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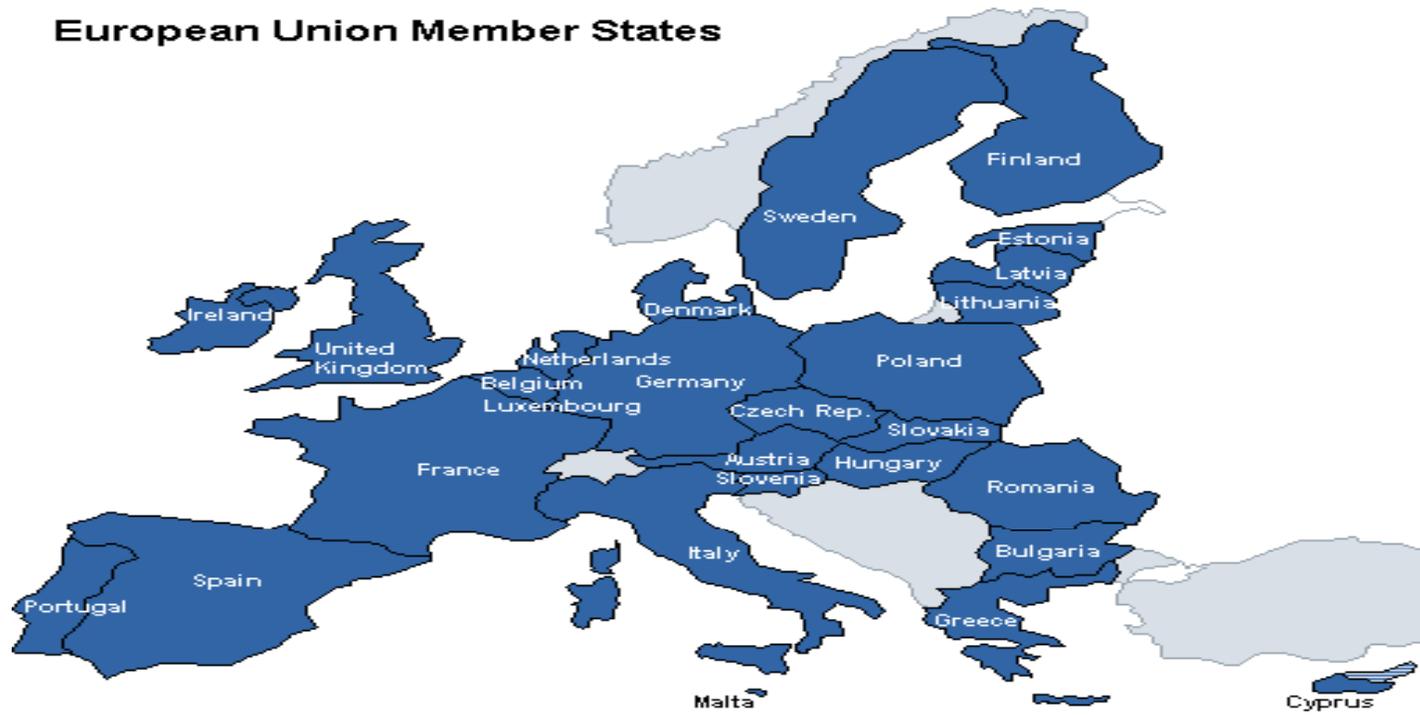
The CJEU's recent rulings on migration as an institutional constraint upon Member States

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European Union Member States



Implementation and interpretation

Council

Directive

Member States

Commission

National Courts

ECJ

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Before-After Lisbon

- Only final courts could refer a question.
 - Almost no cases.
 - Hence, MS had a free hand to incorrectly implement EU Law.
 - **EU rule of law limited.**
- All national Courts may refer a question.
 - EU rule of law established.
 - Agreement on 2008 to implement a fast track procedure for preliminary rulings in case of urgency. This adds to the accelerated procedure from 2000.



Number of references

2005	1
2006	None
2007	None
2008	3
2009	2
2010	5
2011	17

New powers of the CJEU...

- ...as an institutional constraint limiting scope for populist anti-immigration discourses.
- Previously.....the EU was represented as an ‘external venue’ to which member states ‘escape’ in order to avoid constraints on their capacity to restrict migration flows.



El Dridi

- Non-Implementation in Italy of the Returns Directive.
- Italy obliged to accept the ruling and to pass new legislation.
- Influence in other MS.

Achughbabian

- Irregular migration as a criminal offence in France sentenced with prison and fine.
- Following El Dridi reference to the CJEU by non final Court under accelerated procedure.
- Final ruling has consequences for other MS. E.g. Germany

Imran

- Implementation in the Netherlands of the Family Reunification Directive.
- Netherlands manouvred to impede a ruling by the Court.
- Practitioners are encouraged to request similar questions for a preliminary ruling.



Conclusions

- After Lisbon new powers of the CJEU: EU Rule of law on immigration.
- The development of an EU rule of law constitutes a supranational limitation on domestic immigration policies and national legislation that breaches EU legislation arising as a result of populist discourses and proposals by radical right wing parties.