

Investors for the Rule of Law Dialogue

Concept note by the German Marshall Fund of the United States

The respect for the rule of law is essential to the functioning of the EU's internal market and therefore also an important concern of investors active in the Central and Eastern European region. While European institutions have been active in engaging Central and Eastern European governments to prevent democratic and rule of law backsliding during the past years, investors and business actors remained largely idle.

The reasons for that reluctant behavior are manifold. Investors certainly have diverging perceptions on the possible impact of rule of law deficiencies on the investment environment. However, the fact that investors often rushed to secure bilateral agreements with autocratizing governments demonstrates their rising concerns about potential arbitrariness of authorities that disobey checks and balances and the rule of law. In certain industries like the media sector, where autocratizing governments traditionally have few appetite to tolerate foreign capital, literally an escape of foreign investors could have been observed in Hungary. In Poland a similar flight of capital is expected in the near future due to the governing coalitions clear desire to extend its control over the private media in the country.

While at the first sight foreign investors appear to be hostages in countries where political arbitrariness prevail over rule of law—and that explains their readiness to make concessions for their unhindered operations—foreign investors can also exert significant leverage to hinder rule of law backsliding, if they approach governments in a concerted way and with coordinated messages.

While such approach by foreign investors has been rather uncommon in Central and Eastern Europe, there are best practices that may serve as blueprints for structured investor rule of law dialogue. In 2014 AmCham Slovakia successfully united key business representatives in the country and triggered a so called “Rule of Law Initiative”, a structured dialogue between the international business community and the Slovak government on rule of law issues that succeeded to improve Slovak legislation over the past six years. However, in other countries, like Hungary or Poland, the business community obviously failed to take the initiative.

GMF's **Investors for Rule of Law Dialogue** initiative aims at filling this gap. Building on the lessons learned from the Slovak case, the project plans to bring together key business representatives in Hungary and Poland like the AmChams, the bilateral German Chambers of Commerce and Trade, as well as other business stakeholders and experts to identify the most worrying rule of law challenges for the business community and represent a common, coordinated position vis-à-vis the national governments through a structured dialogue.

The project's pilot stage will be conducted early February 2021 with representatives of AmCham Slovakia presenting their experiences for stakeholders of the international business community in Hungary and Poland. In the second step, GMF identifies business stakeholders that may be

interested in participating in a structured rule of law dialogue, establishes structures and processes, and through an intense exchange with participants, their legal experts and independent legal scholars it helps to single out key issues and draft common positions that may serve as key inputs in the dialogue with the respective governments.

Being the initiator of the processes, GMF strives for a co-coordinator role in the national dialogues aside of a business stakeholder that is ready to take over the national co-coordinator role. If the Polish and Hungarian initiatives are successful, an adaptation of the initiative to Bulgaria and Romania can be considered as well.

If sustained, **Investors for Rule of Law Dialogue** may significantly alter the domestic environment for autocratizing governments' rule of law policies. While most of the national legislations that undermine rule of law are introduced without proper dialogue with interested professional groups and civil society, a frequent and structured rule of law dialogue with influential business stakeholders may force governments to act in a more predictive, more argumentative, and more responsive way. While obviously the initiative will not press autocratizing governments to make policy U-turns, it may well have a moderating effect and can succeed in gaining non-neglectable concessions from the Polish and Hungarian governments regarding the transparency of the legislative process, public procurement, legal certainty or the independence of judiciary and other important aspects of the rule of law.