56	9	3	33.33	0	8	44.44	1
Sweden	12	8	4	50.00	9	8	88.89	0	12	70.59	1
France	24	24	12	50.00	22	10	45.45	1	22	47.83	0
Finland	9	9	4	44.44	9	5	55.56	0	9	50.00	1
Netherlands	12	11	4	36.36	10	3	30.00	0	7	33.33	0
Luxembourg	6	6	2	33.33	5	4	80.00	0	6	54.55	0
Germany	24	21	7	33.33	20	6	30.00	1	13	31.71	0
Denmark	9	9	3	33.33	9	2	22.22	0	5	27.78	0
Slovenia	7	7	2	28.57	6	2	33.33	0	4	30.77	0
Italy	24	19	5	26.32	19	2	10.53	0	7	18.42	0
Spain	21	20	5	25.00	20	7	35.00	1	12	30.00	0
Hungary	12	12	3	25.00	12	1	8.33	0	4	16.67	0
Romania	15	15	3	20.00	14	2	14.29	0	5	17.24	0
Austria	12	11	2	18.18	12	4	33.33	0	6	26.09	0
Czech Rep.	12	11	2	18.18	10	2	20.00	0	4	19.05	1
Belgium	12	12	2	16.67	12	5	41.67	0	7	29.17	0
Bulgaria	12	12	2	16.67	12	4	33.33	1	6	25.00	0
Cyprus	6	6	1	16.67	4	1	25.00	1	2	20.00	0
Latvia	7	7	1	14.29	7	1	14.29	0	2	14.29	1
Lithuania	9	9	1	11.11	8	2	25.00	0	3	17.65	1
Poland	21	20	2	10.00	19	1	5.26	0	3	7.69	0
Greece	12	12	1	8.33	12	2	16.67	0	3	12.50	0
Portugal	12	12	1	8.33	12	1	8.33	1	2	8.33	0
Croatia	9	9	0	0.00	9	4	44.44	0	4	22.22	0
Estonia	7	7	0	0.00	6	2	33.33	0	2	15.38	1
Slovakia	9	6	0	0.00	9	1	11.11	0	1	6.67	0
Malta	5	4	0	0.00	4	0	0.00	0	0	0.00	0
Total	329	308	74	22.21	300	85	29.58	6	159	25.83	7

Source: author's representation based on Council of the European Union (2019) and CoR (n.d.-b)

The CoR also supported the European Commission's 2012 initiative for *Directive 2012/0299 on Improving the Gender Balance Among Non-Executive Directors of Companies Listed on Stock Exchanges and Related Measures* (European Commission, 2012; CoR, 2013). This initiative envisioned a quota of 40% for non-executive directors and a 33% quota among all directors, as well as a sanctioning mechanism for non-compliant member states, which the CoR welcomed (CoR, 2013). The subsequent block in the Council prolonged implementation and was only overcome on March 14, 2022 (European Commission, 2022d). *Directive*

2022/2381 on Improving the Gender Balance Among Directors of Listed Companies and Related Measures (EU, 2022) was adopted by Parliament in November 2022 (European Parliament, 2022). The long legislative process that followed the Commission proposal can be read as a testimony of the strong position of the Council and, again, political empowerment on the Union level *through* the states.

Moreover, the CoR delivered an opinion on the Commission's *Gender Equality Strategy 2020-2025* (European Commission, 2020a), stressing the need for subnational governments to be part of „the design, implementation, and monitoring of the strategy” (CoR, 2020). It urged the Commission to set up interinstitutional working mechanisms, to formalize meetings of equality ministers at the Council, to adopt codes of conduct, and to include violence against women in the Treaty of Lisbon's Eurocrimes Article 83 TFEU, urging Member States to ratify the The Council of Europe Convention on preventing and combating violence against women and domestic violence (CoR, 2020). The CoR requested that the Commission demand Member States establish the necessary framework to strengthen women's candidacies in subnational elections and address social norms hindering equal chances of entering politics. Echoing that, the CoR urged Member States to transpose *Directive 2019/1158 on Work-Life-Balance* (EU, 2019), suggested an EU-wide care agreement, and asked the Commission for a revision of the *Barcelona Targets on Childcare* to ensure female labour market participation and the equalization of family and care-work between men and women (CoR, 2020). The latter was subsequently realized (European Commission, 2022a; 2022b).

The CoR endorsed the first *LGBTIQ Equality Strategy* ever put forward by the Commission (CoR, 2022; European Commission, 2020b), directly alluding to the situation in Poland when it

urges the European Commission to ensure that the fundamental principles of the EU are observed, and that no municipality, region, or state introduces systemic discriminatory initiatives, such as the 'LGBT-free zones', [...] or uses funds in ways that are non-compliant with the principle of non-discrimination (CoR, 2022).

This underscores the synergistic working routine between the CoR and the Commission. Yet, the CoR only constitutes a non-binding conjunctive intermediary.

5. EU Top-Down Synergies: The European Court of Justice and the European Commission

The CoR's awareness for socially determined access-hindrances into regional, and subsequently Union, political representation, is matched by the work of the European Commission and the CJEU. Both institutions are accountable to the Treaties (Art. 17 TEU, Art.19 (3) TEU) and not to the European citizens or party

politics. Hence, they are less prone to political volatility. They ensure the application of the Union treaties, including the protection of the values of the Union. Both institutions worked synergistically with Poland's advocates for gender equality and the rule of law.

Furthermore, the Commission holds the authority to activate the Rule of Law Framework, established in 2014, which initiates a structured dialogue with non-compliant Member States, offering recommendations on how to address rule-of-law deficiencies. In the case of Poland, the Rule of Law Framework was invoked in 2016, for the first time in the Union's history. Despite these measures, further restrictive laws were enacted in Poland, prompting the escalation to the Article 7 procedure. The initial stage of this procedure (Article 7(1) TEU) allows the Council of the European Union to determine whether a Member State has committed a clear and serious breach of the values outlined in Article 2 TEU. On December 20, 2017, at the request of the European Parliament, the European Commission formally called on the Council to initiate this process. Consequently, five hearings with the Polish authorities were conducted by May 2022. The second stage (Article 7(2) TEU) of the Article 7 mechanism permits the imposition of sanctions, including financial penalties. Although there was considerable backing among EU Member States for such measures against Poland, implementing them necessitates a unanimous decision by the European Council, which comprises the heads of state or government of all 27 Member States. Moreover, the means potentially enacted through Article 7 TEU are not supported by respective deadlines, and the Commission has been criticized for its reluctance to activate Article 7(1) TEU against Poland (Blauberger & van Hüllen, 2021). While this criticism certainly is justified, the Commission's behaviour might be a result of the need for Council action in the end. Still, finally having activated the mechanism is a public sign for the readiness to protect Union values. In the same vein and with the aim of protecting the Union's budget, regulation 2020/2092 makes the disbursement of Union funds contingent upon the fulfilment of the Article 2 values (EU, 2020a) but, similarly to the Article 7 procedure, is contingent upon an implementing decision of the Council (EU, 2020a), which rises fairness questions since net-receiving countries are more vulnerable than net-contributing Member States (Blauberger & van Hüllen 2021). Annual reports on the rule of law on all Member States, that have been published since 2020 serve as a more coherent means to systematize rule of law breaches across the Union. Over time, these reports could provide the Commission with a documentation to structurally address rule of law breaches, being less vulnerable to Member State political manoeuvre at a certain point in time as they provide a more holistic picture of each Member State over the years.

Infringement procedures by which the European Commission has been safeguarding the principle of gender equality and the rule of law in the context of the judicial reforms in Poland (C-619/18; C-192/18; C-204/21R; C-204/21; C-791/19) (CJEU, 2019a, 2019b, 2021c, 2021d, 2023), have been proven to be more powerful

tool, independent from approval by the Council. The procedure is unequivocal: when a Member State contravenes the provisions of the European Treaties, the European Commission is empowered to escalate the matter to the CJEU, which holds the authority to impose financial penalties. Such an instance occurred with the Republic of Poland. Following the CJEU's determination that Poland had inadequately implemented EU-mandated disciplinary measures against judges and failed to retract specific judicial reforms contravening EU standards, a daily fine of €1 million was levied on October 27, 2021, (C-204/21R) and a landmark judgement condemned the entire Polish law reform on June 5, 2023 (C-204/21), explicitly reiterating the values of Article 2 TEU as the *conditio sine qua non* for Union membership: „respect for those values is prerequisite for the accession to the European Union of any European State applying to become a member of the European Union.” (C-204/21, para. 64) This financial disadvantage was decisive for Poland.

Benefitting from EU Cohesion Policy funds, citizens, regional politicians, and their representatives in the CoR have an interest in a sound working relationship with the Union – in the interest of their electorate. In June 2022, the Partnership Agreement between the Commission and Poland for the 2021-27 period designated €76.5 billion from the Cohesion Policy funds to Poland (European Commission, 2022c). The country is the largest beneficiary of these funds, which total €392 billion for the entire EU (European Commission, 2016.). These funds are Poland's main source for local and regional development initiatives (EU, 2020b; Kulesza & Sześciło, 2012). A significant portion of the European Social Fund Plus (12.9 billion for Poland) is allocated towards the participation of women in the labour market and the provision of childcare services (European Commission, 2022c). The withholding of EU funds is directly connected to Poland's assault on the rule of law and gender equality. The Union's financial mechanisms support the cause of the gender dissidence as the disbursement of EU funds is conditioned on the adherence to its fundamental principles (Art. 2 TEU). Because Poland neither fulfilled the rule-of-law requirement nor did it adhere to the principle of gender equality, the fund's actual arrival in the regions was at risk with a direct impact on Polish citizens.

Indeed, the former government's own logic of evoking financial concerns as the main reason for EU membership (Republic of Poland, 2022; 2023) might have been a reason to stipulate regional and local opposition. In 2021, the main centrist and left-wing opposition parties, several civil society groups (among them the Committee for the Defence of Democracy (KOD), the Citizens of the Republic (Obywatele RP), and the All-Poland Women's Strike have signed the *Agreement for the Rule of Law* (Porozumienie dla Praworządności) listing measures to roll back the government's judicial reform, restore the rule-of-law, and end the dispute with the EU. In addition, the group's identification with regional concerns is significant. Kamila Gasiuk-Pihowicz, a PO Member of Parliament, points out that „above all it [partnership with the EU] allows [us] to activate EU funds” (Notes from Poland, 2021). Indeed, research has shown that the increase in regional cohesion and

development funds granted by the EU is likely the main rationale for action in the CoR (Rodríguez-Pose & Courty, 2018).

In addition to those who benefit from Union funds, the Polish judiciary actively protected the rule of law and dissidence in the country. Despite the danger of being subjected to disciplinary proceedings controlled by the President and Minister of Justice, judges used their rights granted by the EU to oppose the systematic erosion of the judiciary in Poland (C-508/19; C-824/18; C-487/19; C-522/18; C-558/18 & C-563/18; C-585/18 & C-624/18 & C-625/18) (CJEU, 2019c, 2020a, 2020b, 2021a, 2021b, 2022). The Polish judiciary reverted to the EU's legal framework to uphold the rule of law, democratic norms, and gender equality. It becomes apparent that each group developed disobedient action once they were affected by the regressive policies of the government. Opposition originated for different reasons: negative financial implications for the Polish citizens, limited rights for women and the LGBTIQ+ community, severe impediments in the own work sphere for judges that believed in the Poland's democratic value system⁷. All of them found resonance in the value system of the European Union that formed an antithesis to illiberal forces of the PiS. The Union, thus, offers an additional layer of support for dissenters to amplify their voices having institutionalized disobedience in its legal framework.

6. Specialized dissidence

If judges used their professional means to uphold the European legal framework, where did citizens concentrate their efforts? Since gender concerns were not very successful regarding their reach of institutionalized policymaking via national structures, direct presence in Brussels would be an option for unionwide dissent since the European Parliament, the Council of the European Union, and the European Commission are in dialogue with interest representatives and civil society represented at the Union level. This allows interest groups to bypass national governments and directly communicate with Union institutions. In 2023, the EU's Transparency Register stated that 3,599 registrants do not represent commercial interests, 600 registrants advance the interests of their clients, and 8,232 registrants promote their own interests or the collective interests of their members. Two hundred forty-nine registrants are from Poland, and four are directly concerned with gender concerns. Of those four organisations, the Fundacja Instytut Spraw Publicznych (Institute of Public Affairs), a research institution that deals with topics such as gender equality, was the first one to register in Brussels in 2020. The other three are

⁷ Poland was the first country in Europe to adopt a formal constitution, on May 3, 1791, replacing the feudal system with a constitutional monarchy based on the separation of powers and popular sovereignty (Davies, 1996; Granat & Granat, 2021). On June 7-8, 2003, Poland held a referendum about accession to the Union. 58.85% of the eligible electorate voted in favour of the accession with a majority of 77.45%. (Garton Ash, 2023)

non-governmental organisations, one of which followed in 2022 and two in 2023 (EU, 2023). Poland has been in the EU since 2004. It took time for these disobedient organisations to enter the European level, and they did so in the run-up to the 2023 parliamentary elections. This can be interpreted as a reaction to the unsuccessful local elections in 2018 as well as a way of channelling national opposition to the Union level to create more visibility, which ultimately creates more pressure on the national level. In turn, opposition parties' election campaigns can draw from that prominence and attract votes by catering to the pressure from both the subnational and the Union levels.

However, compared to the preliminary proceedings initiated by the Polish judiciary, direct interest group interaction with Brussels was low, which could be attributed to the fact that national women's organisations are organised in unionwide associations, like the European Women's Lobby, which represents more than 2,000 organisations within the EU, in candidate countries, former EU Member States, and in the European Free Trade Association countries (European Women's Lobby, 2025). The Network of East-West Women (NEWW) in Poland serves as the platform of the European Women's Lobby. During the 2001 national elections in Poland, they played a leading role in the „Pre-Election Polish Women Coalition”, which campaigned for greater representation of women in the Sejm and put women's and gender equality policy on the election campaign agenda. NEWW is one of the protagonists in advancing gender budgeting initiatives in Poland. To this end, it organises international and regional conferences and workshops, advise local parliaments and administrations, and provide expertise to civil society actors outside Poland. In 2004, together with the Mayor of Gdansk, they organised a campaign for better management in local communities through gender budgeting. As part of the European Women's Lobby the NEWW acquires knowledge from transnational connection that are facilitated on the Union level and utilizes the gained expertise actively in the national context. (Network of East-West Women, 2025)

This leads to the national level where the picture is different. In 2016, the All-Poland Women's Strike (*Ogólnopolski Strajk Kobiet*) was founded in response to the attack on women's reproductive and LGBTIQ+ rights. Until March 2022, it organised more than 2,500 equality marches (EUMANS, 2022). One possible conclusion that could be drawn from this is that dissenters who are directly affected by Union law and who already have working relations with it, namely the judiciary, make use of existing channels to the Union. Advocates for gender concerns increased their activities during the time of the retrograde path by the government as the promotion of traditional gender norms increased. Here, the re-introduction of traditional gender norms sparked national opposition leading to a favourable outcome of the 2023 Polish election. While activists did not reach beyond the national level, they expressed the desire for sound working relations with the EU, for example in the *Agreement for the Rule of Law*, which shows that an awareness for Union law and its civil disobedient protective characteristics exists (Notes from

Poland, 2021). The reluctance to significantly reach beyond the national level could be explained by the fact that the target population of these civil disobedient groups was the national population of Poland holding the power to overturn the government in the then upcoming election. Thus, there was simply no need to significantly reach beyond Poland but the values of the EU were brought from the supranational to the national levels to make the case for a pro-Union government and, thus, advancing the resilience of Union values in the national and subnational contexts.

Conclusions

The present article connects social norms with MLG to assess the conditions that allow EU law compliant advocacy for the rule of law and gender concerns to access the multi-layered governance system of the EU when such advocacy operates in a state where EU values are under threat. In doing so, insights for the resilience of European values ranging from the subnational to the supranational level were gained. Polish advocacy for the rule of law and gender equality and its translatability to the CoR served as an example of a European values compliant group operating in a democratically backsliding state. It was found that structural provisions and social norms exert multidirectional effects for the European, national, and subnational policymaking levels.

Concerning structural provisions, the Polish 35% quota constitutes a formal step toward the institutionalization of gender dissidence. However, the 2018 regional elections displayed that the pre-eminence of stereotypical gender norms and the neglect of LGBTIQ+ concerns constrained the dissident access in the political realm. Impediments to the success of women in local elections in Poland included heteronormative forms of life, the subsequent impact on women's daily workload due to care and family duties, and the lack of networks. Regarding the structural provisions that inform the Polish delegation to the CoR, a gender-sensitive selection mechanism was not in place while selection processes vary significantly according to internal party rules. Hence, political systems and the democratic national sovereignty over determining these structures limit the enforcement of EU values with consequences for the European governance level. Female representation in the Polish delegation of the CoR remained marginal, ranking among the lowest groups in the CoR. However, female representation in the CoR also demonstrated that gender-sensitive selection policies in some countries do not necessarily lead to high female representation while other countries achieve a higher proportion of female CoR members despite lacking such policies nationally. Hence, gender norms exert a negative influence on equality even when supportive policies are in place, which testifies to the strong impact of traditional gender norms for policy output with varying gravity depending on legal and socially normative realities in Member States.

Conversely, the curtailment gender equality policies and the rule of law galvanized activism once entrenched rights were encroached upon as hetero-

normative, masculine social norms were standardized by the government. Such active dissidence was facilitated by the synergies between the values safeguarded by Article 2 TEU and subnational dissident ideas, establishing a direct link between the Union's body of law and citizens in EU Member States. The Union's legal framework provides dissident actors with agency in their capacity as potential lawful dissidents against their respective Member States. This empowerment is facilitated by provisions such as preliminary rulings (Art. 267 TFEU), lobbying the Union's institutions, and political representation within these institutions, including the CoR.

Synergies between supranational and subnational efforts are key for the containment of governments that violate the rule of law and gender equality. Dissidents deploy Union law in context-based manners to address the specific target audience and objectives. The Polish judiciary leveraged EU provisions through preliminary proceedings with reach to the CJEU to advance gender equality and the rule of law. Attacks on EU values generated increased support for Union policies when Polish gender advocacy groups championed the necessity for a constructive relationship with EU institutions while forming a presence at the Union level relatively late in time concentrating their activism predominantly within Poland. These efforts worked synergistically with efforts by the Commission and the CJEU of which infringement procedures with a direct financial impact were more successful than measures that are contingent upon Member State agreement. Overall, national structural and social realities condition the accessibility of gender dissidence to the European Union level, creating dynamic multidirectional effects that operate both bottom-up and top-down with resilience-strengthening as well as weakening results for Union values within Member States. Hence, to credibly safeguard EU values, the day-to-day practice of social and structural norms in each Member States is key, be it in their application in the judicial system as Poland has successfully shown, in maintaining educational diversity and continuously questioning the social norms that govern our private lives.

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