

Policy Brief, D6.1: Policy paper mapping backsliding

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Mapping Backsliding in the European Union

When the European Union took on ten new member states in 2004, it went through an unprecedented enlargement that raised a number of questions about the future of the EU. The previous enlargements, from the original six member states to nine, then ten, twelve and fifteen states never admitted more than three new members at a time and the new member states had long track records of liberal democracy and market economies – or, in the case of the new Mediterranean member states in the 1980s, at least the latter. The debate about enlargement to formerly communist regimes began as soon as the Berlin Wall fell, and even in its earliest version it centred on the potential effects of a big round of enlargement on the EU's capacity for governance and further integration.¹ This coincided with a debate on the prospects for liberal democracy in terms of both party politics and public policy in the Europe's new democracies.² Apart from the questions about whether a wider Europe might mean more or less deepening in terms of supranational governance and increasing the scope of the EU's competence, this debate also touched on the administrative capacity of the formerly communist states and their political will. The team put together by Paul Taggart and Aleks Szczerbiak focused on the latter question in particular, by examining the sources and consequences of popular and party-based Euroscepticism in both the old and new member states.³ The present policy brief takes the

¹ Helen Wallace, "Widening and deepening: the European Community and the new European agenda", RIIA Discussion Paper No 23, 1989; Christopher Preston, *Enlargement and Integration in the European Union* (London: Routledge, 1997; Karen Henderson (ed.), *Back to Europe: Central and Eastern Europe and the European Union*, London, UCL Press, 1999; Ulrich Sedelmeier and Helen Wallace, "Eastern Enlargement: Strategy or Second Thoughts?", in Helen Wallace and William Wallace (eds), *Policy-Making in the European Union*, Oxford: Oxford University Press, 2000; Ulrich Sedelmeier and Frank Schimmelfennig, "Theorising EU Enlargement: Research Focus, Hypotheses, and the State of Research", *Journal of European Public Policy*, 9:4 (2002): 500-528.

² Gordon Smith, "Transitions to Liberal Democracy", in Stephen Whitefield (ed.), *The New Institutional Architecture of Eastern Europe*, Basingstoke: Macmillan, 1993; Peter Mair, "What is Different about Post-Communist Party Systems?", *Studies in Public Policy No. 259*, University of Strathclyde, 1996; Klaus Goetz, "Making Sense of Post-Communist Central Administration: Modernization, Europeanization of Latinization?", *Journal of European Public Policy*, 8:6 (2001), 1032-1051.

³ Paul Taggart and Aleks Szczerbiak (eds), *The Comparative Party Politics of Euroscepticism*, Oxford: Oxford University Press, two volumes 2008.

question debated by the Taggart and Szczerbiak team as a starting point: a dozen years after the first round of eastern enlargement, as Eurosceptic parties have come to power in some of the new member states, has there been "backsliding" in the EU in terms of the states' commitments to liberal democracy?

This is the first of five policy papers in a series for the EU-funded TransCrisis Horizon 2020 research project that directly address backsliding as a possible crisis for the EU. Taken together, the five papers investigate and analyse the causal links between transboundary crisis management and backsliding in EU member states. The first paper defines backsliding and explores empirical patterns of backsliding across the EU. The second, third and fourth papers analyse three forms of backsliding that are particularly contentious and involve potential problems for the EU: the rule of law (constitutional safeguards and independent institutions), corruption (including corruption control) and equality (gender, race and disability). Each of the three papers assess the extent of and causes of backsliding, and consider far it might be a problem for the EU. The fifth paper asks whether backsliding as such represent a crisis for the EU, and what policy options and tools the EU has for managing backsliding.

BACKSLIDING ON LIBERAL DEMOCRACY IN THE EUROPEAN UNION

Samuel Huntington famously argued that democratization comes in waves, and that the process of democratisation that started in Southern European and Latin American in the 1970s and included the collapse of communism in Europe was the third wave – after first and second waves after each of the two world wars.⁴ Whether post-communist democratization should be considered a fourth wave or an extension of the third wave is itself debatable, but in either case post-communist democratization in Europe and Eurasia has been less of an unequivocal success than democratization in post-authoritarian Portugal, Spain and Greece.⁵ Most of the former Soviet States (the exceptions are the three Baltic republics) have justifiably been described as hybrid regimes or as regimes that have reversed the commitment to democratization. Tayyip Erdogan's Turkey has been subject to the same kind of criticism, long before the crack-down after the failed military coup of July 2016. But even the EU member states have not been immune to accusations of democratic backsliding. Slovakia was sent to the back of the queue for EU membership under Vladimír Mečiar's premiership – the only country to be relegated in this was on the grounds of limited progress toward liberal democracy (as opposed to relegation on the grounds of limited institutional or administrative capacity). Then in 2014 Hungarian prime minister

⁴ Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, (Norman: University of Oklahoma Press: 1991); "Democracy's Third Wave" *Journal of Democracy*, 2, no. 2 (1991), 12-34.

⁵ Marc F. Plattner and Larry J. Diamond, "Is East-Central Europe Backsliding?", *Journal of Democracy*, 18:4 (2007), 5-6.

Viktor Orbán declared for “illiberal democracy”, and cited Vladimir Putin’s regime in Russia as a role model. During the previous four years he had used the sweeping powers that a two-thirds parliamentary majority afforded his government to re-write the constitutional order. In the meantime Romania had been shocked by the 2012 clash between president Traian Băsescu and prime minister Victor Ponta, even if the prime minister eventually had to back down from his effort to impeach the president. Then the victory of the Polish Law and Justice party in the 2015 elections and the party’s immediate campaign to change the constitutional order rammed home the message that the road to liberal democracy might not be a one-way street, even for EU member states.

The literature on backsliding comes in three main varieties: i) the study of democratic backsliding as a trend that involves a reversal of democratization, ii) the study of hybrid regimes in the context of development, and iii) the study of individual countries that have steered away from liberal democracy in one way or another, including some EU member states. This literature does not offer an unambiguous definition of backsliding, let alone one that can be operationalised in a study of backsliding in the EU. Common elements in definitions include reversal of democratization and the weakening of democratic institutions; decline of good governance, transparency and the rule of law; poor governance performance and/of reversal of reforms; weakening of human rights and treatment of minorities; rising populism, nationalism and anti-liberal public opinion; increasing corruption and state capture; and even – for the EU member states – compliance with EU rules and norms and even the danger of a new type of democratic deficit.

The literature that approaches backsliding as a trend away from democratisation focuses more on the question as to whether this is a trend and what causes it than on the definition of the concept. Indeed, like much of the literature on democratisation itself, it does not really need a clear definition of democratisation or reversal of democratisation since liberal democracy is a well established concept.⁶ The editors of a special issue of *Journal of Democracy* on backsliding in East Central Europe, Marc Plattner and Larry Diamond, asked contributors to the issue to examine sharp political conflicts as a source of concern for the solidity of these countries’ democracies. They did not define backsliding, but pointed to concerns about lack of democratic consolidation and the danger of countries reverting to authoritarianism. However, they made direct reference to the assessments carried out by Freedom House, and asked questions about the precariousness of democracy, weakness of democratic institutions and the sources of dangers to democracy.⁷ Indeed the Freedom House data is widely used in the debates about democratisation and its possible reversal, and are used in this paper as well.⁸ Perhaps the clearest and most precise definition of

⁶ Jacques Rupnik, “Is Central Europe Backsliding: From Democracy Fatigue to Populist Backlash”, *Journal of Democracy*, 18:4 (2007), 17-25.

⁷ Plattner and Diamond, “Is East-Central Europe Backsliding?”, p. 5-6.

⁸ James Dawson and Seán Hanley, “East Central Europe: The Fading Mirage of the ‘Liberal Consensus’”, *Journal of Democracy*, 27:1 (2016), 20-34, p.23.

backsliding linked to the concept of democratization is that offered by Lars Svåsand in his study of Malawi: Democratization involves a steady improvement in democratic governance, being stuck in transition involves lack of improvement, and backsliding – simply enough – involves the last alternative, namely a decline in good governance.⁹ Ulrich Sedelmeier offers an equally straightforward definition of backsliding, based on breaches of liberal democratic principles.¹⁰

The most common theme in the literature on democratization and its reversals is democratic norms and commitments to basic democratic principles and the rule of law. This is directly linked to the strengthening, maintenance or weakening of liberal democratic institutions, and ultimately, of the rule of law.¹¹ It involves a reversal of democratization leading to a hollowing out of liberal democracy both in form and in practice.¹² Bela Greskovits thus defines backsliding as “destabilization and reverting to semi-authoritarian politics” or even a “reversal in the direction of democratic development”; Attila Ágh focuses on both formal institutions and democratic performance.¹³

Much of the work on reversal of democratization also focuses on the consequent decline in the quality of democracy, including low transparency and state capture by elites. This is in effect a decline in good governance, or what Thomas Carothers calls “bad governance” and Ulrich Sedelmeier documents as “drops in democratic quality”.¹⁴ This kind of decline in democratic performance is often linked to political contestation of European integration and the core values of the EU, including different aspects of economic and social performance (including equality and discrimination).¹⁵ Writing in 2007, Charles Gati explicitly linked the

⁹ Lars Svåsand, “Democratization in Malawi: Moving Forward, Stuck in Transition or backsliding?”, *Forum for Development Studies*, 38:1 (2011) 1-24.

¹⁰ Ulrich Sedelmeier, “Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession”, *Journal of Common Market Studies*, 52:1 (2014), 105-121.

¹¹ Plattner and Diamond, “Is East-Central Europe Backsliding?”; Dawson and Hanley, “East Central Europe: The Fading Mirage of the ‘Liberal Consensus’”; Douglas M. Gibling and Kirk A. Randazzo, “Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding”, *American Journal of Political Science*, 35:3 (2011), 696-709; Jan-Werner Müller, “Should the EU Protect Democracy and the Rule of Law in Member States?” *European Law Journal*, 21:2 (2015) 141-160.

¹² Dawson and Hanley, “East Central Europe: The Fading Mirage of the ‘Liberal Consensus’”; Bela Greskovits, “The Hollowing and Backsliding of Democracy in Central Europe”, paper presented at Central European University, 9 April 2015.

¹³ Greskovits, “The Hollowing and Backsliding of Democracy in Central Europe”; Attila Ágh, “The Triple Crisis in Hungary: The ‘Backsliding’ of Hungarian Democracy after Twenty Years”, *Romanian Journal of Political Science*, 13:1 (2013).

¹⁴ Thomas Carothers, “A Quarter Century of Promoting Democracy”, *Journal of Democracy*, 18:4 (2007), 113-123, p.119; Ulrich Sedelmeier, “Europe after the Eastern Enlargement of the European Union: 2004-2014”, *Heinrich Böll Stiftung*, 10/5/2014, p.4; Plattner and Diamond, “Is East-Central Europe Backsliding?”; Müller, “Should the EU Protect Democracy and the Rule of Law in Member States?”.

¹⁵ Ivan Krastev, “The Strange Death of the Liberal Consensus”, *Journal of Democracy*, 18:4 (2007), 56-63; Philip Levitz and Grigore Pop-Eleches, “Monitoring, Money and Migrants: countering Post-Accession Backsliding in Bulgaria and Romania”, *Europe-Asia Studies*, 62:3 (2010), 461-479.

term “backsliding” to “resistance to new and necessary political and economic reforms.”¹⁶ Others include performance in terms of protection of human rights.¹⁷

Oligarchy and low performance is in turn sometimes linked to the decline in popular support for democracy and the rule of law. A common theme here has been the rise of support for parties that advocate alternative forms of government that play down individual liberty and the rule of law, including support for nationalism, populism.¹⁸ Ivan Krastnev linked backsliding to the end of the kind of “liberal consensus” that membership of the EU is based on and which the EU to some extent requires in order to function.¹⁹ However, others, like Greskovits, separate “hollowing out” of democracy in the sense of loss of popular support for democracy from backsliding as such.²⁰

In the EU context, the notion of backsliding can be related to the well established literature on differentiated integration, and the question of why some states do not comply with EU law when the governing parties or elites decide that it is not the interest of the government to do so.²¹ Europeanisation and the effect of EU membership on democratic consolidation and good governance has been much debated, and increasingly this literature has turned to investigate the possibility that Europeanisation might be reversed.²² Most structural explanations of declining compliance focus on long-term economic performance or social

¹⁶ Charles Gati, “Backsliding in Central and Eastern Europe”, *The Quarterly Journal*, Fall 2007, 107-120.

¹⁷ Andrew T. Guzman and Katerina Linos, “Human Rights Backsliding”, *California Law Review*, 102 (2014), 603-654.

¹⁸ Plattner and Diamond, “Is East-Central Europe Backsliding?”, p. 6; Elisabeth Bakke and Nick Sitter, “Patterns of Stability: Party Competition and Strategy in Central Europe since 1989”, *Party Politics* 11:2 (2005), 243-263; Agnes Batory and Nick Sitter, “Cleavages, Competition, and Coalition-building: Agrarian Parties and the European Question in Western and Eastern Europe”, *The European Journal of Political Research*, 43:3 (2004), 521-544; Sean Hanley, “The New Right in Europe? Unravelling the Ideology of ‘Czech Thatcherism’”, *Journal of Political Ideologies*, 4:2 (1999), 169-178; Paul Taggart, New Populist Parties in Western Europe, *West European Politics*, 18:1 (1998), 34-51

¹⁹ Carothers, “A Quarter Century of Promoting Democracy”, p.119; Krastev, “The Strange Death of the Liberal Consensus”, p. 58-59.

²⁰ Greskovits, “The Hollowing and Backsliding of Democracy in Central Europe”, p.1 ; Greskovits draws on Peter Mair, “Ruling the Void: The Hollowing of Western Democracy”, *New Left Review*, 42 (Nov-Dec), 25-51.

²¹ Alexander C-G. Stubb, “A Categorization of Differentiated Integration”, *Journal of Common Market Studies*, 34:2 (1996) 283-295; Alkuin Kölliker, “Bringing Together or Driving Apart the Union? Toward a Theory of Differentiated Integration”, *West European Politics*, 24:4 (2001) 125-151; Svein S. Andersen and Nick Sitter, “Differentiated Integration: What Is It and How Much Can the EU Accommodate?”, *Journal of European Integration*, 28:4 (2006), 313-330; Katharina Holzinger and Frank Schimmelfennig, “Differentiated Integration in the European Union: Many Concepts, Sparse Theory, Few Data”, *Journal of European Public Policy*, 19:2 (2012), 292-305; Jack Hayward and Rudiger Würzel, *European Disunion*, London: Palgrave, 2012.

²² Sedelmeier, “Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession”; Sedelmeier, “Europe after the Eastern Enlargement of the European Union: 2004-2014”; Ágh, “De-Europeanization and De-democratization Trends in ECE”; Johan P. Olsen “The Many Faces of Europeanization” *Journal of Common Market Studies*, 40:5, (2002), 921-952; Claudio Radaelli “Whither Europeanization: Concept Stretching and substantive Change” *European Integration online Papers*, 4:8 (200); Plattner and Diamond, “Is East-Central Europe Backsliding?”; Philip Levitz and Grigore Pop-Eleches, “Why No Backsliding? The European Union’s Impact on Democracy and Governance Before and After Accession” *Comparative Political Studies*, 43:2 (2010). 457-485.

integration, or the way the global financial crisis posed a disruptive challenge for fragile democracies.²³ In any case, the financial crisis took some of the new member states to cross road between continued consolidation of democracy and departure from the liberal democratic model.²⁴ But the direct cause of deliberate non-compliance and wilful defiance of inconvenient EU rules has tended to be populist parties' rise to power.²⁵

Most of the literature on the study of hybrid regimes in the context of development likewise does not seek to conceptualise backsliding, but rather focuses on the different ways democratization might be halted, be incomplete or be combined with institutions or practices that limit transitions to liberal democracy.²⁶ Hybrid regimes that are in effect "façade democracy", where illiberal practices are carried out behind seemingly democratic institutions and in practice amount to oligarchy where the state is captured by elites based on non-transparent rule and corruption.²⁷ In hybrid regimes authoritarian practices override democratic institutions and make for considerable differences between formal institutions and the informal exercise of power.²⁸ In most cases hybrid regimes amount to a form of oligarchy, where elections serve to confirm the dominant role of the leading party and the ruling group uses a wide range of economic and political resources to maintain its grip on power. The question is whether this amounts to alternative models of democracy, such as "guided", "less liberal" or even "illiberal" democracy. In any case, as in the literature on the reversal of democratization, the literature on hybrid regimes take backsliding to mean a reversal, or even just stalling, of a process. Backsliding means less or weaker liberal democracy in terms of the rule of law, transparent governance and pluralist governance.

In the EU context the possibility that a member state might backslide to the extent that it becomes a kind of hybrid regime or the government is oriented towards an alternative to liberal democracy – and Orbán's 2014 speech on illiberal democracy was a wake-up call for politicians and journalists alike in this respect – raises two questions that inform the debate on backsliding in the EU: how does the oligarchic elite maintain its position and does backsliding matter for the EU? The first question has prompted some research into EU funding as a source of economic rent, which can be distributed among the oligarchs and

²³ Greskovits, "The Hollowing and Backsliding of Democracy in Central Europe".

²⁴ Attila Ágh, "Post-Accession Crisis in the New Member States: Progressing or Backsliding in the EU", *Studies of Transition States and Societies*, 2:1 (2010), 74-95.

²⁵ Agnes Batory, "Populists in government? Hungary's "system of national cooperation"", *Democratization*, 23:2 (2016), 283-303.

²⁶ Thomas Carothers, "A Quarter Century of Promoting Democracy", p. 119-120; Dawson and Hanley, "East Central Europe: The Fading Mirage of the 'Liberal Consensus'".

²⁷ Attila Ágh, "De-Europeanization and De-democratization Trends in ECE: From the Potemkin Democracy to the Elected Autocracy in Hungary", *Journal of Comparative Politics*, 8:2 (2015), 4-26.

²⁸ Sedelmeier, "Europe after the Eastern Enlargement of the European Union: 2004-2014"; Jacques Rupnik and Jan Zielonka, "The State of Democracy 20 Years On: Domestic and External Factors", *East European Politics and Societies*, 27:3 (2013), 1-25.

their supporters.²⁹ Backsliding is thus linked to public procurement and corruption as a resource for funding. Second, others have noted that the EU might have reached a point where the main problem of limited democratic governance in the EU is not the so-called democratic deficit due to the weak powers of the European Parliament, but rather a new “second democratic deficit” that can be found in some of its member states that are backsliding away from democracy.³⁰ The obvious question is whether this is a threat to the EU as a political system?

Finally most studies of individual countries that have steered away from liberal democracy – and this includes several EU member states – focus more on the causes and dynamics of backsliding than on defining backsliding in a way that encourages comparative analysis.³¹ As early as 2007 Charles Gati identified problems related to backsliding in all four Central European cases, and expressed concern that this was a trend. In Poland, he argued, the Kaczynski twins as president and prime minister showed “immense hostility” to the forces that had guided the country’s transition since 1989. In the Czech Republic president Vaclav Klaus’ scepticism to politics and caused a political standoff that prevented reforms. Slovakia saw a populist backlash against the government that had “engineered Slovakia’s economic miracle”, and in Hungary the then opposition party Fidesz, having lost two elections, “tried to seize power in the fall of 2006 via a series of demonstrations, some violent and some peaceful”.³²

Most of the case studies of Central Europe states focus on the role of populism and illiberal politics, and the various reasons for popular disenchantment with economic reforms and liberal democracy as the driving forces, and constitutional change and centralization of political power as the central problem with backsliding.³³ Zsolt Enyedi and others have used Hungary to illustrate a broader trend, but Enyedi emphasises that backsliding is driven by actors that make idiosyncratic strategic decisions. He thus reject broader structural explanations.³⁴ Likewise a series of domestic political factors including poorly calculated

²⁹ Ágh, “De-Europeanization and De-democratization Trends in ECE”, p. 12-13

³⁰ R. Daniel Kelemen, “Europe’s other Democratic Deficit: National Authoritarianism in a Democratic Union”, paper presented at the Council for European Studies, 8-10 July, 2015, Sciences Po; Müller, “Should the EU Protect Democracy and the Rule of Law in Member States?”.

³¹ Dawson and Hanley, “East Central Europe: The Fading Mirage of the ‘Liberal Consensus’”.

³² Gati, “Backsliding in Central and Eastern Europe”, p. 107-108; Charles Gati and Heather Conley, “Backsliding in Central Europe”, *International Herald Tribune*, 3 April 2007.

³³ Sedelmeier, “Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession”.

³⁴ Zsolt Enyedi, “Populist Polarization and Party System Institutionalisation: The Role of Party Politics in De-Democratization”, *Problems of Post-Communism* (published on-line 14/1/2016) doi:10.1080/10758216.2015.1113883; Nick Sitter, “Absolute Power? Hungary Twenty Years after the Fall of Communism” in Elisabeth Bakke and Ingo Peters (eds) *Twenty Years after the Fall of the Berlin Wall*, Berlin: Berliner Wissenschafts-Verlag, 2011; Marton Varju and Nora Chronowski, “Constitutional Backsliding in Hungary”, *Tijdschrift voor Constitutioneel Recht*, 3 (2015), 296-310. For more structural explanations that emphasis the nature of the economy under communism and the nature of the economic transition, see e.g. Zoltán Pogátsa, “Hungary: From Star Transition Student to Backsliding Member State”, *Journal of*

gambles lay behind the Romanian crisis of 2012. In that case, however, the EU had stronger leverage and could combine social pressure with the EU's ability to exercise material pressure thorough the Co-operation and Verification Mechanism that still operated for Bulgaria and Romania at the time.³⁵

In the EU context there is a well established literature on implementation, compliance and infringement, or what Kristina Mikulova dubbed "Potemkin Europeanization".³⁶ In the context of backsliding, this has been supplemented by analyses of what happens when centralisation of power at the state level results in clashes with EU law.³⁷ Backsliding also raises questions about the meaning of the commitments to fundamental values laid down in Article 2 and the procedures for dealing with a member states that is in breach of these values as laid down in Article 7. In practice, the high thresholds for action under Article 7 means that it is likely to have more moral than practical value.³⁸ Some national parties (represented through their governments in the Council of Ministers and European parties (in the European Parliament) are reluctant to use Article 7 at all, and some are reluctant to use it against governments run by political allies.³⁹ Backsliding therefore points to open questions about the EU's policy tools to cope with this kind of threat, if indeed it is a threat.

Drawing on these three sets of literature, a relatively simple definition of backsliding can be put forward for the purpose of comparative analysis of backsliding in the EU: *Backsliding* is defined as unilateral and systematic acts by a member state government that violates the laws and/or the norms of the EU. This does not cover unilateral policy changes that are compatible with EU laws or guidelines (such as the British decision to leave the EU), or regimes that are established as an exception in the form of derogations or opt-outs (this could conceivable be the case if a state were permitted to relax its efforts e.g. to combat corruption). And it does not cover formal changes to the EU rules, whichever direction they might go in.

Contemporary European Research, 4:5 (2009), 597-613; Greskovits, "The Hollowing and Backsliding of Democracy in Central Europe".

³⁵ Agnes Batory, "Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU", *Public Administration*, 2016 (published on-line 22/2/2016) doi: 10.1111/padm.12254; Ingi Iusmen, "EU Leverage and Democratic Backsliding in Central and Eastern Europe: The Case of Romania", in *Journal of Common Market Studies*, 53:5 (2015), 593-608.

³⁶ Sedelmeier, "Europe after the Eastern Enlargement of the European Union: 2004-2014"; Kristina Mikulova, "'Potemkin Europeanization': Dynamics of Party Competition in Poland and Hungary 1998-2004", *East European Politics, Societies and Cultures*, 28:1 (2014) 163-186.

³⁷ Batory, "Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU".

³⁸ Müller, "Should the EU Protect Democracy and the Rule of Law in Member States?".

³⁹ Sedelmeier, "Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession",

Response to Crises	Unilateral measures	Formal changes to EU rules
Compatible with present EU norms and rules	Joint/coordinated crisis management	New EU tools Treaty Change
Incompatible with present EU norms and rules	BACKSLIDING: Member state policy that involves going back on EU commitments	Derogations and opt-outs

Based on this definition, a further distinction can be made between backsliding that violate EU norms *and* the EU laws that enshrine those norms in law, and backsliding that violates EU norms but for one reason or another does not violate the relevant aspects of EU law.

- *Hard Backsliding* can be defined as acts or policies that involve direct violation of EU primary or secondary law (the *acquis*) *and* violates the fundamental norms and values of the EU linked to liberal democratic governance. This leaves a member state open to intervention by the Commission in the form of infringement procedures, and ultimately to action under Article 7.
- *Soft Backsliding* can be defined as acts or policies that involve violation of a member states' major commitments to the EU, but without directly violating the *acquis*, or at least the relevant part of the *acquis*. In fact soft backsliding with respect to e.g. media freedom can of course turn out also to violate Single Market rules on cross-border trade, or forced early retirement of judges can turn out to violate rules on age discrimination even if it does not necessarily contravene rules in the protection of judicial independence.⁴⁰

Violates Acquis? Violates Norms?	Yes	No
Yes	Hard Backsliding	Soft Backsliding
No	Ordinary infringement	Ordinary Politics

The next three sections of this policy paper explores backsliding across the three central areas that come up again and again in much of the literature on backsliding: first, the rule of

⁴⁰ Batory, "Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU".

law; second, corruption; and third equality. The three areas of investigation reflect three of the four main types of concern in the literature on backsliding. First, the investigation of backsliding in terms of the rule of law explores patterns of change with respect to the fundamental institutions of liberal democracy, with a focus on the core institution (at the expense of other, related matters such as media freedom). The second aspect, corruption and corruption control, is a key element of good governance (and is chosen as an alternative to more ambiguous indicators such as economic reform) and can also serve as an indicator of the problem of state capture by oligarchic elites. The third subject, social equability, is chosen as an indicator of backsliding against rules designed to protect minorities, as an element of the human rights and individual rights dimension of liberal democracy. The main theme touched upon in some of the literature of backsliding that is not covered in this policy paper is public opinion on democracy, human rights, nationalism and other matters in the liberal – populist divide that many authors see as an integral part of backsliding. This is because public opinion can be a driver of backsliding (public opinion as the demands side) and/or a consequence of backsliding (public approval of government's supply side backsliding), but does not in itself serve us well as an indicator of backsliding.

Operationally, for the purpose of this paper, **hard backsliding** involves a) measures that are contrary to EU law, and b) the Commission might choose to investigate or start infringement procedures over, and c) the Court might eventually rule on. Measures that satisfy only a) or only a) and b) are also counted. **Soft backsliding** is operationalised as measures that violate the principal norms of EU as set out in the Treaties, international law and non-binding aspects of EU law, policy strategies and standards. However, since the question of whether the Acquis is violated or not is ultimately a matter for the Commission (starting infringement procedures) and the Court of Justice, in most cases distinguishing between the two forms require closer investigation of each case than is the remit of this policy paper (the next three papers in the series return to this issue). The remainder of this policy paper provides an overview of the extent of backsliding that can be ascertained from a range of open sources and reports. It covers both soft and hard forms of backsliding, and does not necessarily distinguish between the two in the cross-country comparison in each of the three areas investigated.

BACKSLIDING AND THE RULE OF LAW

The rule of law is a fundamental building block of liberal democracy, in the sense of the rule of the majority within legal and constitutional limits and constraints. To the extent that leaders of national governments invoke a crisis (such as the financial crisis, refugee crisis or threat of terrorism) to limit media freedom, restrict the power of independent regulators and politicise the judiciary or central banks, this may constitute backsliding in terms of the broader constitutional safeguards of democracy that all EU member states are committed to as a prerequisite for membership. A range of national measures on all three counts have

drawn criticism from the Commission and the European Parliament. In what follows, the focus is on the rule of law as such, including the safeguarding of independent institutions.

The EU treaties laid down clear responsibilities to protect and adhere to the rule of law for all member states. At Copenhagen, the European Council specifically defined the rule of law as one of the obligations of membership and the political conditions that need to be satisfied. The “Copenhagen Criteria” require that the candidate country must achieve, among other things, stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.⁴¹ That notwithstanding, no similar method or instrument exists to supervise the respect of these same principles *after* accession. While the treaties stipulate commitment to democracy and the rule of law, and provide a basis for suspending the membership of states that violate these fundamental values, this remains very much a “nuclear option”. There are therefore relatively few cases of EU institutions even investigating states for direct breach of EU law in terms of their commitments to democracy, the rule of law and the maintenance of independent judiciary institutions. Most of the well-known cases are a matter of soft backsliding – violations of EU norms that fall short of direct violation of the *acquis*.

The data on backsliding and the rule of law used in this paper is drawn primarily from reports by Freedom House.⁴² This provides time series that covers all the member states, on a relatively reliable comparable basis. In addition a range of reports from the EU institutions, the Venice Commission, the Helsinki Commissions and investigative journalism are used to compile an overview of cases in which member states stand accused by authoritative independent sources of violation of basic EU norms with respect to the rule of law.

Freedom House’s *Freedom in the World* annual report provides assessments of developments in political rights and civil liberties, composed of numerical ratings and descriptive texts for each country and a select group of related and disputed territories. The data is designed to be comparable over time and across countries. Political Rights are scored based on data from three subcategories (with a maximum of 40 points in total): Electoral Process, Political Pluralism and Participation, and Functioning of Government. Civil Liberties are scored based on four subcategories (to a total of 60 points): Freedom of Expression and Belief, Associational and Organizational Rights, Rule of Law, and Personal Autonomy and Individual Right. The Rule of Law is a subcategory for Civil Liberties, based on questions about the independence of the judiciary and the workings of the police, courts and due process. Of the 28 EU states three countries – Bulgaria, Hungary, and Greece – have scores that indicated backsliding both of the domains used here, Political Rights and Civil Liberties.

⁴¹ European Council in Copenhagen, Conclusions of the Presidency, (21-22 June 1993, SN 180/1/93)12.

⁴² See Annex 1.

In terms of the rule of law, they drop from 13-14 points to 10-11 points over the decade up to 2016. The data is reported in Annex 1.

European Union Institutions

The rule of law is one of the fundamental values on which the EU is based according to Article 2 of the Treaty on European Union. The article explicitly states that “[t]he Union is founded on the values of respect for human dignity, liberty, democracy, equality, **the rule of law** and respect for human rights, including the rights of persons belonging to minorities. (...) [F]ailure by a Member State to respect these values may lead to the suspension of that Member State's rights deriving from membership of the Union (Article 1-59)”⁴³. Nevertheless, it has been pointed out that the current EU legal framework is ill designed when it comes to addressing internal, systemic threats to the rule of law. This has become a significant issue to the extent that rule of law related crises appear to have gained both on intensity and regularity in the past decade⁴⁴.

In a well-noted speech on 4 September 2013, Viviane Reding, former EU Justice Commissioner, drew an interesting parallel between Europe’s economic and financial crisis and what she viewed as an increasing number of ‘rule of law crises’ revealing problems of a systemic nature.⁴⁵ Three concrete examples were mentioned in her speech:

- The French government’s attempt in summer 2010 to secretly implement a collective deportation policy aimed at EU citizens of Romani ethnicity despite contrary assurances given to the Commission that Roma people were not being singled out;
- The Hungarian government’s attempt in 2011 to undermine the independence of the judiciary by implementing an early mandatory retirement policy; and
- The Romanian government’s failure to comply with key judgments of the national constitutional court in 2012.

Taken together, these episodes have been often understood as demonstrating the increasing number of instances where national authorities were undermining key EU values such as the rule of law. In his 2012 State of the Union address, José Manuel Barroso, then

⁴³ Treaty on European Union, Official Journal C 326 , 26/10/2012 P. 0001 – 0390. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:12012M/TXT>

⁴⁴ Dimitry Kochenov and Laurent Pech, “Upholding the Rule of Law in the EU: On the Commission’s ‘Pre-Article 7 Procedure’ as a Timid Step in the Right Direction.” EUI Working Papers, Robert Schuman Centre for Advanced Studies Global Governance Programme 2015, 164.

⁴⁵ Viviane Reding, “The EU and the Rule of Law – What’s Next?”, 2013, Press Release Database, available at: http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm

the President of the European Commission, spoke of worrying ‘threats to the legal and democratic fabric in some of our European states’ which need to be brought into check.⁴⁶ The EC has expressed particular concern over developments taking place in Hungary. Recently Hungary’s Prime Minister has advocated the establishment of an ‘illiberal state’ and referred to Putin’s Russia and Communist China as two possible models to follow.⁴⁷ The EU considers that the call for an illiberal regime starkly contradicts Article 2 TEU. The issuing of Tavares Report⁴⁸ by the European Parliament in 2012 signalled a change in the approach to Hungary from treating it as a state with a few isolated problems to a systemic problem.

The landslide victory of nationalist Law and Justice Party in Polish 2015 elections was marked by fast paced developments, including replacement of previous judicial appointees to the country’s constitutional court and passing changes to the rules regulating the court that would make it harder for it to block legislation. On January 13, 2016 The European Union’s executive branch reprimanded Poland after determining that it had failed to uphold the rule of law. On April 13, 2016 MEPs passed a non-binding resolution calling on the Polish authorities to restore the ability of Poland’s Constitutional Tribunal to uphold its Constitution and guarantee respect for the rule of law⁴⁹.

The vice-president of the Commission, Frans Timmermans, and his lawyers accuse the Polish government of "systematically endangering" the rule of law in Poland. They said that changes in the composition of Poland's constitutional court and the circumvention of its modus operandi restrict the independence of the judiciary in a manner that contravenes European principles of the rule of law⁵⁰. These basic principles are laid down in the Lisbon Treaty, to which of course Poland, as a member state, is of course also a signatory. The situation has been aggravated by the government's refusal to publish and recognize the court's judgments. The proceedings against Poland constitute a rare intervention that reflects increasing alarm in the West about the government’s commitment to democratic norms.

Venice Commission

⁴⁶ José Manuel Barroso, State of the Union 2012 Address, 2012, Press Release Database, available at: http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm

⁴⁷ *EUObserver*, Brussels, 28 July 2014 ‘Orban Wants to Build an Illiberal State’, available at: <https://euobserver.com/political/125128>

⁴⁸ European Parliament Motion for a European Parliament Resolution on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)), available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0229&language=EN>

⁴⁹ European Parliament resolution of 13 April 2016 on the situation in Poland (2015/3031(RSP)). Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0123+0+DOC+XML+V0//EN>

⁵⁰ European Commission, “Commission adopts Rule of Law Opinion on the situation in Poland”, 2016, Press Release Database, available at: http://europa.eu/rapid/press-release_IP-16-2015_en.htm

The concept of the “Rule of Law”, along with democracy and human rights, makes up the three pillars of the Council of Europe⁵¹ and is endorsed in the Preamble to the European Convention on Human Rights⁵². A democracy watchdog, the Venice Commission closely monitors developments in the field of constitutional law. Since 2008 the Commission issued 16 negative opinions, which clearly demonstrate backsliding tendencies countries including Bulgaria, Hungary, Romania and Poland. The state of the rule of in Hungary received particularly critical attention, resulting in an unprecedented number of opinions issued between 2011 and 2015. The Commission has criticized the far reaching Constitutional reforms and systematic curbing of media freedom by Prime Minister Viktor Orbán’s government.

Table 1 Bulgaria

Opinion on the Constitution of Bulgaria adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008)
Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary) of the Republic of Bulgaria, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015)

Table 2 Hungary

Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary - Adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011)
Opinion on the new Constitution of Hungary adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011)
Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012)
Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012)
Opinion on Act CLI of 2011 on the Constitutional Court of Hungary adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012)
Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012)
Opinion on the Act on the Rights of Nationalities of Hungary adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012)
Opinion on Act CXII of 2011 on informational Self-determination and Freedom of Information of Hungary, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012)
Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012)
Opinion on the Fourth Amendment to the Fundamental Law of Hungary Adopted by the Venice Commission at its 95th Plenary Session, Venice, 14-15 June 2013
Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015)

Table 3 Poland

Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice
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⁵¹ Statute of the Council of Europe, London, 5.V.1949, Article 3, available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680306052>

⁵² European Convention on Human Rights, Rome, 4.XI.1950, Preamble, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

Commission at its 106 th Plenary Session, (Venice , 11-12 March 2015)
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Table 4 Romania

Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, Adopted by the Venice Commission at its 93rd Plenary Session (Venice, 14-15 December 2012)
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Opinion on the Draft Law on the Review of the Constitution of Romania, adopted by the Venice Commission at its 98th Plenary Session, (Venice, 21-22 March 2014)

In 2016 the attention fell on “constitutional crisis” unravelling in Poland following a landslide victory of the conservative party Law and Order (PIS). The government has effectively precluded the Court from ruling on the constitutionality of legislation. This weakens a key pillar of the democratic rule of law – and thus is highly problematic for Poland and Europe alike. The instantaneous reform to the constitutional tribunal was criticized in the Opinion on Amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland Adopted at 106th Plenary Session March 11-12 2016. The released report stated that some of the changes were a threat not just to rule of law, but to democracy and human rights.⁵³

Helsinki Committee

Backsliding in the field of the rule of law has also been documented in numerous reports issued by the Helsinki Committee. In 2009 Bulgarian legislative amendments proposed by the Justice Ministry for reform in the Meetings and Rallies Act were criticized by Bulgarian Helsinki Committee for posing seriously restrictions on the right to peaceful assembly⁵⁴. The Committee also commented extensively on the ongoing violation of media freedom, deteriorating respect for judicial independence, and rampant corruption⁵⁵. Similar criticisms were directed in 2009 at Croatia by the Human Rights House Foundation⁵⁶. However, the strongest disparagement was once again directed at Hungary⁵⁷. On numerous occasions

⁵³ Venice Commission, 106th Plenary Session, Opinion on Amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, Opinion no. 833/2015, available at:

[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)001-e)

⁵⁴ Bulgarian Helsinki Committee, 2009, New legislative amendments proposed by the government will restrict freedom of peaceful assembly. Available at: <http://www.bghelsinki.org/en/news/bg/single/new-legislative-amendments-proposed-by-the-government-will-restrict-freedom-of-peaceful-assembly/>

⁵⁵ Bulgarian Helsinki Committee, 2013, A Bulgarian Spring? Entrenched Protests Challenge Eastern Europe’s Status Quo. Available at: <http://www.bghelsinki.org/en/news/bg/single/bulgarian-spring-entrenched-protests-challenge-eastern-europes-status-quo/>

⁵⁶ Human Rights House Foundation, 2009, Freedom of expression violations in Croatia. Available at: <http://humanrightshouse.org/Articles/12503.html>

⁵⁷ The Hungarian Helsinki Committee, 2015, Analysis of the Performance of Hungary’s “One-Party Elected” Constitutional Court Judges Between 2011 and 2014. Available at: http://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf

The Hungarian Helsinki Committee expressed concerns over Constitutional amendments which undermined judicial independence, stripped the Constitutional Court of significant powers, and introduced several legal provisions previously ruled unconstitutional. The Committee also criticized media laws in particular the lack of political independence of media regulator the Media Council.

In the beginning of 2016 Helsinki Committee turned its attention to Poland. In January 2016 the Netherlands Helsinki Committee joined an appeal by the Civic Solidarity Platform NGO coalition, expressing concern about amendments in the Polish media and judiciary legislation⁵⁸. In July 2016, the Management Board and the Board of Directors of the Helsinki Foundation for Human Rights and the Helsinki Committee in Poland have issued a joint statement regarding the changes in the Polish judiciary. “What is done to the Constitutional Tribunal and the personnel that forms the body is ridiculing the rule of law and the state. Simultaneously, other bodies that are formally independent, have come under major pressure”⁵⁹, wrote the signatories of the statement.

Since 2010 the committee issued more than 20 reports about Hungarian ‘illiberal’ reforms and violation of principles enshrined in the Polish Constitutions. The main message is that these two countries now jeopardize European democratic norms.

Since 1990s the Committee has not criticized any other member state.

Trends

The overall trends confirm the expectation that backsliding with respect to the rule of law is primarily a problem for the new member states (the 13 that joined in 2004 or later) – with the two old member states in trouble being Italy and Greece. Going by the Freedom House data, some 10 member states have a solid record over the eight years since 2008, 3 have a mixed record, 5 are somewhat problematic on more than one count (Slovakia, Latvia, Romania, Croatia and Italy) and 3 show serious and persistent problems (Hungary, Bulgaria and Greece). When this is combined with data and report from the EU, Venice Commission and the Helsinki Committees, Hungary and Poland emerge as the to front runner in terms of backsliding (the Polish case is so recent that the impact on Freedom House data has yet to become manifest). Bulgaria and Romania also make an appearance on several list, but do not compare with Hungary and Poland when it comes to the substantial qualitative reports for the EU, Venice Commission and the Helsinki Committees. Of the old member states, Italy

⁵⁸ Netherlands Helsinki Committee, 2016, Concerns over the rule of law in Poland. Available at:

http://www.nhc.nl/news/Concerns_over_the_rule_of_law_in_Poland.html?id=716&highlight=+EU

⁵⁹ Helsinki Committee in Poland, 2016, The Constitutional Role of the Judiciary in Poland Has Been Completely Undermined. Available at: <http://www.hfhr.pl/en/the-constitutional-role-of-the-judiciary-in-poland-has-been-completely-undermined/>

and France have on occasion raised concerns, but the most persistent case of backsliding is Greece. Again, however, none of these are comparable to the Polish and Hungarian case in terms of severity.

BACKSLIDING AND CORRUPTION

To the extent that the economic crisis has merited extraordinary measures, it has provided an opportunity for political actors – particularly populist parties - to advocate or claim to step up anti-corruption campaigns. These are often politically motivated. Crisis measures may also have changed opportunity structures on the national level in ways that might affect both the level and type of corruption. Likewise, the crisis may have provided an opportunity for changing anti-corruption legislation, and in some cases dampen anti-corruption efforts for instance by cutting resources for national institutions tasked with corruption control.

Mapping Corruption

There is relatively little hard backsliding with respect to corruption, largely because this is primarily a matter for the member states in terms of legislation. It is often treated as a matter of crime, or even organized crime. The main EU laws pertinent to corruption and corruption control is related to the EU's financial interests – notably in terms of rules on public procurement, the Structural Funds spending and the work of European Anti-Fraud Office (OLAF). Most of the information on backsliding on corruption is a matter of soft backsliding, such as the new member states' commitment at the time of accession to curb corruption (corruption was treated as part of accession conditionality, i.e. the Copenhagen criteria, at the time of enlargement).

However, capturing patterns of soft backsliding across member states is extremely difficult. The main problem is the availability of measurement tools. To date there is no completely reliable method of indicating the overall volume or frequency of corrupt transactions in a country. The most commonly used quantitative indicators are the World Bank (WB) Governance Indicators /Control of Corruption indicator⁶⁰ and Transparency International's

⁶⁰ World Bank Development Research Group, Natural Resource Governance Institute, and Brookings Institution, 1996-2014, Worldwide Governance Indicators. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#home>

Corruption Perception Index (CPI).⁶¹ Both are composite indices that are limited by the reliability of the sources they draw on; and both draw on perceptions of corruption rather than ‘solid’ data on actual occurrence of corruption and therefore are relatively poor for indicating trends over time, particularly changes in relatively short periods of time. The weakness of the quantitative indicators is evident in the sense that many countries seem to follow different patterns in the CPI and WB indicator; i.e. the data contradict rather than confirm patterns shown by one or the other. An additional indicator, the Nations in Transit⁶² expert evaluations score, exists only for the new member states and can therefore not be used for comprehensive cross-EU comparison. Finally the Global Corruption Barometer⁶³ survey respondents in a wide range of countries on their actual experiences of corruption as well as perceptions of how and to what extent they see various institutions affected by corruption in their country. However while the Barometer is a more reliable tool for indicating the extent of everyday forms of corruption in a country (petty corruption or bureaucratic corruption), it misses out on the much more important phenomenon of high level political corruption and state capture – which is as a potential problem for both democracy and for the EU as an organization.

Trends

In the absence of better indicators that would be available for the whole time period and for the whole group of EU countries, a number of conclusions can still be drawn from the CPI and WB data about the state of corruption in EU member states. First, in terms of overall levels, the EU is characterized by great heterogeneity: among the current member states one finds both the countries perceived as ‘cleanest’ globally, notably the Scandinavian member states, and also some medium corrupt countries that do ‘worse’ than many developing countries in generally more challenging governance contexts. Among the latter Greece, Italy and a number of ‘new’ member states – Bulgaria, Romania and Slovakia - stand out, in the negative sense, as rather corrupt (CPI data). Second, it is worth pointing out that a number of new member states do well in EU comparison: for instance Estonia compares well with several long standing member states suggesting that North-South may be a relevant division in Europe. Nonetheless, the quantitative indicators confirm the commonly held opinion that corruption is a problem chiefly in the post-communist part of the EU as well as Italy and Greece.

In terms of developments over time, the methodological limitations of the data are most constraining. With this caveat, a number of observations can still be made. Most

⁶¹ Transparency International: The Global Coalition against Corruption, 1995-2015, Corruption Perceptions Index. Available at: <http://www.transparency.org/research/cpi/overview>

⁶² Freedom House: Nations in Transit, 2003-2016, Corruption Rankings. Available at: <https://freedomhouse.org/report-types/nations-transit>

⁶³ Transparency International: The Global Coalition against Corruption, 2003-2015, Global Corruption Barometer. Available at: <http://www.transparency.org/research/gcb/overview>

importantly, for the majority of EU countries the pattern is stagnation rather than marked upward or downward swings in perceived levels of corruption. This is not to say that individual countries' values remained constant over the past decade or so but rather that, at least according to the quantitative data sets, only relatively minor or temporary changes can be observed for the majority of EU member states. However, with respect to a number of individual countries, some trends may nonetheless be pinpointed. First, Poland is shown in the data sets to have improved considerably over the past ten years, from one of the regional laggards to one of the cleanest countries among the new member states. A similarly positive though less marked trend can be observed with respect to Estonia, which was however in any case among the post-communist countries with a least severe corruption problem. On the other hand, at least the WB data shows Hungary and Slovenia to have declined in the rankings. Among the old member states, Greece and Italy are shown to have a negative trend in levels of perceived corruption in the last few years.

The (direct) impact of the economic crisis

The WB and TI data both show relatively little change from the early 2000s to the early 2010s, and no marked impact in the late 2000s that could be *directly* attributed to the financial and economic crisis. This is to some extent surprising: it would have been reasonable to expect that the crisis created fertile conditions for corruption to 'erupt'. On the one hand, the crisis may have boosted corrupt practices in the sense that the stimulus packages – the injection of public funds into the economy as a crisis measure – impacted on supply side factors. On the other hand, in many countries the crisis necessitated austerity measures that meant cutting budgets for the civil service and public administration, which may have translated into both greater temptation for civil servants to supplement their income from corrupt sources and decreased the chances of detection – both factors, opportunity and risk, having been linked to corruption.⁶⁴ In the latter respect, cutting the budget of watchdogs, such as anti-corruption agencies or other specialized anti-corruption bodies – as was the case in Latvia and Lithuania, for instance⁶⁵ – is especially relevant.

Country specific factors: politics (indirect impact of the crisis)

Since no overarching pattern of either backsliding or improvement can be observed for the new member states – or indeed for the EU 28 overall – it is evident that what happened in

⁶⁴ Robert Klitgaard, *Controlling Corruption*, Berkeley: University of California Press, 1998.

⁶⁵ European Commission, Lithuania: Anti-Corruption Report, Brussels, COM(2014) 38 final; European Commission, Latvia: Anti-Corruption Report, Brussels, COM(2014) 38 final; Gabriel Kuris, *Balancing Responsibilities: Evolution of Lithuania's Anti-Corruption Agency 1997-2007*, Princeton University Case Study 2012; Gabriel Kuris, *Surmounting State Capture: Latvia's Anti-Corruption Agency Spurs Reforms 2002-2011*, Princeton University Case Study, 2012

the member states that do show marked change in either direction is in large part due to country specific factors, namely political dynamics. The rather small number of success stories in corruption studies, where very corrupt countries managed to clean up public life in a short period of time, all point to the importance of political will: namely, that a concerted, focused effort was made by policy-makers resulting in the introduction *and implementation* of a whole range of anti-corruption measures. Conversely, a worsening corruption situation is due to the reluctance or passivity of ruling elites in affecting change or upholding past achievements, which results in window-dressing or no concrete action. Moreover, ruling parties, or a cartel of the main parties in and out of government, can actively make matters worse when rather than just standing by they build support or consolidate their power by capturing the state – this is a situation when corruption is not an anomaly but integral to the functioning of the whole system. In a number of new member states this pattern of state capture is closest to describing the current state of affairs. The economic crisis may have had an indirect role in this in some cases in the sense of creating fertile conditions for large scale electoral swings and for new governments taking office to redesign political institutions in a way that enabled state capture.

Pre-accession vs post-accession dynamics

Another relevant consideration for the new member states is the impact of conditionality. Prior to accession, the EU demanded stringent anti-corruption measures as part of the Copenhagen criteria and this indeed induced governments in the then candidate countries to pass legislation (transparency and freedom of information) and set up anti-corruption institutions and mechanisms, including FOI ombudsmen and specialized anti-corruption bodies (agencies, prosecutors and even tribunals). However, upon accession the leverage afforded by conditionality to the Commission disappeared (with the exception of the Cooperation and Verification Mechanism for Bulgaria and Romania). This resulted in many new member states losing momentum for anti-corruption measures. An important factor to note here is that the Commission's, and more broadly the EU's, powers in the anti-corruption area are rather limited vis-à-vis the member states. In sum, stagnation or backsliding in the new member states post-accession is consistent with expectations and findings from the existing literature on conditionality.

Whether either of these possible explanations holds can only be analysed on the level of the member states, though qualitative research.

BACKSLIDING AND EQUALITY

To the extent that the economic crisis has promoted reduced spending and downgrading of the policy priorities associated with equal opportunities and measures to combat discrimination, a pertinent empirical question is whether some national measures have stepped back from commitments made within the European equality framework.

The prohibition of discrimination is a fundamental principle of the European Union. The EU adopts legislation against discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. This legislation does not prohibit discrimination in all areas of life, but in a number of specified key areas such as employment. EU Member States have an obligation to implement EU law in their national legislation and to apply it correctly, and thus there is considerable scope for hard backsliding in terms of violation of the *acquis*. However, even where EU law requires institutions to be established or lays down procedures and standards, the amount of discretion left to the member states means that there is also substantial scope for soft backsliding: national measures that violate EU norms but without a direct breach of EU law. In many cases, the reality is a mixture of hard and soft backsliding.

The EU Charter of Fundamental Rights, a legally binding document since 2009, in its Article 21 contains a prohibition on discrimination on various grounds. Until 2000 the body of EU law covered gender equality, including areas such as pensions, pregnancy and statutory social security regimes, but in the context of employment and social security. In 2000, two directives were adopted: the Employment Equality Directive prohibited discrimination on the basis of sexual orientation, religious belief, age and disability in the area of employment; the Racial Equality Directive prohibited discrimination on the basis of race or ethnicity in the context of employment, but also in accessing the welfare system and social security, and goods and services.⁶⁶ In 2004, the Gender Goods and Services Directive expanded the scope of sex discrimination to the area of goods and services.⁶⁷ The two latter Directives stipulate the establishment of independent equality bodies for gender and racial equality.

Equality and non-discrimination is a relatively recent area of concern for the EU and thus comparative methodology for measuring progress overtime, tailored to fit the EU policy context, continues to be limited. The majority of indicators measure social inequalities and progress or backlash along those lines, but very few capture policy input and outputs. In addition, while equality can be perceived as an integrated policy field, its various aspects

⁶⁶ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Official Journal of the European Union, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054>; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal of the European Communities 19.7.2000, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043>

⁶⁷ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. Official Journal of the European Union, available at: <http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A32004L0113>

continue to be addressed in isolation. Gender equality, race and ethnicity, and disability are viewed as the major separate fields, with LGBTI rights emerging more recently. The few, fragmented, and mostly one-off indicators that exist are in ‘silos’. This makes it difficult to capture trends and patterns of intersectional policy field with standardized set of quantitative indicators. Therefore, for the purpose of mapping potential backsliding trends data was reviewed alongside an array of qualitative sources, and indexes developed for purposes of this particular mapping exercise.

Mapping Equality: Gender, Race, Disability

The policy brief maps backsliding trends in three fields of equality – gender, race, and disability – domains in which literature on crisis is most robust. In line with EU legislative and normative frameworks, these three domains are treated separately, however we acknowledge their intersectionality and compare member states’ performance on all three domains.

Gender

With the entry into force of the Treaty of Amsterdam in 1999, the promotion of equality between men and women throughout the European Community became one of the essential tasks of the Community. With time all Member State transposed Directive 2004/113/EC on gender equality in the access to and supply of goods and services and Directive 2006/54/EC on gender equality in employment and occupation committing to designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination. In addition the Member States have developed equality strategies and action plans in line with EU frameworks that promote gender equality into all its policies and regulations.

The indicators for measuring potential hard and soft backsliding were inferred from country reports prepared by the European Network of Legal Experts in the Field of Gender Equality and Non-Discrimination⁶⁸ and from the European Commission report “The impact of economic crisis on the situation of women and men and on gender equality policies”.⁶⁹ We have decided to focus on policy inputs bringing analytical attention on the weakening of

⁶⁸ The Network issues 2 country reports per year that focus on political and policy developments in the field. We analysed all the reports issued between 2006 and 2015 on all Member States. Data was compiled according to four categories: policy developments, legislative developments, institutional developments, research developments. See http://ec.europa.eu/justice/gender-equality/document/index_en.htm#h2-9

⁶⁹ European Commission, *The impact of economic crisis on the situation of women and men and on gender equality policies*, Luxembourg: Publications Office of the European Union, 2013.

institutional and legislative frameworks; de-prioritization of gender mainstreaming; and introduction of austerity measures that directly or indirectly impact gender equality. For that purpose we established four composite indicators to be researched on a case by case basis:

- A) retrenchment of equality bodies
- B) retrenchment of gender equality strategies
- C) reduction in family benefits,
- D) reduction in maternity/paternity allowance

The retrenchment of equality bodies and equality strategies (A and B) considers the weakening of institutional and legislative frameworks established for the purpose of breaking down barriers, eliminating discrimination and ensuring equal opportunity and access both in employment, and to goods and services. It captures downgrading and loss of independence of gender equality bodies (changes in legal status, restrictions in competences, downgrading, reduction in budgetary provisions, political pressure to eliminate the agencies) and de-prioritization of gender mainstreaming and awareness raising activities. Reduction in family benefits and maternity/paternity allowance looks at disproportionate gender impact of austerity related policies that directly and indirectly impact gender equality. It also measures decrease in ex-ante gender evaluation and impact studies, which appraise the adequacy of planned/operating measures to promote equal opportunities between men and women and to prevent discrimination.

Reflecting on the EU legislation and norms in the area of gender equality, we consider retrenchment of equality bodies as hard backsliding, retrenchment of equality strategies as soft backsliding, and reduction in benefits and allowance as a mixture of hard and soft backsliding. (See Annex 3 Table 1)

Race

As a result of the transposition of the Race directive of 2000, anti-discrimination laws establish a consistent set of rights and obligations across all EU countries, including procedures to help victims of discrimination. Member States are obliged to provide protection against discrimination in employment and training, education, social protection (including social security and healthcare), social advantages, membership and involvement in organizations of workers and employers and access to goods and services, including housing. All Member States have established specialized bodies to provide independent assistance to victims of racial discrimination. In line with EU integration framework, they develop strategies to promote diversity and integration of ethnic minorities (the Roma), indigenous communities, and non-EU nationals.

Indicators for measuring backsliding in the field of race equality were derived from the monitoring reports prepared by the European Commission against Racism and Intolerance (ECRI)⁷⁰. We also analysed shadow reports compiled by the European Network against Racism and Race Equality Directive shadow reports prepared by the Open Society Foundation.⁷¹ As in the case of the gender equality domain, we focused on institutions and anti-discrimination legislation. The selected set of indicators includes:

- A) retrenchment of legislation to combat racism and racial discrimination
- B) retrenchment of specialized bodies
- C) retrenchment of integration policies

Retrenchment of legislation to combat racism and racial discrimination pertains to laws and available legal tools that prevent and penalise direct and indirect discrimination based on racial or ethnic origin. The indicator captures weakening of available protection and responses to offences involving racism and racial discrimination. It also assesses the effectiveness of the provisions for combating the dissemination of racist ideas as well as incitement to commit and the commission of discriminatory acts or acts motivated by hatred. Retrenchment of specialized bodies looks at the degree of their independence (both in law and in fact) the scope of their remit and resources available for monitoring, collecting data, and instigating legal procedures. Finally the retrenchment of integration policies brings attention to strategies and schemes that promote diversity and equal opportunities, provide assistance to vulnerable groups and prevent discrimination through various mechanisms (i.e. immigration integration programmes, Roma inclusion strategies). Focus rests on reduction in budgetary allocations and targeting scope, as well as de-prioritization of integration objectives and awareness rising campaigns.

In addition we examined socio-political context in each member state in order to capture a potential surge in right-wing extremist groups and political parties, an intensification of hate-speech in public discourse, and an increase in violent acts taken against immigrants and racial minorities. Here we found worsening of conditions across the board in European countries.

⁷⁰ We analysed all the ECRI reports issued between 2008 and 2015 on all Member States. Data was compiled according to three leading themes – hate-speech, violence, integration. European Commission against Racism and Intolerance, 1998-2015, Country Monitoring Work. Available at:

http://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp

⁷¹ European Network against Racism, Racist Crime in Europe, ENAR Shadow Report 2013-2014. Available at: http://www.enar-eu.org/IMG/pdf/shadowreport_2013-14_en_final_lowres-2.pdf. European Network against Racism with support of PROGRESS, and the Open Society Foundation, Racism in Europe Shadow Report 2011-12. Available at: http://www.enar-eu.org/IMG/pdf/shadowreport_en_lr_3_.pdf

Reflecting on the EU legislation and norms in the area of racial equality we consider retrenchment of legislation and specialized bodies as hard backsliding and the retrenchment of integration policies as soft backsliding. (See Annex 3 Figure 2)

Disability

European Member States have all made commitments to combat disability discrimination, and specifically, the disability provisions of the Employment Equality Directive (Directive 2000/78/EC, henceforth: the Directive). Accordingly disabled people should have access to measures that ensure choices and control of life on an equal basis with others. They should be able to decide where and with whom they live, knowing that there are a range of support services (including personal assistance) to support 'living and inclusion in the community' without isolation or segregation from that community. The EU has become party to the UN Convention on the Rights of Persons with Disabilities,⁷² which is the first international legally-binding instrument setting minimum standards for rights for people with disabilities. All member states have signed the Convention, and 21 have also ratified. The Convention sets the highest standards of commitments on MS concerning the rights of disabled persons.

In order to measure potential backsliding in the disability domain we turned to the European Disability Forum's "Report on the impact of the crisis on the rights of persons with disabilities"⁷³. In addition we analysed reports prepared by the European Network for Independent Living and European Coalition for Community Living and various independent national studies.⁷⁴ The focus rested on cuts to disability support framework, including disability allowance and pensions, supported employment and care services. The indicators include:

- A) Retrenchment of de-institutionalization process
- B) Supported Employment Cuts

⁷² United Nations General Assembly, Convention on the Rights of Persons with Disabilities adopted on 13 December 2006, came into force on 3 May 2008. Available at:

<http://www.un.org/disabilities/convention/conventionfull.shtml>

⁷³ The report demonstrates the impact of economic crisis on persons with disability in two main fields – economic participation and political and social participation. Countries not covered in the report include Cyprus, Finland, Germany, Luxembourg and Malta. European Disability Forum, 2014, "Report on the impact of the crisis on the rights of persons with disability". Available at: http://www.edf-feph.org/Page_Generale.asp?DocID=13854&thebloc=13856

⁷⁴ European Network for Independent Living (2014) Comparing the Cost of Independent Living and Residential Care. Available at: http://www.enil.eu/wp-content/uploads/2012/06/Cost-survey_FINAL1.pdf. European Network for Independent Living and European Coalition for Community Living (2014) Shadow Report on the Implementation of Article 19 of the UN Convention on the Rights of Persons with Disabilities in the European Union. Available at: <http://www.enil.eu/wp-content/uploads/2012/06/Shadow-Report-11-04-2014-final-WEB-1-1.pdf> European Network for Independent Living (2013) Personal Assistance Services in Europe. Available at: <http://www.enil.eu/wp-content/uploads/2012/06/European-Survey-on-Personal-Assistance-Final.pdf>

- C) Support/Care Services Cuts
- D) Disability Allowance/Pensions Cuts
- E) Restrictive Needs Assessment

De-institutionalization (A) captures cuts to independent living services and weakening of the right to Personal Assistance. The next three indicators (B/C/D) pertain to cuts in resources and services available to disabled persons, as part of austerity measures and fiscal consolidation plans. Restrictive needs assessment relate to policies which limit access to benefits only to those with 'long-term disability' and those who are fully dependent on care.

Given that disability services rest in the EU normative framework, we categorize all five indicators as soft backsliding. (See Annex 3 Figure 3) It is important to note that the categorization given by the "Report on the impact of the crisis on the rights of persons with disabilities" at times run counter to patterns inferred from ENIL reports and national studies. This is due largely to a more complex understanding by the report of the 'roll back' on commitments to disability policy framework that goes beyond single indicators. Thus at the present moment the presented data should be treated with caution and the inconsistencies must be explained through an in-depth case study analysis of individual countries.

Comprehensive assessment

In the final stage of the mapping exercise, we aggregated the indicators into three broad categories –gender, race, disability – in order to show how each Member State perform in these domains. This exercised allowed us to identify countries with strong backsliding propensities. (See Annex 3 Figure 4)

Trends

Comparing the three domains by frequency of backsliding value of the composite indicators, disability appears as the most vulnerable equality agenda with eleven countries showing step-backs. But this vulnerability pertains to less than half of the EU member states. Importantly though most of the disability indicators we used have financial implications and are all indicators of soft backsliding.

Countries are rather divided in the gender equality field: 10 countries show no backsliding along the chosen indicators, 7 show clear patterns of backsliding, and the rest are inconsistent along the various selected indicators.

Race equality emerges as the most resilient domain with fifteen polities showing no change in policy directions. Importantly though two of the three indicators we used here are showing hard backsliding, and only one is soft backsliding.

We have identified three clusters of countries according to their policy input/output indicators measured separately in three equality domains. The first cluster is composed by the **backsliding polities** that showed unequivocal backsliding in at least two equality domains (marked red): Czech Republic, Hungary, Ireland, Italy, Latvia, Lithuania, Romania, Spain, and the UK. With the exception of three countries in the cluster, gender equality was subject of step-backs everywhere with disability as the second most vulnerable domain. A concentration of negative trends could clearly be captured in the new member states in CEE. The reasons for converging performance of UK and Spain in equality policies will be an interesting puzzle for the in-depth analysis.

The second cluster of countries is composed by those that show **mixed policy performance** identified by mixed values of all three indicators or by those that show diverging performance in the three domains (marked in white). These countries are: Austria, Bulgaria, Cyprus, Estonia, France, Greece, Luxemburg, Portugal and Slovenia. This cluster is surprisingly diverse, cutting across East-West and North-South divides within Europe. It is noteworthy that among these countries one could find ones that were heavily hit by 2008 financial and economic crisis and the ones with less poisonous effects.

The third cluster is composed by those member states that have been able to **resist to forces and invitations to roll back** their equality policies (marked green). This list is composed by the remaining last third of the 27 member states: Belgium, Denmark, Finland, Germany, Malta, The Netherlands, Poland, Slovakia and Sweden. The Nordic countries' and the Benelux group's location is not surprising. Malta's, Poland's and Slovakia's resilience, however, will deserve special attention at further stages of the research. Overall, one third of EU member states have shown unequivocal backsliding in equality policies in the post-2008 years. By the same token, one third of the countries was able to avoid stepping-back on commitments and fundamental achievements regarding equality in the EU.

CONCLUSIONS

In the last few years much has been made of democratic backsliding in the European Union, both in the media and in politics, and in academia. This policy paper represents an effort systematically to map the extent of backsliding in the EU, by focusing on three select areas – the rule of law, corruption and equality – that are at the core of the debates about backsliding. The question was driven by two broader questions – whether backsliding has

become a more severe problem in the EU as a consequence of the financial crisis and whether this represents a new transboundary crisis for the EU. The first step was mapping backsliding. The results across three areas are more or less in line with the broad expectations based on that Hungary, Poland, Romania and Bulgarian would be the most serious cases since these are the cases that have received most attention by journalists, politicians and academics. However, the data is less clear and unambiguous than might be anticipated, and the comparative data suggests that some aspects of backsliding are more prevalent actors the EU than might have been expected. Three points merit particular attention.

First, the comparative data does indeed confirm that the “usual suspects” – Hungary, Poland, Romania and Bulgarian – represent the most serious cases of backsliding. Unsurprisingly, given that it came about after the 2015 elections, the Polish case only show up in more recent reports. But even Hungary, which along with Poland is the most problematic case in terms of “illiberal democracy”, is not a clear-cut leader in backsliding in other important areas. In terms of corruption, the worst performers in the new member states are Romania, Bulgaria and Slovakia, with Hungary joined by Slovenia, Italy and Greece as countries with a worsening corruption problem; and in terms of equality, Hungary is joined by the Czech Republic, Romania, Latvia and Lithuania and four old member states. Even in terms of democracy and the rule of law it is the reports of the EU institutions, Venice Commission and the Helsinki Committees that single out Hungary and Poland – and to a lesser extent Romania and Bulgaria. In terms of the Freedom House data, Hungary is joined by Bulgaria and Greece, but not Romania or Poland.

Second, the comparative data indicates that backsliding is a much broader problem in terms of the states that score high on the backsliding scale in one of the three areas, and that elements of backsliding is present in both new and old member states. France stands alongside Hungary, Poland and Romania as the recipients of criticism from the European Commission regarding political backsliding. Greece and Italy join five of the new member states as poorer performers in terms of corruption. The indicators for equality were less straightforward and required more elaborate work, but in terms of the overall assessment Ireland, the UK, Spain and Italy all have scores put them among the five worst new member state performers.

Third, the comparative analysis suggests that backsliding is far from a uniform or homogeneous phenomenon. The literature on backsliding points to democratic institutions (the rule of law), process, transparency and performance (good governance), and human rights (including equality), as well as political opinion and legitimacy as core elements of democratic backsliding. However, the states the perform worst in terms of democratic backsliding are not necessarily the ones that perform worst on good governance or human rights, at least if corruption and equality is anything to go by. Whereas political backsliding is

high-profile, limited to a few significant cases and has drawn much attention, mapping backsliding on equality requires more work on composite indexes and shows a broader pattern of states going back on some of the commitments they have made as liberal democratic EU member states. Corruption lies somewhere between the two: it is largely shaped by domestic politics, but might consequently be expected to follow political backsliding with a time lag if and when elites' centralisation of political power goes together with efforts to capture political rents. Moreover, the long-standing cases of Greece and Italy demonstrated that corruption can have many causes, and be unrelated to political backsliding or the financial crisis.

Much of the literature on democratic backsliding inside and outside the EU has focused on select countries and been based on single or comparative case studies. The mapping of backsliding in the EU set out in this policy paper suggests that this is indeed an appropriate way to study backsliding. Although comparative data demonstrates that backsliding is a more serious problem in some (mostly new) member states, the comparative analysis set out in this paper also suggests that backsliding is a heterogeneous phenomenon that usually has country-specific characteristics, causes and dynamics. The next three papers in this series therefore take a case study approach, and proceed with investigation of select pairs or small sets of countries to assess the causes and consequences of backsliding in democracy and the rule of law, corruption and corruption control and equality with respect to gender, race and disability.

Annex 1 (Rule of Law)

Freedom House – Freedom in the World Index⁷⁵

Freedom in the World is an annual global report on political rights and civil liberties, composed of numerical ratings and descriptive texts for each country and a select group of related and disputed territories. A country or territory is assigned two ratings (7 to 1)—one for political rights and one for civil liberties—based on its total scores for the political rights and civil liberties questions. Each rating of 1 through 7, with 1 representing the greatest degree of freedom and 7 the smallest degree of freedom, corresponds to a specific range of total scores

Political Rights

The political rights questions are grouped into three subcategories: Electoral Process (3 questions), Political Pluralism and Participation (4), and Functioning of Government (3). The political rights section also contains two additional discretionary questions. The highest score that can be awarded to the political rights checklist is 40 (or a total score of 4 for each of the 10 questions).

Yearly scores from 0-40 (0 lowest score /40 highest score)

Civil Liberties

The civil liberties questions are grouped into four subcategories: Freedom of Expression and Belief (4 questions), Associational and Organizational Rights (3), Rule of Law (4), and Personal Autonomy and Individual Rights (4). The highest score that can be awarded to the civil liberties checklist is 60 (or a total score of 4 for each of the 15 questions).

The Rule of Law

The Rule of Law is a subcategory for Civil Liberties. The highest score that can be awarded to the rule of law checklist is 16 for the three questions **which include:** **(1)** Is there an independent judiciary? **(2)** Does the rule of law prevail in civil and criminal matters? Are police under direct civilian control? **(3)** Is there protection from political terror, unjustified imprisonment, exile, or torture, whether by groups that support or oppose the system? Is there freedom from war and insurgencies? **(4)** Do laws, policies, and practices guarantee equal treatment of various segments of the population?

⁷⁵ <https://www.freedomhouse.org/report/freedom-world/freedom-world-2016>

Table 1 – Freedom House, Political rights

Political Rights	PR - (0-40)													
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Austria	40	40	40	40	40	40	39	39	39	39	38	38	38	37
Belgium	39	40	39	39	40	39	39	40	39	40	40	40	40	40
Bulgaria	36	36	36	36	36	36	35	35	35	34	34	31	33	33
Croatia	31	31	34	35	35	35	35	36	36	36	36	36	36	37
Cyprus	39	39	39	38	38	38	38	38	38	38	38	37	37	38
Czech Republic	37	37	37	37	38	38	38	38	38	38	38	37	38	38
Denmark	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Estonia	37	37	38	39	39	38	39	39	39	39	39	39	39	38
Finland	40	38	40	40	40	40	40	40	40	40	40	40	40	40
France	39	38	38	38	38	38	38	38	38	38	38	38	38	38
Germany	38	40	40	39	39	39	39	39	39	39	39	39	39	39
Greece	36	36	37	37	37	37	37	36	36	35	35	35	35	35
Hungary	37	37	37	37	37	37	37	37	37	36	36	36	32	32
Ireland	38	40	40	40	39	39	39	39	39	39	39	39	39	39
Italy	38	38	38	39	38	38	38	37	37	36	35	37	36	36
Latvia	36	36	36	36	36	35	34	33	33	33	33	33	34	35
Lithuania	38	38	35	36	36	36	37	37	37	37	37	37	38	38
Luxembourg	40	40	40	40	40	40	40	40	40	40	40	39	38	38
Malta	40	40	40	39	39	39	39	39	39	39	39	39	39	39
Netherlands	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Poland	37	37	38	38	38	38	38	38	38	38	38	38	38	38
Portugal	40	40	40	40	40	40	39	39	39	39	39	39	39	39
Romania	32	32	28	30	32	32	34	34	34	34	32	35	34	34
Slovakia	36	36	37	37	37	37	37	37	37	37	37	37	37	36
Slovenia	38	38	38	38	38	38	38	38	38	38	38	38	38	39
Spain	39	38	38	38	39	39	40	40	40	40	39	39	39	39
Sweden	40	40	40	40	40	40	40	40	40	40	40	40	40	40
UK	40	39	39	39	40	40	40	40	40	40	40	40	40	40

Table 2 – Freedom House, Civil Liberties

<i>Civil Liberties</i>	0-60													
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Austria	58	59	59	58	58	58	58	58	58	58	58	58	58	58
Belgium	56	59	59	58	58	58	58	58	58	58	57	57	57	56
Bulgaria	50	50	51	51	50	49	47	47	47	47	47	47	46	47
Croatia	49	48	48	49	50	50	49	50	50	50	50	50	50	50
Cyprus	57	57	57	57	57	57	57	56	56	55	55	55	56	56
Czech Republic	47	52	56	55	57	57	57	57	57	57	57	57	57	57
Denmark	59	59	59	58	58	58	57	56	57	58	58	58	58	58
Estonia	50	52	55	56	56	56	56	56	56	56	56	56	56	56
Finland	59	60	60	60	60	60	60	60	60	60	60	60	60	60
France	56	57	57	55	56	55	58	58	57	57	57	57	57	53
Germany	56	58	59	58	57	57	57	57	57	57	57	57	57	56
Greece	45	50	52	51	52	52	51	50	50	50	48	48	48	48
Hungary	52	52	55	56	55	55	55	54	53	52	52	52	50	47
Ireland	55	58	58	58	58	58	58	58	58	58	58	58	58	57
Italy	54	54	53	53	54	54	52	52	52	53	53	53	53	53
Latvia	50	50	51	53	53	53	53	53	52	51	51	51	51	51
Lithuania	51	52	52	54	54	54	54	53	53	53	53	53	53	53
Luxembourg	57	60	60	60	60	60	60	60	60	60	60	60	60	60
Malta	59	59	59	59	59	58	59	58	58	58	58	58	58	57
Netherlands	58	60	59	59	59	59	59	59	58	59	59	59	59	59
Poland	51	52	54	54	53	55	55	55	55	55	55	55	55	55
Portugal	58	58	57	57	57	58	58	58	58	58	58	58	58	58
Romania	46	47	44	45	49	49	49	49	49	49	49	49	49	49
Slovakia	47	51	53	54	54	54	54	53	53	55	55	54	53	53
Slovenia	54	54	53	54	53	53	53	53	53	53	53	53	53	53
Spain	53	53	53	57	57	57	57	57	57	57	57	57	57	56
Sweden	59	60	60	60	60	60	60	60	60	60	60	59	59	60
UK	57	58	58	57	58	57	57	56	57	56	57	57	57	55

Table 3 – Countries which demonstrate backsliding tendencies (3 points or more on the scale from 0-40)

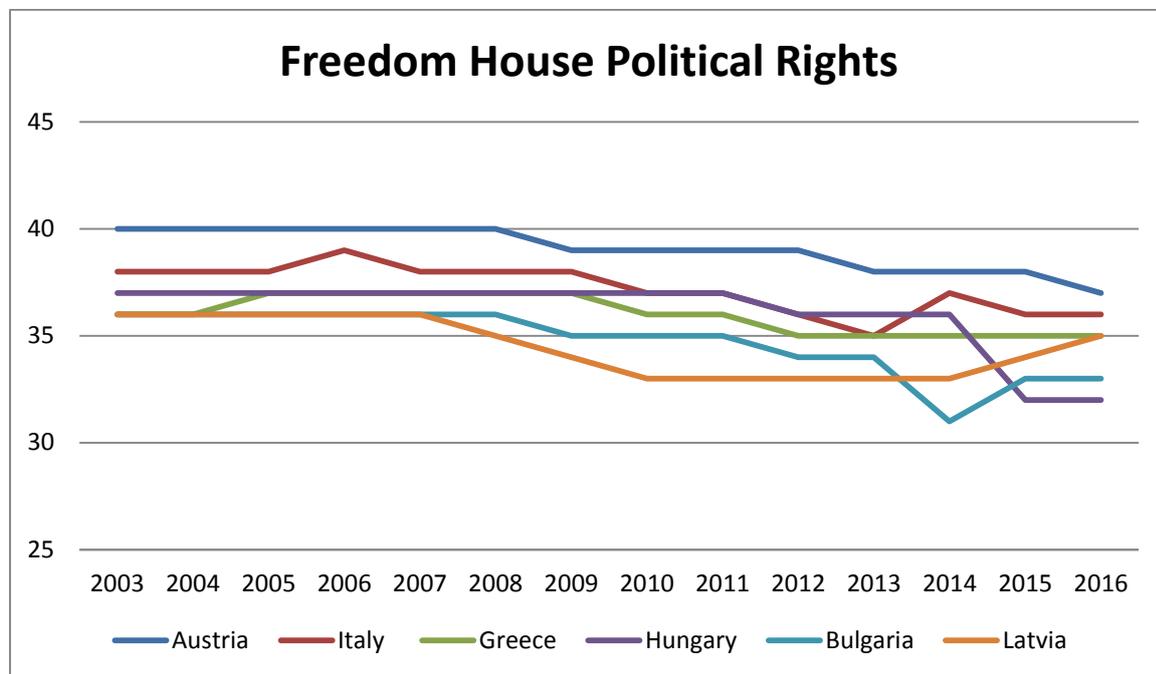
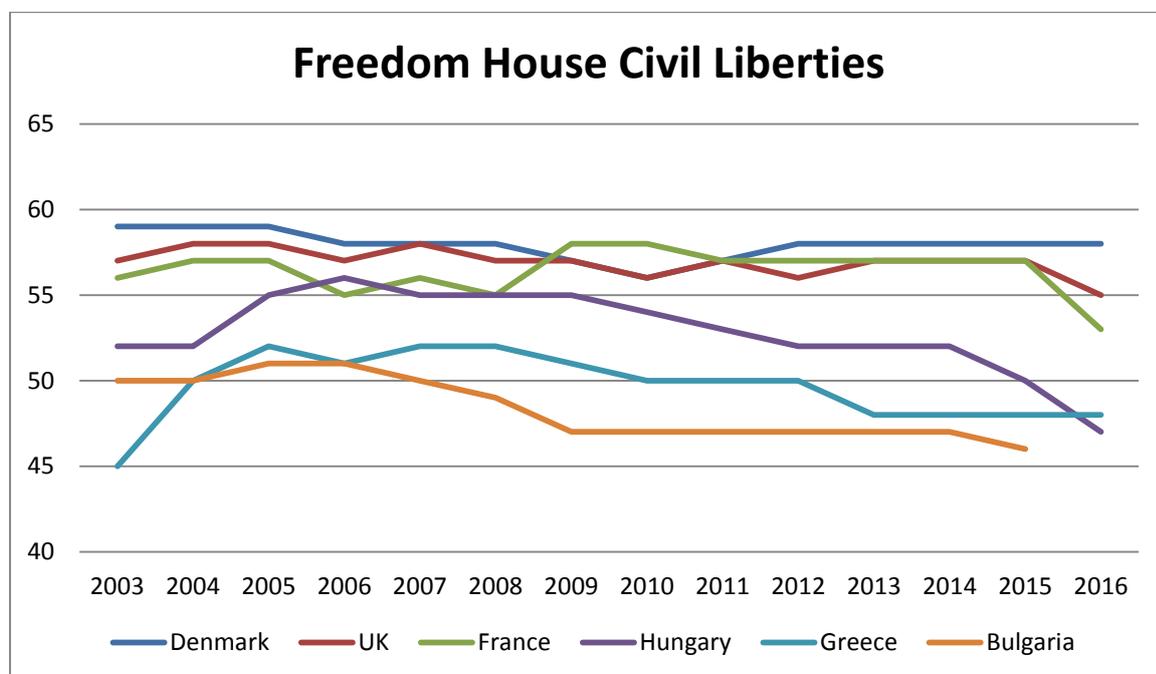


Table 4 – Countries which demonstrate backsliding tendencies (3 points or more on the scale from 0-60)



Bulgaria, Hungary, and Greece are three countries that backslide in the two domains – Political Rights and Civil Liberties

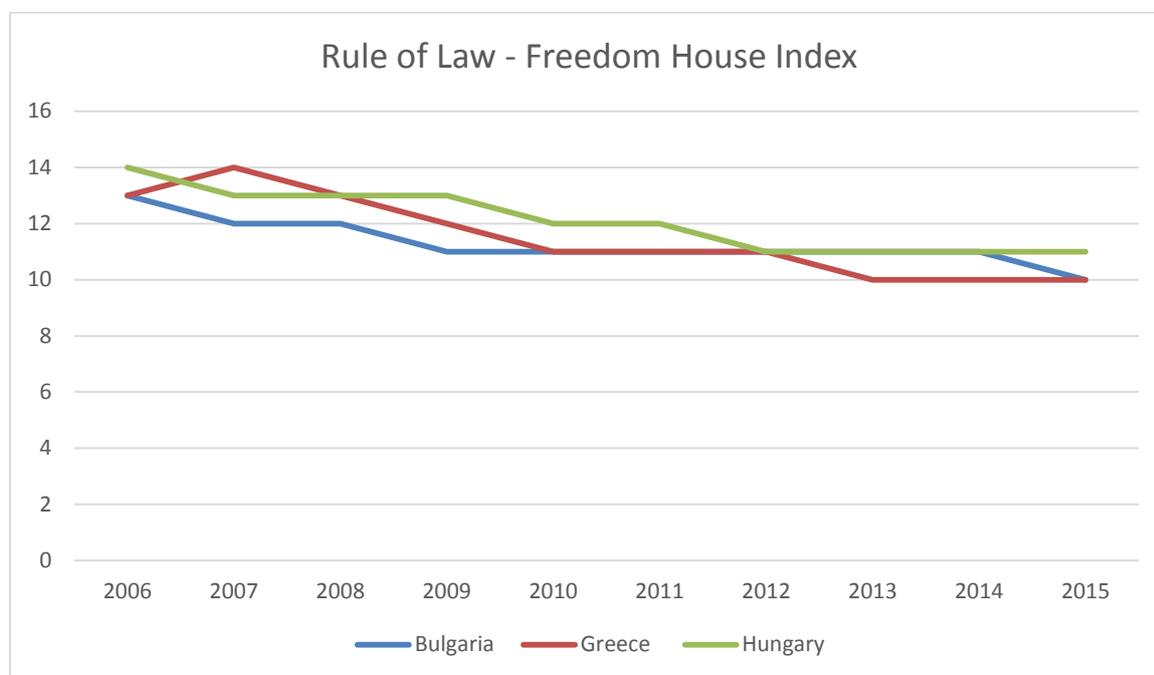


Table 5 – Backsliding and political rights. Average calculated by adding yearly scores (between 0-40) and dividing it by number of years (14).

Green = Strong performers

Purple = Average performers

Orange = Weak performers

Political Rights		
Member State	Average	Backsliding
Denmark	40	
Netherlands	40	
Sweden	40	
Finland	39.9	
Luxembourg	39.9	
UK	39.8	
Belgium	39.6	
Portugal	39.4	
Malta	39.2	
Ireland	39.1	
Austria	39	BACKSLIDING
Germany	39	
Spain	39	
Estonia	38.5	
Cyprus	38	
France	38	
Slovenia	38	
Poland	37.8	
Czech R.	37.6	
Italy	37.2	BACKSLIDING
Lithuania	36.9	
Slovakia	36.7	
Greece	36	BACKSLIDING
Hungary	36	BACKSLIDING
Croatia	34.9	
Bulgaria	34.7	BACKSLIDING
Latvia	34.5	BACKSLIDING
Romania	32.6	

Table 6 – Backsliding and civil liberties. Average calculated by adding yearly scores (between 0-60) and dividing it by number of years (14).

Green = Strong performers

Purple = Average performers

Orange = Weak performers

Civil Liberties		
Member State	Average	Backsliding
Finland	59.9	
Sweden	59.7	
Luxembourg	59.7	
Netherlands	58.9	
Malta	58.3	
Austria	58.1	
Denmark	57.9	BACKSLIDING
Ireland	57.7	
Portugal	57.7	
Belgium	57.6	
Germany	57.1	
Uk	56.9	BACKSLIDING
France	56.4	BACKSLIDING
Cyprus	56.2	
Spain	56	
Czech R.	55.7	
Estonia	55.2	
Poland	54.2	
Slovenia	53.2	
Italy	53	
Lithuania	53	
Slovakia	53	
Hungary	52.8	BACKSLIDING
Latvia	51.6	
Greece	49.6	BACKSLIDING
Croatia	49.5	
Bulgaria	48.2	BACKSLIDING
Romania	48	

Table 7 – Backsliding and the rule of law. The Rule of Law is a subcategory for Civil Liberties Average calculated by adding yearly scores (between 0-16) and dividing it by number of years (11).

Green = Strong performers

Purple = Average performers

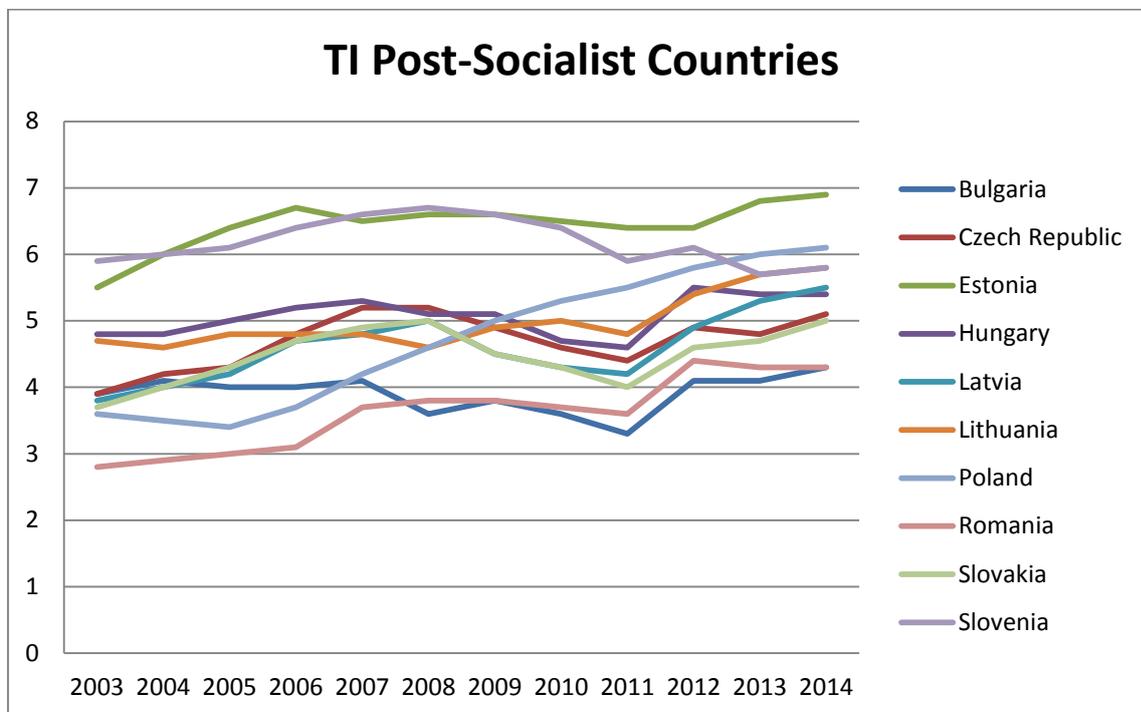
Orange = Weak performers

Aggregated Scores Rule of Law		
Member State	Average	Backsliding
Finland	16	
Luxembourg	16	
Sweden	15.9	
Malta	15.3	
Austria	15	
Belgium	15	
Cyprus	15	
Germany	15	
Ireland	15	
Portugal	15	
Netherlands	14.9	
Denmark	14.7	
UK	14.5	
France	14.4	
Spain	14.2	
Estonia	14	
Slovenia	14	
Czech R.	13.9	
Lithuania	13.4	
Poland	13	
Slovakia	12.2	
Hungary	12.1	BACKSLIDING
Italy	12	
Latvia	12	
Romania	11.9	
Greece	11.5	BACKSLIDING
Bulgaria	11.3	BACKSLIDING
Croatia	10.8	

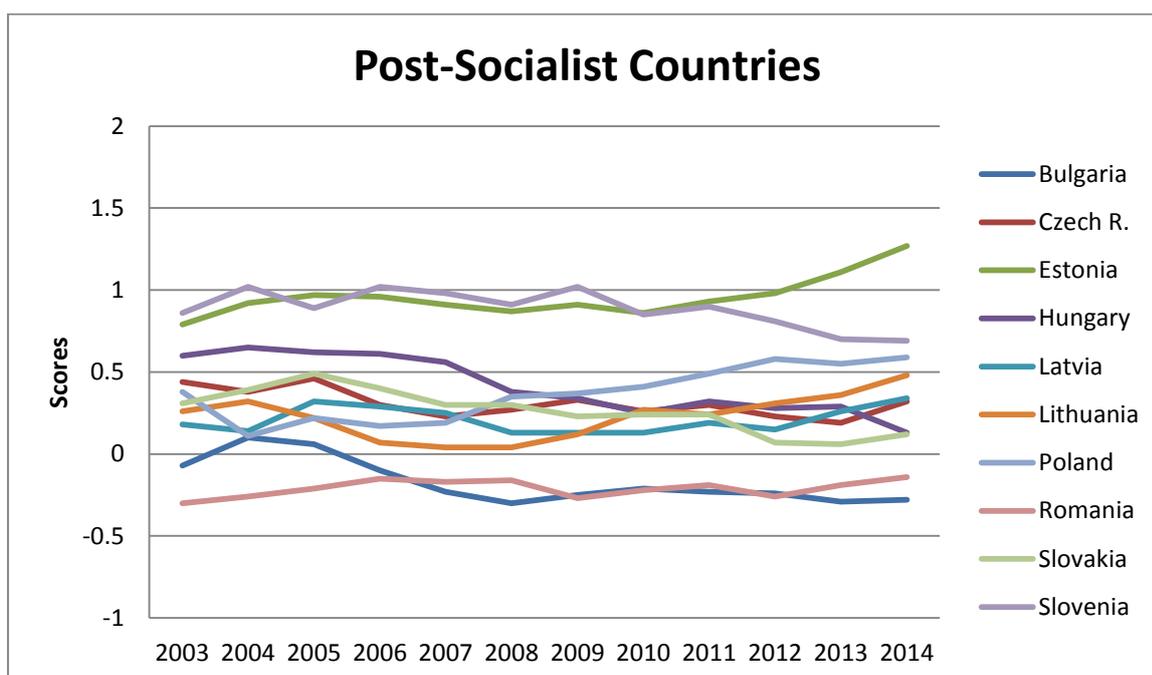
Bulgaria, Hungary, and Greece are three countries that backslide in the two domains – Political Rights and Civil Liberties

Annex 2 (Corruption)

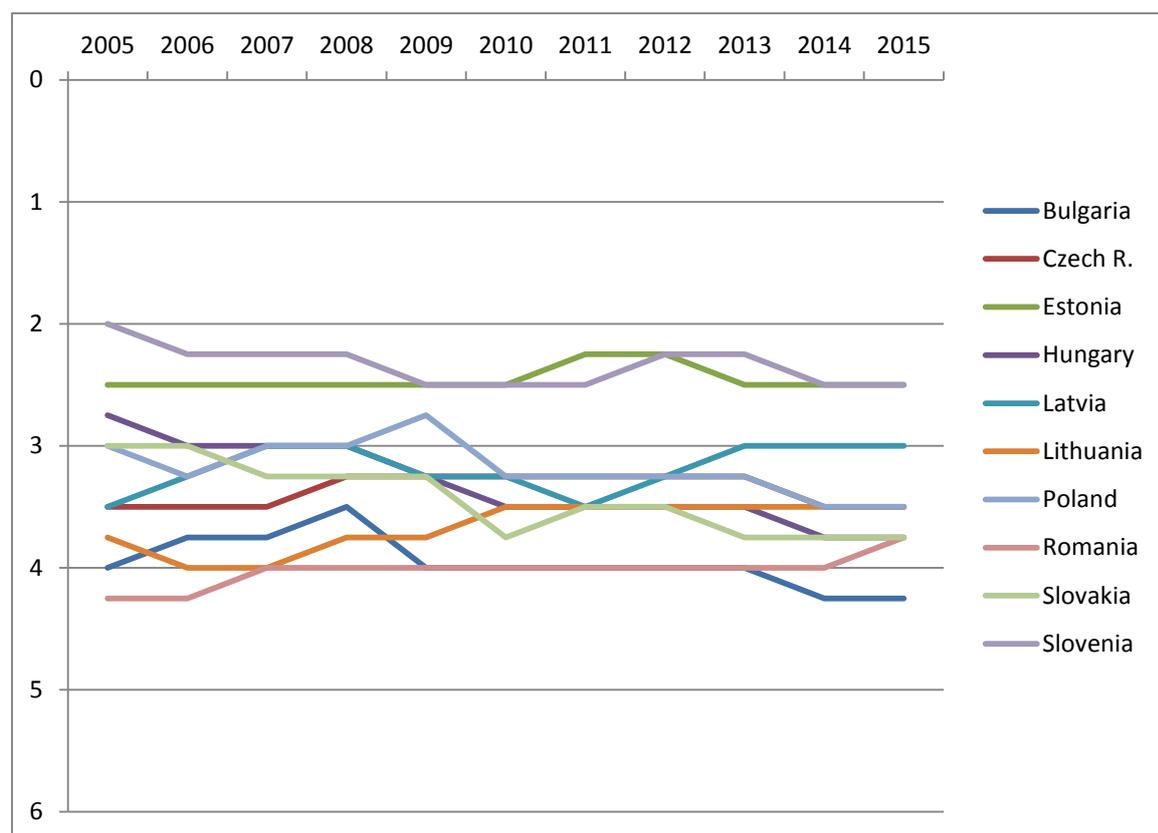
Transparency International Corruption Perception Index



World Bank Control of Corruption Indicator



Nations in Transit



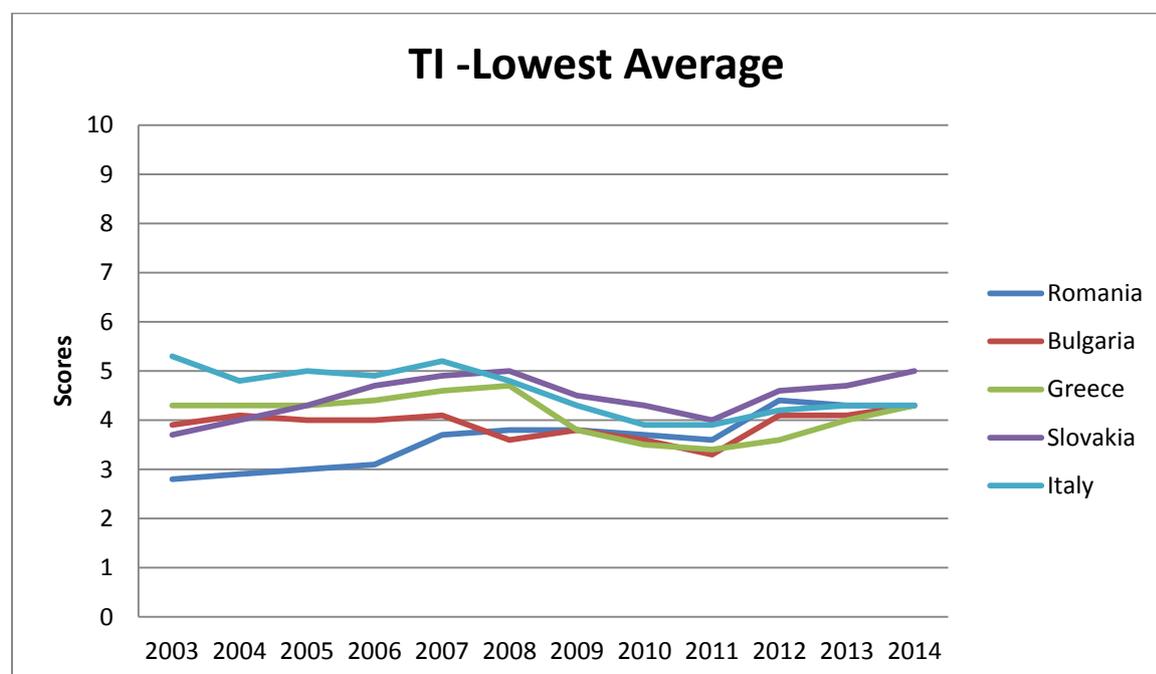
Transparency International Corruption Perception Index⁷⁶

Standardise data sources to a scale of 0-10 where a 0 equals the highest level of perceived corruption and 10 equals the lowest level of perceived corruption⁷⁷.

First 5 figures show countries according to their overall average (calculated by adding all the yearly scores and dividing it by 12).

Figure 6 shows all the post-socialist countries (without Croatia).

Figure 1



⁷⁶ <http://www.transparency.org/research/cpi/overview>

⁷⁷ As of 2012 the index score has been adjusted see:

http://tiukraine.org/sites/default/files/u/124/docs/e_corruption_perceptions_index_an_updated_methodology_for_2012_1.pdf

Figure 2

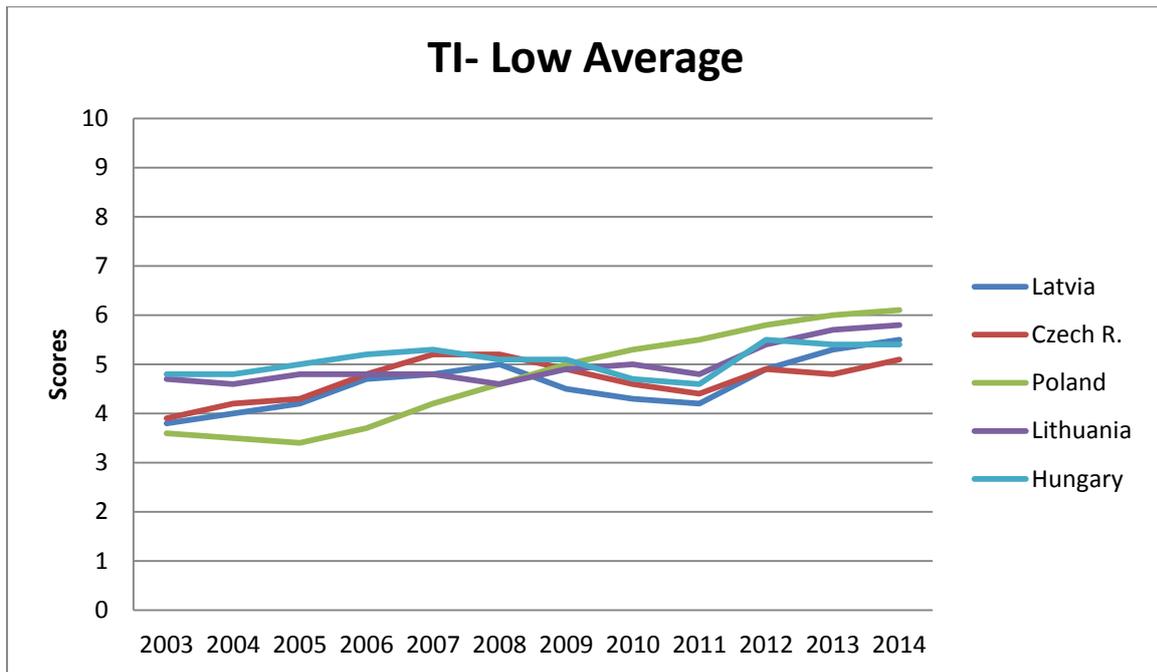


Figure 3

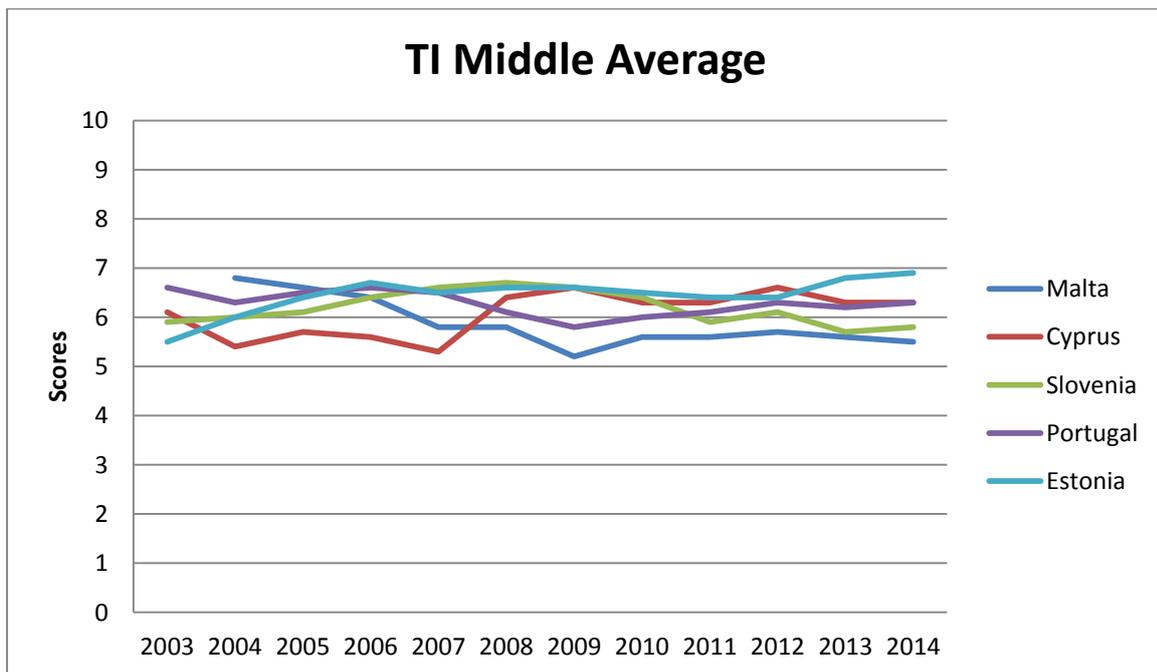


Figure 4

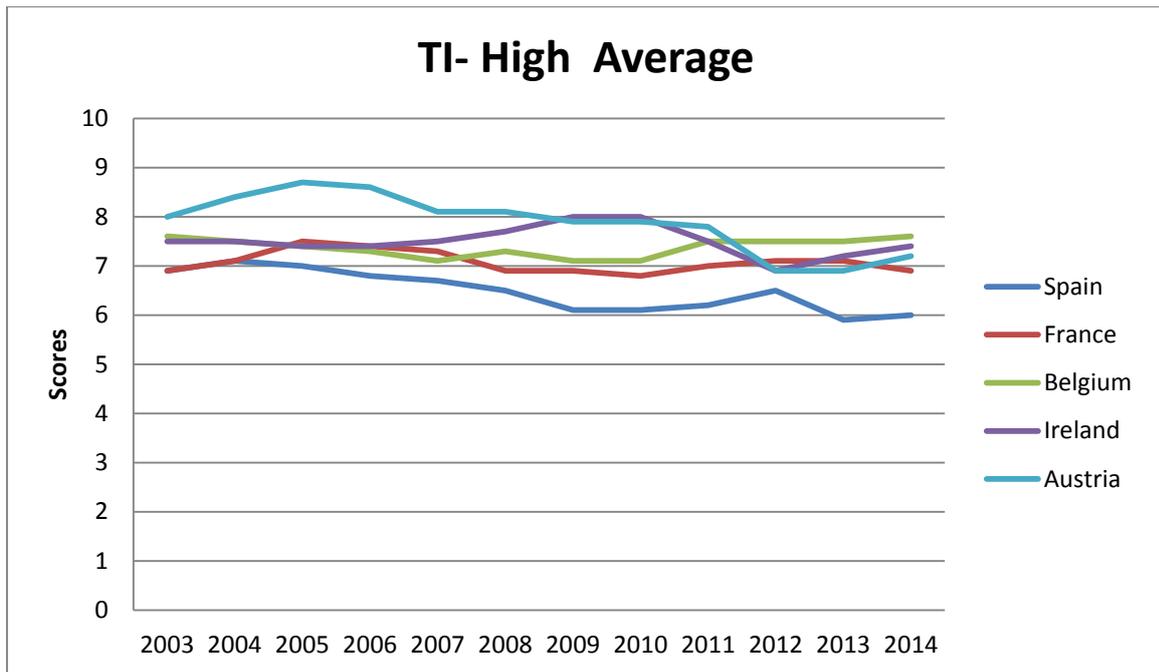


Figure 5

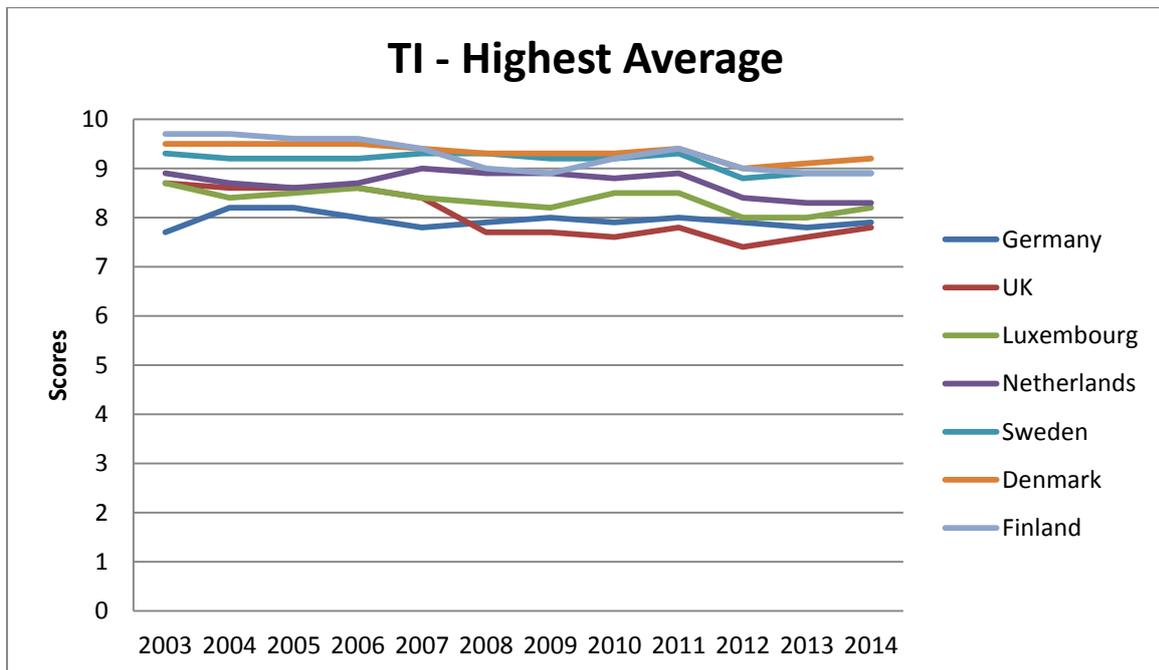
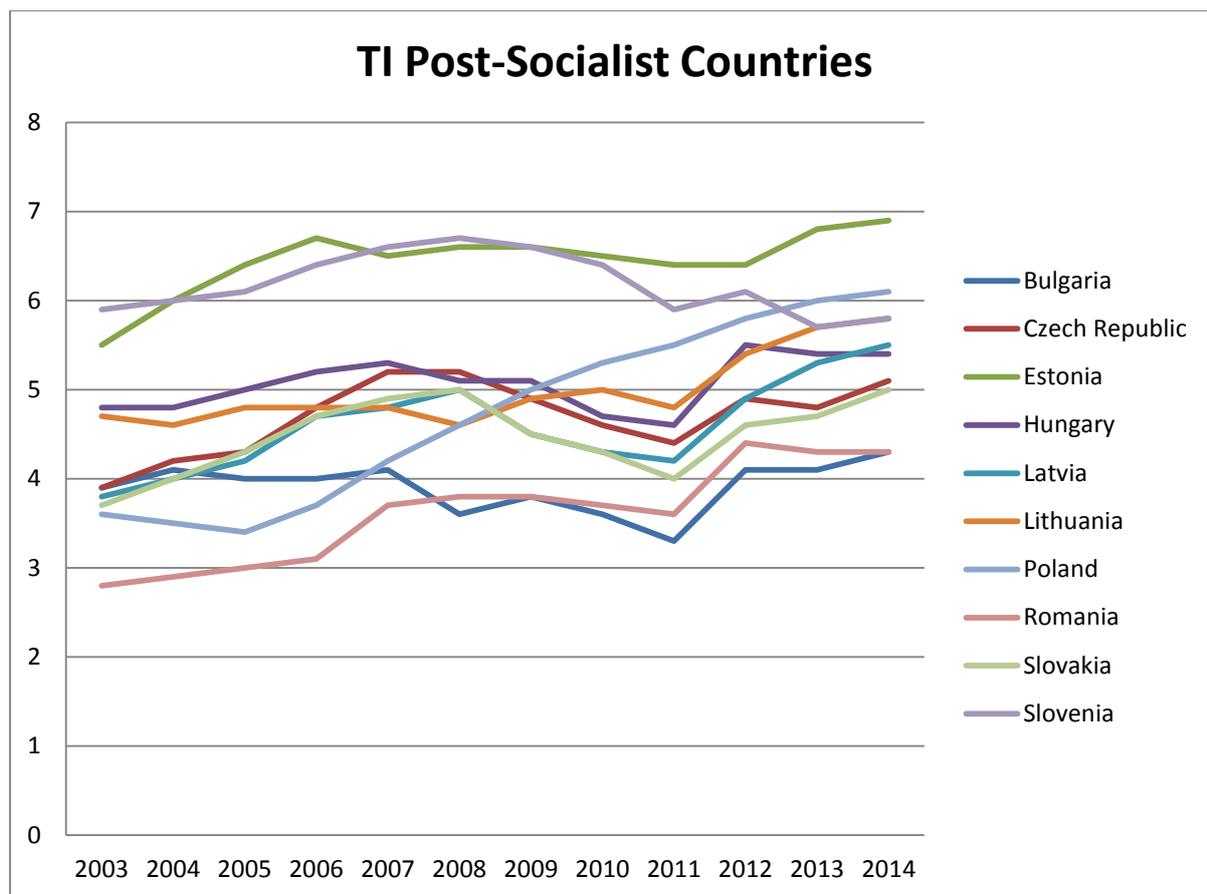


Figure 6



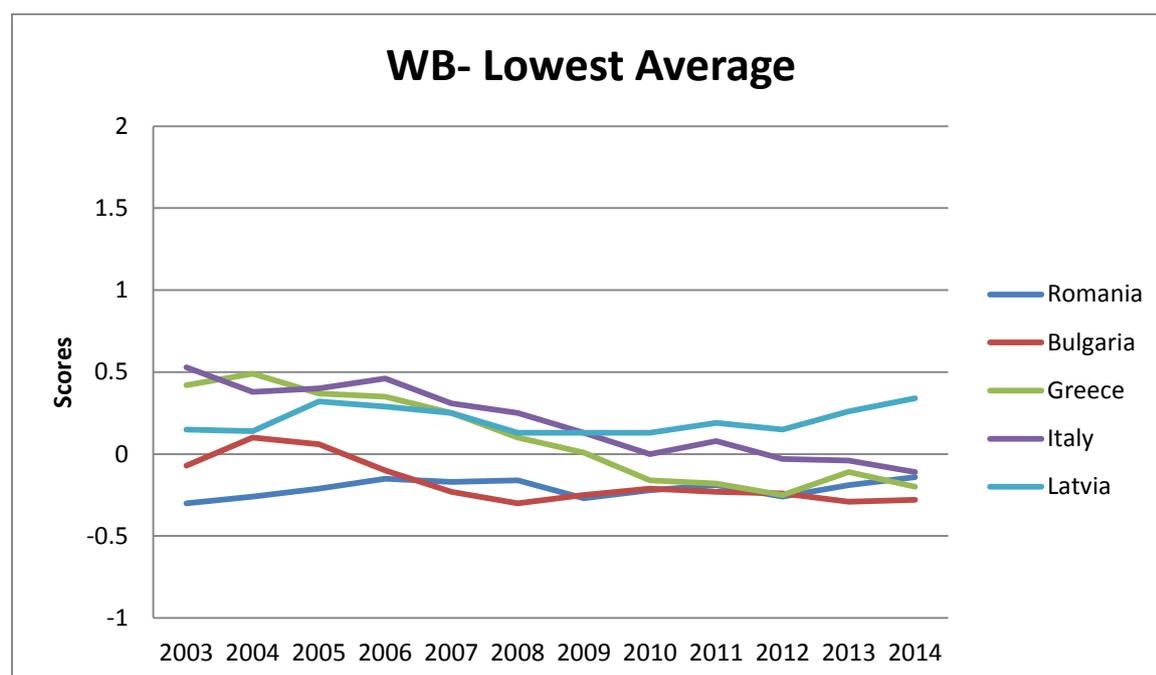
World Bank Corruption Control Index⁷⁸

The indicators are reported in their standard normal units, ranging from approximately -2.5 to 2.5.

First 6 figures show countries according to their overall average (calculated by adding all the yearly scores and dividing by 12)

Graph 7 shows all the post-socialist countries (without Croatia)

Figure 7



⁷⁸ <http://info.worldbank.org/governance/wgi/#doc>

Figure 8

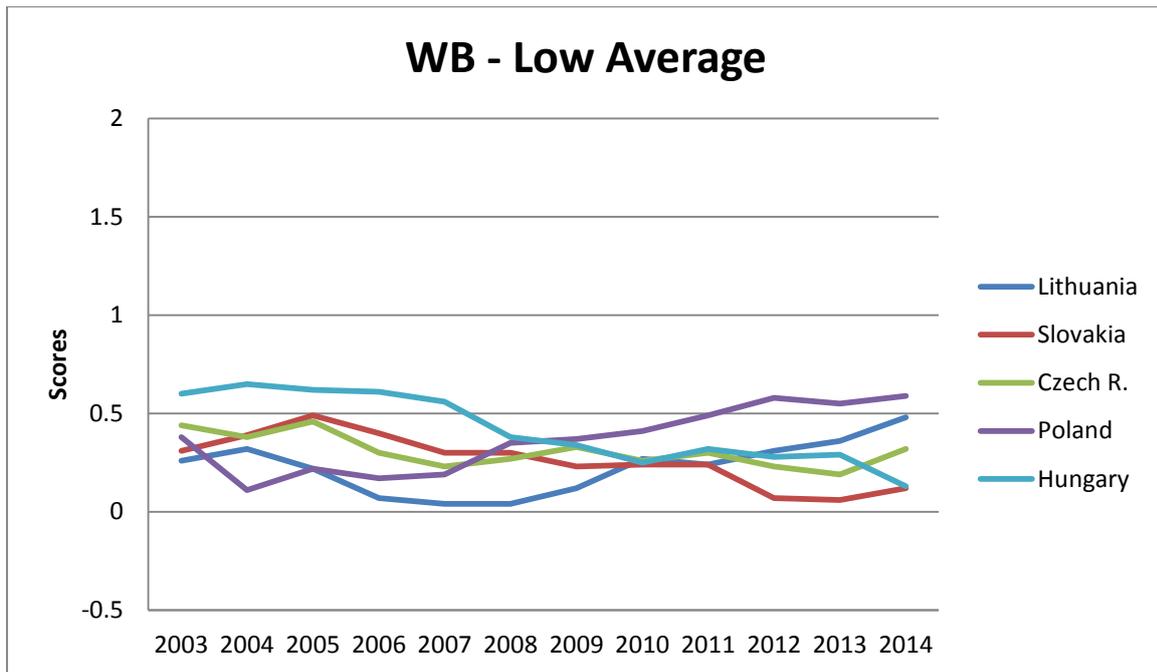


Figure 9

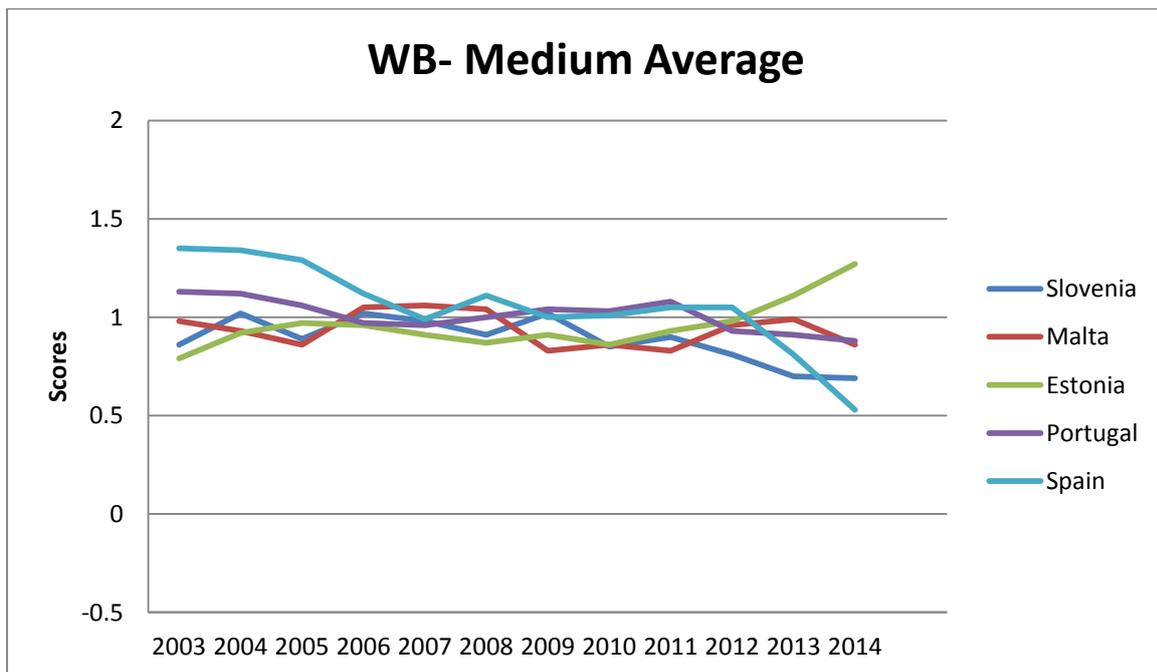


Figure 10

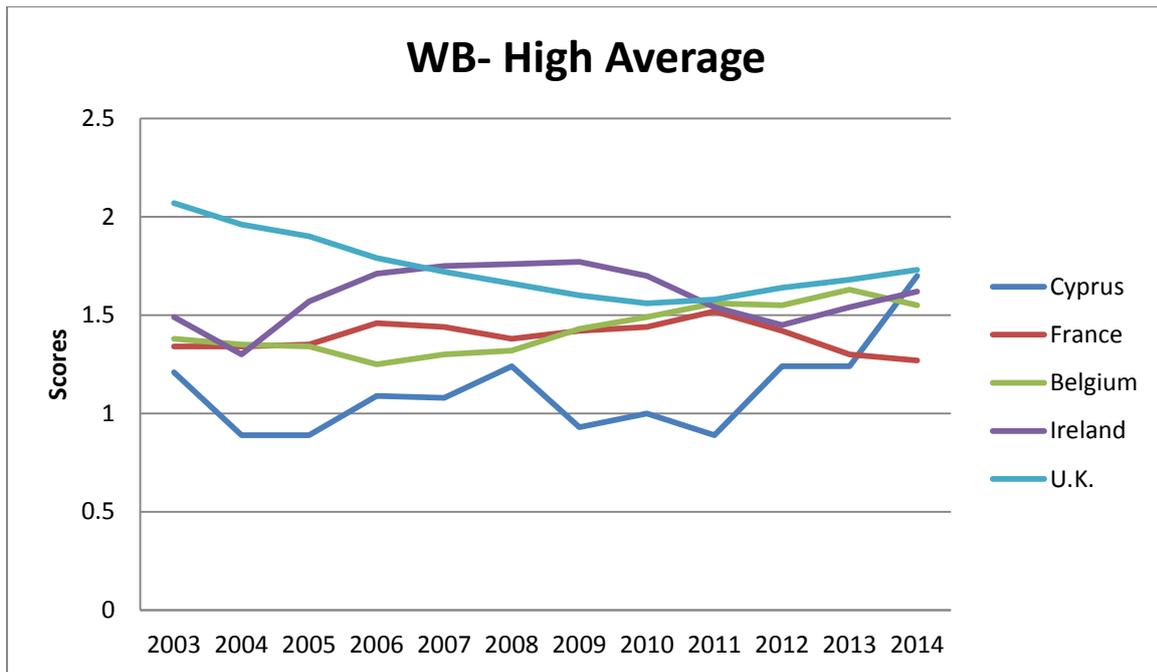


Figure 11

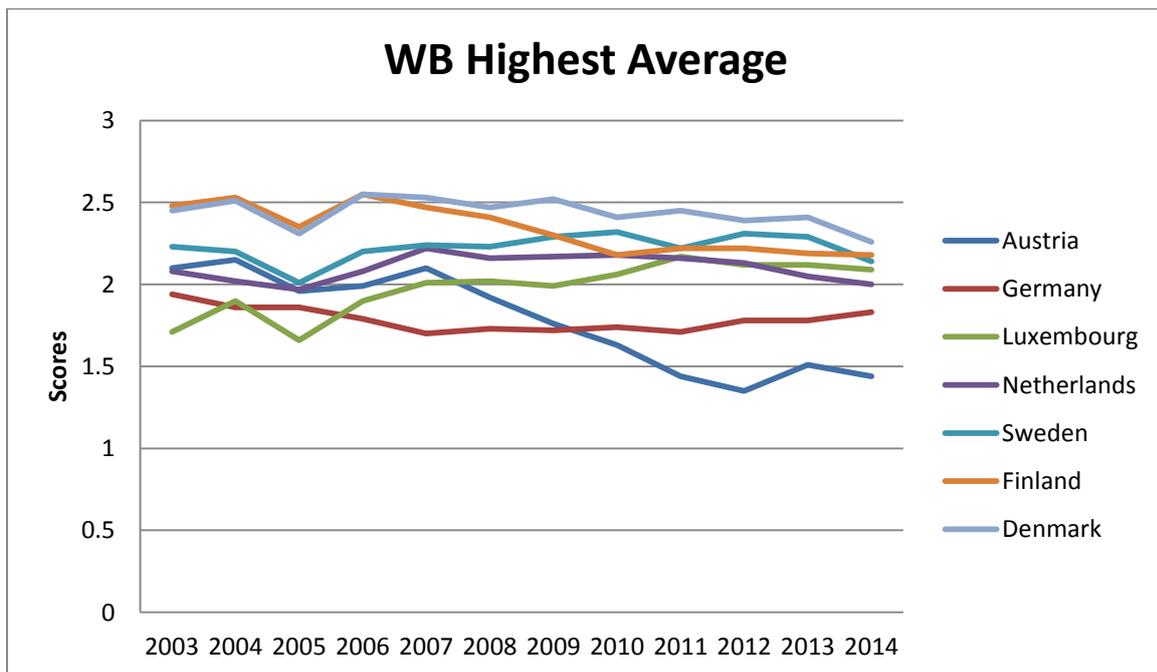
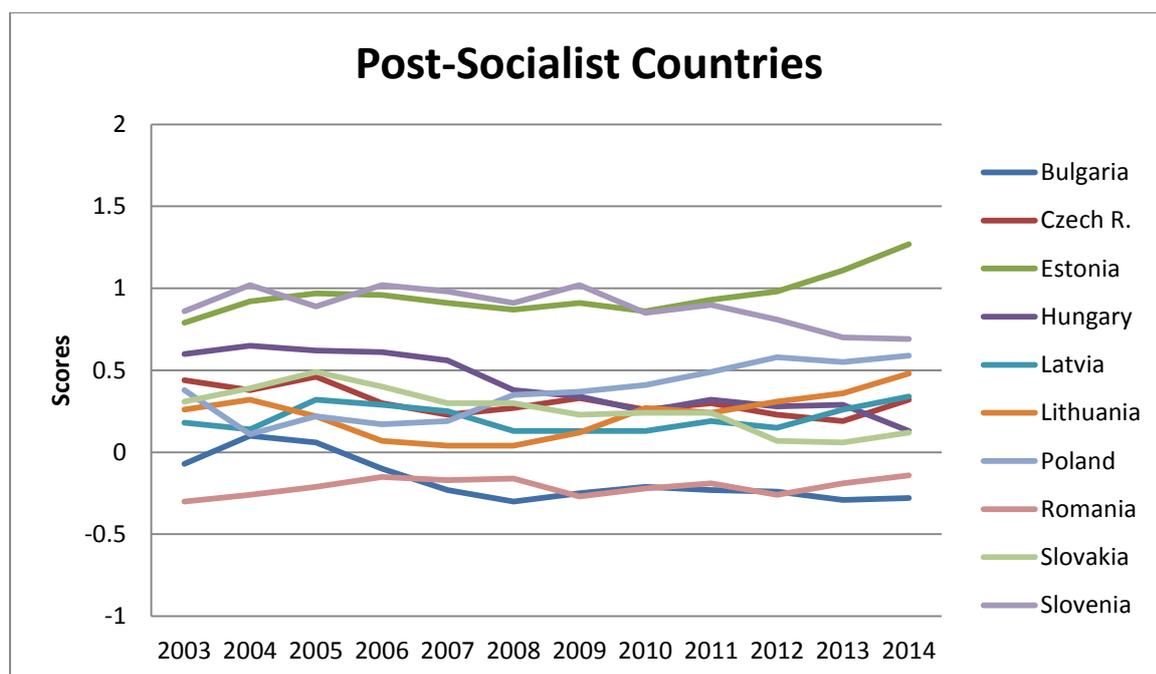


Figure 12

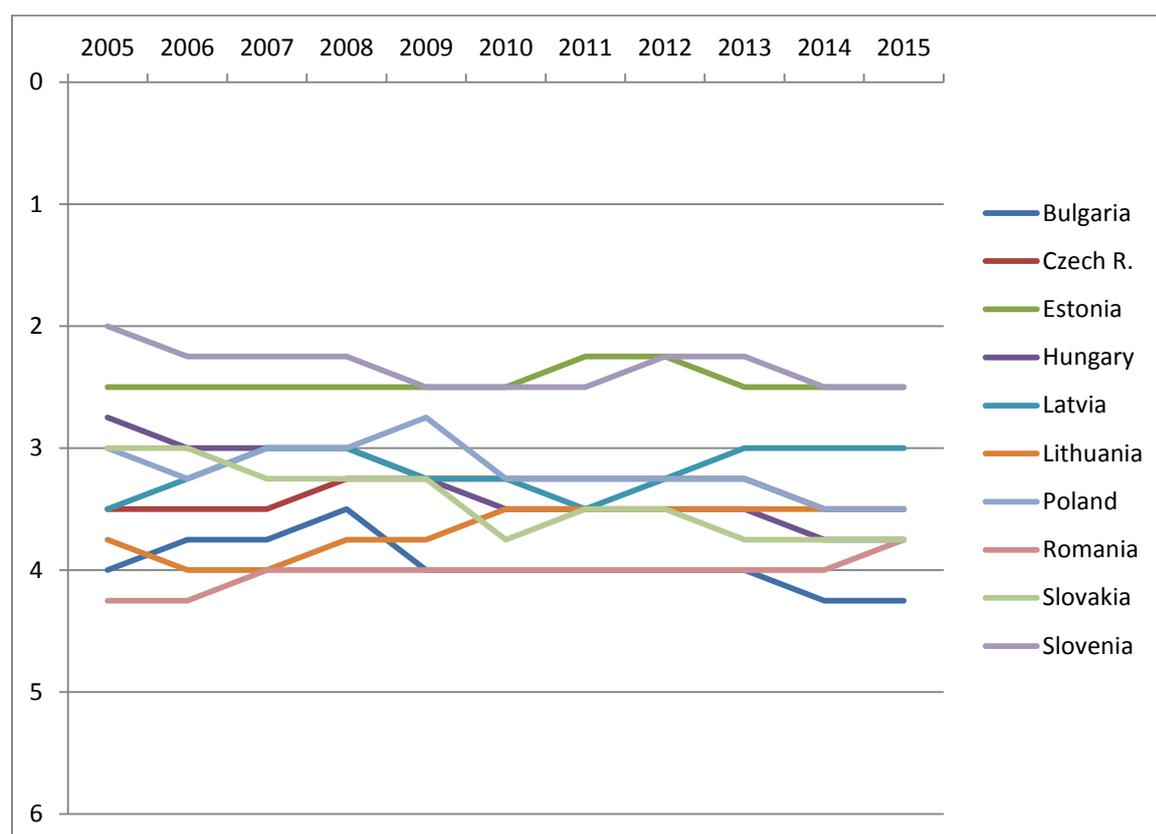


Nation in Transit⁷⁹

The ratings are based on a scale of 1 to 7, with 1 representing the highest and 7 the lowest level of democratic progress. The ratings follow a quarter-point scale. Minor to moderate developments typically warrant a positive or negative change of a quarter point (0.25), while significant developments warrant a half point (0.50). It is rare for any category to fluctuate more than a half point in a single year.

1. Corruption Index

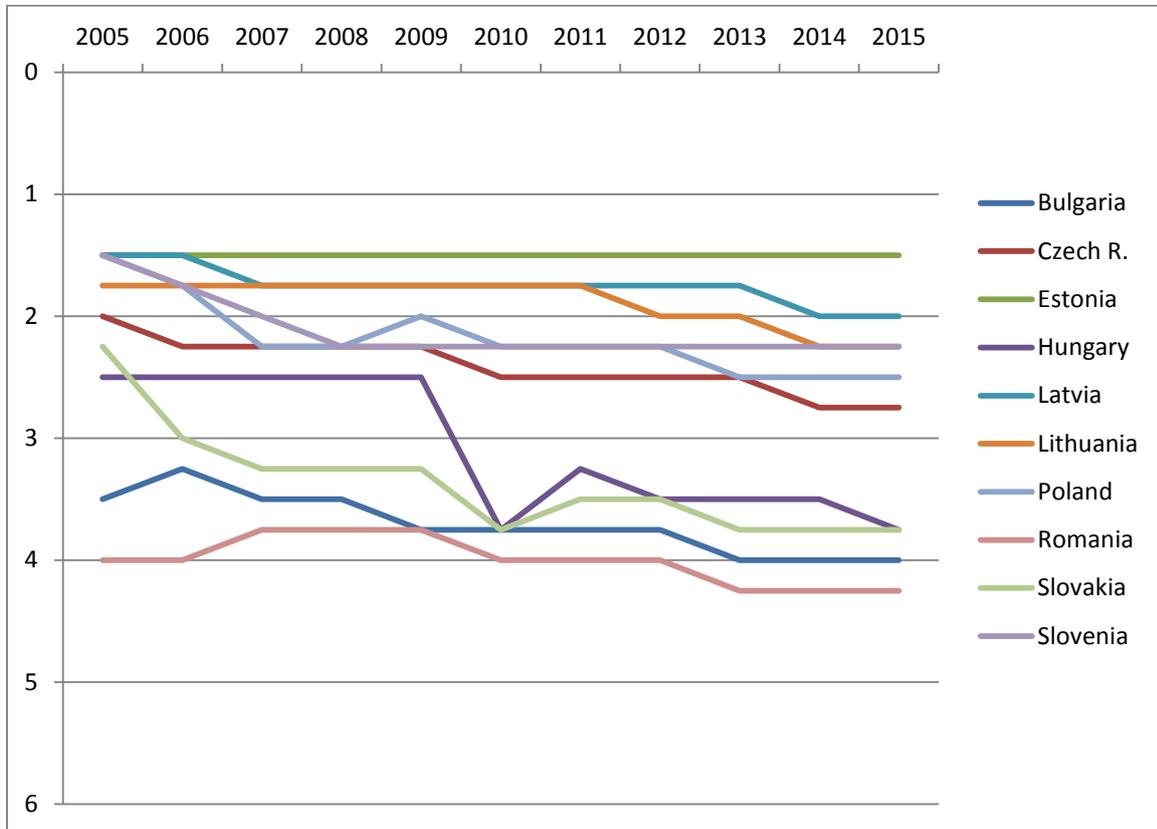
Figure 13



⁷⁹ <https://freedomhouse.org/report-types/nations-transit>

2. Independent Media Index

Figure 14



Annex 3 (Equality)

Figure 1 Gender

Member States overall assessment	Hard Indicator	Soft Indicator	Hard/Soft Indicator	Hard/Soft Indicator
	Equality Bodies (Retrenchment)	Equality Strategies/Policies (Retrenchment)	Reduction in family benefits/ childcare services	Reduction in Maternity/Paternity leave (time and allowance)
Austria	↓	N/C	N/C	N/C
Belgium	↓	N/C	N/C	N/C
Bulgaria	N/C	N/C	N/C	N/C
Cyprus	N/C	↓	N/C	N/C
Czech Republic	↓	N/C	N/C	↓
Denmark	N/C	N/C	N/C	N/C
Estonia	↓	↓	↓	↓
Finland	N/C	N/C	N/C	N/C
France	↓	N/C	↓	N/C
Germany	N/C	N/C	N/C	↓
Greece	N/C	N/C	↓	N/D
Hungary	↓	↓	N/C	N/C
Ireland	↓	↓	N/D	N/D
Italy	↓	N/C	N/C	↓
Latvia	↓	↓	↓	↓
Lithuania	↓	↓	N/D	↓
Luxembourg	↓	N/C	N/C	N/C
Malta	N/C	N/C	N/C	N/C
Netherlands	N/C	N/C	↓	N/C
Poland	N/C	N/C	N/C	N/C
Portugal	N/C	N/C	N/C	N/C
Romania	↓	↓	↓	↓
Slovakia	↓	N/C	N/C	N/C
Slovenia	N/C	N/C	N/C	↓
Spain	↓	↓	N/C	↓
Sweden	N/C	N/C	N/C	↓
UK	↓	↓	↓	↓

(RED) **backsliding** on at least two indicators

(WHITE) **mixed performance** on the four indicators

(GREEN) **resisting roll backs** on at least three indicators

↓ - decrease in performance

N/C – no change in performance

N/D – no data available

Figure 2 Race

Member States - overall assessment based on columns CDE	Hard Indicator	Hard Indicator	Soft Indicator	Socio-Political Context		
	Legislation to combat racism and racial discrimination (retrenchment)	Speicalized Bodies (retrenchment)	Integratoin Policies (retrenchment)	Hate Speech in public discourse (politicians, political parties, media)	Extremist groups/political parties	Violent Acts against immigrants and racial minorities
Austria	N/C	N/C	N/C	↑	↑	↑
Belgium	N/C	N/C	N/C	↑	↑	N/D
Bulgaria	N/C	N/C	↓	↑	↑	↑
Cyprus	N/C	N/C	↓	↑	N/D	↑
Czech Republic	↓	↓	↓	↑	↑	↑
Denmark	N/C	N/C	N/C	↑	N/D	N/D
Estonia	N/C	N/C	N/C	N/D	N/D	N/D
Finland	N/C	N/C	N/C	↑	N/D	↓
France	N/C	↓	↓	↑	↑	↑
Germany	N/C	N/C	N/C	↑	↑	N/D
Greece	N/C	N/C	↓	↑	↑	↑
Hungary	↓	N/C	↓	↑	↑	↑
Ireland	N/C	↓	N/D	N/D	N/D	N/D
Italy	↓	↓	N/C	↑	↑	↑
Latvia	↓	↓	↓	↑	N/D	N/D
Lithuania	↓	↓	↓	↑	N/D	↑
Luxembourg	N/C	N/C	N/C	N/D	N/D	N/D
Malta	N/C	N/C	N/D	N/D	N/D	N/D
Netherlands	N/C	↓	N/C	↑	N/D	↓
Poland	N/C	N/C	N/C	↑	↑	↑
Portugal	N/C	N/C	N/C	N/D	N/D	N/D
Romania	↓	↓	↓	N/D	N/D	N/D
Slovakia	N/C	N/C	↓	↑	↑	N/D
Slovenia	N/D	↓	N/C	N/D	N/D	N/D
Spain	N/C	N/C	N/C	N/D	N/D	N/D
Sweden	N/C	N/C	N/C	↑	↑	↑
UK	N/C	↓	N/C	↑	N/D	↑

(RED) **backsliding** on at least two indicators

(WHITE) **mixed performance** on the three indicators

(GREEN) **resisting roll backs** on at least two indicators

↓ - decrease in performance

N/C – no change in performance

N/D – no data available

↑ - overall increase in hate speech and violence against immigrants and racial minorities (this data was not used to categorize performance of individual member states)

Figure 3 Disability

	Soft Indicator	Soft Indicator	Soft Indicator	Soft Indicator
Member States overall assessment	Supported Employment	Support/Care services	Disability Allowance/Pension	Needs Assessment
Austria	↓	↓	N/C	↓
Belgium	N/D	N/C	N/C	↓
Bulgaria	↓	N/C	N/C	↓
Cyprus	N/D	N/D	N/D	N/D
Czech Republic	N/D	↓	↓	↓
Denmark	N/C	↓	N/C	↓
Estonia	↓	↓	N/D	N/C
Finland	N/C	N/C	N/C	N/C
France	N/D	↓	↓	↓
Germany	N/D	N/D	↓	N/C
Greece	N/D	↓	↓	↓
Hungary	↓	N/D	↓	↓
Ireland	N/D	↓	↓	↓
Italy	N/D	↓	↓	↓
Latvia	N/D	N/D	↓	N/D
Lithuania	N/D	N/D	↓	↓
Luxembourg	N/D	N/D	N/D	N/D
Malta	N/D	N/D	N/D	N/D
Netherlands	N/C	N/C	↓	N/C
Poland	↓	N/C	N/C	N/C
Portugal	↓	↓	↓	N/D
Romania	↓	↓	N/D	N/C
Slovakia	↓	N/C	N/C	N/C
Slovenia	N/C	N/C	N/C	N/C
Spain	↓	↓	↓	↓
Sweden	N/D	N/D	N/D	↓
UK	↓	↓	↓	↓

(RED) **backsliding** on at least two indicators

(WHITE) **mixed performance** on the four indicators

(GREEN) **resisting roll backs** on at least two indicators

↓ - decrease in performance

N/C – no change in performance

N/D – no data available

Figure 4 Aggregated Indicators

Member States	Gender	Disability	Race
Austria	MIX	MIX	N/C
Belgium	N/C	N/C	N/C
Bulgaria	N/C	↓	N/C
Cyprus	MIX	N/D	MIX
Czech Republic	MIX	↓	↓
Denmark	N/C	MIX	N/C
Estonia	↓	MIX	N/C
Finland	N/C	N/C	N/C
France	MIX	MIX	↓
Germany	N/C	N/D	N/C
Greece	MIX	↓	MIX
Hungary	↓	↓	↓
Ireland	↓	↓	MIX
Italy	MIX	↓	↓
Latvia	↓	↓	↓
Lithuania	↓	MIX	↓
Luxembourg	MIX	N/D	N/C
Malta	N/C	N/D	N/C
Netherlands	N/C	N/C	MIX
Poland	N/C	MIX	N/C
Portugal	N/C	↓	N/C
Romania	MIX	↓	↓
Slovakia	MIX	N/C	N/C
Slovenia	MIX	N/C	MIX
Spain	↓	↓	N/C
Sweden	N/C	N/C	N/C
UK	↓	↓	N/C

(RED) backsliding polities that show unequivocal backsliding in at least two equality domains

(WHITE) mixed policy performers that show diverging performance in the three equality domains

(GREEN) resisting polities that show no roll backs on their equality policies

↓ - decrease in performance

MIX – mixed pattern

N/C – no change in performance

N/D – no data available

Workshop on ‘backsliding’ in terms of corruption control, and human rights, equality and social justice in the EU

Date:

Tuesday 14 June 2016

Venue:

Center for Policy Studies, **Central European University**

Nador utca 9, 1051 Budapest

This workshop was held in preparation of the first report for Work Package 6, on **Political leadership, national politics and transboundary crisis management**. It was designed to investigate, map and quantify “backsliding” in EU member states. Mapping backsliding in the context of the crises involves gathering data both on backsliding in terms of the *acquis*, and on backsliding in terms of Copenhagen Criteria-type constitutional safeguards. The first step involves providing an overview of backsliding across sectors and states, with a particular focus on the weakening of independent institutions, corruption and corruption control, human rights, equality and social justice, and violations of the *acquis*. A public workshop in 2017 will present the result of case studies on each of these three topics, both in terms of whether backsliding is the result of transboundary crises and whether it might in itself lead to or constitute a crisis for the EU.

Schedule:

10.00 – 10.30 Introduction (Nick Sitter)

10:30 – 11:00 Defining backsliding (Nick Sitter and Joanna Kostka)

11:00 – 11:45 The rule of law and independent institutions (Nick Sitter and Joanna Kostka)

Break for a light lunch

12:15 – 13:00 Corruption and corruption control (Agnes Batory and Joanna Kostka)

13:00 – 13:45 Human rights, equality and social justice (Viola Zentai, Andrea Krizsan and Joanna Kostka)

14:45 – 14:30 Summing up

Defining backsliding

The first report, by Joanna Kostka and Nick Sitter, covered the existing literature on backsliding and the definition of the concept used in Work Package 6. The overall research question for Work Package 6 is in two parts: i) Has there been "backsliding" in the EU in the context of the economic crisis, and ii) does this represent a potential EU-level crisis?

The literature on backsliding come in three main varieties: i) the study of democratic backsliding, as a reversal of democratization, ii) the study of hybrid regimes in the context of development, and iii) the study of individual countries that have steered away from liberal democracy in one way or another. This literature does not offer an unambiguous definition of backsliding, let alone one that can be operationalised in the study of backsliding in the EU. Common elements in definitions include reversal of democratization and the weakening of democratic institutions; decline of good governance, transparency and the rule of law; poor governance performance and/of reversal of reforms; weakening of human rights and treatment of minorities; rising populism, nationalism and anti-liberal public opinion; increasing corruption and state capture; and even (in the EU) compliance with EU rules and norms (and the danger of a new type of democratic deficit).

The discussion of the report explored other relevant literature that provides a context for the study, including that on democratization, EU crises, democratization in Central Europe, post-accession Central Europe, varieties of compliance with EU law and Euroscepticism.

BACKSLIDING is defined as unilateral (and systematic) acts by a member state that violates the acquis and/or the norms of the EU. Borrowing from Paul Taggart and Aleks Szczerbiak's conceptual work on Euro-scepticism, one can define two forms of backsliding:

HARD BACKSLIDING, which involves direct violation of EU primary or secondary law (the acquis) and leaves a member state open to intervention by the Commission.

SOFT BACKSLIDING, which involves violation of a member states' major commitments to the EU, but without directly violating the acquis (or at least the relevant part of the acquis – in fact soft backsliding with respect to e.g. media freedom can of course turn out also to violate Single Market rules on cross-border trade).

The discussion of the report explored the ways in which this is operationalised across the three areas that the first policy paper will cover – the rule of law, corruption and equality. **HARD BACKSLIDING** involves a) measures that are contrary to EU law, and b) the Commission might choose to investigate or start infringement procedures over, and c) the Court might eventually rule on. Measures that satisfy only a) or only a) and b) are also counted. **SOFT BACKSLIDING** is operationalised as measures that violate the principal norms of EU as set out in the Treaties, international law and non-binding aspects of EU law, policy strategies and standards.

The rule of law and independent institutions

The second report, by Joanna Kostka and Nick Sitter, covered the research team's preliminary findings with respect to backsliding and the rule of law and the weakening independent institutions. To the extent that leaders of national governments invoke a crisis to limit media freedom, restrict the power of independent regulators and politicise the judiciary or central banks, this may constitute backsliding in terms of the broader constitutional safeguards of democracy that all EU member states are committed to as a prerequisite for membership. A range of national measures on all three counts have drawn criticism from the Commission and the European Parliament.

Although the EU treaties (especially Article 2) and the Copenhagen Criteria laid down for new states that wish to join the organisation stipulate commitment to democracy and the rule of law, and provide a basis for suspending the membership of states that violate these fundamental values, this remains very much a "nuclear option". There are therefore relatively few cases of EU institutions even investigating states for direct breach of EU law in terms of their commitments to democracy, the rule of law and the maintenance of independent judiciary institutions. Most of the well-known cases are a matter of soft backsliding – violations of EU norms that fall short of direct violation of the acquis.

The data on backsliding and the rule of law used for Paper 1 is drawn primarily from reports by Freedom House. This provides a times series that covers all the member states, on a relatively reliable comparable basis. In addition a range of reports from the EU institutions, the Venice Commission, the Helsinki Commissions and investigative journalism are used to compile an overview of cases in which member states stand accused by authoritative independent sources of violation of basic EU norms with respect to the rule of law.

The overall trends confirm the expectation that backsliding with respect to the rule of law is primarily a problem for the new member states (the 13 that joined in 2004 or later) – with the two old member states in trouble being Italy and Greece (as expected). Some 10 member states have a solid record over the eight years since 2008, 3 have a mixed record, 5 are somewhat problematic on more than one count (Slovakia, Latvia, Romania, Croatia and Italy) and 3 show serious and persistent problems (Hungary, Bulgaria and Greece).

The discussion centred on the difference between the overall data from sources such as Freedom House (not collected specifically to study backsliding) and the country-specific reports inspired by difficult cases (particularly Hungary, Poland and Romania), as well as the patterns of backsliding with respect to the rule of law compared to the two other cases (below).

Corruption and corruption control
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The second report, by Agnes Batory and Joanna Kostka, covered the research team's preliminary findings with respect to corruption and corruption control. To the extent that the economic crisis has merited extraordinary measures, it has provided an opportunity for national leaders in office to alter public procurement practices in ways that might affect both the level and type of corruption. Likewise, it has provided an opportunity for changing anti-corruption legislation.

There is relatively little hard backsliding with respect to corruption and the rule of law, largely because this is primarily a matter for the member states in terms of legislation (and is often treated as a matter of crime, or even organized crime). The main EU law pertinent to corruption and corruption control is related to the EU's financial interest – notably in terms of rules on public procurement, spending of structural funds and the work of OLAF. Most of the information on backsliding on corruption is a matter of soft backsliding, i.e. of member states going back on commitments set out in the EU treaties or rules on EU accession (conditionality).

The comparative data on backsliding in the rule of law is drawn from the reports of Transparency International and other international organisations. All this data concerns perceptions of corruption, rather than corruption and corruption control as such. This means that it measures administrative corruption, but misses out on the much more important (as a potential problem for both democracy and for the EU as an organization) phenomenon of oligarchic state capture.

The preliminary findings concerning corruption (or rather the perception of corruption) fit the research team's general expectation that this would be a more serious problem in the new member states than most of the old member states – again with the well-established exception of Italy and the more recent exception of Greece. The two country cases with a negative trend (ie corruption situation worsening in the past years, according to perceptions-based index data) are Hungary and Slovenia; whereas Poland (at least until late 2015) and Estonia show clear improvement over time.

The discussion centred on the patterns of improvement and increasing problems of corruption, and the differences between perceived corruption and new forms of state capture. The data does not support the hypothesis that the states' management of the economic crisis directly affects corruption (at least in terms of perceptions of corruption). Likewise there is no evidence of a "conditionality effect", i.e. the idea that once the monitoring associated with conditionality ended corruption would become worse. However, there evidence is compatible with the idea that the financial crisis has had a series of

country-specific effects: the crisis has created fertile ground for the rise of populism and changes of government, which in turn may have altered both the perception of administrative corruption and the very nature of corruption (to a new form of state capture).

Human rights, equality and social justice

The third report, by Viola Zentai, Andrea Krizsan and Joanna Kostka, covered the research team's preliminary findings with respect to human rights, equality and social justice. To the extent that the economic crisis has promoted reduced spending and downgrading of the policy priorities associated with equal opportunities and measures to combat discrimination, a pertinent empirical question is whether some national measures have weakened human rights, equality and social justice.

The report focussed on backsliding with respect to gender equality, disability discrimination and racial discrimination. In these areas there is a considerable body of EU law, and thus some scope for hard backsliding in terms of violation of the acquis. However, even where EU law requires institutions to be established or lays down procedures and standards, the amount of discretion left to the member states means that there is also considerable scope for soft backsliding: national measures that violate EU norms but without a direct breach of EU law. In many cases, the reality is a mixture of hard and soft backsliding. The report covered backsliding as a binary matter (leaving the distinction between soft and hard backsliding to the more detailed analysis due in paper 4).

The report drew on data from EU reports as well as reports of the ECRI and EDF and a range of country reports, to establish a data set that covers all 28 EU states from 2008 to 2015.

The overall trends is that some 10 states showed significant backsliding, some 15 states represented more mixed cases and only 5 states did not show backsliding.

The discussion centred on sources and data reliability, as well as on the trends in backsliding on equality as compared to corrupting and the rule of law.

The preliminary findings as to the overall pattern for backsliding in equality indicate the kind of north – south and east – west divide that the team had anticipated, with the additional finding that the UK breaks this pattern and is grouped with the southern and eastern member states as one of the weaker performers.

Contrary to the team's initial hypothesis, there is little evidence to suggest that the economic crisis was a direct cause of backsliding. Indeed, Poland (until 2015) stands out as a particularly resilient case.