



WP6
**Political Leadership, National Politics, and
Transboundary Crisis Management**

Deliverable D6.3

**Summary of insights from knowledge
exchange workshop**

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Knowledge exchange workshop with practitioners on backsliding in terms of the rule of law, corruption control, and human rights, equality and social justice in the EU; on institutional mechanisms to deal with control of corruption, and protection of constitutional safeguards

Date:

Wednesday 15 November 2017

Venue:

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

Nador utca 9, 1051 Budapest – Karl Popper Room

This workshop was held as a follow-up to the written reports delivered as part of Work Package 6, on **Political leadership, national politics and transboundary crisis management**. It was designed to present the results of case studies on each of these three topics to practitioners in the field, 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; and to seek feedback and advice from said practitioners on how best to develop further research on the topic. The workshop reported on the three main tasks of Work Package 6: analysis of backsliding in the EU (both in terms of democracy and the *acquis communautaire*); analysis of the reasons for backsliding (including the extent to which it constitutes a response to transboundary crisis management in general and the financial crisis in particular); and assessment of the (crisis management) capacity of EU leaders to address the issue of backsliding and explore policy options. The discussion was designed to set the stage for and to inform the final work on dissemination under the TransCrisis programme, as well as the follow-up work that members of the TransCrisis team will do after the conclusion of the project. In order to secure an open, frank and informal exchange of ideas, the workshop was designed as a small gathering of expert practitioners in the field. The discussions were conducted under the Chatham House Rule¹, and consequently this report summarises the main points raised in the discussion without attributing them to individual participants – be it the TransCrisis team or the practitioners. Further open or public workshops may follow in the first three months of 2018.

¹ The Royal Institute of International Affairs defines its eponymous rule thus: When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed. <https://www.chathamhouse.org/about/chatham-house-rule>. In the case of the present workshop, all the participants agreed to have their names and affiliations listed in the report's list of participants.

Schedule

09:30 – 10:30 Introduction to the project; The rule of law and independent institutions (presentation by Nick Sitter, followed by discussion)

10:30 – 11:30 Corruption and corruption control (presentation by Agnes Batory, followed by discussion)

11:30 – 12:30 Human rights, equality and social justice (presentation by Viola Zentai, Andrea Krizsan, followed by discussion)

12:30-13:30 Working lunch, discussion continues and concluded.

Participants

Agnes Batory, Professor of Public Policy, CEU School of Public Policy and CEU Center for Policy Studies

Goran Buldioski, Director of the OSF Think Tank Fund and OSF Open Society Initiative For Europe, Open Society Foundations

Andrea Krizsan, Research Fellow, CEU Center for Policy Studies

József Péter Martin, Executive Director, Transparency International Hungary

Bart Scheffers, Program Officer, OSF Open Society Initiative For Europe, Open Society Foundations

Nick Sitter, Professor of Public Policy, CEU School of Public Policy and BI Norwegian School of Management

Herta Toth, Senior Program Manager OSF Open Society Human Rights Initiative, Open Society Foundations.

Viola Zentai, Director of the CEU Center for Policy Studies

Judit Wirth, Policy Analyst, Trainer and Legal Consultant, NANE Women's Rights Association.

Introduction to the Reports

The members of the CEU TransCrisis team introduced the reports that have been published as part of Work Package 6, all of which had been sent to the participants in advance. The four presentations summarised the findings and main conclusions of the reports. The reports are available on the TransCrisis web-site, at

<https://www.transcrisis.eu/publications/>, as “D6.1 Mapping Backsliding and Report on Workshop” and “D6.2 Backsliding in area of constitutional safeguards and independent institutions, corruption control, and general equality and minorities” – and will therefore not be summarised in this short workshop report. The introductory discussion also focussed on options or scenarios for crisis management in the EU and its member states with respect to backsliding in the broader crisis management framework developed in the TransCrisis project, including 1) a scenario that involves neither new rules nor a shift from the national to EU level, but rather crisis management as a matter of the member states elaborating temporary ad hoc measures; 2) the classic European integration scenario of developing new policies, rules and/or institutions at the EU level; 3) a scenario that involves the EU-level but relies more on guidelines and coordination than on prescriptive rules; and 4) a scenario in

which the main policy tools are located at the member state level but there is considerable coordination.

Knowledge exchange and discussion

The discussion raised a number of important points that the CEU TransCrisis team will endeavour to address in its further work on the TransCrisis project and the follow-up work that is anticipated after the conclusion of the project. A short, non-exhaustive, summary follows:

- The report “D6.2 Backsliding in area of constitutional safeguards and independent institutions, corruption control, and general equality and minorities” was subtitled *Exit, Voice and Disloyalty*, to suggest that backsliding is a third option for governments that find any given piece of EU law unacceptable: in addition to raising the issue for discussion (voice) or seeking an opt-out (or even leaving the EU), a number of member states governments have chosen to implement EU law disloyally. The discussion raised a question about disloyalty to what – in the light of some states being disloyal to a specific part of the EU’s policy universe (e.g. human rights, the rule of law) but loyally implementing other aspects of EU law. A related issue concerned whether this was a populist elite strategy or a reflection of a shift in public sentiment to aspects of EU policy.
- A central point related to all the policy areas discussed was the weakness of the EU’s policy tools to secure compliance in member states (new and old) post-accession. This may only partly be a problem of the lack of enforcement capacity; limited political will to use the available policy tool is sometimes as problematic. This holds not only for member state governments, but also for the Commission and some political groups in the European Parliament. Indeed, there are signs that political will – and the consensus required to act on many forms of backsliding – is, if anything, weakening over time. Backsliding is sometimes part of broader political projects of “hollowing out” liberal democracy, and can include considerable efforts by governments to de-couple form and substance when it comes to compliance with EU law. Lack of political will to enforce the EU’s rules can turn this into a vicious cycle of façade compliance and symbolic enforcement.
- The problem of weak capacities for enforcement and limited political will at the EU level is exacerbated the by the long-term nature of many of the most serious consequences of backsliding for citizens in the states concerned: the long term costs of corruption, inequality and the erosion of the rule of law – even the simple economic cost – can be masked by positive short term macro-economic indicators.
- There are broader political issues at play, inasmuch as backsliding can be cast in terms of both a) quiet disloyalty and creative compliance that is presented as formally compatible with EU law, until proven otherwise by the Court of Justice; and b) open defiance, when backsliding is defended in terms of the national interest, national emancipation from an international elite, or an alternative model of democracy. The latter point raises the question of whether “illiberal democracy” can be considered a democracy at all – as indeed German Chancellor Angela Merkel

pointed out when she said she could not understand the use of the word "illiberal" in connection with the word "democracy".²

- The question of how to measure and comparatively assess backsliding is difficult, particularly since many of the issues at hand warrant case-by-case investigation and do not easily lend themselves to quantification (even by the use of proxy variables). This is particularly pertinent to research on corruption, where for example patterns of contestation in public procurement (single bidder; non-pilot systems) is sometimes used as a proxy for state capture but the significance of such proxies can vary considerably (e.g. between big and small states, national and local level procurement etc.). Moreover, it is in the nature of oligarchy and corruption that new and innovative means of e.g. channelling EU funds to the desired recipients constantly develop and that these be adapted to any given national context.
- In terms of backsliding the difference between minor and major forms of backsliding within each policy sector merits close analysis both in terms of the nature of the problem and in terms of whom it hurts most. For example, in terms of corruption, the high-level systematic political corruption might well be more damaging to both the polity and the economy in the long run, but it is low-level bureaucratic corruption that is most keenly felt by citizens on a day-to-day basis. Increased corruption control in terms of low-level bureaucratic corruption might be compatible with increasing corruption in terms of oligarchy and state capture. Moreover, significance of state capture for democratic or good governance depends somewhat on the nature of state capture: when state capture or political corruption is competitive (different groups compete for the favours of the state) it might be less damaging to democracy than when it is non-competitive (a single cohesive group has captured the state).
- The study of backsliding in any given sector, such as equality and social justice, warrants qualitative case studies also because it is affected by policy inertia. Even after a change of governments, some of the programmes (or effects of the programmes) of previous governments can mask the direct effects of backsliding. Aggregate measure and proxy variables have their use, but both the research presented in the workshop and anecdotal evidence suggest that case studies are essential in the analysis of backsliding.
- A final point of discussion concerned the significance of backsliding as a symptom of broader political shifts in some EU member states, including (but not limited to) for example shifts away from transparency in public policy; shifts towards clientelism; centralization of political power and assertion of power over civil society; a shift away from inclusive policy processes toward policy informed by the clients of the government; as well as the much-discussed shifts towards populism and/or illiberal democracy. This discussion was linked to the broader questions raised in other recent TransCrisis meetings about at which level crises are best addressed (the state- or the EU-level) and whether crises warrant more prescriptive rules or more flexible, ad hoc, measures.

² "Merkel questions Orbán's term 'illiberal democracy'", Budapest Business Journal, 2/2/2015, https://bbj.hu/politics/merkel-questions-orbans-term-illiberal-democracy_91829