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Illiberal Trends and Anti-EU Politics in East Central Europe

Edited by

Astrid Lorenz · Lisa H. Anders

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ABBREVIATIONS

ALDE	Alliance of Liberals and Democrats for Europe
ANO (2011)	Akce nespokojených občanů, Action of Dissatisfied Citizens
CBOS	Centrum Badania Opinii Społecznej, Polish social research center
CEE	Central and Eastern Europe
CEU	Central European University
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
ČSSD	Česká strana sociálně demokratická, Czech Social Democratic Party
ECB	European Central Bank
ECE	East Central Europe, East Central European
ECtHR	European Court of Human Rights
EFSF	European Financial Stability Facility
EMU	European Monetary Union
EP	European Parliament
ESM	European Stability Mechanism
ESS	European Social Survey
Fidesz	Federation of Young Democrats—Hungarian Civic Alliance
HFHR	Helsinki Foundation for Human Rights
HUF	Hungarian Forint
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
IMF	International Monetary Fund
KDNP	Kereszténydemokrata Néppárt, Christian Democratic People's Party

KOD	Komitet Obrony Democracji, Committee for the Defence of Democracy
KOS	Komitet Obrony Sprawiedliwości, Justice Defense Committee
LGBT	Lesbian, Gay, Bisexual and Transgender
MC	Monetary Council
MEP	Member of the European Parliament
MSZP	Hungarian Socialist Party
MT	Media Council
NB	National Bank
NCJ	National Council of the Judiciary
NGO	Non-Governmental Organisation
NJC	National Judicial Council
NMHH	National Media and Infocommunications Authority
NUTS	Nomenclature of Territorial Units for Statistics
ODS	Civic Democratic Party
OL'aNO	Obyčajní ľudia a nezávislé osobnosti, Party of the Ordinary People and Independent Personalities
OSCE	Organization for Security and Co-operation in Europe
PES	Party of European Socialists
PiS	Prawo i Sprawiedliwość, Law and Justice Party
PO	Platforma Obywatelska, Civic Platform
PSL	Polskie Stronnictwo Ludowe, Polish People's Party
SaS	Sloboda a Solidarita, Freedom and Solidarity party
SC	Supreme Court
SMER	Sociálna demokracia, Social Democracy
SPD	Svoboda a přímá demokracie, Freedom and Direct Democracy
TESS	Transnational European Solidarity Survey
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TK	Trybunał Konstytucyjny, Polish Constitutional Tribunal

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CHAPTER 1

Examining Illiberal Trends and Anti-EU Politics in East Central Europe from a Domestic Perspective: State of Research and Outline of the Book

Lisa H. Anders and Astrid Lorenz

1 INTRODUCTION

In East Central Europe (ECE), democracy and the rule of law are under siege, most notably in Hungary and Poland and, to a lesser extent, also in the Czech Republic and Slovakia. Elected majorities weakened the judiciary, limited minority rights and curtailed activities of independent media and several NGOs. As a result of these illiberal trends, some of the former democratisation and Europeanisation frontrunners are now regarded as prime examples of democratic backsliding. EU actors repeatedly demanded to uphold EU foundational principles as enshrined in Article 2 of the Treaty on European Union (TEU). But the more they did

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so, the more ECE governments reacted by accusing the EU of applying ill-defined rule of law concepts, by insisting on national sovereignty stipulated in Article 4(2) TEU and by emphasising the cultural differences between Eastern and Western Europe.

Relations between Brussels on the one hand and Budapest, Warsaw, Prague and Bratislava on the other hand further deteriorated during the so-called refugee crisis. The Visegrád countries openly opposed commonly agreed EU law, namely the refugee relocation scheme. When EU actors demanded compliance, ECE politicians argued that they had to defend their electorate. They fiercely refused to comply and complemented their opposition with an increasingly harsh anti-EU rhetoric. As a result, opposition against particular EU policies turned into general EU criticism—a development we subsume under the keyword of anti-EU politics.

As is also reflected in recent European case law, such problems and conflicts undermine the EU's legal system and previous integration achievements. In 2018, the Court of Justice of the European Union (CJEU) noted that European values and norms, particularly the fundamental right to an independent tribunal, can no longer be taken for granted in all EU member states. Referring to a Polish national, the CJEU ruled that judicial authorities in EU member states can now block the execution of a European arrest warrant if they consider that the independence of the judiciary in the issuing member state is no longer guaranteed (CJEU 2018). In 2020, a German Higher Regional Court refused for the first time to extradite a Polish suspect to his home country due to “profound doubts about the future independence of the Polish judiciary” (Bauomy 2020).

Illiberal trends and anti-EU politics have the potential to undermine mutual trust among member states and to alter relations between the EU and some of its member states permanently, as well as shattering established theorising in EU studies. Hence, it is crucial to understand their domestic causes, context conditions, processes and consequences. This edited volume, therefore, aims to provide in-depth empirical knowledge of the background of rule of law problems and the open defiance of EU rules in ECE countries. To arrive at a more encompassing understanding of these phenomena, it brings together researchers from different disciplines and with different theoretical perspectives on the illiberal trends and anti-EU politics in ECE countries. It contains qualitative case studies, comparative works and quantitative analyses of the societal, political and

institutional processes. Together, the studies capture the different facets of the illiberal trends and anti-EU politics which is urgently needed for empirically informed theory-building. In doing so, they contribute to deepening the much-needed area expertise concerning Eastern and Central Europe (Dale et al. 2016) and help to explore if the differences between the East and the West are as sharp as often claimed by politicians.

2 ILLIBERAL TRENDS AND THE ECE COUNTRIES' RELATIONS WITH BRUSSELS

It seems that around the globe, illiberalism is on the rise (Levitsky and Ziblatt 2018; Mounk 2018). Illiberalism can be defined as the rejection of mechanisms and institutions to protect individual rights and freedoms from those in power. In many Western democracies, the protection of individual rights and freedoms preceded democratisation and later was integrated into concepts of democracy (Zakaria 1997). Therefore, liberal democracy—a combination of the constitutionalist and the electoral principle—was long regarded as the standard model of democracy (Murphy 1993). However, these principles do not necessarily go hand in hand. As Fareed Zakaria put in his seminal article on illiberalism: “Democracy is flourishing; constitutional liberalism is not (...) Just as nations across the world have become comfortable with many variations of capitalism, they could well adopt and sustain varied forms of democracy” (1997, p. 23f). What we see today is that even established democracies can fall short of liberal norms.

Illiberal trends frequently manifest themselves along two dimensions: first, the dismantling of the political institutions guaranteeing checks and balances and minority rights. Often this happens “through a discontinuous series of incremental actions” (Waldner and Lust 2018, p. 95) when democratically elected authorities start to “systematically weaken, annihilate or capture internal checks on power” (Pech and Scheppele 2017, p. 10). As in most of the cases they do so by legal means, the current illiberal trends have also been described as “gradual setbacks under a legal façade” (Lührmann and Lindberg 2019). Secondly, the dismantling of counter-majoritarian institutions is frequently accompanied by a contestation of liberal social and cultural norms, i.e. the rejection of pluralism and an increasing mobilisation along the social-cultural axis of political contestation (Havlík 2019; Vachudova 2019). Along these lines, Kaczyński and Orbán promote their “cultural counter-revolution” (Krekó and Enyedi

2018, p. 45) which centres around cultural conservatism, Christianity and ethnic nationalism.

In all ECE countries, there are more or less manifest illiberal tendencies undermining the EU's foundational principles, though their particular form and extent are far from being uniform. When the Fidesz—KDNP party alliance won a two-thirds majority in the Hungarian parliament in 2010, it named the elections a “revolution at the ballot box”, mandating the new government to overhaul the constitutional order of the country. Since then, it has exploited its legislative dominance to undermine the independence of the judiciary, curbed the media and increasingly suppressed civil society actors (Bánkuti et al. 2012; Batory 2015; Priebus 2016; Scheppele 2013, 2015). As the Prime Minister explicitly stated in 2014, he aims to establish a new illiberal state (Orbán 2014) and he wants to break with the “dogmas” that have been adopted by the West as this will secure Christian values, cultural conservatism and a true Hungarian way of governing.

The Polish Law and Justice Party (PiS) had already started promoting in the early 2000s the idea of a “new and virtuous Fourth Republic” (Halmai 2017, p. 8). According to this idea, a radically new illiberal, centralised system based on a particular “moral order” should help to realise the aims of the “unfinished 1989 revolution” and overcome the alleged pathologies of the existing system. To realise this goal, PiS—in office since 2015—has weakened the Constitutional Tribunal and eroded various political and individual rights, such as the right to assembly and privacy (Sadurski 2018, 2019a).

Compared to these two cases, the Czech Republic currently undergoes “a quieter politics of backsliding” (Hanley and Vachudova 2018, p. 278; see also Lorenz 2020). Recent developments might nevertheless be “just as consequential in the longer term” (Buščíková and Guasti 2019, p. 322). The country's party system had more or less collapsed when Prime Minister Babiš—a technocratic populist—came to power with his slogan to run the state like a firm (Babiš 2017, p. 128 ff.). To increase the state's “efficiency”, he suggested abolishing the senate and the regions, to downsize the parliament, to reduce the number of ministries and to strengthen the state's influence on public media (Havlík 2019). To date, however, there “has been no sustained, successful power grab” (Dawson and Hanley 2019, p. 716).

In Slovakia, the populist governing party SMER has deployed illiberal means since 2006. It repeatedly articulated anti-minority and anti-EU

positions while the judiciary “continued to experience troubling government influence” (Freedom House 2018, see also Láštík 2019). Overall, however, corruption seems a bigger problem than illiberalism (Freedom House 2019). In 2018, the murder of a journalist and his fiancé caused large-scale anti-corruption protests and public demands to break with the established politicians. As a result, SMER leader Robert Fico resigned as Prime Minister. In 2020, the party OL’ANO (Ordinary People and Independent Personalities) won the national elections with an anti-crime campaign, but the fragmented parliament makes it complicated to form a coherent coalition and to find a clear political course.

The illiberal trends caused heated debates about the rule of law. Relations between Brussels and the Visegrád group—especially Budapest and Warsaw—have become strained and much more complicated. EU actors identified a “true rule of law crisis” (Reding 2013) and a “clear risk of a serious breach of the rule of law” in the ECE countries (European Commission 2019; Sargentini Report 2018), while many ECE politicians insisted on the concept of constitutional pluralism and presented themselves as “the true guardians of EU values” (Mos 2020, p. 13).

The second bone of contention is the asylum policy. The Visegrád countries vehemently opposed the refugee relocation scheme, openly defied European rules and court decisions in this policy field and, in doing so, questioned the principle of precedence of EU law over national law. Often politicians in these four countries justified their opposition with their more or less open rejection of Islam (Gotev 2015; Orbán 2015). Moreover, they actively engaged in anti-EU campaigns. The Hungarian government launched a “Let’s Stop Brussels!” consultation in 2016 (Halmai 2016). The following year, it invested millions in billboards, leaflets, TV commercials, and mass mailings to spread its anti-immigrant appeals and to demonise Brussels (Krekó and Enyedi 2018, p. 45). Similarly, Czech politicians criticised “the Brussels dictatorship”, echoing the well-known phrase of the former “Moscow dictatorship” (Jelínková 2019). Also, the Polish government regularly railed against the EU’s intrusion into national affairs. These developments caused heated debates among EU member states about European burden-sharing, and ECE countries were repeatedly accused of lacking solidarity.

It is puzzling how the people in ECE perceive the illiberal trends and anti-EU politics. As Fig. 1 shows, in the last few years, trust in national government has grown in most countries, especially in Hungary and Poland, but remarkably in the Czech Republic as well. At the same time,

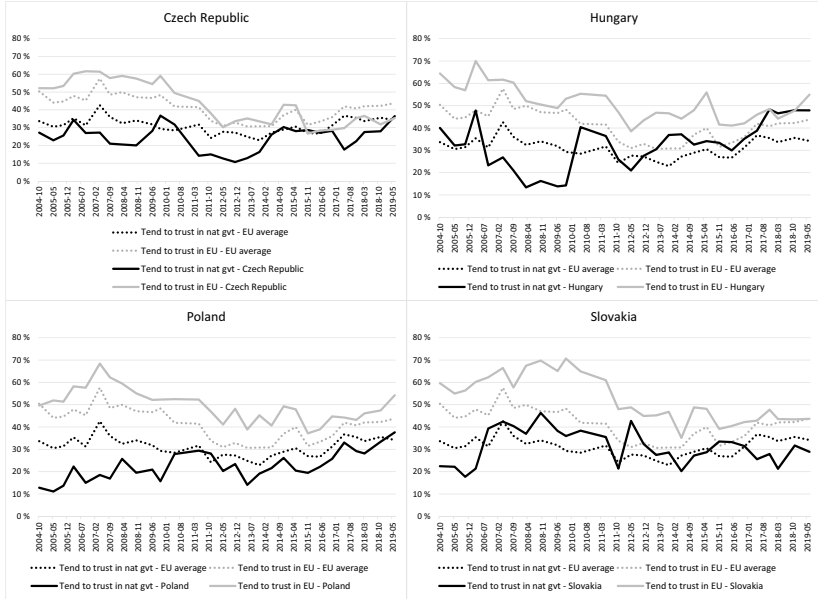


Fig. 1 Trust in national government and in the EU, 2004–2019 (*Source* Eurobarometer; Question wording: I would like to ask you a question about how much trust you have in certain media and institutions. For each of the following media and institutions, please tell me if you tend to trust it or tend not to trust it. The [NATIONALITY] government; The European Union)

the public’s trust in the EU increased, although governments have intensified their anti-EU rhetoric and disregard European law where it collides with their domestic political agenda.

Past elections as well as opinion polls in Hungary have repeatedly shown that a majority of the population supports the government’s agenda.¹ Despite Orbán’s decidedly critical stance towards “Brussels” and the frequent clashes between Brussels and Budapest, Hungarians also show high trust in the EU. The same holds for Poland, where the

¹Of course, this has to be interpreted in light of the amendments of the electoral system in the run-up to the parliamentary elections in 2014 (Krekó and Enyedi 2018, p. 42; OSCE 2014) and the revision of the media law (Polyák 2015) resulting in the dominance of pro-government media outlets (Freedom House 2020).

governing PiS party could increase its vote share in the 2019 elections. Irrespective of the recent standoffs between Brussels and Warsaw, Polish people show high levels of trust in the EU. Czech people, in contrast, show comparatively low levels of trust in the EU, while the Czech government harshly criticised the relocation scheme but refrained from general anti-EU politics. In Slovakia, the past government's rhetoric and action vis-à-vis the EU was volatile (Baboš and Malová 2018) and the people are split in their trust in the EU, making Slovakia rank between Poland and the Czech Republic. Obviously, the illiberal trends and anti-EU politics in ECE are not uniform and the interrelationship between domestic politics and EU perceptions are not straightforward, calling for further exploration.

3 CONFLICTS OF A NEW QUALITY

Clearly, conflicts between the EU and its member states on certain policies have existed ever since the Union and its predecessors were founded. EU and ECE actors already struggled over liberal rights and policies before what is now interpreted as an “illiberal turn”. In the pre-accession period, the conflicts concerned ethnic minority rights, especially the rights of the Roma minority. Policy conflicts on environmental standards, military policy and the relations to Russia have also put strain on the relations between the EU and the ECE countries. But in general, the Visegrád countries were exceptionally good formal compliers (Dimitrova 2010; Treib 2014). Dissatisfaction with EU norms resulted in shallow transposition and “dead letters” rather than in open and intentional EU rule violation.

For various reasons, however, the recent disagreements between Brussels and ECE capitals present conflicts of a new quality. Firstly, they constitute very general polity disputes touching upon the meaning of democracy and rule of law. Now, the member states do not just bring diverging policy-preferences to the EU negotiation table but “also demand to decouple EU membership from the values and the processes of liberal democracy” (Vachudova 2019, p. 702). In this vein, the Hungarian Minister of Justice recently stressed that the rule of law “lacks well-defined rules”. She further demanded that the “Union shall respect the national identities” and “not try to impose an artificial, one-size-fits-all framework” (Varga 2019). Similarly, the former Fidesz MEP and Jean Monnet Professor of Politics at the University College London, György

Schöpflin (2015), argued that the rejection of liberal universalism does not contradict the application of the rule of law. As has been underlined, this disagreement about EU foundational values severely threatens the EU's core identity and has the potential to seriously endanger the Union's cohesion (Kelemen and Blauberger 2016, p. 321; Ovádek 2018, p. 495).

Secondly, these conflicts start to undermine existing modes of integration and Europeanisation. The refusal to take part in the relocation scheme was not just an ordinary case of non-compliance caused by lacking compliance capacities. ECE politicians generally criticised how decisions had been made and self-confidently argued that they had to defend their electorates' interests and values against illegitimate interference from the EU (Krstev 2017; Schlipphak and Treib 2016). Refusing to implement commonly agreed European laws and even ignoring CJEU rulings, they challenged—and still challenge—a central principle of European unification, namely integration through law. On the one hand, this principle requires national decision-makers to act as agents of Europeanisation. They need to accept and implement EU law faithfully (Bieber and Maiani 2014; Manko 2017; Radaelli 2003). On the other hand, this principle also entails the evolution of European law by case law of the Court of Justice of the EU and national courts. Both principles are increasingly challenged by ECE politicians. Especially as the European case law is regarded as undemocratic because the European court and national courts are not elected by the people.

Thirdly, the EU's instruments against illiberal backsliding and open non-compliance have proven more or less ineffective and prospects for swift solutions of the current conflicts seem poor. In view of the institutional reforms in Hungary and Poland, the European Commission first reacted with diplomatic instruments, later with harsh criticism, several infringement proceedings, the creation of a new Rule of law framework and the activation of its means of last resort, the Article 7 TEU procedure. Up until now, however, all these measures have not stopped backsliding. On the contrary, new conflicts emerged. Recent cases in point are the conflicts regarding the Polish law on the Supreme Court (European Commission 2018), the Hungarian law on foreign-funded NGOs (European Commission 2017) and the Hungarian laws that criminalise activities in support of asylum seekers. Against this backdrop, the European Parliament concluded that “the situation in both Poland and Hungary has deteriorated since the triggering of Article 7” (European Parliament 2020).

Fourthly, the conflicts relating to the European asylum policy as well as conflicts on the rule of law created new alliances. While not all ECE governments were in direct trouble with the EU, many politicians are nevertheless willing to support those opposing EU directives and foundational principles. This is exemplified by the re-strengthening of the Visegrád group and its collective insistence on EU member states' right "to carry out domestic reforms within their competences" (Visegrad Group 2018). It is also reflected in the Hungarian and Polish governments' announcements to torpedo the Article 7 proceedings by vetoing any EU sanctions against these two member states. Due to these new alliances, ECE countries are often perceived as a homogenous region. Some scholars even identified the return of an East-West divide (Krastev 2017) as well as a "core-periphery divide" caused by the "ECE divergence from EU mainstream" (Ágh 2018). Adding to this impression, ECE politicians repeatedly stressed the cultural differences between the East and the West.

Finally, as has been shown in the previous section, significant parts of the ECE societies support both European integration and their governments. Many citizens, while generally welcoming European integration and trusting EU institutions, can be mobilised by the idea of pursuing an inherently national way of "doing things" instead of continuing the former strategy of importing what seems to them to be Western European democracy and policy templates. Obviously, they support their governments' illiberal agendas.

4 STATE OF RESEARCH

The illiberal trends and anti-EU politics came as a surprise not only for politicians, but also for many EU and democratisation scholars. Most of them deemed the EU's 2004 eastern enlargement as a success story, as particularly in Hungary, Poland, Slovakia and Czechia, Europeanisation and democratisation seemed to reinforce each other. The EU had governed its enlargement by means of conditionality (Schimmelfennig and Sedelmeier 2004) and the candidate countries' ruling elites were more than willing to fulfil the Copenhagen criteria as they "overlapped with their political and economic agendas" (Vachudova 2005, p. 78). After their accession, ECE countries were quickly regarded as more or less robust and consolidated democracies (see, for instance, reports by Freedom House, Rupnik and Zielonka 2013, p. 3).

Most democratisation and EU scholars expected ECE countries to be immune to democratic backsliding (Merkel 2010), and they predominantly attributed this to the EU's conditionality policy (Dawson and Hanley 2019, p. 711). Already prior to the EU accession, scholars had expected EU membership to generate "powerful, broad-based and long-term support for the establishment of democratic institutions because it is irreversible, and sets in train a cumulative process of economic and political integration that offers incentives and reassurances to a very wide array of social forces" (Whitehead 1996, 19). This expectation also guided actors in ECE countries, like Poland (Sadurski 2004). After the EU enlargement in 2004, scholars agreed that EU conditionality had a decisive "transformative power" (Grabbe 2006) and helped "post-communist countries [to] consolidate their democracies" (Dimitrova and Pridham 2004, p. 93 f). In the same vein, later publications highlighted that a lock-in of pre-accession institutional changes would contribute to their persistence even after accession when the EU's sanctioning power weakened (Sedelmeier 2012).

Surely enough, there were also critical voices. Early on, observers noted low participation rates and a radicalisation of the remaining active electorate in Eastern Europe. They warned not "to paint an overly optimistic picture of the future that lies before the democracies of Central and Eastern Europe" (Greskovits 2007, p. 46). Yet, such concerns were hardly heard but "swept away by EU euphoria and over-optimism that EU membership with all its 'automatic' effects would resolve the basic contradictions between and within economic, political and social developments" (Ágh 2016, p. 12).

Meanwhile, it became clear that the standard assumption of a more or less linear Europeanisation and democratic consolidation was too optimistic. It obviously needs revision. Political systems are still in flux after 30 years of democratisation and Europeanisation before and after the formal accession (cf. Guasti and Mansfeldová 2018). These dynamics attracted the attention of various scholars. Broadly speaking, the expanding body of literature on current developments in ECE falls into three categories. First, case studies on backsliding dynamics in specific countries. Secondly, preliminary works on the potential causes of backsliding. Thirdly, contributions discussing possible remedies against illiberal backsliding.

Numerous case studies trace the institutional reforms dismantling the rule of law in ECE countries (Batory 2015; Jaremba 2016; Priebus 2016;

Rupnik 2012; Sadurski 2019a, 2019b; Sólyom 2015). To describe the phenomenon of interest, they came up with an astonishing variety of keywords, such as “Frankenstate” (Scheppelle 2013), “diffusely defective democracy” (Bogaards 2018), “Potemkin democracy” or “elected autocracy” (Ágh 2015) and “externally constrained hybrid regime” (Bozóki and Hegedűs 2018). More recent studies also analyse in greater detail the ideational foundations of the illiberal backlash in ECE countries as well as the rhetoric of the illiberal agents (Buzogány and Varga, 2018; Dawson and Hanley 2019; Mos 2020). A few exceptions aside, these studies focus disproportionately on the most visible cases of backsliding: Hungary and Poland (Cianetti et al. 2018). They certainly provide an enlightening take on backsliding dynamics and the associated institutional changes in these two paradigmatic cases. The domestic roots of backsliding and current conflicts between the EU and ECE countries as well as alternative problem perceptions within these countries, however, have received comparatively little attention so far.

A second strand of the literature addresses the potential causes of the illiberal backlash. These studies approach the phenomenon of interest from various theoretical viewpoints, including political economy theories, agent-based or institutionalist approaches or theories of political culture. They explain the erosion of democracy by economic and financial problems (Szente 2017, p. 472), by demographic developments (Krastev 2018) or by stressing the role of actors and their discourses in making and unmaking democratic institutions (Dawson and Hanley 2019). Some trace it back to the post-1989 dominance of the “liberal orthodoxy”, stressing that post-communist countries were expected to “return to Europe” mainly by mimicking Western liberal democratic blueprints (Krastev and Holmes 2020). Others highlight that pre-accession conditionality merely resulted in formal and rather shallow “conditionality constitutionalism”, underlining that constitutionalism and the rule of law still lack “a firm social and politico-cultural entrenchment in civil and political society” (Blokker 2016, p. 250; see also Pridham 2005). In this perspective, the PiS victory has shown that ECE societies have remained nationalist and have “merely been pretending to accept the shared norms of liberal democracy, only to reap the economic and financial fruits of their EU membership” (Karolewski and Benedikter 2017, p. 519). This variety of approaches shows that we are still missing a strong and widely acknowledged explanation of the illiberal trends. As a recent review aptly concluded, there is no “readily available set of theories that we (...) can

uncontroversially adopt, adapt, and apply to the problem of backsliding” (Waldner and Lust 2018, p. 106; also compare Cianetti et al. 2018, p. 243).

A third strand of the literature explores how the EU can enforce its foundational values. Ample studies analyse the deployment and actual effects of the EU’s various instruments to counter rule of law backsliding in its member states. They focus on political instruments, such as the Article 7 procedure, which can ultimately result in the suspension of the backsliding government’s voting rights, the Rule of law framework established in 2014 and the Rule of law dialogue, launched in the same year by the Council of the EU (Closa 2016, 2018; Kochenov et al. 2017; Kochenov and Pech 2015, 2016; Müller 2015; Oliver and Stefanelli 2016). Furthermore, they examine the effects of judicial tools against backsliding, such as infringement proceedings and private enforcement litigation in national courts (Blauberger and Kelemen 2016; De Schutter 2017). Most of these studies approach the ECE countries from an enforcement and top-down perspective, and they agree that political and judicial instruments have proven rather ineffective. Thus, some recent publications discuss if existing instruments could and should be employed differently (Pech and Kochenov 2019). Other works address the suitability of new oversight instruments, such as the conditionality of EU funds (Blauberger and van Hüllen 2020; Neuwahl and Kovacs 2020; Pech and Scheppele 2017).

Publications on the EU’s instruments against democratic backsliding are predominantly written by legal scholars (Ovádek 2018, p. 499). Against this backdrop, it comes as no surprise that they focus on legal aspects and legalistic remedies for the erosion of the rule of law while the social, political and cultural preconditions of the rule of law have remained largely neglected (Blokker 2016). Experiences with ECE countries, however, clearly demonstrate that democracy does not rest on law alone. It needs to be supported by decision-makers and rooted in a society which perceives it as legitimate. As Pridham (2005) and Blokker (2016) and others argued, societal attitudes were much less influenced by EU conditionality politics than the domestic legal framework. Nevertheless, they are often ignored by de-democratisation and Europeanisation studies as well as by legal analyses of rule of law problems inside the EU. Accordingly, some scholars criticise the EU’s assumption that liberal democracy and compliance within the member states can be secured by law or legalistic instruments, and that the European constitutionalism rests upon a

set of values shared within the member states (Dupré 2015). In this vein, recent publications called for broadening the one-sided focus on formal institutions and legal solutions and to examine empirically “the political and socio-economic factors which enable democratic deficits to take root” (Ovádek 2018, p. 501, see also Blokker 2016, p. 266; Cianetti et al. 2018).

5 AIMS AND OUTLINE OF THE BOOK

This volume aims to map and to understand illiberal trends and anti-EU politics in East Central Europe by linking EU studies with area expertise and assembling contributions from different disciplines. Empirically, it adds to the literature by zooming into domestic processes in all four countries of the region. Examining rule of law and compliance challenges in Slovakia and the Czech Republic as well allows us to compare and contrast the dynamics in Hungary and Poland. Several contributions also broaden the perspective comparing ECE countries with other EU states, thereby testing whether differences between the Visegrád countries and the remaining EU member states are really as pronounced as frequently claimed.

The volume adds to theory-building by exploring how different theoretical perspectives can help to capture the domestic context conditions, processes and consequences of the illiberal trends and anti-EU politics in ECE. Individual contributions are not bound to a specific theoretical perspective. This is not only due to the fact that a generally accepted theoretical model for these phenomena is still missing. More importantly, we are convinced that complex problems need complex analytical approaches as well as area-sensitive solutions. We therefore bring together complementary analytical approaches from sociology, political and legal science. This diversity helps to arrive at a more encompassing understanding of the current developments in ECE countries and contributes to moving beyond a mainly legalistic or institution-centred perspective on backsliding and the EU’s instruments against it.

The different theoretical perspectives aside, the contributions are connected by a number of shared assumptions. First, they model politics as a *process*. Secondly, they focus on individual or collective *actors’* perceptions, rhetoric, actions and interactions. Thirdly, though focusing on actors as drivers and shapers of policies, they conceive them as embedded in a given *context*. The contributions share the premise that the context

influences—but does not determine—the actors’ strategies. Therefore, similar institutions (like democratic or EU norms) and legal instruments neither have to be perceived in the same way nor yield similar effects. Fourthly, many of the contributions interpret illiberal trends and anti-EU politics as causally entangled phenomena which sometimes are not self-standing policy aims but rather *instruments or effects* of actors’ strategies to reach their actual goal.

These shared basic assumptions guide the overall structure of the book. Following a classic processual input—output model of democracy (Easton), it starts from society and analyses citizens’ perceptions and demands in part 1. Part 2 then looks at how political actors respond to these inputs and strive to shape societal demands through their rhetoric and campaigns. Along these lines, contributions also analyse if actors follow a coherent illiberal or anti-EU ideology and uncover how they struggle to realise certain policies inside the government system and with societal actors. Part 3 illuminates how and why the policy output—illiberal reforms and non-compliance with EU rules—causes conflicts with European actors. It also investigates EU actors’ strategies to secure EU norms against illiberal backsliding as well as the counter-strategies this has brought about in ECE countries. The contributions of the concluding fourth part of the book discuss theoretical and conceptual implications for democracy, the rule of law and Europeanisation.

In detail, the book is structured as follows: As mentioned, the contributions to the opening part, including Chapters 2 through 4, focus on citizens’ perceptions and demands. More specifically, the quantitative studies analyse the prevalence of Euroscepticism, the nexus between Euroscepticism and Islamophobia and conceptions of European solidarity in East Central European and the remaining member states. Together, they help to assess whether and how citizens’ attitudes towards the EU and European integration in East Central Europe differ from other EU member states and if illiberal and anti-EU politics in ECE countries can be explained by these differences.

In Chapter 2, Lars Vogel examines if anti-EU politics in East Central European countries are backed by a particularly negative public opinion on European integration. To do so, he analyses if there are regional or EU-wide patterns, trends and determinants of Euroscepticism. He compares the explanatory power of classic Euroscepticism accounts and also explores if public opinion on European integration is linked to critical attitudes towards immigration and illiberal conceptions of democracy.

Gert Pickel and Cemal Öztürk then analyse in Chapter 3 why especially the issues of asylum and migration have led to such vehement opposition from the Visegrád states. Taken together, Chapters 2 and 3 demonstrate that anti-EU politics of ECE countries cannot simply be attributed to high levels of Euroscepticism in the region. Rather, they result from the rejection of specific EU policies. This finding is also supported in Chapter 4 by Florian K. Kley and Holger Lengfeld. To test if ECE countries generally show lower levels of European solidarity, as often argued during the refugee crisis, the authors explore solidarity in other policy areas. They comparatively investigate ECE citizens' willingness to support indebted countries financially and their attitudes towards EU-wide redistributive measures. Again, the contribution underlines that ECE countries are less distinct from the other EU countries than assumed in public and academic debate.

The second part, including Chapters 5 through 8, sheds light on political actors and their illiberal and anti-EU rhetoric and practice. Analysing politicians, parties, and administrations, the contributions complement existing studies on backsliding in ECE countries which typically focus on institutional changes as well as the general state of democracy and devoted less attention to the agents of the current illiberal trends. The comparative works and case studies reveal considerable intra-regional and temporal variations regarding the illiberal agendas of political actors. Furthermore, they demonstrate the differences between the illiberal or anti-EU rhetoric on the one hand and the actual policies on the other hand.

In Chapter 5, Vratislav Havlík and Vít Hloušek provide a comprehensive overview of all four countries of interest, comparing the illiberal ideology and practice of governing parties in the Czech Republic, Hungary, Poland and Slovakia. The authors show that not all decision-makers in the region follow a coherent illiberal agenda and that illiberal practices vary as well. Differences between rhetoric and practice are also discussed in Chapter 6. Focusing on Hungary and the Czech Republic, Paula Beger analyses the link between the public contestation of the EU's asylum and migration policies and the member states' compliance in the policy field. Her contribution also provides an explanation why similar levels of public contestation in both countries resulted in a different compliance performance. Next, in Chapter 7, Michał Dulak looks more closely at the link between illiberal backsliding and anti-EU party rhetoric. To analyse this link, he explores over time how the main ruling and the

main opposition party in Poland, PO and PiS, position themselves vis-à-vis the EU and then checks whether this is backed by societal attitudes. In the last chapter of the second part, Petra Guasti sheds light on the anti-pluralist dimension of illiberalism, analysing how certain political actors in the Czech Republic and Slovakia block pro-universal rights legislation by the EU or the Council of Europe (Chapter 8). In line with Chapter 5, the contribution shows that illiberal backlashes are not necessarily the result of a coherent illiberal ideology, but also of short-term strategic considerations of political actors.

The third part of the volume, including Chapters 9 through 11, addresses the EU's political reactions to the illiberal turn and anti-EU politics in ECE countries. To contribute to current scholarly debates on the EU's oversight instruments, the authors go beyond a top-down enforcement perspective and pay particular attention to the interplay between EU and domestic actors. In doing so, they shed light on the deployment of the EU's remedies against rule of law backsliding and the counter-strategies they have caused. Furthermore, they address how the problems around the illiberal turn and anti-EU politics can be solved by non-legalistic means.

In Chapter 9, Attila Vincze critically reflects on misperceptions in current rule of law conflicts between Brussels and Budapest and their usage in domestic debates. His contribution helps to understand how and why governments criticised for illiberal practices can frame EU interventions such as the Article 7 procedure as political attacks. The same is true for Chapter 10 by Lisa H. Anders and Sonja Priebus, who analyse how the Commission justified rule of law-related infringement procedures against Hungary and how the Fidesz government reacted legally and rhetorically. Given the apparent shortcomings of the EU's instruments, Claudia Y. Matthes then investigates in Chapter 11 how domestic civil rights movements can contribute to safeguarding the rule of law in a bottom-up manner. Focusing on the Polish case, she illustrates how and by which means civil society organisations can keep the issue of backsliding on the domestic and European political agenda.

The three contributions of the concluding fourth part of the book discuss conceptual and theoretical implications for future research. They add to EU studies by moving beyond ECE and a narrow EU perspective and embedding the empirical observations into broader theoretical reflections on democracy and rule of law. In Chapter 12, Luca Tomini and Seda Gürkan elaborate on how illiberal trends and autocratisation

are related to anti-EU-politics and de-Europeanisation. Ireneusz Paweł Karolewski argues in Chapter 13 for a general theory of democratic backsliding, stressing that it should cover societal, institutional and processual aspects. In the final chapter, Chapter 14, Astrid Lorenz and Lisa H. Anders highlight the added value of the volume by summarising how the main findings of the individual chapters speak to each other and jointly provide a comprehensive picture of illiberal trends and anti-EU politics in ECE. Moreover, they link the findings to the state of research and discuss theoretical implications as well as potential avenues for future research.

Overall, the contributions provide rich empirical material to illuminate various facets of the illiberal trends and anti-EU politics in East Central Europe. They thereby contribute to filling a gap that has emerged due to the decline in regional and area studies in many EU member states since the 1990s. When referring to East Central Europe, EU scholars often have to rely on a small number of sources available in English and they all too often infer from the politicians' public rhetoric to their actual policies. As theory-building is also dependent on in-depth case knowledge, this will be provided by contributions of authors with the required language skills, along with the profound country, regional and theoretical expertise.

To be clear, the regional focus of the book neither implies that illiberal trends and anti-EU politics are limited to this region nor that they are equally manifest in all four East Central European countries. Illiberal rhetoric and action, critical discourses on the EU in general and joint decision-making in particular, as well as the renewed interest in national solutions are not confined to the region. Thus, the findings will be of interest not only to experts on East Central European countries, but also to those studying the rule of law, illiberal backsliding and the EU's instruments against it. They will also broaden the empirical knowledge of all those interested in European integration and the interplay between the European and the domestic level.

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PART I

Societal Roots of the Illiberal Trends
and Anti-EU Politics



Illiberal and Anti-EU Politics in the Name of the People? Euroscepticism in East Central Europe 2004–2019 in Comparative Perspective

Lars Vogel

1 INTRODUCTION

Until around the 1992 Treaty of Maastricht, public opinion on European integration was described as “permissive consensus” (Lindberg and Scheingold 1970), implying that citizens in Western Europe tacitly supported their elite’s efforts to push integration further. In the countries of East Central Europe (ECE), citizens had strongly supported EU membership as a “return to Europe” since the 1990s at least until the accession in 2004. Nevertheless, the support was not consensual (Guerra 2013). Nowadays, public opinion on European integration in both ECE and the EU in general is characterised by a “constraining dissensus” (Hooghe and Marks 2008); that is, significant parts of the population evaluate European integration negatively or even oppose it. This public

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contestation constrains pro-European elite's leeway in pursuing further steps of integration and encourages parties—both at the fringes and from the mainstream—to politicise European integration and its liberal constitutional foundations.

Anti-EU and illiberal policies of governments may thus be backed by negative public opinion on European integration. With institutional reforms that contest the rule of law or by open non-compliance with EU immigration policy, national governments in ECE—encompassing Czechia, Hungary, Poland and Slovakia—may thus be responsive to domestic Eurosceptic public opinion or actively mould the latter to get domestic support for such policies. The present chapter, accordingly, describes patterns, trends and determinants of public Euroscepticism in ECE to analyse whether public opinion on European integration in these countries is related to the contestation of both the immigration policies and the constitutional principles of the EU by the respective governments. By using longitudinal and cross-sectional, cross-country and country-by-country analyses, the chapter makes two contributions to the research on public opinion on European integration and to regional studies on ECE. Firstly, three dimensions of attitudes towards European integration are delineated and empirically validated: diffuse regime, input- and policy-specific support. Secondly, the chapter analyses the results of ECE in a comparative perspective to investigate whether Euroscepticism in ECE is characterised by regional or by European-wide patterns. It shows only weak indications for a ECE-specific Euroscepticism, i.e. similar patterns among all ECE countries that are distinct from the EU average. In contrast, ECE is less characterised by regional similarities but rather by country differences with regard to both the degree of Euroscepticism and its linkage to the issue of immigration and conceptions of democracy. Additionally, the standard explanatory factors for Euroscepticism need to be amended for and are mediated by country-specific factors. For instance, negative assessments of domestic democracy are positively related to Euroscepticism in Czechia and Slovakia while negatively related to in Hungary and Poland.

In order to develop these findings in more detail, the remainder is structured as follows: the following part introduces the multidimensional concept of Euroscepticism. The third paragraph delineates the hypotheses to explain Euroscepticism and introduces preferences towards immigration and conceptions of democracy as explanatory factors that are directly linked to the ECE governments' contestation. The final three parts

present the data, the results of the descriptive and multivariate analysis and provide some conclusions.

2 EUROSCEPTICISM: CONCEPT

Since Euroscepticism implies different meanings, it requires conceptual clarification before being applied in empirical research. It has to be delineated whether Euroscepticism includes fundamental opposition to European integration as well as a critique of its current praxis and performance, or just reluctance or doubts. Furthermore, the term Euroscepticism suggests unidimensionality, i.e. people either support or oppose European integration generally. However, research on public opinion has demonstrated that attitudes towards European integration are multidimensional. They can display ambivalence and ambiguity: instead of consistent pro- or anti-European sentiments, citizens may reject certain facets or objects of European integration but favour others (De Vries 2018, pp. 40–41; Boomgaarden et al. 2011; Stoeckel 2013).

An important starting point for conceptual clarification is provided by Easton's (1975) concept of political support that distinguishes between authorities, regime, and community as three different *objects* of evaluation, as well as between specific and diffuse as two different *modes* of support. According to this perspective, scepticism is the lack or withdrawal of support. While specific support is based on the positive evaluation of the performance of the authorities, institutions or the entire regime, diffuse support is not referring to the actual performance of an object but is derived from the support of the values and norms it represents. This conceptual distinction was refined when applied to attitudes on European integration, but the difference between “utilitarian/specific/output-oriented support [and] affective/diffuse/input-oriented support” (Boomgaarden et al. 2011) still appears in most of these approaches. For instance, Kopecky and Mudde (2002), in their work regarding party stances on European integration, differentiate between support (or lack of) that is affective/value based (Europhiles and Europhobes) or performance based (Optimists and Pessimists). The combination of both dimensions results in a typology in which Euroscepticism encompasses fundamental opposition towards European integration (Europhobe pessimists) and rejection of the actual practice of integration (Europhile pessimists). This dichotomy is resembled in the distinction between “Hard” and “Soft” Euroscepticism

(Taggart and Szczerbiak 2004) or in the category of “critical citizens” (Norris 1999), who support the idea of democracy but evaluate the practice of democracy in their own country negatively. Weßels (2007) underlines that each mode of support—value and performance based—can be applied to each object except the community, i.e. for authorities and institutions as well as for the entire process of European integration.

An additional dimension of specific support is policy-related support, which is derived from the dichotomy of input- vs output-legitimacy (Scharpf 1999) or regime- vs policy-evaluations (Dahl 1998). On the one hand, specific support is input-based on the assessment of the responsiveness and inclusiveness of a regime. For democratic systems such as the EU, input-based support is particularly important, since it is normatively based on democratic equality in terms of participation and representation. On the other hand, specific support is based on the output a regime delivers, for instance, the provision of economic goods or social security. Recent studies underline that the demand for a shift of competencies to the EU level is influenced by the comparison between the performance of the domestic government in a particular policy field and the (presumed) performance of the EU institutions in that policy field. The demand for further integration is, accordingly, a specific form of policy support based on the presumed superiority of policy solutions at EU level compared to national solutions—averaged for multiple policies (De Vries 2018, pp. 45ff).

In order to capture the described multidimensionality of attitudes towards European integration, we distinguish (I) diffuse regime support, (II) input-specific regime support and (III) policy-specific regime support, which are further combined in a typology of Euroscepticism (s. below).

3 EXPLAINING EUROSCEPTICISM: HYPOTHESES

Theoretical approaches to explain public support of European integration either focus on economic considerations, identity issues, such as anti-Muslim attitudes (see Chapter 3), benchmarking, cue-taking or, rather seldom, democratic conceptions as explanatory factors (Ejrnæs and Jensen 2019; Hobolt and Vries 2016).

Economic or utilitarian approaches assume that citizens support European integration, should the perceived benefits of membership of a given country in the EU outweigh the costs (Gabel 1998). These approaches

distinguish between individuals and collective benefits. Individual benefits of European integration are unequally distributed among the population and conditional on socioeconomic status traits such as, for instance, education, occupation and income. The higher the education and income and the more skilled the occupation, the more advantages individuals can retrieve from trade liberalisation in the course of European integration and the more they support it. In contrast, the less skilled and educated people are, the more their job security is endangered by liberalisation, which makes them less supportive. Sociotropic assessments of the benefits of EU membership for ones' own country can be based on the attributed responsibility of the EU for the macroeconomic performance of this country or on its status as net-recipient or net-contributor in the EU system of fiscal transfers. Other approaches have focused on the welfare system and assume that European integration is less supported in countries with a developed welfare state, which is perceived as threatened by further liberalisation. In countries with high levels of inequality, European integration is perceived as stimulating further redistribution. The underlying assumption is that individuals' support is linked to their attitudes to the welfare state (Garry and Tilley 2015).

In the ECE countries with comparatively weak welfare states and high levels of inequality, support for the EU is, accordingly, supposed to be stronger among citizens who support further redistribution. *Accordingly, we assume that policy-specific support for European integration decreases, the lower the individual socioeconomic status becomes (H1a) and the more one supports welfare-state redistribution (H1b). Diffuse regime support and input-specific regime support are presumed as less influenced by these factors.*

Identity approaches (Hobolt and Vries 2016) emphasise cultural issues such as identity, immigration and religion (Carey 2002). In this view, citizens perceive European integration not primarily in terms of economic liberalisation but as a more general process to overcome national and cultural boundaries. Citizens who share conceptions of distinct and culturally homogeneous nations are, accordingly, more likely to feel threatened by European integration than those who favour cosmopolite conceptions of culturally heterogeneous societies (s. also Chapter 3 in this volume). *Accordingly, Euroscepticism is expected to be higher among citizens with nationalist world views compared to those with cosmopolite orientations (H2).* The former share homogeneous and exclusive conceptions of national identity that are expressed, inter alia, by sceptic to hostile attitudes towards immigration.

Scholars of public opinion have emphasised that citizens lack knowledge, time, interest and commitment to gather sufficient information on the basis of which they are able to evaluate distant objects such as the EU and its institutions. They rather rely on informational shortcuts or cues that are more easily accessible in their daily experience (Zaller 1992; Anderson 1998). The impact of several cues has been investigated, including the media coverage of the EU, attitudes of domestic elites, stances of established and challenger parties, and the performance of national governments (Hobolt and Vries 2016). These cues are primarily derived from objects in the domestic context and presumed to enfold two opposite influences. The cueing argument was developed in research on voting behaviour in European elections: if people are satisfied with their domestic government, they vote for the parties that form this government (Franklin et al. 1995). Generalising this argument assumes that the less one is satisfied with the national government, the less one supports European integration. In contrast, benchmarking approaches (De Vries 2018; Sánchez-Cuenca 2000) stress that the national contexts provide a benchmark for the evaluation of the EU: if citizens are not satisfied with their national government or the democratic regime in their country, they may perceive a shift of competencies to the supranational level of the EU as an appealing alternative. Vice versa, citizens who are satisfied with their national government are likely to oppose shifts of competencies from the national to the supranational level; that is, they are Eurosceptic concerning the policy-specific dimension of political support. Whether cueing or benchmarking dominates is conditional on the national context (Ejrnæs and Jensen 2019). *We therefore assume that satisfaction with the government is linked to both input- and policy-specific support for the EU (H3a), satisfaction with the economic situation is linked to policy-specific support (H3b), while satisfaction with national democracy is linked to input-specific support (H3c). However, whether the domestic evaluation is a cue that is directly transferred to the EU level or serves as an indirect benchmark is conditional upon the national context.*

Parties and governments also actively mould public opinion towards European integration (Gabel and Scheve 2007; Steenbergen et al. 2007). Since the consensus among established political elites to support European integration has remained longer than the “permissive consensus” among the population (Vogel and Rodríguez-Teruel 2016), attempts to politicise European integration were pursued primarily at the fringes of the national party systems. Parties and elites on the left mobilise voters

against the neoliberal and, since the financial crisis, the austerity policy of the EU, whereas on the right, they mobilise by accusing the EU of undermining the national identity and sovereignty (Hobolt and Vries 2016). *If citizens take cues from parties they support, the degree of Euroscepticism is supposed to be higher for citizens who support a Eurosceptic party (H4).* The causality may, however, also be reversed: Eurosceptic attitudes may originate endogenously and subsequently determine the party choice. Although we cannot completely rule out this alternative interpretation, two caveats are made. Firstly, if citizens' Eurosceptic attitudes were endogenous to party stances, the choice for a Eurosceptic party would be significantly influenced by the other explanatory factors discussed in this section. Thus, the absence of multicollinearity would support the cueing interpretation. Secondly, voters' choice for Eurosceptic parties is in any case not completely influenced by the Eurosceptic stances of these parties. This is more likely for Eurosceptic parties with a broad programmatic package compared to niche parties and in electoral competitions, which are not centred on issues of European integration, i.e. rather in national than European elections.

Input-specific support is linked to the perception of responsiveness in the policy-making process; that is, both private interests and the interests of the own country are regarded in the policy-making process (see Chapter 7). Empirical evidence shows that perceived external efficacy of the EU indeed decreases Euroscepticism (Rohrschneider 2002; McEvoy 2016). We assume that input-specific support is further influenced by the conceptions of democracy. This assumption links the debate on Euroscepticism with the one on democratic backsliding and contestation of EU law by the ECE governments. We distinguish analytically between an illiberal conception of democracy that stresses the primacy of national popular sovereignty and majoritarian rule, and a liberal conception which puts universal civil and minority rights as well as institutional control and division of power in the foreground (Mény and Surel 2002). Citizens may perceive the EU as a threat to illiberal conceptions, since qualified majority voting can result in EU decisions that are contrary to national majorities. Additionally, economic liberalisation is inextricably linked to the protection of individual civil rights such as, for instance, free movement, which constrains national sovereignty further. *We therefore assume that citizens with an illiberal conception of democracy are less supportive of European integration on the input-specific dimension (H5).*

Combining these assumptions in a longitudinal perspective, diffuse regime support for the EU is presumed to have remained stable in the ECE countries in the period under investigation, but specific support, both input- and policy-related, is volatile and dependent on the domestic context. Since diffuse regime support is driven by value-based evaluations, it should be more stable than specific support. Accordingly, the economic developments of the ECE countries are presumed to contribute in particular to policy-specific support. In particular, the economic difficulties since the financial crisis of 2007/2008 may have changed the perception of economic benefits resulting from EU membership. Less benefits are perceived, if the responsibility for economic decline is attributed to the EU, but also, if the responsibility for successfully coping with economic hardships is attributed to the national governments instead of to the EU (Vogel and Göncz 2018). Additionally, cultural issues may have influenced policy-specific support in the course of the so-called refugee crisis of 2015/2016 and the efforts at EU-level to reform the relocation scheme for immigrants and refugees. In the ECE countries, in which some national governments portrayed the EU as undermining national ethnic homogeneity and thus the foundation of cultural identity, policy-specific support is considered to decrease in the aftermath of 2015. Input-specific support might have decreased too, since governments in ECE countries fuse their accusation of the EU undermining national identity and sovereignty with their conception of an alternative, illiberal view of democracy that challenges the liberal foundations of the EU enshrined in Article 2 TEU.

4 DATA BASIS: THE EUROPEAN ELECTION VOTER STUDIES 2004–2019

The data for this investigation is derived from the four Voter Studies of the European Election Studies (2004, 2009, 2014 and 2019).¹ Our sample includes all countries in which the survey was conducted at each election to the European Parliament since 2004, thereby including 24 states that were EU members in 2019 (except for Bulgaria, Croatia, Malta and Romania). Each Voter Study was conducted after the respective European election and contains around 1000 randomly selected respondents

¹<http://europeanelectionstudies.net/>.

in each wave in each country. The recommended weighting procedures were applied for post-stratification and to take into account the different number of inhabitants of the countries in the case of reporting EU averages.

Dependent Variables

Diffuse regime support is measured by the answer to the question “Generally speaking, do you think that [country]’s membership of the European Union is a good thing, a bad thing, or neither?” and input-specific support by the question “All in all again, are you very satisfied, fairly satisfied, not very satisfied or not at all satisfied with the way democracy works in the European Union?” To capture policy-specific support, the following standard item was selected: “Some say European unification should be pushed further. Others say it already has gone too far. What is your opinion?” Since policy evaluations in the multi-level context of the EU are linked to policy allocation, respondents who evaluate the problem-solving capacities of the EU better than that of their national political system are supposed to favour further integration. The membership question was asked in all four waves; satisfaction with democracy was not asked in 2014 and neither was the question on unification in 2004.

Independent Variables

Individual utilitarian judgments are not directly assessed but measured by the length of formal education and the subjective social class (Table 3 in the Appendix). Self-assessment of class belonging serves as a valid indicator for the access to resources that is otherwise measured by occupation and income (Wright 2000). Sociotropic utilitarian considerations are measured by the preference for welfare-state redistribution. Nationalist and cosmopolite orientations are distinguished by measuring respondents’ attitudes towards immigration. Cueing and benchmarking are assessed by asking for the satisfaction with democracy within a given country, the disapproval of the national government and an assessment of the national economic situation. Party cues are assessed by asking for which party respondents have voted in the most recent national election. By this focus on the national election instead of on the European elections, it is less likely that the electoral choice was influenced by parties’ positions on European integration (see above). The classification of parties as

Eurosceptic is based on their belongingness to one of the following party groups in the European Parliament: GUE/NGL, ID and ECR (Table 4 in the appendix). The exception being Fidesz, which was categorised as Eurosceptic despite their affiliation to the EPP. If parties do not belong to any parliamentary group, the classification follows the overview provided by Barbieri (2015). Finally, the measurement of democratic conceptions is constrained by the indicators that are available in the EES. We use the support for the restriction of civil rights to combat crime as an indication of illiberal conceptions. Citizens who approve restrictions are more likely to share illiberal conceptions of democracy, since they provide individual civil rights not universally, but only if this is not seen as an obstacle to the realisation of certain policy goals.

5 EUROSCEPTICISM IN ECE 2004–2019: DESCRIPTION AND TYPOLOGY

Regime support increased in all ECE countries since their accession in 2004 even though in Hungary it is only marginally higher in 2019 compared to 2004 (Fig. 1). In Poland, Hungary and Slovakia, diffuse support in 2019 is even above the average of the remaining EU member states, while support in Czechia remains remarkably lower. With the exception of Hungary, neither in ECE nor in the remaining EU, diffuse regime support dropped at the peak of the economic crisis in 2009. Instead, it decreased slightly afterwards (except in Hungary and Poland), since the economic crisis has developed into a financial and state budget crisis. Furthermore, neither the conflicts during or in the aftermath of 2015's massive influx of asylum seekers nor the contestation of the rule of law by constitutional reforms in Hungary and Poland nor the non-compliance of the Visegrád countries with the relocation scheme have been accompanied by a decrease in public diffuse regime support for the EU since 2015. Moreover, diffuse support has even increased, while it decreased in the average of the remaining EU countries.

In contrast, satisfaction with EU democracy has decreased in almost all observed ECE countries since 2004, except in Poland, which parallels the development of the average in the other member states (Fig. 2). Similar to the level of diffuse support, the input-specific support in Hungary and, especially, in Poland was always above the average of the remaining EU countries including Slovakia and Czechia. Finally, policy-specific support is the most volatile dimension: in all ECE countries and in the average of

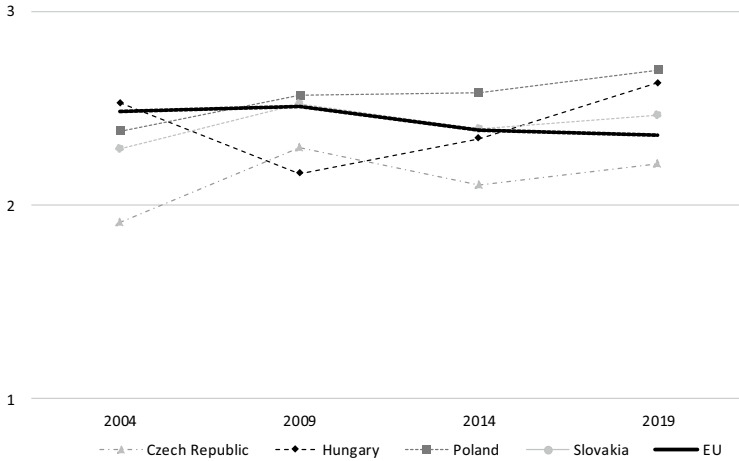


Fig. 1 Diffuse regime support: EU membership is a good thing (Means 2004–2019, EES) *Note* Generally speaking, do you think that [country]’s membership of the European Union is a good thing (3), a bad thing (1) or neither (2)? (answers are recorded). EU without ECE countries, Bulgaria, Croatia, Malta and Romania

the other EU countries, it decreased significantly in 2014 with a re-rise in 2019 (Fig. 3). Only in Czechia did policy-specific support not re-rise after the drop from 2009 to 2014.

These different and, accordingly, loosely coupled developments in ECE—increasing diffuse support, decreasing input-specific support and volatile output-specific support—corroborate the multidimensional structure of attitudes towards European integration at the macro-level. To investigate this multidimensionality at the individual level, input-specific support and policy-specific support are combined into three categories of specific support: (1) citizens who are not satisfied with EU democracy and who judge European integration as too far-reaching,² (2) citizens who are both satisfied with EU democracy and with the current status of European integration (or even want it to be pushed further) and (3) those with mixed evaluations of input and policy. In the observed ECE countries

² Before, the question measuring policy-specific support was collapsed in two categories: those who think European integration has gone too far (0–4) and those who are either satisfied or even want it to be pushed further (5–10).

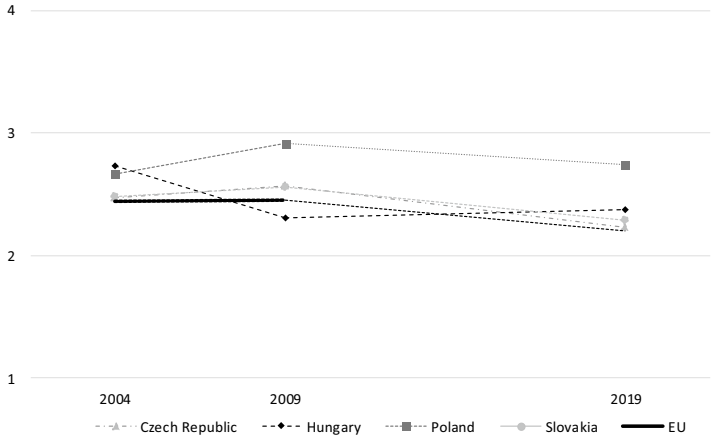


Fig. 2 Input-specific support: Satisfaction with EU democracy (Means 2004/9/19, EES) *Note* All in all again, are you very satisfied (4), fairly satisfied (3), not very satisfied (2) or not at all satisfied (1) with the way democracy works in the European Union? (answers recoded). EU without ECE countries, Bulgaria, Croatia, Malta and Romania

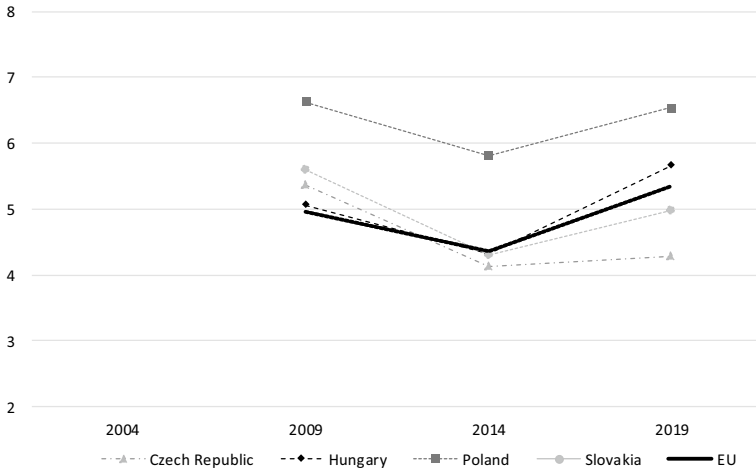


Fig. 3 Policy-specific support: Evaluation of European integration (Means 2009–2019, EES) *Note* Some say European unification should be pushed further. Others say it already has gone too far. What is your opinion? Please indicate your views using a scale from 0 “has already gone too far” to 10 “should be pushed further”. EU without ECE countries, Bulgaria, Croatia, Malta and Romania

in 2019, the relation between those three categories of specific support and diffuse regime support is rather close (Table 1): 69.3% of those who are sceptical towards the regime display no specific support, while 70.7% of the diffuse supporters are simultaneously satisfied with both EU democracy and policy performance. Those who are undecided about the benefits of EU membership judge input and policy overwhelmingly mixed or negative. In the average of the other EU member states (no figure), 65.1% of those without diffuse support show no specific support, which is close to the ECE average of 69.3%. But only 47.6% of those with diffuse regime support display outright specific support. This suggests that in the ECE countries, regime support is more closely coupled with performance assessment than in the remaining member states, which is presumably due to the shorter experience with European integration in ECE.

Based on these observations, a typology of Euroscepticism, i.e. of those who explicitly judge at least one dimension of European integration negatively, is applied to the EES of 2019 (see Table 1). Relying on the categories proposed by Taggart and Szczerbiak (2004) and Weßels (2007), “Hard Eurosceptics”, who neither display diffuse nor specific support, constitute a minority of 6.2% of all ECE citizens. “Soft Eurosceptics”, who lack specific support but do not judge the membership of their country in the EU negatively (but also not positively), are the majority of Eurosceptics constituting a slightly greater share of the ECE population (8.4%). “Critical EU supporters” are those who evaluate EU

Table 1 Types of Euroscepticism in ECE countries (Column- and (Total-) Percentages, EES 2019)

		<i>Diffuse regime support (EU Membership is ...)</i>			<i>Total</i>
		<i>Sceptical (...bad)</i>	<i>Undecided (...neither good nor bad)</i>	<i>Supportive (... good)</i>	
Specific input/policy support	Sceptical	69.3 (6.2)	38.6 (8.4)	6.9 (4.8)	19.3
	Hard Eurosceptics		Soft Eurosceptics	Critical EU supporters	
	Mixed	23.6 (2.1)	40.6 (8.8)	22.4 (15.6)	26.5
	Supportive	7.1 (0.6)	20.7 (4.5)	70.7 (49.1)	54.2
Total		8.9	21.6	69.5	100.0

For details of calculations: s. above

membership positively but who are critical both about policy and democratic performance of the EU. The few citizens who perceive no benefits from EU membership, but are either satisfied with EU democracy or policy output or both are “Sceptical Instrumentalists”.

Taking these four types together, Eurosceptics appear as a minority in the ECE countries and in the average of the remaining EU countries (Fig. 4). Nevertheless, in Czechia and Slovakia, as in the EU average, its amount increased in the past ten years. In 2019, it even encompasses a huge minority of 43.5% in Czechia. In contrast, Euroscepticism has decreased in Hungary and Poland in the same period, which rules out that rising Eurosceptic public opinion has fuelled the non-compliance in immigration policy of the national governments in these two countries. Despite these differences, the composition of Eurosceptics differs only marginally: in most of the countries, Euroscepticism is primarily based on a lack of diffuse regime support (“Hard” and “Soft” Eurosceptics) and its increase is primarily due to a growing amount of “Hard” Eurosceptics. The “Critical EU supporters”, who support membership, but who are

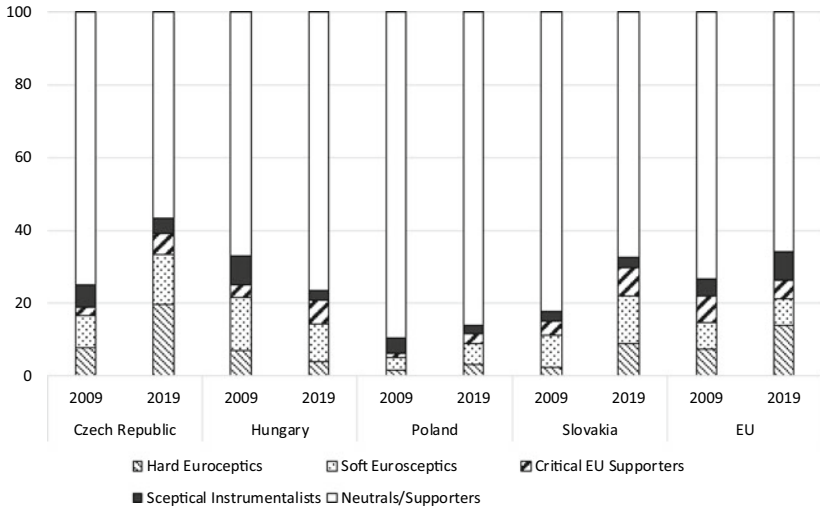


Fig. 4 Types of Euroscepticism in ECE and EU-20 (Percentages, EES 2009/19) *Note* EU without ECE countries, Bulgaria, Croatia, Malta and Romania

critical about both the EU's input and policy performance, constitute the minority of Eurosceptic citizens in most countries.

6 FINDINGS: MULTIVARIATE ANALYSIS FOR 2019

To analyse the determinants of these attitudes to European integration, we use single-level linear regression models for the country-by-country analyses and two-level random intercept models for the cross-country analyses (Table 2). We first investigate the impact of individual utilitarian considerations based on the own social status. The higher the self-estimated social class-affiliation, the higher the diffuse regime and policy-specific support in the average of the EU. Formal education additionally increases input-specific support. In contrast, in the ECE countries, both factors enfold an impact only in Czechia. Here, education increases diffuse regime support and higher social class increases policy-specific support. Thus, in ECE, with the exception of Czechia, all types of EU support are independent from individual utilitarian judgements, which is a remarkable difference to the EU average for which H1a is confirmed.

Proceeding to sociotropic judgements, H1b is partially confirmed; that is, welfare-state preferences are linked to diffuse regime support in Slovakia but not in the EU average, while they are linked to specific support in the EU and in Czechia, Slovakia and Hungary. There is no link between preferences for redistribution and EU support in Poland. Furthermore, the domestic context mediates not only the degree but also the direction of the impact: the more citizens reject redistribution, the more they support the EU in Czechia and Slovakia, while the support is lowered among Hungarian opponents of redistribution. Following the explanations suggested above, the EU is perceived by Czech and Slovakian citizens—and in the EU average—as an agent of economic liberalisation and is thus valued by those who want to constrain redistribution. In contrast, the Hungarians perceive the EU rather as means for fostering redistribution that makes the EU more valued among those who support redistribution. This mediating effect is presumably due to the differing degree of inequality and welfare-state institutions in the respective countries.

In the EU average, citizens who approve restriction of immigration—used as proxy for nationalistic orientations—are less likely to display both diffuse support and specific support compared to citizens with cosmopolite orientations. In ECE, the impact is limited to specific support

Table 2 Single- and Multi-level linear regression models explaining support for European Integration (EES 2019, beta values)^a

	<i>Diffuse regime support: EU Membership (3, good, 1: bad)</i>				<i>Input-specific support Satisfaction with EU democracy (4: satisfied, 1: dissatisfied)</i>				<i>Policy-specific support 0: Integration has gone too far - 10: should be pushed further</i>						
	CZ	HU	PL	SK	EU ^b	CZ	HU	PL	SK	EU ^b	CZ	HU	PL	SK	EU ^b
Self-estimation own class (Higher)	.08	.01	.01	0	.07***	.02	-.04	-.07	-.04	.01	.12**	-.01	.05	.03	.06***
Education (Higher)	.13**	.07	-.04	.07	.06***	.08	.04	.02	-.01	.02**	.06	.03	-.04	.03	.05***
Reject redistribution	.09	-.01	0	.15***	0	.09***	-.1**	.06	.1**	.03***	.04	-.1**	-.03	.12**	-.02
Favour immigration	.02	.09	.05	-.08	.11***	.06	.18***	.32***	0	.12***	.1	.19***	.26***	.03	.19***
Dissatisfaction with democracy in own country	-.23***	.09	.17**	-.23***	-.21***	-.43***	-.25***	.02	-.55***	-.5**	-.12**	.15**	.21***	-.15**	-.14***
Dissatisfaction with government	.11**	0	-.14	-.02	-.02	.09	.07	-.07	.04	-.01	.1	.02	-.11	.04	-.03***
Dissatisfaction with economy	-.03	-.01	-.14**	-.2***	-.06***	.02	.07	-.05	-.15***	0	-.01	.03	-.08	-.19***	-.05***
Vote for Eurosceptic party in national election	-.18***	-.17***	-.22***	-.09	-.22***	-.12**	-.17***	-.14**	-.08	-.17***	-.15***	-.14***	-.17***	-.07	-.18***
Favour restriction of civil rights	-.07	-.03	-.05	.02	-.03***	.02	-.13***	.03	.01	-.02	0	-.07	-.03	-.02	-.02**
CZ					-.07					-.02					-.08

	Diffuse regime support EU Membership (3: good, 1: bad)					Input-specific support Satisfaction with EU democracy (4: satisfied, 1: dissatisfied)					Policy-specific support 0: Integration has gone too far - 10: should be pushed further				
	CZ	HU	PL	SK	EU ^b	CZ	HU	PL	SK	EU ^b	CZ	HU	PL	SK	EU ^b
HU					.12**					.13***					.09
PL					.08					.13***					.1
SK					.02					.02					-.02
R ² /Maddala-	.14***	.15***	.12***	.18***	.15***	.22***	.11***	.13***	.39***	.33***	.09***	.2***	.17***	.09***	.13***
R ^{2c}															
N	703	715	703	679	15,659	706	707	692	677	15,479	697	700	699	677	15,346

^aAll models control for age and gender. ^bEU member states of 2019 excluding ECE countries, Bulgaria, Croatia, Malta and Romania; ^clikelihood-ratio Chi² test; ** $p < .01$; *** $p < .001$; coefficients with p -values $\geq .01$ are not considered as significant following the recent debate in statistics (Wasserstein et al. 2019)

and, furthermore, to Hungary and Poland. The more Hungarian and Polish citizens favour restrictions of immigration, the more they are dissatisfied with EU democracy and the more they perceive integration as too far-reaching. The results corroborate H2 in that citizens who share conceptions of culturally homogeneous national identity are more reluctant to support European integration—presumably due to its border-transcending impact. The lack of such a link in Czechia and Slovakia is an exception from the general picture in the EU.

Satisfaction with national democracy, the government and the economy are presumed to influence the attitudes towards the EU either via the cueing or the benchmarking mechanism. Dissatisfaction with democracy decreases diffuse support and specific support in the EU average as well as in Czechia and Slovakia. This underlines the cueing effect of the domestic context. As presumed in H3c, the evaluation of domestic democracy has the strongest impact on satisfaction with EU democracy. It is, however, also relevant for diffuse support for which it is even one of the most influential predictors. The Polish and Hungarian cases, in contrast, support the benchmarking interpretation: dissatisfaction with democracy increases policy-specific support of the EU; that is, the more one is dissatisfied with Hungarian or Polish democracy, the more EU integration is requested to be pushed further. In Hungary, however, dissatisfaction with domestic democracy is also connected positively to dissatisfaction with EU democracy. While EU democracy is judged by the Hungarians by the same measure as domestic democracy, there is no evidence for such a link in Poland. In both countries, further EU integration seems to be perceived to solve democratic deficits at national level and in Hungary at both levels.

Disapproval of the national government fuels diffuse support in Czechia only, accordingly, Czech citizens' satisfaction with their government goes along with increased Euroscepticism. This negative effect corroborates the benchmarking approach for Czechia, but the effect prevails in no other ECE country. Rather, the opposite cueing effect dominates in the EU average: dissatisfaction with the own national government decreases enthusiasm for further integration.

Slovakia is the only ECE country in which the perception of economic decline goes along with lower EU support in all three dimensions. In Poland, a negative sociotropic assessment is connected to decreased diffuse support, while in the EU average it goes along with diffuse and policy-specific EU support. Sociotropic assessments are not linked to the EU evaluation in Czechia and Hungary.

Voting for a Eurosceptic party in the most recent national election is strongly and consistently linked to lower EU support in all dimensions, which holds true for the EU average and for almost all ECE countries—with Slovakia as a remarkable exception. It should be underlined that the voting decision is controlled for other explanatory factors and shows only low multicollinearity. Thus, the decision to vote for Eurosceptic parties in the last national election is just partially motivated by the utilitarian and benchmarking considerations or by the policy- and politics-related attitudes, which are analysed here to explain Euroscepticism.

Finally, illiberal conceptions of democracy, measured by the approval of civil rights restrictions in favour of reaching a certain policy goal, go along with decreased diffuse regime and input-specific support in the EU average. In contrast, Hungary is the only country in ECE in which illiberal conceptions of democracy are linked to attitudes on European integration: Hungarians who accept restrictions of civil rights are more likely to display lower input-specific support.

The multi-level cross-country analysis shows a significant and positive impact of the domestic context in Hungary and Poland for input-specific support and, for Hungary, for diffuse support. The attitudes towards European integration in Czechia and Slovakia are, in contrast, explained thoroughly by the explanatory factors valid in the EU average. This result corroborates observations of a “Europeanisation of Euroscepticism” in Czechia; that is, Eurosceptic attitudes are decreasingly linked to the domestic historic, social and political characteristics of a country but are increasingly connected to a Eurosceptic political discourse with similar patterns and narratives in all EU member states (Havlík et al. 2017, pp. 163–164). In contrast, the higher levels of support in Hungary and in Poland indicate additional domestic factors that decrease Euroscepticism in these countries vis-à-vis their explicitly Eurosceptic governments.

Furthermore, the country-by-country analysis of the ECE countries has demonstrated that the impact of many general explanatory factors is conditional upon the national context—with the exception of the vote for a Eurosceptic party. In Czechia and Slovakia, utilitarian considerations and cueing effects of domestic democracy are most important. However, in Slovakia, the sociotropic benefits are important, including the preferences for redistribution, while in Czechia only individual utility is important. The two countries differ further as Slovakia is the only ECE country in which the stances of the (two) Eurosceptic parties do not decrease EU support among their voters, and Czechia is the only country in which the government serves as a benchmark instead of as a cue for EU evaluation.

By contrast, in Poland and Hungary, utilitarian considerations are not decisive for attitudes towards European integration—except the preferences for redistribution in Hungary—but preferences for immigration enfold significant impact. Furthermore, in both countries, dissatisfaction with democracy serves as a benchmark instead of as a cue for policy-specific support implying that dissatisfaction with domestic democracy goes along with the demand for further integration, which is in strong contrast to Czechia and Slovakia and to the EU average—even though the picture in Hungary is more complex due to the cueing effect on input-specific support. The peculiarity of Hungary is further underlined by the negative connection between input-specific support and illiberal conceptions of democracy, which is unique in ECE.

7 CONCLUSION

The aim of this chapter was to describe the structure, development and determinants of attitudes towards European integration in ECE in order to analyse whether and how the contentious politics of the governments in this region vis-à-vis the EU are related to public opinion on European integration. The chapter focused especially on the connection between Euroscepticism and illiberal conceptions of national identity and democracy in the context of standard explanatory factors. Using data from a series of European Election Studies, the chapter distinguished Euroscepticism analytically in diffuse regime, input- and policy-specific support. It demonstrated that public support for European integration in ECE is more closely linked to instrumental performance assessments than in the EU average. This result may be explained by the shorter EU experience of citizens in the ECE countries, which provided less time to decouple diffuse regime support from performance evaluations.

Given this coupling, governments in ECE may back their contentious politics by drawing on negative assessments of the EU in immigration policy and its constitutional regulations. The results indicate, however, that the relation between public opinion and government politics is less straightforward. Firstly, Euroscepticism is not widespread and has even decreased in Hungary and Poland, i.e. in those countries that pursue the fiercest politics of EU policy contestation. It is, however, remarkably high—and has even increased—in Czechia and Slovakia. Secondly, although contestation began to escalate in the course and aftermath of the so-called refugee crisis of 2015, Euroscepticism in ECE shows only a moderate increase in its input-specific dimension since then. Thirdly, the determinants for Euroscepticism reveal rather country-specific than

region-specific patterns. Especially, the cultural issues that are most salient in ECE governmental politics—immigration and conceptions of democracy—are only relevant for public Euroscepticism in Hungary and Poland, but not in Czechia and Slovakia, where socioeconomic and utilitarian considerations are more important.

The country-specific domestic context is also relevant for the outcome of comparisons between the performance at the national and the EU level. While dissatisfaction with democracy is generalised to the EU level in Czechia and Slovakia, dissatisfied citizens in Poland and in Hungary are more likely to support further integration. Obviously, the domestic public discourse and its narratives, including the politics of the national governments, are built upon and revolve around country-specific criteria for citizens' evaluation of European integration. National grievances that serve as cues to increase Euroscepticism in some countries increase support of European integration in others, presumably as a means to overcome them by further integration. Given this intra-regional heterogeneity, the level and the determinants of public Euroscepticism do not provide a thorough explanation for the similarity of the Visegrád governments in their illiberal and anti-EU politics.

APPENDIX

Table 3 Question wording

	<i>Wording</i>
Self-estimation own class (Higher)	If you were asked to choose one of these five names for your social class, which would you say you belong to? (1) the working class, (2) the lower middle class, (3) the middle class, (4) the upper middle class or (5) the upper class
Education (Higher)	How old were you when you stopped full-time education? (Age in years, classified by EES team)
Reject redistribution	0 You are fully in favour of the redistribution of wealth from the rich to the poor in [country] ... 10 You are fully opposed to the redistribution of wealth from the rich to the poor in [country]
Favour immigration	0 You are fully in favour of a restrictive policy on immigration ... 10 You are fully opposed to a restrictive policy on immigration
Dissatisfaction with democracy in own country	On the whole, how satisfied are you with the way democracy works in [country]? Are you: (1) very satisfied; (2) fairly satisfied; (3) not very satisfied; (4) not at all satisfied
Dissatisfaction with government	Let us now come back to [country]. Do you approve or disapprove of the government's record to date? (1) approve; (2) disapprove
Dissatisfaction with economy	What do you think about the economy? Compared to 12 months ago, do you think that the general economic situation in <country name> is: (1) a lot better; (2) a little better; (3) stayed the same; (4) a little worse; (5) a lot worse
Vote for Eurosceptic party in national election	Which party did you vote for at the [General Election] of [Year of Last General Election]?
Favour restriction of civil rights	0 You fully support privacy rights even if they hinder efforts to combat crime ... 10 You fully support restricting privacy rights in order to combat crime

Source EES

Table 4 List of Eurosceptic Parties (EES country and party codes)

1040 Austria	1040420 Austrian Freedom Party
	1040600 Alliance for the Future of Austria
1056 Belgium	1056325 Workers Party of Belgium (Partij van de Arbeid van België (PVDA +))
	1056335 Workers Party of Belgium (Parti du Travail de Belgique (PTB))
	1056711 Flemish Interest
	1056913 New Flemish Alliance
1196 Cyprus	1196321 Progressive Party of the Working People
	1196951 National Popular Front
1203 Czech Republic	1203220 Communist Party of Bohemia and Moravia
	1203413 Civic Democratic Party
	1203951 Freedom and Direct Democracy Tomio Okamura
1208 Denmark	1208220 Red-Green Unity List
	1208421 Liberal Alliance
	1208720 Danish People's Party
1233 Estonia	1233810 Conservative People's Party of Estonia (EKRE)
1246 Finland	1246223 Left Wing Alliance
	1246820 True Finns
1250 France	1250225 Unbowed France
	1250720 National Rally
1276 Germany	1276321 The Left
	1276621 Alternative for Germany
1300 Greece	1300210 Communist Party of Greece
	1300215 Coalition of the Radical Left
	1300611 Independent Greeks
	1300710 Golden Dawn
1348 Hungary	1348421 FIDESZ-KDNP Alliance
	1348700 Jobbik
1372 Ireland	1372951 Sinn Fein (Ourselves Alone)
1380 Italy	1380631 Brothers of Italy - National Centre-right
	1380720 Northern League
	1380956 Five Star Movement
1428 Latvia	1428723 For Fatherland and Freedom - National Independence Movement of Latvia
1440 Lithuania	1440621 Order and Justice

(continued)

Table 4 (continued)

	1440952 Election Action of Lithuania's Poles
1528 The Netherlands	1528220 Socialist Party
	1528526 Christian Union
	1528600 Party of Freedom
	1528661 Forum for Democracy
	1528951 Party for the Animals
1616 Poland	1616436 Law and Justice
	1616953 Kukiz'15
1620 Portugal	1620211 Left Bloc
	1620229 Unified Democratic Coalition
1703 Slovakia	1703440 Freedom and Solidarity
	1703710 Slovak National Party
1705 Slovenia	1705710 Slovenian National Party
1724 Spain	1724230 Podemos (We Can)
	1724955 Voice
1752 Sweden	1752110 Green Ecology Party
	1752220 Left Party
	1752700 Sweden Democrats
	1752810 Centre Party
1826 United Kingdom	1826210 Sinn Fein
	1826620 Conservative Party
	1826903 Democratic Unionist Party
	1826951 United Kingdom Independence Party

Source EES

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The Varying Challenge of Islamophobia
for the EU: On Anti-Muslim Resentments
and Its Dividend for Right-Wing Populists
and Eurosceptics—Central and Eastern
Europe in a Comparative Perspective

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1 INTRODUCTION: IS THERE A CONNECTION BETWEEN ISLAMOPHOBIA, RIGHT-WING POPULISM AND EUROSCEPTICISM?¹

In the 2019 European elections, right-wing populist and far-right parties² witnessed a clear plus in votes. While their electoral success has fallen short of the nightmare scenarios of the supporters of the European Union,³ it is an enormous challenge for the EU. Whether in government or as opposition in national parliaments, right-wing populists have successfully torpedoed joint action of the EU in recent years. A prominent example is the resistance of the Visegrád States against binding quotas for the distribution of refugees and asylum seekers. Their political agenda threatens the much-vaunted ‘European Community’ and its values in the name of national interests. This unexpected comeback of nationalism weakens the EU beyond Eastern Europe, as something like Brexit shows. It is another write-in likely to give European right-wing populists a further boost.

The so-called refugee crisis is frequently mentioned as a catalysing factor. The demand for a restrictive immigration regime has become the battle horse of right-wing populists ever since. The allusions to the so-called refugee crisis, however, are far too simplistic from our point of view. They do not explain how and why the immigration of 2.3 million people—which constitute less than 0.5% of the total population of the EU—has succeeded in sparking deep conflicts. In addition, the label ‘refugee crisis’ conceals the fact that the controversy over migration has indeed become an anti-Islam discourse. Based on existing studies, we hypothesise that Islamophobia—understood as a collective hostility vis-à-vis Muslims and their religion—is tied to Eurosceptic positions. Right-wing populists have instrumentalised this connection to increase

¹Substantial parts of the article stem from research activities carried out in the research group ‘Multiple Secularities—Beyond the West, Beyond Modernities’ at the University of Leipzig, which is funded by the German Research Foundation (DFG). for further information see www.Multiple.Secularities.de.

²In our article, we use the well-known term right-wing populism. In the relevant research literature, however, the radical right-wing orientation of these parties is increasingly emphasised, while the populist style of pitching ideological content is regarded as a supplemental feature (see Mudde 2019).

³Empirical findings reveal a high mobilisation of EU supporters (Stark et al. 2019).

citizens' distance from the EU and thus exacerbate an erosion of its support among citizens.

To investigate whether Islamophobia has become a driver for Euroscepticism, we first shed light on the extent of derogatory attitudes towards Muslims. We demonstrate that Islamophobic attitudes among citizens have become a pan-European strain for the EU, while at the same time, they are more pronounced in Eastern Europe. Secondly, using the European Social Survey data, we scrutinise the Islamophobia-Euroscepticism Nexus in a comparative perspective, showing that in Western Europe, it is primarily (though not exclusively) supported by voters of right-wing populist parties, while in the new EU member states, right-wing populists and mainstream politicians attempt to outbid each other when it comes to Islamophobic statements. This strengthens anti-EU efforts. Thirdly, we show that the nexus works separately from the presence or absence of Muslims. Finally, we discuss our conclusion that the hostile stance of the Visegrád States against immigrants is therefore in line with public opinion. Supranational bargaining attempts like the quota system for the distribution of refugees are thus doomed to failure. However, the consequences of Islamophobia and Euroscepticism for the EU are controversial.

2 THEORISING THE ISLAMOPHOBIA-EUROSCEPTICISM NEXUS

A linkage between anti-migration attitudes and individual stances towards the EU is the subject of various studies investigating the causes of Euroscepticism. It appears that citizens with negative attitudes towards immigrants are more likely to have negative outlooks vis-à-vis the EU (Stockemer et al. 2018; Yavçan 2013). Obviously, the EU is seen as a stakeholder in migration policy issues (e.g. Schengen, Dublin Agreement & Frontex). Among other reasons, this explains why the so-called refugee crisis has increasingly become a stress factor for Brussels (Stockemer et al. 2018). Eurobarometer (2018) data also reveal that, since 2015, citizens have identified immigration and terrorism as the main problems faced by the EU (see Fig. 1). Revealingly, fear of terror and immigration are mentioned in the very same breath. This pattern suggests that the anti-immigration discourse of recent years has de facto become an anti-Islam discourse, primarily directed against Muslims (Pickel 2018; Stockemer et al. 2019).

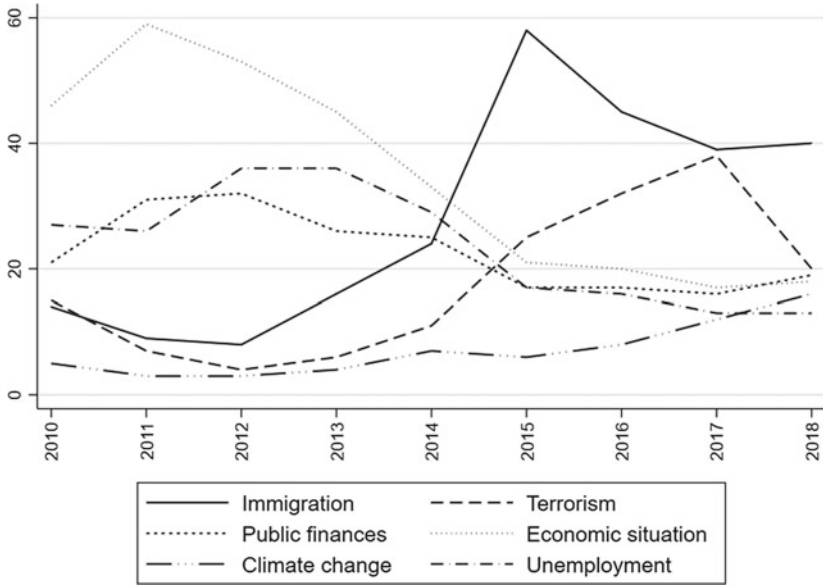


Fig. 1 Key issues faced by the EU from the perspective of citizens (*Source* Eurobarometer [2018])

We stress, however, that the Islamophobic discourses are not a new trend (Pickel and Öztürk 2018a). The so-called refugee crisis only had a catalysing effect that activated and intensified already existing resentments against Muslims. Two factors were decisive for this: First, most immigrants who have arrived since 2015 are either Muslims or originate from predominantly Muslim societies, such as Syria, Iraq and Afghanistan. Secondly, Muslims have been associated with terrorism since the 9/11 attacks and whole series of ISIS attacks in European cities since 2015 have further amplified such perceptions. In any case, it is hardly deniable that many Europeans perceive Muslims as bigots, dangerous and violence-prone (Pickel and Pickel 2019).

The impact of such threat perceptions on the emergence of collective prejudices takes centre stage in the Integrated Threat Theory (Stephan and Stephan 1996). In essence, this theory assumes that fears and threat perceptions provide the driving force underlying hostile attitudes vis-à-vis outgroups. This socio-psychological framework of prejudice research

is at the end of the day a refined version of the Social Identity Theory (Tajfel 1982). Social Identity Theory argues that the emergence of resentments is preceded by (a) the construction of collective identities, and (b) a categorisation process. The additional argument of Integrated Threat Theory stresses that collective identities unfold their conflict potential if the outgroup is perceived as a threat. A distinction is drawn between realistic threats covering concrete concerns (such as anxiety about economic decline or worries about inland security), and symbolic threats, standing on more diffuse fears (such as a menace to a country's way of life) (Stephan and Stephan 1996). Both perceptions of threats are no rarities when it comes to Muslims: In popular discourses, they are often presented as a burden for 'native' welfare systems, the fifth colonnade of Islamist terrorism, and as a cultural threat to the liberal achievements of Western societies (Ciftci 2012; Pickel and Yendell 2016).

Since these threat perceptions are widespread, extending all the way into the mainstream of European societies (Kallis 2018), and since citizens blame the EU for issues relating to immigration, our hypothesis is:

H1 Islamophobic orientation patterns correlate with and promote Eurosceptic attitudes.

However, attitudes towards immigrants and the EU do not arise in a vacuum. Citizens use 'information shortcuts' to shape their attitudes towards Brussels and Strasbourg (Rooduijn and van Kessel 2019). The positions of individually preferred parties towards the EU and its socio-political agenda matter (Steenbergen et al. 2007, for another perspective on the citizens-parties linkage see Chapter 7).

We consider the voters of right-wing populist parties to be predestined for a fusion of Islamophobic and Eurosceptic attitudes because, following the approach of Mudde and Kaltwasser (2017), the nucleus of populist parties is the propagation of an antagonistic conflict between the 'ordinary people' and the allegedly 'alienated, corrupt elites' plus the demand that politics should be decisively determined by the 'volonté générale'. Accompanying this by a nativist 'host ideology', right-wing populists portray the people in an ultra-nationalist manner and with exclusionary intentions as ethnically homogeneous (Mudde and Kaltwasser 2017). The hostility of the European right-wing populists is directed against the national political elites, but also against the EU which is perceived as a citizen-distant

and elite-dominated institution. Moreover, their complex and opaque decision-making processes are difficult to reconcile with the demand for a direct implementation of the alleged ‘*volonté générale*’ (Rooduijn and van Kessle 2019; Werts et al. 2013). Right-wing populists campaign on a pan-European level against Islam and Muslims and agitate against the so-called Islamisation of their nations (Hafez 2014; Kallis 2018; Pickel and Yendell 2018). The Brussels-based bureaucrats have been accused of orchestrating the alleged ‘invasion of Muslims’ (Kalmar 2018; Krastev 2018).

H2 Voters of right-wing populist parties are particularly susceptible to a combination of Islamophobic and Eurosceptic attitudes.

The Islamophobia-Euroscepticism Nexus, however, operates under strongly varying context conditions. Muslim communities have become a visible reality in everyday life in many Western European and Scandinavian societies. In most Eastern European societies, on the other hand, their presence is marginal. They often make up less than 1% of the population (PEW 2011). The contact hypothesis (Allport 1971) can serve to assess whether these contextual variations pose a moderating effect upon the Islamophobia-Euroscepticism Nexus (Stockemer et al. 2018). This hypothesis suggests that contact with outgroups can contribute to the erosion of resentments. This, however, is not an automatism.

A prejudice-reducing effect is more likely (a) if there is equal status between the involved groups, (b) if common goals are pursued and (c) if the institutions of a society endorse this contact (Allport 1971). If the contact hypothesis is optimistically transferred to the Islamophobia-Euroscepticism Nexus, one could argue that it is precisely the absence of Muslims that intensifies resentment against them. If Islamophobic attitudes do indeed promote scepticism towards the EU, then it could be assumed that the individual linkage of Islamophobia and Euroscepticism is particularly pronounced in societies with few Muslims.

Studies investigating the causes of Eurosceptic attitudes often do not share this optimistic reading of the contact hypothesis. Azrout et al. (2013) point out that the political situation in many European societies (i.e. nationalism, electoral success of right-wing populists, and widespread fear of Islamist terrorism) would not satisfy the conditions set out by

Allport (1971). On the contrary, contact under these unfavourable conditions could exacerbate tensions between Muslims and the majority population. The premise is then exactly the opposite. This reading assumes that the individual linkage between Islamophobia and Euroscepticism is much stronger in societies with larger Muslim communities.

According to us, the moderating effect of the presence or absence of Muslim communities on the Islamophobia-Euroscepticism Nexus should not be overestimated. First, studies show that there is a gap between the real and perceived proportion of immigrants with many citizens overestimating their share within the population (Gorodzeisky and Semyonov 2019). Therefore, citizens' subjective perception is decisive. If citizens believe that there are too many immigrants and that their existence is threatening, Eurosceptic attitudes are a very likely consequence (Stockemer et al. 2018). Secondly, several studies were able to validate the assumptions of Allport's (1971) contact hypothesis. An anti-Muslim social climate is particularly pronounced in Eastern Europe, where the number of Muslims is comparatively small (Marfouk 2019; Pickel and Öztürk 2018b; Schlueter et al. 2019). This increasingly salient anti-Muslim social climate, further intensified by the so-called refugee crisis, might have led to a loss of reputation for the EU in Eastern Europe (Krastev 2018). Against this backdrop, we assume that the Islamophobia-Euroscepticism Nexus is not a Western European peculiarity.

H3 The smaller the share of Muslims in the total population, the more pronounced an anti-Muslim social climate is (**H3a**). However, the Islamophobia-Euroscepticism Nexus is not tempered nor intensified by the different share of Muslims (**H3b**).

3 RESEARCH DESIGN: DATA AND METHOD

We use the seventh wave of the European Social Survey (2014) as the central database for testing our hypotheses.⁴ This survey allows us to investigate the research guiding hypothesis because citizens were asked whether they would like to see an immigration ban for Muslims and whether they believe that the European unification process has gone too

⁴For further information see <https://www.europeansocialsurvey.org/>.

far. We consider the support of a Muslim ban as a proxy for Islamophobic attitudes (Pickel and Öztürk 2018b). To classify the ideological leanings of parties, we refer to the PopuList of Rooduijn et al. (2019).⁵ The percentage of Muslims in the total population is derived from a publication of the Pew Research Centre (2011).

The ESS (2014) provides a representative survey of 18 EU member states, as well as Israel, Switzerland and Norway. Since the so-called refugee crisis has led to the aforementioned conflict over binding quotas for the distribution of asylum seekers within the EU, we have decided to limit the case selection to its member states. Despite this limited number of cases, we believe that the ESS (2014) is a suitable database for testing our hypotheses. These 18 European societies differ substantially in terms of their geographical location, socio-economic conditions, experience with democracy and the share of Muslims. Since we assume a pan-European Islamophobia-Euroscepticism Nexus despite these different contextual conditions, our research resembles the idea of a most-different system design (Pickel 2016).

The data were gathered between 2014 and 2015. We do not consider the timing of the survey to be a major problem. We acknowledge that the refugee flows and the political conflicts over their distribution in the EU member states reached their peak after the data were gathered. However, debates about an increased terrorist threat by Muslim immigrants arose when the data were collected. It even coincided with the attack on Charlie Hebdo (January 2015) in 11 states (Castanho Silva 2018). As already mentioned, anti-Muslim hostility is not a new trend in Europe (Pickel and Öztürk 2018a). Even before the so-called refugee crisis, effects between Islamophobia and Euroscepticism have been observed (Boomgarden and Freiere 2009; Hobolt et al. 2011).

The ESS (2014) data also allow us to control for conventional explanatory factors of Eurosceptic attitudes beyond Islamophobia into the empirical analysis. We include mistrust in political institutions, the ideological left-right positioning of individuals, identity-based factors such

⁵We have coded the support of the following parties as a vote choice for right-wing populists: Freedom Party of Austria (FPÖ), Alliance for the Future of Austria (BZÖ), Flemish Interest (VB), National Front (FN), Freedom and Direct Party (SPD), Danish People's Party (DF), Conservative People's Party (EKRE), Finns Party (Ps), National Rally (FN), Alternative for Germany (AfD), Hungarian Civic Alliance (Fidesz), The Movement for a Better Hungary (Jobbik), Party for Freedom (PVV), Law and Justice (PiS), Sweden Democrats (SD), and the UK Independence Party (UKIP).

as strong identification with one's own nation and threat perception towards immigrants. The structure of the data further allows us to incorporate utilitarian considerations. Some of these can be motivated either by egoistic considerations (i.e. well-educated and wealthy individuals are regarded as the winners of the process of Europeanisation) or by socio-tropical considerations (e.g. an assessment of the economic situation of one's own nation) (Abts et al. 2009; McLaren 2007; Van Elsas et al. 2016). As a further robustness check, we control for the residence, gender and age of the respondents. For an overview of all indicators, please refer to the appendix.

We used multilevel analysis to test the hypotheses (Gelman and Hill 2007; Hox 2010).⁶ This statistical procedure fits the hierarchical structure of the data. In addition, we present other visualisations in order to make the findings accessible to a more intuitive interpretation.

4 FIRST RESULT: ANTI-MUSLIM ATTITUDES FOSTER EUROSCEPTICISM, BUT...

A superficial glance at Fig. 2 suggests that positions towards immigrants are subject to pragmatic and utilitarian considerations in most European societies. It is perceived as particularly important that immigrants adapt to their lifestyle, learn their language and possess the necessary work skills and educational qualifications needed in their countries. Conversely, however, this in no way means that ascriptive characteristics such as religious affiliation or even the skin colour of people are irrelevant. Many citizens in European societies openly admit that they would prefer immigrants with a Christian background and that they are opposed to the immigration of non-white people.

However, there are substantial differences between European societies. In Sweden, Germany and the Netherlands, only one in ten respondents considers a Christian background and the colour of people's skin to be an important criterion for the acceptability of immigrants.

In Lithuania, Poland, Hungary, the Czech Republic and Estonia, these ascriptive features of immigrants are considered important by one in four respondents. The preference of these particular selection criteria translates

⁶We visualise the results of the multilevel analysis with the `coefplot` command (Jann 2014).

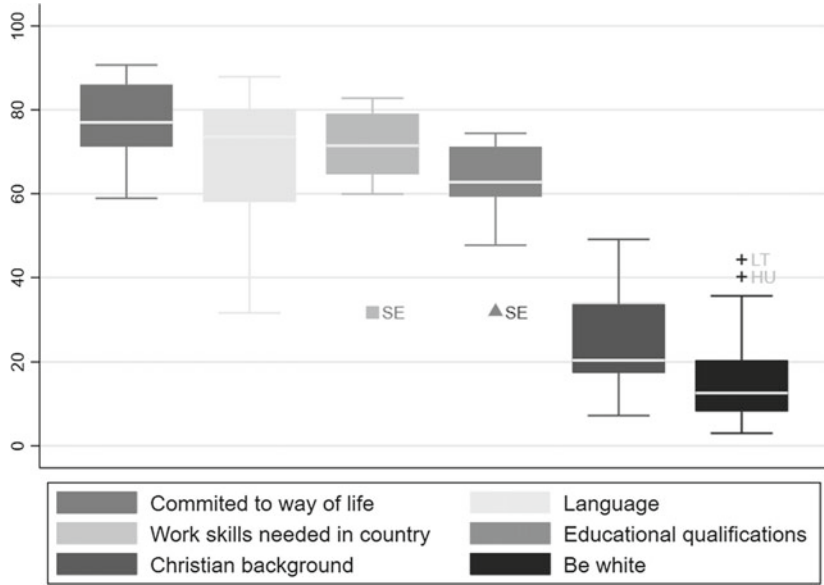


Fig. 2 Qualifications considered important for immigrants (*Note* The figure shows the percentage of agreement with these criteria. *Source* European Social Survey [2014])

into a predominantly pronounced rejection of Muslims, as Fig. 3 shows. Attitudes towards immigrants are subject to an explicit hierarchisation in all European societies. Immigrants from poorer EU member states are preferred over immigrants from poorer non-EU countries. The strongest rejection, however, is directed against Muslims. Again, notable differences between European societies catch the eye. While in Sweden, Germany and Denmark a Muslim ban is supported by less than 10% of the population, it is one in four in Poland, Lithuania and Estonia; even one in two in the Czech Republic and Hungary who would applaud it. To put it bluntly: The resistance of the Visegrád States' governments against binding quotas for the redistribution of refugees are in line with public opinion on this issue in their countries (Krastev 2018; Pickel and Öztürk 2018a).

But do these Islamophobic attitudes indeed foster negative attitudes towards the EU? The results obtained from the multilevel analysis in Fig. 4 validate the research-guiding hypothesis: individuals in favour

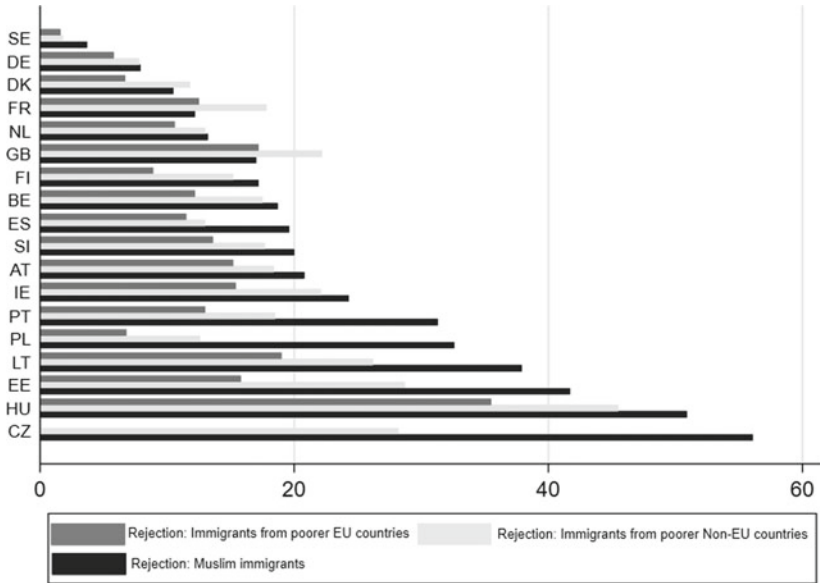


Fig. 3 Rejection of different groups of immigrants (*Note* The figure shows the rejection of these groups of immigrants in per cent. *Source* European Social Survey [2014])

of a Muslim ban are more likely to say that the European unification process has gone too far (bivariate regression coefficient = 0.219, $p < 0.0001$). To be sure, Islamophobic sentiments are not the only source of Euroscepticism. Beyond Islamophobia, negative attitudes towards the EU are facilitated by political and identity-based attitudes, utilitarian considerations and social structural characteristics of individuals.

Citizens who distrust national political institutions, who voted for right-wing populists in the last elections, who have a strong identification with their nation, who perceive migrants as a threat, and consider the current state of the economy to be precarious, tend to show negative attitudes towards the EU. The EU enjoys greater support among citizens with higher levels of education, inhabitants of large metropolitan areas and the younger generations. Yet, even under the control of these factors, there is a statistically robust linkage between Islamophobia and Eurosceptic attitudes (regression coefficient in the overall model = 0.086,

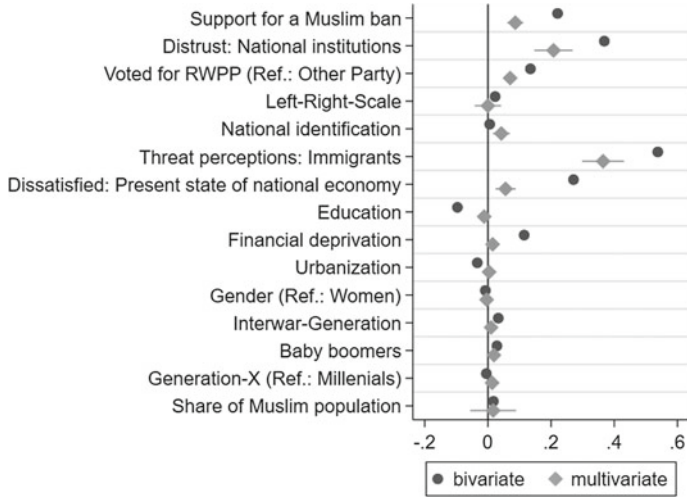


Fig. 4 Sources of Euroscepticism (*Note* The figure shows the results of a multi-level analysis. Individual-level variables are group-mean centred. The proportion of Muslims in the societies is grand-mean centred. The coefficients shown are based on robust standard errors. Number of countries: 18. Number of cases (total): 17,311. Number of cases (average): 962. Wald statistics: 874.53, $p < 0.0001$. *Source* European Social Survey [2014], PEW Research [2011], and Rooduijn et al. [2019])

$p < 0.0001$). In line with the Integrated Threat Theory, these results reveal that citizens who perceive immigrants and an ever-growing cultural diversity in their societies as a threat thus withdraw their support from the European project (Stockemer et al. 2019). The effect of socio-economic factors is practically negligible in comparison.

Are voters of right-wing populist parties the main bearers of the Islamophobia-Euroscepticism Nexus? In Fig. 5, we have plotted the average support of a Muslim ban in relation to the Eurosceptic attitudes of voters from all parties in the sample.⁷ Four ideal typical positions can be differentiated with the Scatterplot: (1) A non-Islamophobic support for Europe (bottom left), (2) a non-Islamophobic Euroscepticism (top left), (3) an

⁷To safeguard resilient empirical results, we only use parties with more than 20 respondents in the sample.

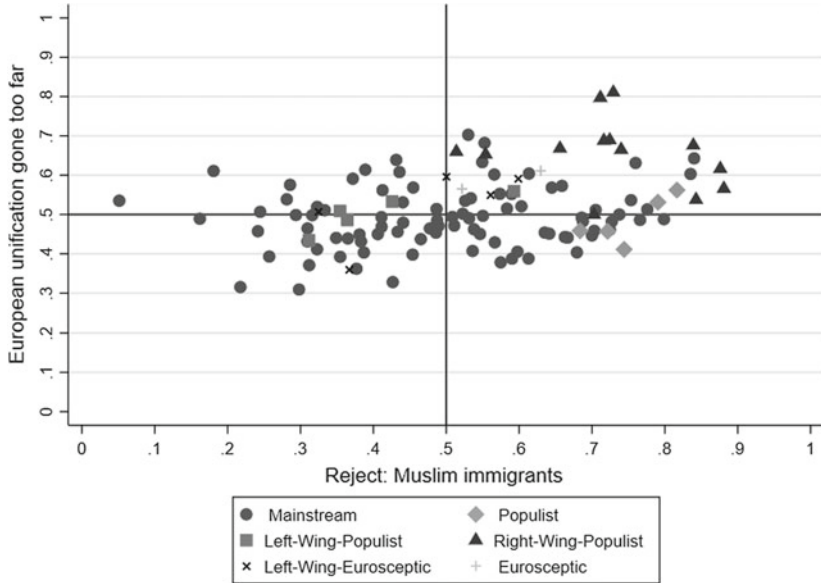


Fig. 5 Relationship between Islamophobic and Eurosceptic attitudes among voters of different parties (*Note* The Scatterplot relates the support for a Muslim ban to the perception that European unification has gone too far. This is the average attitude of voters from all parties of the sample examined with at least 20 respondents. Both scales were normalised to a range between 0 and 1. In addition, we set two reference lines at their mean value. *Source* European Social Survey [2014] and Rooduijn et al. [2019])

Islamophobic support for Europe (bottom right) and (4) an Islamophobic Euroscepticism (top right). If we now locate the electorate of right-wing populist parties in this scatterplot, we can see that their average voters applaud a restrictive immigration policy against Muslims.

Except for the voters of the Polish PiS, a Eurosceptic attitude also prevails. To clarify: Voters of right-wing populist parties tend to be Islamophobic Eurosceptics. It is also clear, however, that they are not alone when it comes to these attitudes. Islamophobic Euroscepticism is a broader phenomenon, and it extends into the mainstream of European societies. Other groups featuring a combination of these attributes are, for example, voters of populist parties, to whom Rooduijn et al. (2019) do not attest a clear-cut nativist host ideology (e.g. the Czech ANO).

The list also includes Eurosceptic parties (e.g. the Dutch 50PLUS), left-wing Eurosceptic parties (e.g. the Portuguese Coligação Democrática Unitária), left-wing populist parties (e.g. the Irish Sinn Féin), as well as the voters of liberal (e.g. the Danish Venstre), social-democratic (e.g. the Austrian SPÖ) and conservative (e.g. the British Tories) mainstream parties.

If we turn our focus to internal polarisation, then a blatant difference becomes apparent between Eastern European societies on the one hand, and Scandinavian and Western European societies on the other. Figure 6 shows that voters of right-wing populist parties in Scandinavia and Western Europe are much more Islamophobic and Eurosceptic than the average citizen—an ironic finding if we bear in mind that right-wing

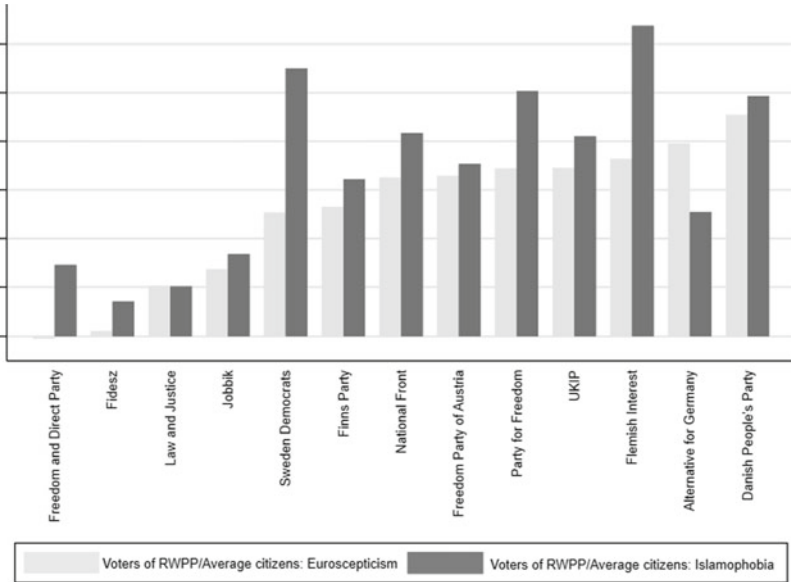


Fig. 6 Differences in Islamophobic and Eurosceptic attitudes between voters of right-wing populist parties and average citizens (*Note* The bar charts visualise the mean value differences between the attitudes of voters of right-wing populist parties and the average citizen in the respective societies. The Islamophobia and Euroscepticism scales were normalised to a range between 0 and 1. *Source* European Social Survey [2014] and Rooduijn et al. [2019])

populists portray themselves as the voice of an alleged ‘silent majority’. A very different picture emerges in post-socialist societies. The attitudes of voters of right-wing populist parties in Eastern Europe hardly differ from those of the average citizen. In fact, right-wing populists and mainstream politicians in Eastern Europe attempt to outbid each other when it comes to Islamophobic statements (Hafez 2018; Slačálek and Svobodová 2018). Tomio Okamura, chairperson of the right-wing populist Freedom and Direct Party, for example, has become famous across the borders of the Czech Republic for his call to take pigs and walk with them in front of mosques.

5 SECOND RESULT: THE SHARE OF MUSLIMS DOES NOT MATTER

In East Central Europe, even among mainstream politicians, Islamophobic statements are no rarity. The Czech president and former chairman of the Czech Social Democrats Miloš Zeman considers Islam a ‘religion of death’ and declared in public that he considers the term ‘moderate Muslim’ to be an oxymoron, just as there would be no ‘moderate Nazis’ either (Trait 2016). Given that (right-wing) populist governments in the Czech Republic (ANO), Poland (PiS) and Hungary (Fidesz and Jobbik) have combined their nationalist course against immigrants with harsh criticism against the European Union’s cosmopolitan elites, it is hardly surprising that the Islamophobia-Euroscpticism Nexus is not conditioned by the proportion of Muslims in the overall population (regression coefficient of cross-level interaction = 0.044, $p > 0.10$).

It may seem paradoxical that right-wing populists in Eastern Europe have become part of the anti-Islam chorus. From the perspective of the contact hypothesis (Allport 1971), however, this finding comes as little surprise. Anti-Muslim resentments are most widespread where Muslims rarely live (see Fig. 7). Since Muslims in Eastern Europe often do not even make up 1% of the population, personal experience cannot work to counter this attitude pattern. Thus, many Eastern Europeans do not have the opportunity to align the shrill statements of their governments with reality through real-life interactions with Muslims. What complicates matters is that so-called parasocial contacts (Horton and Wohl 1956) fill the place of a lack of personal contacts.

Several studies demonstrate that the media fill that void and shape the perception these voters have of Muslims. Further aggravating these views

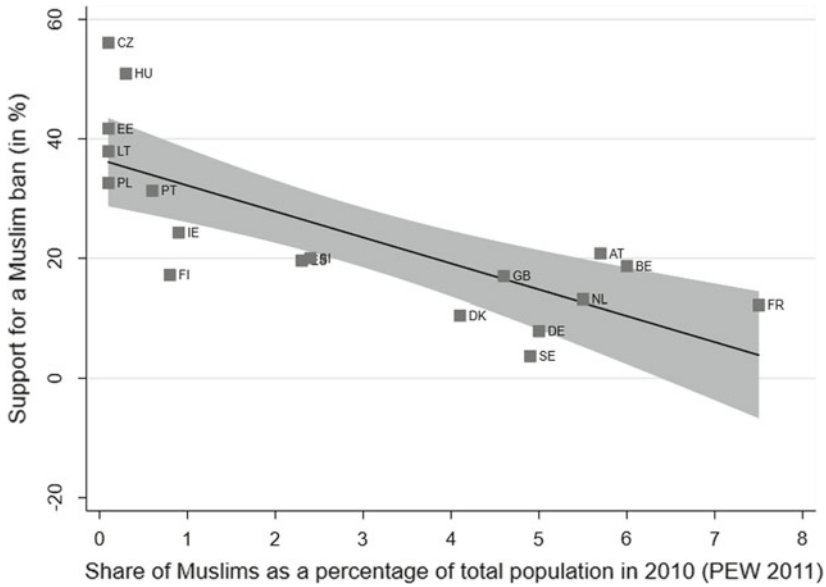


Fig. 7 The relationship between the percentage of Muslims in the overall population and the support for a Muslim immigration ban (*Note* The scatterplot links the proportion of Muslims in the total population with the support for a Muslim ban. *Source* European Social Survey [2014], PEW Research [2011])

is a predominantly negative bias in reporting. News about conflict in the Middle East, a whole series of Islamist terrorist attacks in European cities committed by ISIS, and the image of no-go zones for whites in Muslim-dominated neighbourhoods contribute to an image in which Muslims—as a collective—appear to be fanatical, violent and dangerous. The ever-growing dependency of the media on right-wing populist governments in Eastern Europe is likely to intensify this trend (Ahmed and Matthes 2016; Kalmar 2018; Pickel and Yendell 2016).

What this means is that for most Eastern Europeans living outside the large metropolitan areas there is hardly any possibility of countering these stereotypes with the reality that provides real contact with Muslims. The markedly varying share of Muslims in the total population, however, does not affect the Islamophobia-Euroskepticism Nexus, as shown in Fig. 8.

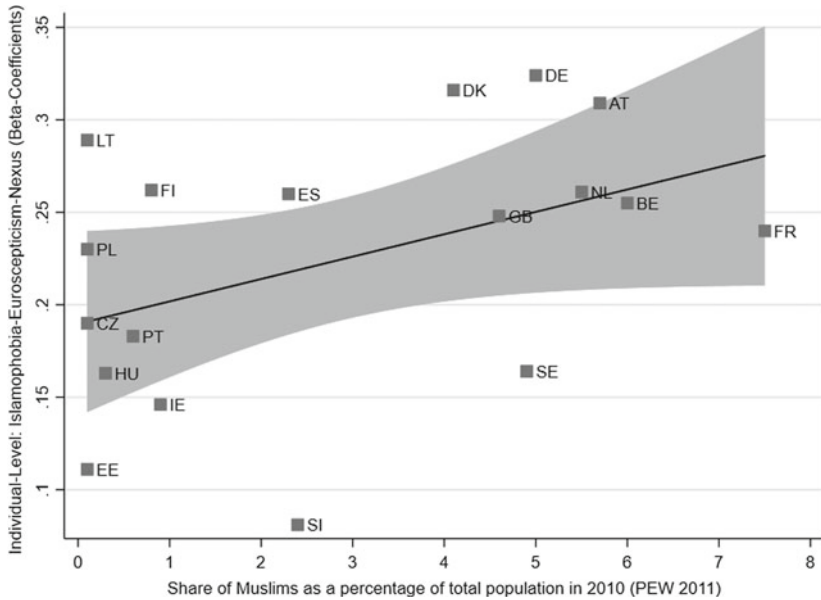


Fig. 8 The moderating effect of the share of Muslims as a proportion of the total population on the Islamophobia-Eurocepticism Nexus
 (Note The scatterplot relates the individual-level effect of Islamophobic attitudes on Euroceptic opinions to the percentage of Muslims in the total population. The beta coefficients were extracted from regression analyses. They provide information about the strength of the Islamophobia-Eurocepticism Nexus at the individual level in the 18 investigated societies. We controlled for left-right orientation, education, place of residence, gender and age of the respondents. Source European Social Survey [2014] and PEW Research [2011])

This result underlines the importance of subjective perceptions of citizens. When individuals perceive Muslims as a threat and embrace a restrictive immigration policy towards Muslim immigrants, they tend to display more Euroceptic attitudes in all societies under study. The strength of the Islamophobia-Eurocepticism Nexus effect is more pronounced in the Czech Republic and Poland than in Sweden, as well as more pronounced in Lithuania than in France. In short: The presence or absence of Muslims is of secondary importance when it comes to the strength of the individual-level linkage between Islamophobia and Eurocepticism.

6 CONCLUSION: RIGHT-WING POPULISTS, EUROSCEPTICISM AND HOW THE EU CAN DEAL WITH IT

To summarise, our results indicate a robust relationship between the support for a Muslim ban and the perception that the European unification process has gone too far. The setting provided by the so-called refugee crisis served to reveal Islamophobia as a major stress factor for the EU. It even fosters a perception of distance between citizens and European institutions.

Voters of right-wing populist parties are the main bearers of this Islamophobic Euroscepticism. Crossed-out mosques, the collective demonisation of Muslims as rapists, and the call to defend the so-called Christian Occident have become their pan-European core brand. Right-wing populists combine Islamophobia with fierce criticism of the allegedly corrupted national and European elites. According to their rhetoric, bureaucrats in distant Brussels allegedly orchestrated the so-called invasion of the Muslims to promote what they refer to as the ‘great exchange’. This might sound shrill. Yet, our findings reveal that right-wing populists target their attacks on an already unpopular group of people. There are deep-rooted cultural and historical resentments against Muslims. Additionally, and since the rise of Islamist terrorism, Muslims appear to many EU citizens as fanatical, dangerous and, above all, violent. With the so-called refugee crisis, latent resentments against Muslims gained new intensity or were activated anew. Europe’s right-wing populists serendipitously welcomed these events and have been profiting from them (see Norris and Inglehart 2019).

A new tendency is that Eastern European right-wing populists have become a vocal part of the anti-Islam chorus, although (or specifically because) Muslims constitute a marginal group there. Their hostilities used to be directed against the Roma and other minority groups present in their societies. In line with the contact hypothesis, it is precisely the absence of Muslims that favours an anti-Muslim social climate. Therefore, ‘Islamophobia without Muslims’ provides a dividend for Eastern European right-wing populists. Wherever they control the government, they use their great influence on the media to construct a fear-mongering image of Islam and Muslims.

Politicians such as Viktor Orbán in Hungary and Lech Kaczyński in Poland hope that this rhetoric can yield advantages in national elections—even more since voters from right-wing populist and mainstream

parties largely agree in their rejection of Muslim immigrants. Moreover, the stereotypes of Muslims transmitted by the media cannot be adapted to a more profane reality through contacts. Since the EU is pushing for mandatory quotas for the distribution of refugees, populist attacks against the elites can be further projected towards Brussels. For populists in decision-making positions, this rhetoric is very attractive.

Spurred by the right-wing populists' rhetoric, many citizens are now under the impression that the EU wants to impose on them unwanted refugees from the Middle East. The shrillest voices even claim that the foreign rule of the Kremlin was replaced by Brussels (Kalmar 2018; Krastev 2018). But as we have shown, the anti-immigration stance of the Visegrád States reflects a congruence between government behaviour and public opinion. For many Eastern Europeans, a restrictive immigration policy is a top priority. The so-called refugee crisis served to reveal diverging attitudes between Western and Eastern Europe and fuelled their conflict potential. These rifts further endanger the EU's legitimacy (which was never particularly pronounced anyway), undermine even weak versions of the European project and have led to serious controversies between the EU's 28 member states.

It almost seems as if Visegrád's protectionist position has triggered an imitation effect among the right-wing populists of Western Europe. They present their agenda with more self-confidence than ever before, and force supporters of a cosmopolitan Europe into defensive positions. By doing well in elections, right-wing populist parties have moved from the margins into the mainstream of most party systems. For fear of further losses of their votes, mainstream politicians like Horst Seehofer and Sebastian Kurz team up with Viktor Orbán. Their goal is to further strengthen and safeguard the walls of 'Fortress Europe'. Inside the EU, attacks on Muslims and their places of worship have increased in recent years. A mutual recognition of all citizens as free and equal (Habermas 1996) is thus in danger. Their current target is Muslims, but these attacks are clearly against the open society and the European project.

The consequences for the EU are controversial. It is hard to deny that the so-called refugee crisis has led to a loss of reputation for the EU. Egoistic national tendencies do not only complicate supranational solutions to immigration policy issues. The anti-immigration campaign of the Visegrád States has facilitated the power ascension and consolidation of (right-wing) populist governments. The signs of the times point to an unprecedented comeback of nationalism. In these circumstances,

a deepening of the European project is hardly realistic. However, even right-wing populists are quite divided on the consequences to be drawn from their EU criticism. The options range from promoting an exit to the attempt to rebuild the European project in an anti-cosmopolitan manner. Kalmar (2018) argues that right-wing populist politicians and their parties in Eastern Europe are not necessarily against the EU. Their dependence on its structural and investment funds is too great for this. Rather, their political mission is to create a ‘different EU’, that is, a ‘Fortress Europe’ that protects them from rejected (Muslim) immigrants. In fact, the Euroscepticism that exists in Eastern Europe therefore does not question EU membership. This alliance with other European countries is seen in the Baltic States and Poland as a guarantee of independence from Russia. Their Euroscepticism is aimed rather at different EU policies.

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Is There an East–West Divide over European Solidarity? Comparing European Citizens’ Attitudes Towards Cross-Border Solidarity 2016

Florian K. Kley and Holger Lengfeld

I INTRODUCTION¹

Media and academic debates concerning the Visegrád governments rejecting the EU refugee relocation scheme and their criticism of ‘Brussels’ suggest that the East Central European countries are marked

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by strong anti-EU politics and attitudes. To contextualise this impression, this chapter analyses European solidarity in different fields of European integration. In recent years, a series of crises have hit the European Union (EU) with the refugee crisis being only one of them. These crises have challenged solidarity between both European citizens and member states of the EU. In this chapter, we investigate attitudes towards different domains of transnational solidarity of citizens from East Central European (ECE) and other European countries: firstly, the European banking and financial crisis, and secondly, the Great Recession.

The European banking and financial crisis of 2008 resulted from massive insolvencies in the American real estate market that jeopardised the stability and liquidity of several major European banks. To save banks teetering on the brink of bankruptcy, some EU member states took out large government loans, which resulted in adverse deficits in their national budgets. The mismatch between drastically increased government debts and stagnating gross domestic products led to a devaluation of the (international) credit status of some European countries. Moreover, the sovereign debt crisis weakened the Euro as a whole and put the European Monetary Union (EMU) under pressure. These institutional deficits were tackled by a series of financial support measures provided by the International Monetary Fund (IMF), the European Central Bank (ECB) and not least of all, the EU member states. Although the Maastricht Treaty specifically prohibits such actions (formerly known as the ‘No Bailout Clause’), richer countries, followed by EU institutions, de facto allocated financial aid to countries in need. Finally, all these financial measures were publicly subsumed under the well-known term ‘bailouts’. We call these emergency financial measures among EU member states *European fiscal solidarity*.

The following economic crisis (also known as the Great Recession) starting in 2009 was a distinct sort of crisis, which is a direct consequence of the sovereign debt crisis that had besieged some member states. Countries had to meet strict requirements by the EU creditors, who made extensive structural reforms a condition of the bailout measures. While these policy actions are expected to restore economies to sustainable growth in the long term, in some member states the so-called austerity measures even fostered an economic downturn in the short term. In this context, austerity measures have further worsened the situation, especially in the crisis-stricken Mediterranean member states, where the welfare state was comparatively weak even before the crisis (e.g. Gelissen 2000).

Besides this growing North–South divide come the lasting East–West differences with the economically less powerful countries in Eastern and Central Europe. Thus, we complement our research by adding questions concerning distributional mechanisms between rich and poor countries in Europe. Throughout the chapter, we refer to this as *European territorial solidarity*.

Regarding public support among citizens from ECE countries, one may assume different results for the two domains of solidarity.² Over the progress of the crises, none of the ECE countries received financial assistance from rescue funds. Public debate and discourses played an important role anyway, when national politicians in Slovakia raised their voice against extensive financial measures for other, wealthier EU member states (Kulish and Castle 2011). Taking into account their comparably low levels of economic wealth, one may assume citizens from the ECE countries could be rather sceptical towards European fiscal solidarity than other member states, especially the crisis-stricken Southern ones. In contrast, one may assume public opinion for European territorial solidarity to be rather pronounced among the peoples of these countries. At the time of their accession in the 2000s, and still today, ECE countries lag behind the economic level of many Central and Western European countries (Eurostat 2017). Having benefitted from the already existing redistribution mechanisms, such as the European Social and Investment Fund, citizens may claim these systems to be extended even further in future to close the intra-European wealth gap. Both solidarity domains were discussed extensively in recent years, making the question of citizens' views on these issues highly relevant.

In this paper, we analyse to what extent citizens from thirteen EU countries are willing to show each form of European solidarity. By doing so, we investigate if and to what extent attitudes of citizens from the three ECE countries of Hungary, Slovakia and Poland differ in comparison with other European countries. In Sect. 2, we will elaborate on the conceptual framework of our study. By European solidarity, we mean a form of solidarity expanded beyond one's own nation state; recipients of solidarity are other EU countries, or citizens living in another EU country. In Sect. 3, we describe the methodology of the data used, the Transnational European Solidarity Survey (TESS). In Sects. 4 and 5, we present

²For the concepts of diffuse and specific support of (European) democracy, see Chapter 2.

descriptive results on the strength of European solidarity. The subjects of the analyses are two domains of European solidarity, territorial and fiscal solidarity, each of which we analyse by referring to a general and more in-depth survey question.

2 EUROPEAN SOLIDARITY: CONCEPT AND MEASUREMENT

To ensure an empirically reliable measurement, scholars usually define the term solidarity according to relevant literature. This, however, raises two different issues. On the one hand, scholars researching solidarity face a large amount of different definitions (Bayertz 2000; Hechter 2001). On the other hand, the meaning of the term solidarity is blurred by its day-to-day use in the political arena, where the term often operates as a normative concept for legitimation (Bayertz and Boshammer 2008).

Against this backdrop, we rely on classical sociological theory and conceive solidarity as a specific form of social action (see Gerhards et al. 2019b). Solidarity is the act of allocating resources which are provided by a donor and given to a recipient in need of the specific resource. This transaction takes place voluntarily without expecting a mutual return. In some cases, solidarity is mediated by a third actor, who pools resources on behalf of the donor(s) and allocates them in a second step. In such a specific case, we speak of institutionalised solidarity. The best-known example of institutionalised solidarity at the national level is the welfare state systems. Because most people do not have an opportunity to directly help fellow Europeans, we base our research on fictive, yet realistic forms of institutionalised solidarity.

Further clarifications of our understanding of ‘European solidarity’ are important for the empirical measurement. We do not examine real acts of solidarity, but attitudes towards different domains of institutionalised solidarity, i.e. whether citizens are in favour of solidarity. This is theoretically plausible, because according to the ‘theory of planned behaviour’ (cf. Ajzen 1991), we can assume that the essential preferences of individuals determine their concrete actions. Thus, our operationalisation serves as a reliable proxy for measuring institutionalised solidarity at the European level. Furthermore, we distinguish three dimensions that the construct of solidarity consists of: (1) types of actors, (2) domains and (3) spatial levels.

1. Regardless of being a donor or recipient, *actors* are defined as either individuals or collective actors (i.e. regions or nation states). While a European perspective could also focus on solidarity directly towards individual actors in Europe (e.g. supporting the poor in other European countries), we will focus on citizens' attitudes towards institutionalised forms of solidarity where donors and recipients are collective units in the first place.
2. Recipients (both individuals and collective actors) of solidarity may differ in terms of their level of vulnerability in regard to a certain *domain* of solidarity. A variety of domains or causes of solidarity in Europe can be distinguished.³ In our research, we primarily focus on recipients whose circumstances are affected by one of the two crises Europe has recently experienced:
 - a. *Territorial solidarity*: This domain takes wealth disparities within a territorial unit into account. Redistribution policies which reduce such inequalities are present *within* many EU member states, and even between member states in the form of the European Structural and Investment Funds. Hence, we measure territorial solidarity as the support to reduce wealth disparities between poor and rich territorial units.
 - b. *Fiscal solidarity*: When collective actors fall into insolvency, better-off actors act as guarantors. In the case of the financial crisis, better-off member states guaranteed surety for the monetary loans of countries which could not pay back their debt. Therefore, we define fiscal solidarity as the willingness to support indebted collective actors financially (see also Lengfeld et al. 2020).

In this paper, we have chosen these two domains as they are of high salience for the ECE countries. More than other countries, ECE ones profit from already established mechanisms of territorial solidarity within the EU (e.g. due to the European Structural and Investment Funds). ECE countries also took a unique role during the financial crisis. We will discuss the backgrounds in detail in the corresponding sections of the chapter.

³See Gerhards et al. (2018, 2019a, and 2019b) for the discussion and analyses of other domains of solidarity.

3. As our research interest is to determine the extent of a unique European solidarity, we set our focus on a specific *spatial level*. To determine its strength, a relational comparison with other regional spaces is used. Even though European integration has come a long way and has led to the integration of rights for European citizens (Gerhards and Lengfeld 2015), the nation state has been the central institution of solidarity in many ways and remains so in the present. As national levels of solidarity should be fairly established in most countries, they may serve as a helpful starting point of comparison in the first place. Additionally, since globalisation continuously boosts transnational exchange between people and countries worldwide (Held et al. 2000), we also explore to what extent European solidarity differs from cosmopolitan solidarity at the global level. Hence, we compare the strength of European solidarity for each domain in relation to a similar national and global one.

3 METHODOLOGY

In the following sections, we present descriptive findings based on the *Transnational European Solidarity Survey* (TESS). The TESS is a unique survey conducted by the research projects ‘SOLIDUS’ (EU/Horizon 2020) and ‘Horizontal Europeanisation’ (DFG). Fieldwork was carried out in 2016 in thirteen European countries by the polling institute Kantar TNS Berlin with national subsidiaries from Kantar TNS, using computer-assisted telephone interviews.⁴ The final sample contains a total of 12,500 respondents, with approximately 1000 respondents per country, including Austria, Cyprus, Germany, Greece, France, Hungary, Ireland, the Netherlands, Poland, Portugal, Slovakia, Spain and Sweden.⁵

To analyse a broad spectrum of countries that allow us to explore the domains of solidarity as deep as possible, the country selection was guided by the following criteria: (1) Did a country receive financial help from an international fund or facility during the Euro crisis? (2) Is the country part of the Eurozone? (3) What kind of regime does the country’s welfare state

⁴In eleven out of the thirteen countries, the fieldwork was conducted in June and July 2016. In France and Ireland, the fieldwork phase was set for October and November 2016.

⁵For Cyprus, 500 interviews were sufficient due to its scarce population.

belong to (liberal, social democratic, conservative, Mediterranean, post-socialist)? (4) Does the country presently have a rather Eurosceptic or Non-Eurosceptic government? We aimed to sample a diverse set of countries containing a balanced number of states for each criterion. Therefore, we selected Greece, Cyprus, Portugal, Spain and Ireland as receivers of international funds and facilities due to the Euro and banking crisis. Sweden represents a social democratic welfare state regime as the only Scandinavian country in our sample. France, the Netherlands, Germany and Austria are all Western European countries that are part of the Eurozone. Most importantly for this chapter, Poland, Slovakia and Hungary represent East Central European EU member states. By selecting Poland and Hungary, we also covered two non-Eurozone member states.

In order to reap reliable data that is representative of each country's population, we considered two major constraints for the sampling. Firstly, we took the various national landline/mobile phone mix of the gross sample into account.

Secondly, to cover all regions of each country proportional to the number of inhabitants, the numbers in the gross sample were stratified regionally by using NUTS-2 regions. The gross sample was allocated to cells representing the NUTS-2 regions according to their share in the population. Within each cell, the dialed numbers were selected at random. Furthermore, respondents in the survey are citizens eligible to vote in national elections in the respective country exclusively. In landline households with multiple members, the interview partner was identified using the last birthday method.

For our analysis, we solely rely on descriptive analyses of approval rates in general as well as for each country. The approval rates depicted are weighted, either for the whole sample or for each country separately, relying on two different weighting variables. The items used are listed in the Appendix (Tables 1 and 2) with further information on country-specific adaptations as well (Table 3).

4 FISCAL SOLIDARITY

As a consequence of the 2008 financial crisis that emerged in the US spilling over to European economies, national governments had to stabilise their banks that were threatened by massive loan defaults. Additionally, they experienced an economic depression starting in 2009. Both crises destabilised national budgets especially in the Southern member

states, leading to the Euro and sovereign debt crisis. In order to bolster the single currency, the EU, its member states and the IMF implemented financial measures towards European fiscal solidarity by granting guarantees and loans to Eurozone countries facing serious financial difficulties, such as Greece, Portugal, Ireland and Cyprus. A permanent, highly capitalised bailout for future crisis situations was established in the form of the temporary European Financial Stability Facility (EFSF), followed by the permanent European Stability Mechanism (ESM). At the same time, the purchased government bonds would support crisis countries. Ultimately, the Eurozone countries made a commitment to reciprocal, albeit limited, European fiscal solidarity in the event of a failure to balance their national budgets.

The main criticism often focused on the problematic legal situation of the financial assistance measures, as they were contradicting the ‘No Bailout Clause’, which prohibits the liability of the EU as well as member states for debts of other countries (Article 125 TFEU). Within the ECE countries, the assistance measures were additionally regarded as out of proportion. For example, the Slovak Parliament was the first political entity to vote against the expansion of the EFSF in 2011. The opponents of the EFSF argued that it would be unfair for Slovakia, the second poorest country in the Eurozone, to have to secure loans for countries like Greece and Portugal. These countries were not only wealthier than Slovakia, they were also considered to be self-responsible for bringing this emergency upon themselves through lax fiscal policies (Kulich and Castle 2011).

Little is known about attitudes of ECE citizens on European fiscal solidarity from survey research, with most studies focusing on individual-level explanations or face qualifications due to limited numbers of countries. Yet the results are somewhat contradicting. On the one hand, some studies find people from ECE countries to be rather sceptical towards such measures. Slovaks have proven to be among the least supportive in regard to European fiscal solidarity (Kleider and Stoeckel 2018, p. 13; Verhaegen 2018, p. 885), while Poles highly emphasise that states should help themselves in debt situations (Pellegata 2017). However, Juan Díez Medrano et al. (2019) show that Romanians barely differ in their attitudes towards financial assistance measures in comparison with citizens from other member states, such as Denmark. Based on the contradicting results and the briefly outlined political discussion, we expect people from the ECE countries in our study to be more likely to refuse European

fiscal solidarity than people from the other countries surveyed, especially in comparison with the Southern crisis-stricken ones.

In the TESS survey, we raised the question of whether EU citizens consider the pursued political strategy to be legitimate. Are they willing to show fiscal solidarity with member states faced by heavy economic troubles? To answer this question, we again followed our theoretical concepts' spatial solidarity levels by measuring attitudes towards fiscal solidarity on three spatial levels: between regions within an EU member state, between EU member states and between EU member states and countries outside the EU (see Table 1 in the Appendix for item formulation).

As Fig. 1 shows, two-thirds of all respondents were in agreement with their country providing financial aid to EU countries. Compared to this, fiscal solidarity with countries outside of the EU was significantly lower and not shared by a majority of respondents. These results show that many respondents regarded the EU as an exclusive solidarity space that is distinct from the cosmopolitan idea of universal solidarity. Finally, results demonstrate that the nation state remains the dominant social space for supporting areas in crisis: a huge majority of 83% of respondents would give financial help to suffering regions within their own country.

How homogeneous are attitudes of citizens from different EU member states towards European fiscal solidarity? As Fig. 2 demonstrates, citizens from each surveyed country agreed on it by majority. Yet, differences exist with an approval rate of 53% in Hungary and 78% in Spain. We found the highest approval rates in the former crisis countries of Spain, Ireland and

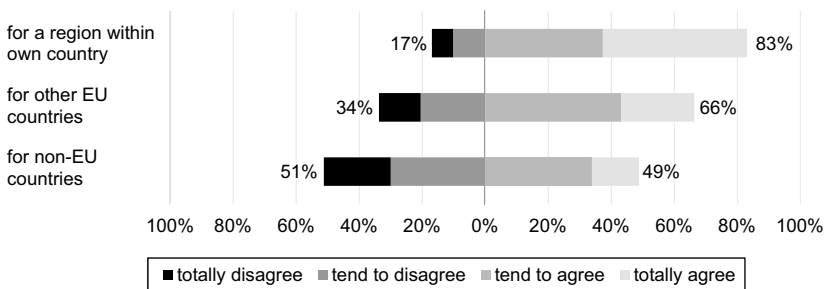


Fig. 1 Approval for bailouts in times of crisis by different spatial levels (Source TESS 2016, own calculations, $N = 11,927$, relative frequencies, valid answers only, weighted)

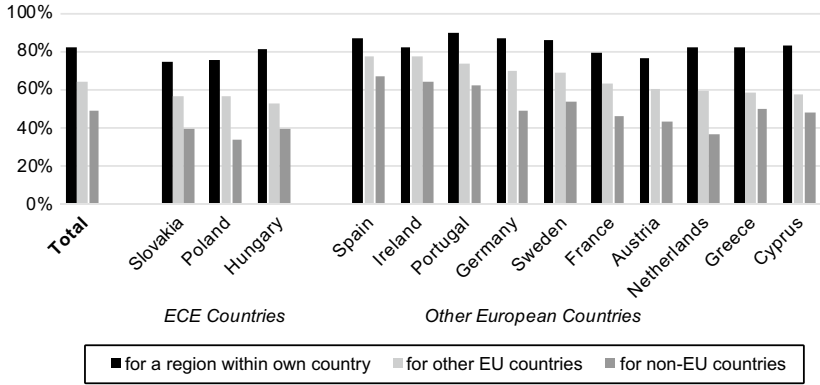


Fig. 2 Approval for bailouts in times of crisis by different spatial levels: country differences (*Source* TESS 2016, own calculations, $N = 11,927$, relative frequencies, valid answers only, weighted)

Portugal. Here, more than 70% of the population agreed on supporting countries in need. However, only in these countries (and in Sweden), a majority of respondents also wanted their country to provide financial help to countries outside of the EU. This result seems to indicate that citizens experiencing (or having experienced) a severe crisis in their own countries are wary of its negative consequences to a higher extent and thus speak out for supporting other troubled countries. However, this holds true only in countries that overcame the crisis successfully. In Greece and in Cyprus, less than 60% approved bailouts within the EU.

For the ECE countries of Slovakia, Poland and Hungary, we observe comparable support rates. Despite being below the overall mean, levels of approval are still above the majority threshold of 50%. Furthermore, with the exception of Hungary (approval rate of 53%), Slovakia and Poland (both 57%) barely differ from other countries with lower approval rates, such as Cyprus (57%) or Greece (59%). They therefore do not constitute the extensively sceptical cluster as we had expected.

Besides approval in general, solidarity requires effort and, in the case of the European bailout funds, those providing the assistance must also assume the risk for failing loans. However, this does not specify the form and extent of the aid the individual must provide. If a debtor country were to default on its loan repayments, the donor country would have to stand

guarantee, and these costs would burden national budgets. As a result, donor countries would have less money available for their own spending, for investments and for servicing their debt. However, it is impossible to say how these constraints would directly impact individual citizens living in the donor countries. This would be different if all EU citizens were to co-finance relief efforts with their own income via a dedicated, direct tax. Thus, a direct European solidarity contribution in the form of an additional tax would result in a heavier direct burden on the population and therefore pose a stress test for the willingness to show European fiscal solidarity.

An additional European tax of this kind does not yet exist but might be plausible in a certain scenario. To test the approval for this, respondents were given a three-part statement with different tax rates and asked to indicate whether they agree or disagree with each of the three proposed rates. All respondents were asked about the same tax rates, but these were combined with different absolute values (in Euro or the national currency) according to the average income of the member states (see Table 3 in the Appendix). With the highest tax rate mentioned first, it was assumed that acceptance of the proposed rates would increase as the tax rates decreased. Hence, if a respondent accepted a certain tax rate, the following question(s) with lower values were skipped (see Table 1 in the Appendix for item formulation).

According to the findings shown in Fig. 3, a clear majority of 61% of the respondents supported the proposal for an income-related solidarity tax with a minimum contribution to bail out countries within the EU

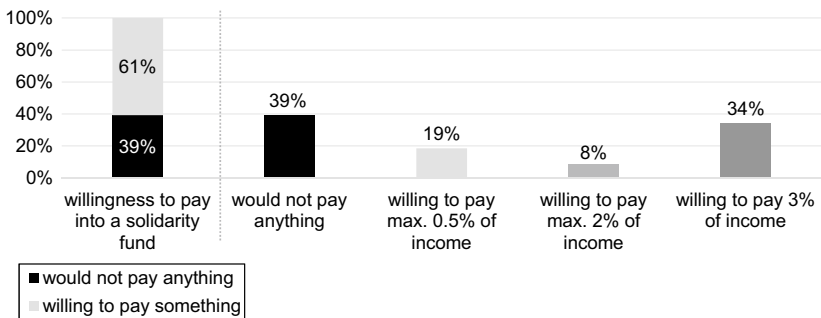


Fig. 3 Willingness to pay into a solidarity fund (*Source* TESS 2016, own calculations, $N = 12,187$, relative frequencies, valid answers only, weighted)

in budgetary crises, and agreed on one of the three scenarios. Within the group of supporters, 34% of Europeans would have paid 3% income tax, followed by 19% respondents who would not have paid 3% but 2%, and 8% of interviewees who only agreed to the 0.5% tax proposal. These findings indicate that, on average, a hypothetical European solidarity tax would have been accepted by the majority of Europeans living in the countries surveyed.

Figure 4 presents approval and disapproval rates by survey country. The results are even more differentiated between the countries than European fiscal solidarity in general. Even though potential contributors have been in the majority in twelve out of thirteen countries, in France a slight majority of 53% disagreed on all three proposals. The highest rate of acceptance can be found in Ireland (78%). Among the six countries with above average acceptance rates are those countries that have received or were receiving bailout funds from the EU and IMF at the time of fieldwork. In these countries, the highest tax rate also received the highest support. Compared to the (former) crisis countries, citizens from Western European countries have been rather sceptical about personally

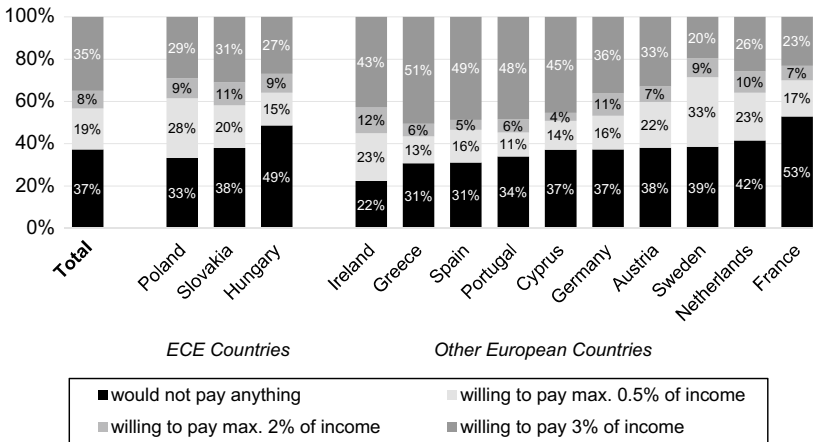


Fig. 4 Willingness to pay into a solidarity fund: country differences (Source TESS 2016, own calculations, N = 12,187, relative frequencies, valid answers only, weighted)

contributing to a solidarity tax. Nevertheless, they accepted the general idea by majorities with the exception of France.

Finally, the ECE countries are quite heterogeneous, with half of the Hungarians approving the measures (51%), while Slovaks (62%) and Poles (67%) displayed much higher rates of approval. As the latter two show average rates of acceptance comparable with other member states, e.g. Portugal (66%) or Austria (62%), respondents from France showed an even lower level of approval (47%) than the Hungarians. This supports the previous results, with the ECE countries not being outstandingly refused on this issue compared to other EU countries, even if Hungary marks an exception to some degree.

To sum up, European bailout funds, such as the ESM, were established by the EU and the IMF to grant loans to Eurozone countries facing the most serious financial difficulties. This deepening of European solidarity was accomplished in a very short time and has also not gone unchallenged in Europe. However, the findings of our analyses point to a great willingness to show European fiscal solidarity, which is much higher than solidarity expressed with troubled countries from outside the EU. This impression is supported by the fact that a good two-thirds of respondents from across the EU would accept a 0.5% or higher solidarity tax on income. The ECE countries in our sample turned out not to constitute a cluster of refusal, as we had expected. The results from Slovakia and Poland are comparable with those from other member states, while only the Hungarians are somewhat more sceptical. Despite this, they still accept European fiscal solidarity in general, albeit with a slight majority, and are not refusing the possibility of accepting a solidarity tax by a huge majority.

5 TERRITORIAL SOLIDARITY

With the accession of twelve new member states in 2004 and 2007, the EU faced a huge increase in welfare disparities: in the newly joined ECE countries, the gross domestic product was far below the EU average (Eurostat 2017). Nevertheless, the new member states experienced an increase in economic growth rates in the following years both in absolute and in relative terms (Eurostat 2017). It seemed as if the economic convergence process, one of the central goals of the EU (Article 3 (3) TEU; Article 174 TFEU), was well on its way. With the economic and Euro crises beginning in 2008, the situation changed. Although at a

slower rate than before, the new member states, especially in the ECE countries, were able to further reduce the gap with the wealthier states, despite lagging considerably behind the richer ones. Despite this, a new cleavage arose with the countries hit hardest by the crisis in Southern Europe falling behind on economic terms (Eurostat 2017).

With the North–South divide reinforcing and the East–West divide basically persisting, spatial disparities seem to be one of the biggest challenges to the EU today. What could be done to reduce inequality between the member states of the EU? One way would be to establish territorial redistribution measures. With the European Structural and Investments Funds, such measures have existed within the EU for several decades already. Yet these measures are limited in two ways: firstly, although they take up a big part of the overall EU budget, they are restricted in their financial scope. Secondly, with the exception of funds like the European Solidarity Fund, established for providing financial help to countries in case of (natural) disasters, such measures aim at enhancing the situation of subnational regions particularly by supporting projects in certain thematic fields.

With the calculation of redistributive measures primarily based on the GDP of regional units, the ECE countries were among the group of member states profiting the most from these measures. With the aim of fostering convergence between EU countries and regions, the funds were used for financial investments in different fields, such as infrastructure (due to the European Regional Development Fund; European Parliament and Council of the European Union 2013a) or to fight poverty (European Social Fund; European Parliament and Council of the European Union 2013b). While the economically weaker member states thus profit from the redistribution system, political debate was rather critical within the wealthier countries. The criticism of the debate on being ‘net contributor’ states even became one of the central arguments for the successful campaign on leaving the EU in Great Britain (Henley 2016). While there is, to our knowledge, no empirical research analysing citizens’ attitudes towards these measures at a European level, we expect that the self-interest of citizens from poorer countries, and their experience as beneficiaries from the already known system, will lead to higher levels of

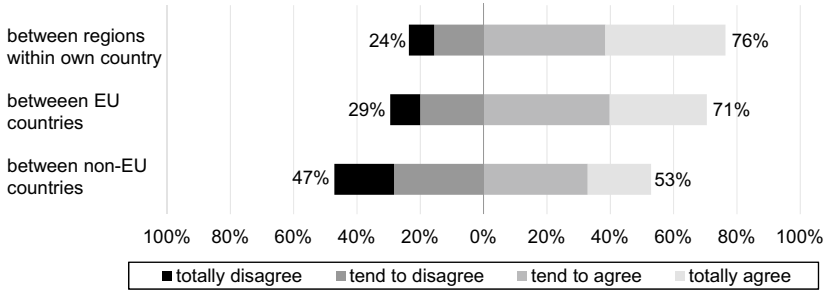


Fig. 5 Approval for reduction of spatial differences by different spatial levels (*Source* TESS 2016, own calculations, $N = 11,843$, relative frequencies, valid answers only, weighted)

approval for a general system of redistribution among EU member states in the ECE countries.⁶

Within the TESS, we surveyed citizens' general attitudes towards the reduction of territorial disparities: Would they support the reduction of wealth differences among different spatial areas? According to our concept of spatial solidarity levels, we measured attitudes towards such a form of solidarity on three different levels: solidarity among regions within one's own nation state, among countries within the EU and among countries worldwide (see Table 2 in the Appendix for item formulation).

Figure 5 shows that a majority of 71% of the respondents have been in favour of the reduction of spatial differences among EU countries. Support for solidarity between different regions of a nation state was only slightly bigger. For a global reduction of disparities, we find only a scarce majority. Overall, we can observe a huge support for reducing disparities within the EU and the nation state, while a global reduction is controversial.

Do citizens from different countries differ in their acceptance of European territorial solidarity and what do citizens from ECE countries think? Figure 6 shows that in every country under investigation, a majority of respondents have spoken out for the reduction of disparities among the EU states. With a maximum

⁶In their study for Spain, Laia Balcells et al. (2015) showed that people from regions that are perceived to be rather wealthier show lower levels of support for measures of regional redistribution. This finding is in line with our expectation.

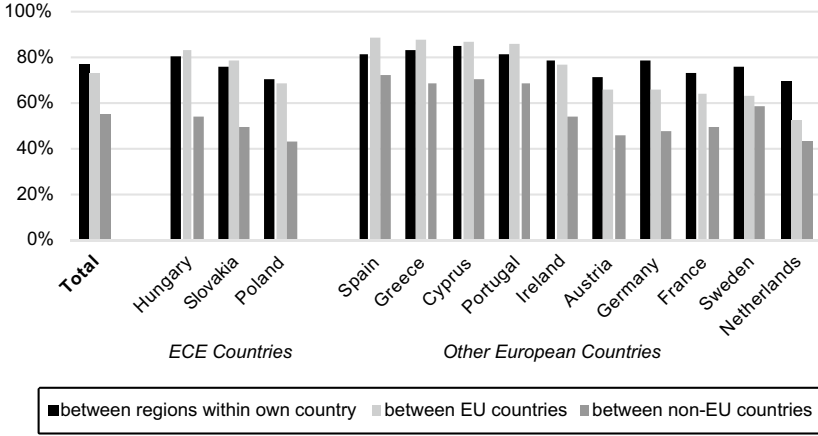


Fig. 6 Approval for reduction of spatial differences by different spatial levels: country differences (*Source* TESS 2016, own calculations, $N = 11,843$, relative frequencies, valid answers only, weighted)

level of approval of 88% (Greece) and a minimum of 53% (the Netherlands), country differences are still very distinct. Once again, regional clusters can be identified; especially among Southern European member states, the idea of reducing disparities within the EU was highly accepted. Although Ireland forms an exception with an acceptance rate above the average (74%), Western and Northern European countries showed the lowest rates of acceptance in the sample, with the highest level in Austria (66%) and the lowest in the Netherlands (53%).

Compared to the mean level of approval, the three ECE countries in the sample showed average approval rates on European territorial solidarity: while approval in Hungary (83%) and Slovakia (78%) was somewhat above the mean (74%), in Poland it was below (68%). Hence, approval among the ECE countries has been lower than in Southern member states, but higher than in Western and Northern ones. Strikingly, both the Southern and the ECE countries are those countries where the agreement on EU-wide reduction of territorial disparities exceeded the acceptance of the comparable question for reducing differences within the country.

It thus seems that whether a country’s citizens are supporting this form of solidarity depends on its economic and financial potential as well as the

experience as a beneficiary of the current policies. In contrast to populations from Southern and ECE member states, people from Northern and Western European countries may feel disadvantaged by the institutionalisation of comparable measures, as their role as net contributors may be intensified in such a scenario.

However, is there still a majority of citizens supporting measures of reducing spatial disparities in Europe when taking into account that resources are scarce and a (hypothetical) decision has to be made between the three spatial levels? To find out, we asked the respondents to decide on which level the reduction of territorial inequalities should be realised first: within the nation state, among EU countries, or among countries worldwide? Consequently, we asked for a second choice, omitting the option chosen before (see Table 2 in the Appendix for item formulation).

As Fig. 7 shows, the majority of respondents preferred to reduce territorial inequalities within the nation state first. Every fourth has chosen the European level, while 18% would have liked to reduce disparities among countries worldwide. The priority of one's own nation is not surprising, though the low difference between the relative number of choices of the EU and the global level, on the other hand, is. Regarding the second choice, almost two-thirds of the respondents had chosen the European level, far ahead of their own nation or the global level. Taken together, the pattern is clear: while citizens prioritise reducing disparities within their own nation, the EU is the second most important space of solidarity.

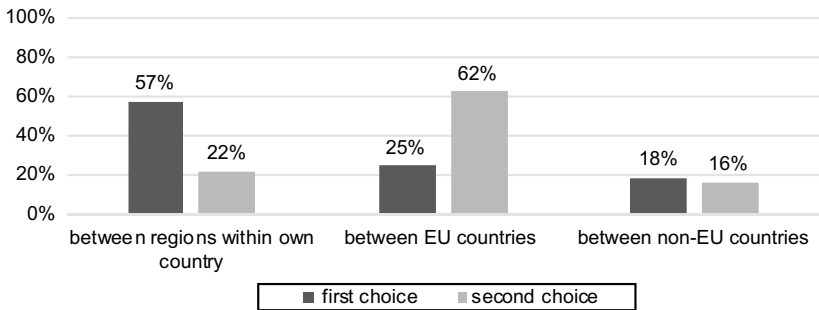


Fig. 7 Where should territorial differences be reduced first and second? (*Source* TESS 2016, own calculations, $N = 11,169$, relative frequencies, valid answers only, weighted)

Figure 8 depicts country differences. For reasons of simplification, we focus solely on the first choice and on the comparison between national and European solidarity. Unsurprisingly, the EU level is not mentioned as often as the national level in any of the countries. For the European preference, differences are remarkable once again with 17% selecting the European level in Hungary and 40% in Greece as the first option. As for the general approval shown before, respondents from Southern European countries preferred EU solidarity to a higher degree than respondents from the Western and Northern countries do. ECE countries do not constitute a homogeneous cluster, with a bigger share mentioning the EU level in Slovakia (35%) and the lowest among Hungarians (17%). Consequently, the latter showed a very high level of reducing disparities within their nation state, while the Slovaks did so only on a comparably moderate level. Taken together, the nation state is still the preferred level for reducing territorial disparities in all surveyed countries, being even more pronounced in ECE countries. The significance of the EU varies among EU countries, with the group of ECE countries posing the best example.

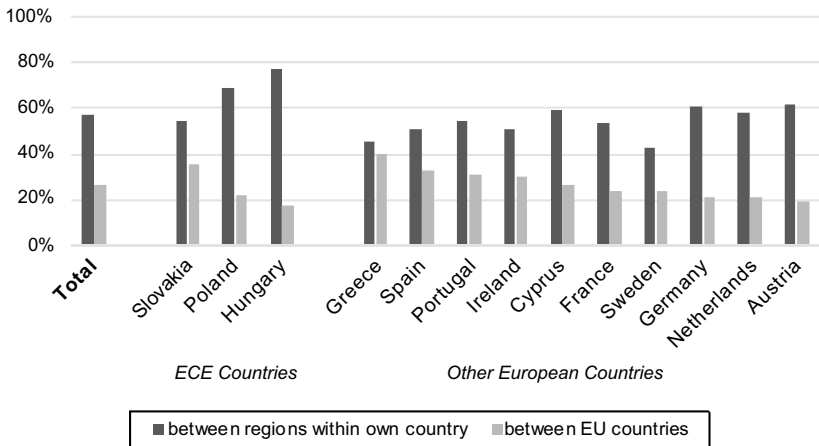


Fig. 8 Where should territorial differences be reduced first? Country differences (Source TESS 2016, own calculations, $N = 11,169$, relative frequencies, valid answers only, weighted)

In sum, our results show that a great majority of EU citizens agreed on reducing disparities among countries within the EU. This majority existed in every country surveyed, even though levels of agreement varied strongly, with the highest levels of approval in Southern countries and lower levels of approval in Northern and Western European ones. Furthermore, the results imply that the nation state is still the most important space for reducing disparities, while the EU comes second before the global level. Although the ECE countries follow the general patterns, they are at the same time rather heterogeneous: while Slovaks showed levels of European territorial solidarity and ranking of the European level to be very close to the European average of our sample, Hungarians and Poles, on the other hand, both emphasised the reduction of the disparities within their countries. Additionally, Hungarians showed comparably higher levels of European territorial solidarity, while in Poland, the approval level was below the average. Citizens from ECE countries do not, therefore, constitute a consistent group of the strongest advocates of European territorial solidarity.

6 CONCLUSION

In this chapter, we asked to what extent citizens of EU countries approved different domains of solidarity. For that, we derived two domains of solidarity for empirical testing, both resulting from EU crises in recent years. Firstly, the Eurozone and sovereign debt crisis—followed by bailout measures introduced by the EU, the ECB as well as the IMF—raised the question whether citizens approve such assistance measures for indebted EU countries. We call this domain *European fiscal solidarity*. Secondly, as a consequence of the negative economic developments of the crisis countries, as well as the already existing wealth differences among EU member states, the issue of reducing economic disparities by means of redistribution between countries is another politically controversial topic among the EU public. We name this domain *European territorial solidarity*—a kind of solidarity, existing already in the form of the European Social and Investment Funds. After having laid down a systematic approach to grasp and measure solidarity among Europeans, we empirically analysed the question of country differences with a focus on East Central European countries for both domains.

Our descriptive analyses using the 2016 TESS survey revealed a high level of approval for the idea of European fiscal solidarity with two out of

three respondents agreeing on it. Furthermore, a question on accepting to personally pay into a fictive fund has shown that a clear majority would have also been willing to pay for solidarity with their own income. We expected citizens from ECE countries to show lower levels of support for European fiscal solidarity as they were not affected by the crises themselves and may feel disadvantaged when helping wealthier countries. We found clear country differences, and although Slovakia, Hungary and Poland—the three ECE countries in the TESS—showed among the lowest levels of approval for European fiscal solidarity, we nevertheless found a majority within each. Differences to some other EU member states turned out to be small as well. Furthermore, we found majorities to be willing to personally pay into a fictive fund within each ECE country under observation, although the rates of approval differ with especially Hungarians refusing the idea more often than others. However, among the countries under observation, Hungarians have still been less sceptical than respondents from France.

For European territorial solidarity, we found an even more pronounced level of approval among all respondents than for European fiscal solidarity. Nevertheless, when asked to set out a priority, respondents would have rather chosen to redistribute within the boundaries of their nation state, with the European level being second ahead of a global system of redistribution. With regard to the ECE countries, we expected to find higher approval rates, as they would probably profit from redistributive measures due to their weak economic situation in the EU. Again, country differences in general were remarkable. We found higher approval rates for European territorial solidarity among the ECE countries than in Western and Northern ones, but not exceeding the high rates of approval in the Southern member states. Furthermore, the three countries in focus show diverging levels of approval to some degree. Finally, we identified huge differences among ECE states when it comes to the question of priority, with an average level of preferences for the nationwide equalisation over a European one in Slovakia and the highest rate of national favouritism in Hungary among all countries surveyed.

From this, we derive two important observations. Firstly, despite their relatively young membership within the EU and their comparably weak economic position, citizens from ECE countries do not stand out on matters of solidarity as expected—neither in refusing European fiscal nor in claiming European territorial solidarity. Secondly, differences between the ECE countries under observation are noteworthy. While citizens from

Slovakia, the only Eurozone country among the three, show the most similar patterns compared to the other EU member states in our sample, Hungary especially stands out with lower rates of approving fiscal solidarity, simultaneously being more demanding in the case of European territorial solidarity with a distinct national focus. In short, to speak of a homogenous group with attitudes contradicting those of other member states would be misleading. We interpret the lack of a controversial cluster in combination with tendencies towards majority approval rates for solidarity among all countries under investigation as a sign of a rather close-knit EU.

As a consequence, further integration steps, like expanding already existing measures of solidarity, such as financial assistance (e.g. the ESM) or redistribution mechanisms (e.g. European Social and Investment Funds), may be legitimated by the citizens of the EU. The peoples of ECE countries do not mark an exception, showing that the idea of a group of veto players in the east is not realistic in these domains.

However, our study faces several limitations, restraining the idea of unconfined expansions and developments of further policies. Firstly, with thirteen countries, the TESS is a very good starting point for a systematic analysis of solidarity in Europe. Nevertheless, the country differences revealed in this study show that we need information for each member state on such issues to be able to rule out the possibility of countries refusing such ideas and becoming veto players in the political arena. Secondly, our sociological perspective is restricted to general ideas. Explicit policies in these fields, such as the introduction of Eurobonds or the expansion of the funding system, may bring along opponents rejecting the practice, not the general idea. Besides research on the effectiveness of different policies, further research on public opinion is needed here. Thirdly, the analyses in this chapter can only make a point on the two domains of solidarity in focus—fiscal and territorial. As we could show elsewhere (Gerhards et al. 2019b), in the case of redistributing refugees or sharing the costs on this matter among EU countries, perspectives on solidarity are highly diverse between the citizens of different EU member states. We therefore recommend caution on what topic which measures of European solidarity are introduced.

APPENDIX

See Tables 1, 2, and 3

Table 1 Items and question wording: territorial solidarity

<i>Item</i>	<i>Wording</i>
General attitude towards fiscal solidarity	<p><i>We have learned in recent years that regions within countries as well as entire countries can fall into a severe debt crisis</i></p> <p><i>Please tell me to what extent you agree or disagree with each of the following statements</i></p> <p>(1) <i>In times of crisis, the better off [GENERAL REGION NAME]s in [COUNTRY] should give financial help to other [GENERAL REGION NAME]s facing severe economic difficulties</i></p> <p>(2) <i>In times of crisis, [COUNTRY] should give financial help to other EU countries facing severe economic difficulties</i></p> <p>(3) <i>In times of crisis, [COUNTRY] should give financial help to other countries outside of the European Union facing severe economic difficulties</i></p> <p>Answer options: ‘totally disagree’, ‘tend to disagree’, ‘tend to agree’ and ‘totally agree’</p> <p>Note See Table A.3 for further information on country item adaptations</p>
Willingness to pay into a fund for European fiscal solidarity	<p><i>And now imagine the following situation. To fight against future debt crises, every member state of the European Union has to contribute to a European solidarity fund. This money will only be used to fight economic crises in EU countries with severe financial problems.</i></p> <p>(1) <i>Would you personally be willing to pay three per cent of your income, but at least [COUNTRY-SPECIFIC CURRENCY AND VALUE 1] per month to this fund?</i></p> <p>(2) <i>And what about two per cent of your income, but at least [COUNTRY-SPECIFIC CURRENCY AND VALUE 2] per month?</i></p> <p>(3) <i>And what about a half per cent of your income, but at least [COUNTRY-SPECIFIC CURRENCY AND VALUE 3] per month?</i></p> <p>Answer options: ‘yes’, ‘no’ and ‘refuse to pay anything’ (the interviewer did not read out the latter)</p> <p>Note Statement (2) was only asked when (1) was refused. Statement (3) was only asked when (2) was refused</p> <p>See Table A.3 for further information on country-specific item adaptations</p>

Source TESS 2016, own depiction

Table 2 Items and question wording: fiscal solidarity

<i>Item</i>	<i>Wording</i>
General attitude towards territorial solidarity	<p data-bbox="250 164 322 895"><i>There are differences between rich and poor regions in a country, between countries in Europe and also between countries in the world. Please tell me to what extent you agree or disagree with the following statements</i></p> <p data-bbox="329 164 405 895">(1) <i>Differences between rich and poor [GENERAL REGION NAME]s in [COUNTRY] should be reduced, even if wealthier [GENERAL REGION NAME]s have to pay more</i></p> <p data-bbox="412 164 488 895">(2) <i>Differences between rich and poor countries in the EU should be reduced, even if wealthier countries in the European Union have to pay more</i></p> <p data-bbox="495 164 568 895">(3) <i>Differences between EU countries and poor countries outside of the EU should be reduced, even if EU countries have to pay more</i></p> <p data-bbox="546 188 591 895">Answer options: 'totally disagree', 'tend to disagree', 'tend to agree' and 'totally agree'</p> <p data-bbox="598 272 647 895">Note See Table A.3 for further information on country item adaptations</p>

(continued)

Table 2 (continued)

<i>Item</i>	<i>Wording</i>
Regional preference for territorial solidarity	<p><i>Assuming a decision about priority has to be made: in your opinion, where should the difference be reduced first?</i></p> <p>(a) <i>Between rich and poor [GENERAL REGION NAME]s in [COUNTRY]</i></p> <p>(b) <i>Between rich and poor countries in the European Union</i></p> <p>(c) <i>Between EU countries and poor countries outside of the European Union</i></p> <p><i>And where should they be reduced second?</i></p> <p>(a) <i>Between rich and poor [GENERAL REGION NAME]s in [COUNTRY]</i></p> <p>(b) <i>Between rich and poor countries in the European Union</i></p> <p>(c) <i>Between EU countries and poor countries outside of the European Union</i></p> <p><i>Note</i> See Table A.3 for further information on country item adaptations</p>

Source TESS 2016, own depiction

Table 3 Country-specific item adaptations

<i>Country</i>	<i>Currency</i>	<i>General region names</i>	<i>3%</i>	<i>2%</i>	<i>0.5%</i>
Austria	Euro	Bundesland	60	40	10
Cyprus	Euro	Επαρχίες (eparchies)	30	20	5
France	Euro	Département	50	30	8
Germany	Euro	Bundesland	50	30	8
Greece	Euro	περιφέρεια (periferia)	15	10	3
Hungary	Hungarian forint	megye	4000	2500	600
Ireland	Euro	regional authority region	50	30	8
The Netherlands	Euro	provincie	50	30	8
Poland	Polish zloty	województwa	60	40	10
Portugal	Euro	região	15	10	3
Slovakia	Euro	kraji	15	10	3
Spain	Euro	comunidades autónoma (CCAA)	30	20	5
Sweden	Swedish krona	Län	600	400	100

Source TESS 2016, own depiction

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PART II

Rhetoric and Practice of Illiberal and Anti-EU
Politics



Differential Illiberalism: Classifying Illiberal Trends in Central European Party Politics

Vratislav Havlík and Vít Hloušek

1 INTRODUCTION

Studies on Euroscepticism in East Central Europe and its links with illiberal politics (Havlík et al. 2017; Styczyńska 2018) are often focused on the ‘transnational cleavage’, generated by globalisation and Europeanisation and further strengthened by the migration crisis and the Eurozone crisis (Hooghe and Marks 2018, see also Chapters 1 and 14).¹ However, so far, a comprehensive, comparative analysis of the ideological premises of illiberal party politics, as well as an evaluation of how these premises have been put to practice, has been lacking. It is the aim of our chapter to

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fill this lacuna, exploring illiberal trends in the party systems of the Czech Republic, Hungary, Poland and Slovakia.

The existing research mostly consists of case studies of individual countries. Even those works that address East Central Europe as a whole (Pakulski 2016) are not consistently comparative. However, we can build on the analyses of the Hungarian (Bozóki 2012; Bozóki and Hegedűs 2018; Bugarič 2015; Ilés et al. 2018; Innes 2015; Körösenyi 2018; Pappas 2014) and Polish (Buras and Knaus 2018; Pacześniak 2015; Zarycki et al. 2017) approaches to an illiberal concept of democracy, as well as those of East Central European populism (Havlík and Voda 2018). Besides, we draw on our own research on the Czech Republic and Slovakia.

First, we introduce the concept of illiberal democracy and its operationalisation in the areas of ideology and political practice. The next section presents and briefly compares the party-political actors of illiberal politics in East Central Europe, i.e. Andrej Babiš's party ANO (Czechia), Viktor Orbán's Fidesz (Hungary), Jarosław Kaczyński's Law and Justice, or 'PiS' (Poland) and Robert Fico's SMER—Social Democracy (Slovakia). The following section analyses the ideologies of these parties, in terms of their compatibility with illiberal democracy. We then show how these ideas are implemented in the political practice of the aforementioned government parties, and to what extent, limitations are placed on the liberal model of governance. In the final section, we compare and contrast these changes and show that in East Central Europe we have to differentiate among potentially illiberal party-political actors according to their ideological sources and the degree of their success in introducing illiberal measures into political practice (for other analyses of political practice, see Chapters 7 and 8).

2 ILLIBERAL DEMOCRACY: THE CONCEPT AND ITS OPERATIONALISATION

The concept of illiberal democracy has been part of the debate involving political philosophers and experts on democratic theory since Fareed Zakaria's famous article (1997, 2003). In 2014, it was transplanted by the Hungarian Prime Minister Viktor Orbán into the political and ideological discussion:

The most popular topic in thinking today is trying to understand how systems that are not Western, not liberal, not liberal democracies and perhaps not even democracies, can nevertheless make their nations successful. [...] We are trying to find the form of community organisation, the new Hungarian state, which is capable of making our community competitive in the great global race for decades to come.

We shall see that Orbán is certainly not the only East Central European politician to take such a route. However, although this quotation shows what form of state organisation Orbán rejects, it does not provide us with a clear definition of illiberal democracy that could be operationalised and serve for an analysis of contemporary East Central European politics in our study.

Zakaria's definition of a liberal democracy as '[A] political system marked not only by free and fair elections, but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion and property' (Zakaria 1997, pp. 22–23) implies a certain tension between the constitutional-liberal component of limitations being placed on power and protection provided to minorities, and the democratic component—that is, the political will of the majority, or the principle of the absolute sovereignty of the people. Disregarding the liberal component leads to populism, the excessive concentration and abuse of power, disrespect for civil and human rights and restrictions on freedoms.

Drawing upon Zakaria, Wolfgang Merkel classified illiberal democracies within the broader category of defective democracies and defined the former as the most frequent empirical type of the latter: 'In illiberal democracies, the principle of the rule of law is damaged, affecting the actual core of liberal self-understanding, namely the equal freedom of all individuals' (Merkel 2004, p. 49).

The introduction of the elements of illiberal democracy has both an ideological and a practical dimension. For the former, we will analyse key documents such as political party programmes and statements by leading party and government figures in which they formulate their criticisms of liberal democracy, the 'Western' variant of liberalism and the concept of human rights. Our narrative analysis (Patterson and Renwick Monroe 1998) is based on the assumption that it is precisely the creation of an illiberal narrative in opposition to the Westernising and Europeanising discourses that is characteristic of the contemporary political trends in

East Central Europe. These narratives do not seek to act as fully-fledged ideologies, but they do provide explanations for the gradual change of politics, in particular the political system.

For analysing the *practical* steps being taken by politicians, we use Merkel's conception of 'embedded democracy'. Of the five dimensions (Merkel 2004, p. 36), restrictions on—or the absence of—the following lead to illiberal democracy: freedom of expression and freedom of association, the horizontal accountability of power, individual liberties and rights, and the principle of equality before the law. Given that in our analysis we will chiefly address the construction of illiberal democracy as a political system—in the sense that the basic political institutions are undergoing a change—we can reduce the activities testifying to the illiberal trend as follows (see Table 1).

If an illiberal ideology is put into practice, this can limit the principle of the separation of powers and options for the external oversight of the political process via the media and civil society institutions. Law is being 'bent' to serve those who control political power, and to allow them to use it against the opposition. We will be looking into the politics of the Visegrád Group countries for such changes to the law and government implementation measures that correspond to the manifestations described above. We have chosen EU accession as a symbolic opening landmark of our study, as it was a culmination of the transition and consolidation of liberal democracy in East Central Europe (Vachudova 2005).

3 ACTORS OF ILLIBERAL POLITICS

Of the parties examined in this chapter, Hungary's Fidesz has been active the longest. It was founded in 1988 as a response to the gradual decline of the communist regime in the country and it has been linked with the figure of Viktor Orbán since its inception. During its history, the party has witnessed a major ideological turn: after the 1994 elections, what was originally a liberal party appealing to young voters turned into a classic conservative party. Gradually, Fidesz managed to push out or absorb all the other right and centre-right entities, and became the dominant—or practically the only—party on the right. Orbán formed his first government in 1998 (in office until 2002) and then went into opposition. However, since 2010, he has won three parliamentary elections in a row, thus becoming the longest-serving prime minister in the four East Central European countries. Unlike the Czech ANO 2011 and the

Table 1 Dimensions and indicators of illiberal politics

<i>Dimensions</i>	<i>Indicators</i>
Restrictions on freedom of expression	State control or political regulation of public service broadcasters Politically motivated regulation of journalism generally Political or economic concentration of mass media ownership, threatening pluralism
Restrictions on freedom of association	Legal regulations affecting the activities of opposition parties or civil society Economic regulations impacting the activities of civil society Regulation of other autonomous spheres, such as universities and academic liberties Politically motivated interference with private property and the autonomy of proprietors' actions in the economy
Restrictions on the horizontal accountability of power	Strengthening the executive to the detriment of the judiciary or the legislature Regulations limiting or obstructing the opposition's checking of government via parliament or other institutions, typically in the form of amendments to the rules of procedure Limitations on the independence of the judiciary

Source Authors, based on Merkel (2004, pp. 36–43)

Slovak SMER leaders, Orbán never sought to deny his strong ideological grounding, with topics such as a strong Hungarian nation, Hungarian minorities abroad and a significant emphasis on Hungarian history traditionally serving him as major political issues. Also characteristic of Orbán has been a strong anti-liberal appeal, consisting not just in a critique of liberal left parties (Havlík 2012) but also in attacks on liberalism as such, with the Western political model pronounced dead (Buzogány 2017, p. 1307).

The PiS party in Poland was founded in 2001 and so far has only been led by the Kaczyński brothers. The party has established a strongly conservative profile, with a major emphasis on Polish national consciousness and the role of the Catholic Church. Like Viktor Orbán, Jarosław

Kaczyński can be described as an opponent of liberalism. Law and Justice formed the government in 2005–2007, inviting in 2006 the nationalist parties Self-Defence and the League of Polish Families into the coalition. The steps of the current PiS government, in office since 2015, are increasingly discussed in terms of ‘dismantling the foundations of Poland’s liberal democratic order’ (Markowski 2016, p. 1320), though PiS is more implicitly than explicitly illiberal.

In Czechia, the most striking illiberal party-political actor is the ANO 2011 movement, founded in 2012 by Andrej Babiš, one of the richest Czechs. The movement emerged from the civic association Action of Dissatisfied Citizens, established in 2011 and very closely linked with the figure of its founder since its inception. ANO 2011 presented itself as a protest against the current and previous political establishments since 1989 (Balík and Hloušek 2016, p. 111), and this, in combination with the form of political marketing it chose, quickly earned it the label of a populist movement. It has been characterised by an anti-political appeal and a business-firm party structure (Kopeček 2016). The 2017 elections confirmed the party’s ascendancy and Babiš became the prime minister.

For more than a decade now, the SMER—Social Democracy Party—has been a phenomenon of Slovak politics. It was founded in 1999 by Robert Fico, formerly of the Party of the Democratic Left. With the exception of a brief intermezzo in 2010–2012, SMER has been in government and has also held the post of prime minister since 2006. From the outset, Fico was seen as a largely non-ideological and pragmatically oriented figure, who styled himself as resolving people’s everyday problems (Učeň 2001, p. 407). Like the Czech ANO, the party initially refused to be placed on the left-to-right axis and sought to define itself in opposition to the existing political establishment. However, Fico gradually abandoned his non-ideological profile and started to adopt the fundamental principles of social democracy (Spáč 2012, pp. 245–246). The party won such a strong position in the 2012 elections that it could form a single-party government, which further strengthened Fico’s grip on Slovak politics. After the 2016 elections, SMER, pragmatically, changed its position on European integration considerably, replacing its frequent criticisms of the EU over the previous years practically overnight, and now supporting a shift for Slovakia into the ‘hard core’ of European integration.

We saw that in East Central Europe, the gamut of actual or potential illiberal parties runs ideologically from the leftist SMER to the ostensive

anti-ideological and anti-political, centrist ANO, to the national conservative right of PiS and Fidesz. How do these differences manifest themselves in party programmes and ideologies?

4 THE IDEOLOGIES AND PROGRAMMES OF FIDESZ, PiS, ANO AND SMER

Viktor Orbán has endorsed an illiberal conception of politics the most explicitly. Although in the case of Fidesz, these tendencies have long roots, reaching back to before 2010 when the party won a constitutional majority in parliament, it is Orbán's 2014 speech to the members of the Hungarian minority in the Romanian town of Băile Tuşnad (Tusnádfürdő) that is most often described as crucial. In this important speech (Orbán 2014), Orbán described several specific principles that illustrate in detail his notion of governance:

- a 'liberal democracy and the liberal Hungarian state did not protect community assets';
- b 'a democracy does not necessarily have to be liberal';
- c 'societies that are built on the state organisation principle of liberal democracy will probably be incapable of maintaining their global competitiveness';
- d 'we must break with liberal principles and methods of social organisation, and in general with the liberal understanding of society'.

Liberalism—Orbán's chief ideological antagonist—was given a specific face before the 2018 elections. Fidesz based its election campaign on attacking George Soros, an American investor with Hungarian roots. They accused him of seeking to turn Hungary into a 'country of immigrants' and thus to disrupt its sovereignty (Fidesz 2018). In 2015, the migration issue became the flagship in the party's policy manifesto. As part of a 'national consultation', Orbán said that 'we will not allow immigrants to threaten the jobs and security of Hungarians' (Fidesz 2015). Fidesz's understanding of the decision-making process is substantially illiberal, irrespective of which issue or policy is at stake. Particularly characteristic has been the concentration of power, accompanied by the decline of pluralism (Havlík and Stojarová 2018), when Orbán's Fidesz defended many often fundamental legislative and constitutional changes

by reference to the mandate it had won in elections. This can be shown in the wording of the ‘Declaration of National Cooperation’, adopted by Orbán’s government in 2010 shortly after coming to office (Office of the National Assembly 2010). The voters, who secured a two-thirds majority of seats for the party, have according to this resolution ‘decided to create a new system: the National Cooperation System’. Fidesz interpreted its electoral victory as an active mandate from the electorate to create an entirely new system for the functioning of the state.

The roots of the ideology and programme of Law and Justice (PiS) in Poland reach back into the late 1980s to a wing of the Solidarity movement that sought a Christian-democratic and nationalist orientation. After an initial stage in 2001–2002, when the party described itself primarily as fighting against corruption and crime generally, it gradually emphasised its Christian social-conservative profile (Millard 2010). The notion of a ‘Fourth Republic’ (*Czwarta Rzeczpospolita*) provides a key to this profile.

The Fourth Republic idea envisaged a substantial political as well as social transformation of the Polish state, the role of which was to be substantially strengthened overall. Crucial parts in this were to be played by Polish nationalism, a thoroughgoing decommunisation, moral renewal driven by Polish Catholicism and a new union between the people and the political elite. The vision of the new system was populist and strongly anti-pluralist (Obacz 2017). At times, this radical rejection of the ‘state pathology’ of the Third Republic as well as of the ‘Tusk system’—i.e. the politics of the government in office 2007–2015 (PiS 2014, pp. 15–44)—was messianic and left little space for a liberal conception of citizenship (cf. Nalewajko 2013, pp. 336–339). The key concepts of the transformation from Third to Fourth Republic were framed in terms of culture and identity, and this corresponded to the tradition of Polish politics in the twentieth century (Zarycki et al. 2017). Programmatic elements linked with moral issues, such as the struggle against cultural ‘progressives’ and the rejection of abortion, and the rights of sexual minorities, have been very important for PiS in the long term. PiS also very strongly endorses Christianity, or more precisely Catholicism, as an important source of political values standing against the ‘demoralisation of society’ (PiS 2014, pp. 7–14; 2005b, pp. 24–32).

PiS demanded a thoroughgoing ‘cleansing’ (meaning decommunisation) and transformation of the political and administrative system, with the aim of strengthening the Polish state (PiS 2005a). Already at this point, it was argued that the judiciary and the public prosecutor’s office

needed to be subject to state supervision, and the immunity of judges limited (PiS 2005a, pp. 20–21). Later on (PiS 2009), the fundamental characteristics of the proposed political system were set. Poland would be shifted towards a semi-presidential system, where the government would have to cooperate with the president, and the controlling role of the parliament over the executive would be weakened overall. Whereas the proposal to strengthen the prime minister's role in government did not contain elements of illiberal democracy, the proposal that the government would be able to issue, via the president, decrees with the power of law—this combined with limiting the scope and powers of the Constitutional Court—was oriented in an illiberal direction. PiS stressed the general need to reform the judiciary and to strengthen the control exercised by the Ministry of Justice over the courts of law (PiS 2014, pp. 66–68). It also called for new and essentially greater regulation of public service broadcasters (PiS 2014, pp. 142–143).

It is not easy to classify Czechia's ANO party ideologically. The fact that it is a member of the Alliance of Liberals and Democrats for Europe (ALDE) group in the European Parliament does not help us much. This is because the party has sought to keep its programme and ideology as flexible as possible. In 2013, it presented itself as an alternative to traditional right-wing parties. In 2017, it responded to the shift of the electoral core to the left by emphasising the social aspects in its manifesto. Moreover, the party's rhetoric is flexibly obeying the demands of political marketing.

ANO's manifesto for the 2013 parliamentary elections contained no illiberal elements, nor radical proposals to overhaul the political system. Some of the points in the manifesto—for example, the plan to create a Supreme Judicial Council, which would strengthen judiciary autonomy—would in fact improve the quality of liberal-democratic government in Czechia. However, observing the actual campaign, we note that it was informed by the overarching simile of the efficient management of the state as a business firm—that is, it was to be managed efficiently, but without 'superfluous' control mechanisms. As Bušíková and Guasti (2019) have shown, Babiš could pick up the threads of discourses that existed during the 1990s and even during Communist President Gustáv Husák's 'normalisation'. Against the vision of a liberal democracy, he pitted a technocratic populist vision of managing politics and public administration, which would substantially reduce democratic checks and balances for the sake of efficiency.

Babiš was quite open in a book that he used as an enticement to voters during his campaign for the 2017 elections. In it, he first points out that the legislative process is protracted and that government stability and efficiency are low (Babiš 2017, pp. 119–126). The key to this is the abolition of ‘superfluous’ institutions such as the regions and the Senate, decreasing the number of MPs by half, limiting parliamentary discussion via changes to parliamentary procedure, strengthening the role of direct democracy to the detriment of representative democracy and increasing political control of public officials (Babiš 2017, pp. 128–133). Still, there is no explicit illiberal discourse here, nor nationalist nor culturally conservative rhetoric typical of PiS or Fidesz.

In Slovakia, SMER gradually abandoned its non-ideological stance, as we mentioned above. Crucial for the establishment of SMER’s firm position in the party-political spectrum was the period 2002–2006, when it was seen as a strong left-wing critic of Mikuláš Dzurinda’s second government (Kopeček 2007, p. 290). However, SMER’s ideological identity was not an easy one to determine even after that date, and there were doubts when it formally anchored itself as a party of the left. The social-democratic label clashed with more or less illiberal ideological elements, which came to the fore particularly after 2006, though they had been visible previously. In its 2006 manifesto, a Fico-led government by SMER and two other nationalist parties officially committed the country to supporting the education of minorities in their own tongues. However, the developments of the subsequent years, characterised by Fico’s playing the ‘Hungarian card’, were adumbrated in the proviso that ‘teaching in the national minority’s language cannot be to the detriment of the quality of teaching of the state Slovak language’ (Vláda SR 2006, p. 35). Fico’s characteristic pragmatism—governing alongside the nationalists—was seen by the Party of European Socialists as infringing its fundamental values, and for that reason, it suspended SMER’s membership for several years, arguing that ‘Slovakia needs social democracy, but not at the cost of compromising with extreme nationalism and xenophobia’ (PES 2006).

After 2012, SMER somewhat moderated its illiberal rhetoric, either because the quality of Hungarian-Slovak relations improved, or because the party was able to form a government on its own, without coalition partners. The period 2012–2016 was largely dominated by the issue of Slovak-Russian relations. Fico’s traditionally declared support for the EU was in direct contrast to the ever-closer relations between the two countries (Maťašovská 2012; E15.cz 2016). At the same time, Fico and

Orbán started to support each other, especially in their resistance to the accepting of migrants (HN Televízia 2016). SMER's ideological flexibility then subsequently graduated in spring 2017 when Fico, in a sudden rhetorical U-turn, stopped criticising the EU and started actively supporting Slovakia's participation in an ever-closer union. As Fico said, 'to be at the core with Germany and France, that is the essence of my policy. For Slovakia, the Visegrád Group is not an alternative to the EU' (Vilček 2017).

5 ILLIBERALISM AS PRACTICAL POLITICS

In terms of the practical steps taken by Orbán's Hungarian governments, there have been several after 2010 that have been described as 'illiberal' (see also Anders and Priebus in this volume). The main point of contention was the Media Act; later, in connection with the 'migration crisis', it was Orbán's struggle against the Central European University (CEU) funded by George Soros and against those NGOs who supported migrants. Other issues that will be briefly discussed include concerns about the erosion of the horizontal accountability of power and a problematic electoral system.

What has been called the 'Media Act' is in fact a group of several laws regulating the media. Orbán's government attracted attention shortly after coming to office by adopting the act in 2010. The Act on the Freedom of the Press and the Fundamental Rules of Media Content stipulates in Article 10 that 'all persons shall have the right to receive proper information on public affairs at local, national and European level, as well as on any event bearing relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation'. The oversight of the media is entrusted to the newly created National Media and Infocommunications Authority—specifically, to its strong Media Council (National Media and Infocommunications Authority 2011). Opponents of this legislation were particularly critical that the media came under the substantial control of a body appointed by the state. Under pressure from the European Commission, the Hungarian government agreed to revert to a milder proposition, namely that 'it is a task for the entirety of the media system to provide authentic, rapid and accurate information on affairs and events' (Haraszti 2011, also see Chapter 11). Doubts about the independence of the Hungarian media continued in the following

years, particularly as Lőrincz Mészáros, a close ally of the prime minister, has recently bought more and more media titles (Novak 2017).

Another area where Orbán's government took specific legislative measures is its struggle against migration. After 2015, the government raised its standard by adopting legislation limiting the activities of NGOs and other groups involved in the migration issue. A 2018 act on illegal immigration stipulates that whoever 'helped persons who entered the territory of Hungary illegally [...] to obtain a residency permit' has committed a criminal offence, as has anyone who 'facilitated in Hungary the opening of proceedings to grant international protection to a person who is not subject to persecution on the grounds of race, nationality, belonging to a particular social group or having a political belief' (Magyar 2018). Dubbed 'Stop Soros', this act has brought domestic and international criticism on the government (Beauchamp 2018) and is clearly incompatible with the role of NGOs in liberal democracies.

The Hungarian government also took specific steps in the area of academic freedoms. The so-called Lex CEU, which began to be implemented in practice in January 2019, requires universities accredited abroad and providing teaching in Hungary to also have a campus in the country of origin. A second, more fundamental condition (Bárd 2017) requires foreign universities to act in Hungary only on the basis of an intergovernmental agreement between the two countries. The act, which according to commentators was obviously aimed against the Soros-funded CEU, led to the prestigious university's exit from Hungary.

Particularly in connection with the adoption of a new constitution (which came into effect in January 2012), the Hungarian government has been criticised for eroding horizontal accountability. By decreasing the retirement age in the judiciary from 70 to 62, the constitution retired 274 judges with immediate effect (Halmai 2017, p. 471). This was problematic because at a stroke it removed a whole generation of judges, many of them in senior positions. Following domestic and international criticism, the legislation was amended to allow the judges to return to their profession; however, the changes in the leadership of the courts of law mostly remained in place. A new system of administrative justice, adopted in late 2018, which gave the government the power to approve these judges, attracted similar criticism. It has been pointed out in this context that the impartiality and independence of a segment of the judiciary were under threat (Gorondi 2018).

The Hungarian government owes its exceptionally strong position to the electoral system, among other factors. The new 2012 electoral law further strengthened its majoritarian elements, not to mention the fact that according to some political scientists, the drawing of single-member constituencies can be described as ‘gerrymandering’ (Krekó and Enyedi 2018).

The first stint of Law and Justice in the government of Poland in 2005–2007 foreshadowed the future direction of the illiberal reform of Polish institutions. Nevertheless, more ambitious changes were not planned, let alone implemented. PiS then spent eight years in opposition, but after the autumn 2015 elections formed a government led by Beata Szydło, whom Mateusz Morawiecki replaced in December 2017. Of the illiberal institutional changes undertaken by the PiS government after 2015, we need to note the reforms of judicial power, the ‘fight’ of the government with the Constitutional Tribunal and the amendments to the electoral system. Beyond this, legislation was quickly introduced that affected the vital actors of a liberal-democratic regime, the media.

Poland’s Constitutional Tribunal (Trybunał Konstytucyjny, TK), which operates as a classic Constitutional Court in the process of preventive and subsequent control of constitutionality, had previously come into conflict with PiS’s political intentions (Solska 2018). After the 2015 elections, the conflict between government and the TK became more acute. Playing a role in its escalation was the precipitous nomination of new judges by the government of the Civic Platform, whom President Andrzej Duda (PiS) refused to appoint. The TK countered that the president must appoint the judges, but the government did not publish this decision in the requisite manner, and it did not formally come into effect. In December 2015, the government proposed a new TK act, which complicated its decision-making procedures. PiS also achieved control of the TK in terms of personnel, by staffing it with judges that were associated with the party (Kobyliński 2016). According to the opinion of the Venice Commission (2016), the new act purposely and substantially weakened the role of the TK as the guarantor of Polish constitutionality and Poland’s legal system.

The judiciary was also affected by other reforms that came into effect after 2015. The official aim was to improve the efficiency of judicial proceedings. However, the reforms were aimed more at weakening the independence of the judiciary, largely by politicising the process of appointing judges. Even President Duda vetoed two out of the three

government reform acts. Particularly dangerous was the potential politicisation of the National Council of the Judiciary. An act lowering the compulsory retirement age for judges of the Supreme Court, meanwhile, led in practice to the forced retirements of judges who were considered supporters of opposition parties. The discussion and the adoption process of these acts were remarkable: over two weeks, the opposition submitted about a thousand amendments, which were all rejected *en bloc* in one vote. The Supreme Court of Poland, disagreeing with these changes, submitted in August 2018 a plea to the Court of Justice of the EU (CJEU). Until the CJEU responds, the Supreme Court of Poland has suspended the new acts, but the executive (government and president) have said they do not respect the decision of the court, and nominate new judges according to the new, dubious rules.

Beyond these changes, the Polish Parliament has adopted an act that could potentially weaken the independence of the Central Electoral Commission and the National Election Bureau, an act weakening the freedom of association and a Media Act that caused the replacement of the leading figures in public service broadcasters with people loyal to PiS. Public service broadcasters were thus transformed into mouthpieces of government policy. The parliamentary control over new legislation has likewise been weakened, because the government, commanding a majority in parliament, can push through most of its bills in a shortened procedure that precludes substantial discussion and extensive criticism.

Despite its relative newness, after the 2013 elections, Andrej Babiš's ANO 2011 became a member of the Czechia government coalition, alongside the Social and the Christian Democrats. After the 2017 elections and an intermezzo of the single-party ANO minority cabinet, which failed to win parliament's confidence, a coalition government of ANO and the Social Democrats was formed in summer 2018. ANO was a strong partner in both governments and could potentially push through fundamental institutional changes; yet we also see the real limits to its power, stemming from the necessity of working in a coalition. The social-democratic control over the Interior Ministry in particular prevented ANO from undertaking any radical change of personnel in the police—for example, any change that could render problematic the already very sensitive political process of investigating the affairs in which Babiš has been embroiled (Hanley and Vachudova 2018; Pehe 2018). There were no attempts to limit the freedom or independence of public service broadcasters, and no institutional interference with the judiciary, police or

public prosecution—apart from attempts to discredit the investigators of cases linked with Babiš and his Agrofert holding company (Hanley and Vachudova 2018, pp. 284–285) and certain problematic changes of personnel in the apparatus of ministries, state agencies and state-owned enterprises. The amendments to the Civil Service Act might be problematic. But even if these are adopted, it cannot be interpreted as an illiberal political change, but rather as a return to the practice of appointing and removing state secretaries (the most senior officials in ministries) according to a political and not an expert key. An amendment of the parliamentary procedures of the Chamber of Deputies—currently under discussion—could, potentially, limit somewhat the options of the parliamentary opposition; however, at the time of writing (November 2019), we are at the stage of general political discussion.

In line with Jiří Pehe's (2018) evaluation, the foregoing suggests that Babiš is potentially an actor of illiberal change, but his real policy is limited by pragmatism, because he is seeking to maximise electoral support and not to irritate potential voters by radical proposals. He is also hampered by efforts to cooperate at the EU level and the functional system of checks and balances in Czech politics, which, faced with attempts at radical institutional overhaul, is relatively rigid. Babiš does not hesitate to use the media outlets he owns to influence political discussion; he certainly has no qualms about shifting the country towards less liberal forms of democracy, but is unable to push these changes through the Czech political system. Particularly dangerous are certain changes of personnel undertaken by Babiš's government and attempts at 'state capture' to serve the business interests of Babiš's holding company.

Slovak governments led by Robert Fico differ considerably in terms of some of the aspects observed here. Whereas his first government, in office 2006–2010, can be labelled national-populist (Smetanková 2013) and largely illiberal, later SMER governments were more moderate in this respect. The causes for this included the different make-up of these governments and the pragmatic approach taken by the Slovak prime minister at the time. In 2009, the government coalition of SMER and two nationalist parties adopted an amendment to the State Language Act, which modified and made stricter requirements on the use of Slovak in the public domain and, in fact, limited the use of national minority languages. That same government also adopted an amendment to the Press Act, which had been criticised for limiting media freedom, by third

parties including the OSCE (Prušová 2009). The act in question introduced the right to reply to people who felt offended by news reporting (i.e. not commentary).

Though Fico's politics after 2012 can be described as populist (Bugarić and Kuhelj 2018, p. 24) and still very 'nationalist', the attacks on the Hungarian minority have substantially reduced over time. After the 2016 elections, Fico even formed a government with the Most–Híd party, representing the interests of the Hungarian minority, and the Slovak National Party. However, there have been other threats to the rule of law, from not-entirely-transparent affairs of recent years, whether this included potential links between former Interior Minister Kaliňák and some controversial businessmen or speculations about links between Fico and a figure of the Italian mafia (Kapitán 2019). The illiberal proclamations by the former Slovak prime minister—in particular, those connected with the 'migration crisis'—were evidently a pragmatic response to the attitudes of Slovaks towards the quotas for receiving refugees. A similarly pragmatic step at the same time was the acceptance of a minimal number of refugees (in single digits) in order for Slovakia to avoid legal action by the European Commission.

In conclusion, we note that given the present make-up of the government coalition and SMER's weakened position after the affair of a murdered investigative journalist, no evidently illiberal steps can be observed in practical politics; however, this might easily change, depending on the future make-up of government coalitions.

6 VARYING DEGREES OF ILLIBERALISM: COMPARISON AND DISCUSSION

Looking back on the party programmes, utterances made by leading politicians of Fidesz, PiS, ANO and SMER, as well as other documents that deal with long-term visions and strategies, we see that issues of an illiberal conception of democracy are certainly not explicitly developed or even addressed in all of them.

The presence of this ideological motive for political behaviour can be found most strongly in the utterances made by Viktor Orbán who said explicitly that an alternative to 'Western liberal democracy' was needed and who also outlined his symbolic geopolitical sources of inspiration in selected authoritarian regimes. However, the Hungarian notion of illiberalism is very explicit and loud, but in terms of content or doctrine,

rather flexible. Thanks to this, Orbán can gradually replace his symbolic opponents or capitalise on various rhetoric emphases. Certainly, there are perennial themes in Orbán's illiberal ideology, including the fight against Soros, in the figure of whom the Fidesz voter may bring together old anti-Semitism with very modern anti-globalism. But, as the situation changes, migrants, the CEU, EU economic governance, the EU as a whole, other Hungarian parties or indeed anyone else can be freely subjected to criticism. We see that in Orbán's case, illiberalism is a powerful instrument—one that is pragmatically used, with an eye to marketing principles—that is a loose combination of various elements, rather than a coherent ideology. This does not decrease its danger, pointing rather to its relative lack of ideological purity. What is hiding behind the vague idea is a combination of traditional ethnic nationalism, social and cultural conservatism, and post-communist oligarchic politics.

In the case of Law and Justice, the notion of 'illiberalism' itself does not appear; but the very detailed doctrine of the party overall provides a set of characteristics of illiberal ideology that can be more easily grasped than in Hungary: a mistrust of the separation of powers, a mistrust of pluralism (of social and cultural pluralism perhaps even more than of political pluralism), a Christian social and national politically conservative position, exaggerated anti-communism, Euroscepticism and a centre-left paternalist economic policy. Liberalism is rejected as a social system, neoliberalism as an economic one, and Europeanism and globalisation are refused as enemies of the moral rebirth of the Polish nation. PiS illiberalism can be read as a modernised and updated version of a long Polish political tradition. If Fidesz's Hungarian illiberalism is the loudest and most explicit, PiS's Polish version is the clearest and most firmly anchored in a coherent ideology.

Looking at the rhetoric and programmes of the Czech and Slovak cases, we do not find explicit illiberalism. Rather, ANO and SMER are characterised by a populist tone, linked in the Slovak case with strong nationalism; in the Czech case, with anti-immigration rhetoric; and in both cases, with populism and long-term soft Euroscepticism. However, the intensity of Robert Fico's and Andrej Babiš's Eurosceptic rhetoric varies wildly, depending on the topic, context and audience, with theirs being a more pragmatic rather than an ideological choice. It could be said, then, that ANO and SMER are not in fact ideologically illiberal parties. Yet we must note certain illiberal elements present in the rhetoric and

programmes of the two parties and their leaders. Babiš's and Fico's pragmatism do not prevent them from deploying stronger illiberal emphases, if there should be demand for that among the electorates.

In the cases of Fidesz and PiS, illiberalism is something of an ideological 'master' leading to practical political steps taken on the basis of doctrines elaborated on to a greater or lesser degree, whereas, ideologically speaking, both ANO and SMER are illiberal only *in potentia*. However, as the historical experience with the trajectory of Viktor Orbán's changing opinions and ideological viewpoints shows (Hloušek and Kopeček 2010, pp. 188–189), even a former pro-Western liberal can end up on the opposite end of the political spectrum, if there are enough ideological and pragmatic reasons to do so.

Let us now turn from ideas and doctrines to political practice. In the preceding segments of this chapter, we have focused on the most important and most conspicuous elements, which are telling in terms of the quality of democratic governance. Table 2 summarises these aspects

Table 2 Illiberal practices of governing parties in East Central Europe

<i>Indicators</i>	<i>Fidesz</i>	<i>PiS</i>	<i>Smer</i>	<i>ANO</i>
State control or political regulation of public service broadcasters	Yes	Yes	Yes	No
Politically motivated regulation of journalism generally	Yes	Yes	Yes	No
Political or economic concentration of mass media ownership, threatening pluralism	Yes	No	No	Yes
Legal provisions affecting the activities of opposition parties or civil society	Yes	No	No	No
Economic regulation impacting the activities of civil society	Yes	Yes	No	No
Regulation of other autonomous spheres, such as universities and academic liberties	Yes	Yes	Yes	No
Politically motivated interference with private property and the autonomy of proprietors' actions in the economy	No	No	No	No
Strengthening the executive to the detriment of the judiciary or the legislature	Yes	Yes	Yes	Yes
Regulations limiting or obstructing the opposition's checking of government via parliament or other institutions, typically in the form of amendments to the rules of procedure	Yes	Yes	Yes	Yes
Limitations on the independence of the judiciary	Yes	Yes	Yes	No

Source: Authors

along the three dimensions of illiberal democracy presented in Sect. 2, namely the control of the media and the limitation of their independence, limitations on the activities of the opposition and civil society as well as strengthening the executive and limiting the separation of powers in the country.

With the exception of Czechia, governments in all three other countries have at least attempted to establish state control over public service broadcasters. This process can be considered as achieved in Hungary and Poland, but in Slovakia the attempts to regulate were neither as vigorous, nor as successful. The murder of the journalist, Ján Kuciak, in February 2018, caused mass protest, which dampened further attempts at political control of the media. What is more, Slovakia is a country with a plural media market, similar to the Czech Republic. In Czechia, it is not the potential threats to pluralism that concern public service broadcasters, but the fact that Prime Minister Babiš owns an important media group, Mafra, whose newspapers support the government. The public service broadcasters remain independent, and there is pluralism in the private media market. This, by contrast, is disappearing from the Hungarian media, whether due to political control over public service broadcasters, as noted above, or the economic concentration of private media ownership in the hands of people and companies close to the Fidesz party.

None of the East Central European states has introduced illiberal measures against the autonomy of proprietors' actions in the economy. In the other points of the second dimension, however, the practices of the countries vary dramatically. In Czechia, there are no political or economic pressures exerted against civil society, nor against the parties of the opposition. Somewhat stronger attempts to limit certain civil society actors could be observed under SMER governments in Slovakia, but the activities of these sectors are not being suppressed in the country. Poland is today in this respect closer to a liberal model, with some illiberal elements mixed in. In Hungary, however, democracy is fully illiberal in this respect; a combination of political and financial regulation asphyxiates the independent activities of civil society, the academic sphere, as well as political opposition.

We see most illiberal policies in the third dimension. In all four countries, there have been attempts—albeit of very different intensities—to increase the influence of the executive at the expense of checks by the legislature. Where government parties command a clear majority in parliament (Fidesz and PiS), parliamentary power is diminished by the actual

behaviour of the government majority. However, the attacks against the very essence of liberal democracy—an independent judiciary—are even more serious. In Hungary and Poland, these attacks have progressed the most, and the judicial review of constitutionality in particular has been largely paralysed. There is a danger of a similar situation in Slovakia, where the Constitutional Court is dysfunctional because many justice seats are vacant. The Slovak example shows that to limit judicial power, one does not need to change laws and regulations; it suffices to use changes of personnel, or block them.

What is the weight of the individual dimensions? In terms of constitutional engineering, the third dimension is key for the stabilisation of an illiberal democracy. It is no accident that the first institutional reforms in Poland and Hungary that took place were attempts to regulate the independence of the constitutional judiciary and judicial power. In terms of the long-term formation of public opinion, the first dimension—the media—follows. Regulation of media plurality and the transformation of public service broadcasters, especially TV stations, into mouthpieces of the regime, lead to long-term change of political discourse. Our analysis of four East Central European cases shows that civil society institutions come third in terms of importance. Although they can be very annoying to illiberal politicians, they nevertheless represent the interests of partial segments of the population. If they are denied the option of communicating their critical positions in the media and if they are precluded from responding to arbitrary government action by legal action, their position vis-à-vis the domestic public becomes very fragile.

7 CONCLUSION

The absence of long-term democratic traditions, a weak political culture among citizens and leaders alike, and the absence of political education and political socialisation of citizens all played their roles in a fragile and contested position of liberal democracy in East Central Europe, and together with pressures exerted by rapid political, social and economic changes, created a demand for leaders of a certain type. The implicit assumption from the early days of democratic transition—that democratisation and liberalisation must go hand in hand, and that this is a process of unidirectional progress—has not been confirmed. Nonetheless, it is evident that in terms of the manifestations of illiberalism, this is no

coherent group, and that not all countries of the Visegrád Group are emerging illiberal democracies.

In recent years, Hungary and Poland have presented themselves significantly differently than Slovakia and Czechia. Whereas the Hungarian government can be described as illiberal and the Polish government as halfway illiberal (quite illiberal in terms of ideology, but not as successful as Hungary in terms of implementation so far), Slovakia's is more social populist and Czechia's a kind of managerial populism. Despite some elements of illiberalism, the ANO and SMER governments can be described as more or less liberal; however, always with the proviso that given the very pragmatic, ideological and rather unanchored style of their politics, this might be subject to change, at any time.

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Party Rhetoric and Action Compared: Examining Politicisation and Compliance in the Field of Asylum and Migration Policy in the Czech Republic and Hungary

Paula Beger

1 INTRODUCTION

Since the 1990s, asylum and migration policy has been a low salience issue in East Central Europe (ECE), being barely addressed in public debates and excluded from political parties' manifestos. Until a few years ago, policies were in line with EU standards and mainly remained in the hands of the administration. With the European refugee crisis in 2015, however, the policy field all of a sudden became politicised and several governments rejected the implementation of the EU relocation scheme.

Focusing on Hungary and the Czech Republic in the period from 2015 to 2018, this chapter investigates the link between politicisation and compliance. It starts by showing how asylum and migration policy

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became politicised within recent years. It then goes on to examine compliance with EU directives in the field of asylum and migration policy. It will be demonstrated that the politicisation of the policy field did not lead to general non-compliance. While governments of both countries politicised asylum and migration issues and decided not to implement the relocation scheme, the Czech Republic implemented other asylum- and migration-related EU directives. Hungary, however, also violated other EU rules in the field. Based on the compliance literature of ECE and building on expert interviews,¹ it will be suggested that this is mainly due to the varying degree of politicisation of the administration. If it remains de-politicised, it executes the policy in accordance with the EU standards.

The chapter is anchored on the theoretical background of politicisation, Europeanisation and compliance research. As very little research has so far been undertaken to combine questions of politicisation and compliance with EU law, this study contributes to an under-researched area. Its empirical findings have important implications for research on illiberal trends and anti-EU politics. They suggest that the pursuit of illiberal as well as anti-EU agendas of ruling parties (for party agendas, see Chapters 5 and 7) can be counterbalanced or at least decelerated by de-politicised state bureaucracies. Future research, therefore, should focus on the administration in backsliding states and examine how governments try to capture them.

2 THE POLITICISATION OF ASYLUM AND MIGRATION POLICY IN THE CZECH REPUBLIC AND HUNGARY

Politicisation means that the wider public sphere is involved with a specific issue. Most scholars analyse politicisation by looking at three aspects: the public salience of an issue, the number of actors involved and the polarisation of their opinions (De Wilde 2011; Rauh and Zürn 2014, p. 125). As political parties play a crucial role in this process, they are suitable research subjects when examining politicisation (Hooghe and Marks 2012; Dolezal et al. 2016, for the analysis of ECE parties, see also Chapters 5 and 7). Therefore, this section analyses party manifestos of the

¹The expert interviews were conducted in 2016 and 2017 with academics and representatives from relevant think tanks as well as administrative employees of the Czech and Hungarian Ministry of Interior and the Immigration and Asylum Office in Hungary.

Czech and Hungarian governing parties and the three biggest opposition parties. Manifestos are in general a valid source to identify parties' opinions (Grande and Hutter 2016, pp. 26–27) and to examine politicisation in the partisan arena. The following paragraphs also consider the public debates on asylum and migration.

In both Hungary and the Czech Republic, the policy field of asylum and migration policy² was developed almost from scratch in the pre-accession phase. In that time, the issue was not politicised. It was low in public salience and only a few parties formulated programmatic preferences (Beger 2020). The asylum and migration policy was shaped almost exclusively by the government and the responsible administration without receiving much public attention. For these actors, the EU conditionality served as the main guideline as one *acquis* chapter demanded the building of, for example, a proper border control, domestic institutions for law enforcement and a legislative framework for asylum and migration (European Commission 2019). The ECE governments still lacked experience with immigration and international refugee movements (Grabbe 2003, p. 306; Lavenex 1998, p. 138; Miciukiewicz 2011, p. 186), and the EU standards were adopted in a technical and uncontested down-loading process (Author's interviews, Prague, 23rd January 2018; 31st January 2018; 29th January 2018; 1st February 2018).

Several of the interviewed experts confirmed that the very apolitical and bureaucratic policy field reached only the top of the political agenda with the refugee crisis³ in the Czech Republic (Author's interviews, Prague, 23rd January 2018; 31st January 2018; 29th January 2018; 1st February 2018). Similarly, in Hungary, asylum and migration was not a disputed issue before 2015 and only since that year became prioritised

²The definition of asylum and migration policy is derived from the corresponding research in political science that addresses different sub-policies like asylum policy and policies of migration, such as labour migration or integration (Bendel 2011, p. 377; Faist and Ette 2007, p. 15). The difficulty in differentiating migration and asylum policy while respecting the interacting aspects of both categories has remained a challenge (Crisp 2010, p. 133). Consequently, this chapter frames the policy field as asylum and migration policy.

³The wording "refugee crisis" might be put into an inhuman interpretative framework. Different frames like the "Schengen crisis" (Börzel and Risse 2018) or the "external relations crisis" (Falkner 2016) seem more appropriate in this regard. However, the emphasis on the policy field of asylum and migration is at the centre of this research, and thus, the expression "refugee crisis" is chosen.

(Author's interviews, Budapest, 2nd November 2017; 9th November 2017).

In Czech Parliament, the opposition parties did not delineate from the government line, even though their deputies did not have to follow any party discipline because they did not articulate their positions regarding the policy field in manifestos or party programmes (Shevel 2011, p. 224). Parties paid more attention to asylum and migration issues in the 2000s when the asylum and refugee legislation was repeatedly amended, but nevertheless abstained from formulating clear party positions. The same was true for Hungary; asylum and migration was not a widely disputed issue here either (Author's interviews, Budapest, 2nd November 2017; 9th November 2017). Thus, in both countries, the policy field remained technocratic until many years after the accession.

As mentioned, political actors started to politicise the issue only in 2015. In this year, the European refugee crisis increased the salience of asylum- and migration-related questions. The policy entered mass politics in the Czech Republic and Hungary. Though the numbers of asylum applicants in the Czech Republic were low, political parties sparked a public debate about migration and asylum. All political parties of the Czech Parliament took a restrictive stance in that matter (Jelínková 2019, p. 36f.). As experts reported, the political parties in Czechia discovered how they could direct attention towards the issue and how to exploit it electorally (Author's interview, Prague, 23rd January 2018).

In their public statements, the populist centrist Action of Dissatisfied Citizens ANO 2011 focused mainly on security issues, whereas the Social Democrats and the Christian and Democratic Union–Czechoslovak People's Party also raised the issue, but within a securitised frame. In addition, both the government and the opposition took a negative stance towards the EU migration and asylum policy in most of the press interviews concerning this policy field (Jelínková 2019, p. 39). Furthermore, many xenophobic and populist splinter parties emerged in the Czech Republic focusing on asylum and migration issues (Bertelsmann Stiftung 2018a, p. 35; for anti-Muslim attitudes, see also Chapter 3).

In the 2017 election year, when national parties were running for the election of the Chamber of Deputies, both government and opposition parties explicitly addressed the issue in their manifestos. Polarisation increased as the parties articulated more diverging positions towards the policy field of asylum and migration. In its party manifesto, ANO 2011 devoted much more attention to questions of migration than other Czech

political parties. It declared illegal migration as the main issue in Europe and demanded to end migration waves by means of EU and NATO operations or with the help of the Czech army. Furthermore, ANO 2011 suggested punishing the abuse of the domestic asylum system with threatening penalties. The EU relocation scheme, though, was not explicitly addressed (Burst et al. 2020: ANO 2011, position 321–670). In contrast, its social democratic coalition partner ČSSD openly rejected the mandatory quotas of the EU relocation scheme in its party manifesto of 2017 and opted for a preventive system to stop irregular migration while delivering development aid to African and Asian countries (Burst et al. 2020: Czech Social Democratic Party, position 446–457).

The three biggest opposition parties positioned themselves with rather short statements in their manifestos. The liberal-conservative Civic Democratic Party (ODS) demanded a consistent immigration policy that should, *inter alia*, set stricter conditions for the abuse of the social system (Burst et al. 2020: Civic Democratic Party, position 174–177). The Czech Pirate Party remained vague and referred to a rational approach to solve the refugee crisis. It also aimed at supporting humanitarian aid close to conflict zones (Burst et al. 2020: Czech Pirate Party, position 453–455). The populist Party Freedom and Direct Democracy (SPD) referred to the EU relocation scheme in a xenophobic manner as a forced mechanism to integrate illegal immigrants (Burst et al. 2020: Freedom and Direct Democracy, position 28–30).

In sum, while the polarisation increased when compared to the 2014 election year, in 2017, only the ČSSD and the populist SPD made an explicit reference to the EU relocation mechanism which they refused. The emerging intra- and inter-party competition over the adoption of the refugee quotas (Bertelsmann Stiftung 2018a, p. 35) was even more apparent in public debates than in the party manifestos.

In Hungary, asylum and migration has become a similarly salient topic since 2015, although the debate took different shapes. In the run-up to the 2014 parliamentary elections, no party had even mentioned immigration in its manifesto (Manifesto Project Data Dashboard).⁴ Following

⁴Some statements can only be found in the manifesto of Fidesz from 2007. Interestingly, Fidesz supports a common European immigration policy (Fidesz 2007, p. 41f.).

the vastly increased inflow of refugees and asylum seekers in Hungary,⁵ the policy field was shifted from a bureaucratic management sphere to a political one, though not all political parties were increasingly involved with the issue. From 2015 onwards, political debates about asylum and migration were dominated by the governing party, the Federation of Young Democrats–Hungarian Civic Union (Fidesz). The alliance between the right-wing populist Fidesz and the conservative Christian Democratic People’s Party (KDNP) started a governmental campaign against migrants. It built its public communication on mass media measures and set up a huge billboard campaign and a national consultation on immigration (Nagy 2019, p. 123). While the public discourse of the government increasingly turned to spread a “moral panic” (Barlai and Sik 2017), the government’s campaign remained unchallenged by the opposition parties of the Hungarian Parliament (Nagy 2019, p. 115). Furthermore, opportunities for public criticism were restricted, as non-governmental actors were practically prohibited from broadcasting political advertisements on public TV or radio (Bertelsmann Stiftung 2018b, p. 8). The two biggest opposition parties, the right-wing extremist party Movement for a Better Hungary (Jobbik) and the Hungarian Socialist Party (MSZP), passed their manifestos right before the Parliament’s elections in 2018 but did not formulate clear goals for a domestic asylum and refugee policy. Jobbik associated migration policy with the defence of the Hungarian nation and identity (Jobbik 2018), while the MSZP put the topic in a domestic context and mainly addressed Hungarian migrants (MSZP 2018).

The governing party Fidesz chose the EU relocation scheme as an issue to mobilise domestic support against the EU. First, in September 2015, the party initiated a parliamentary resolution against the EU quota system that was perceived to be encouraging immigrants to migrate to Europe (Resolution 36/2015 [IX. 22], Magyar Közlöny No. 136). Furthermore, the Hungarian government initiated a referendum in October 2016 and Hungarian citizens could vote whether the Hungarian government should comply with the relocation scheme,⁶ but the referendum

⁵As 177,000 asylum applications in total were registered in Hungary in 2015. That was an increase of 314% compared to the previous year (Statistics of the Hungarian Immigration and Asylum Office).

⁶The referendum was accompanied by mass media measures based on very suggestive statements while interlinking migration and asylum with terrorism and misusing the terms migration and asylum. The referendum—which posed the single question “Do you want

was invalid due to insufficient turnout (Halmai 2016). While Fidesz became increasingly active in politicising the policy field, it surprisingly did not reflect its “intense anti-migration campaign” (Bertelsmann Stiftung 2018b, p. 36) within its party manifesto. It rather used measures like the referendum and a parliamentary resolution to launch an EU anti-rhetoric.

In the same way, the main opposition parties only briefly described their position towards asylum and migration in their manifestos before the 2018 parliamentary elections. They appeared to be reluctant to counterbalance the public mobilisation against the EU and especially the EU relocation scheme.

Focusing on the salience, the actor expansion and the polarisation, it could be shown that the programmatic dispute was missing in both countries, as actors—if they positioned themselves—predominantly demanded restrictive asylum and migration policies. Nevertheless, the issues of migration and asylum gained high public attention in the two ECE countries.

3 DIFFERENT DEGREES OF NON-COMPLIANCE IN THE CZECH REPUBLIC AND HUNGARY

The following section analyses whether politicisation resulted in increasing non-compliance. Though it has been suggested that anti-EU rhetoric can stir non-compliant behaviour and thus lead to a disintegrative course (Börzel and Risse 2018, p. 7), the two approaches are rather used separately. In this context, ECE countries are mentioned in politicisation (Börzel and Risse 2018; Hutter and Kriesi 2019) or compliance studies (Falkner et al. 2004; Falkner et al. 2008; Sedelmeier 2009; Toshkov 2012).

Compliance performance can be measured by the number of infringement procedures. Though infringement data have to be interpreted with caution, they serve as the most valid source for comparing compliance in EU countries (Börzel and Sedelmeier 2017, p. 201). When the Commission starts an infringement procedure, a letter of formal notice is issued to the member state. It can be followed by a reasoned opinion, which sets out a clear deadline to solve the case of EU law violation that can

to allow the European Union to mandate the relocation of non-Hungarian citizens to Hungary without the approval of the National Assembly?”—demonstrated the anti-EU mobilisation of the Hungarian government.

be caused by non-notification, non-transposition, late transposition or substantially incorrect transposition of a directive (Falkner et al. 2004, p. 456). A referral to the Court of Justice of the European Union finally sanctions the non-compliant behaviour. Thus, there is a qualitative difference between the different stages regarding the depth of non-compliance, and cases can be differentiated between severe and swiftly solved instances of non-compliance. While the formal notice suggests the first evidence of a non-compliant behaviour, a reasoned opinion can be regarded as a last final written warning before the sanctioning and serves as an indicator for measuring non-compliance (Börzel and Sedelmeier 2017, p. 201; Falkner et al. 2004, p. 456). If a member state reacts according to the reasoned opinion, the sanctioning can be avoided. Using reasoned opinions for measuring formal non-compliance, the two country cases of the Czech Republic and Hungary show different levels.

Within the period under consideration, the European Commission issued several formal notices to the Czech Republic that concerned directives of the policy field. In 2015, for the first time, the Commission sent two formal notices that criticised the execution of common procedures for granting and withdrawing international protection and the standards for the reception of asylum. A year later, the Commission found fault with the conditions for third-country nationals coming as seasonal workers or for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (European Commission Database on infringement cases). Though these formal notices were not followed by reasoned opinions that defined a stage of non-compliance, it is striking that the same year when the European refugee crisis became part of the public debate, the Czech Republic got their first formal notices concerning the policy field. In 2017, the Commission started an infringement procedure against the Czech Republic for not transposing the Council Decisions 2015/1523 and 2015/1601 on relocation and resettlement. As there was no indication that the Czech Republic would start relocating to its territory, the Commission referred the case to the Court of Justice of the European Union (European Commission 2017b). As demonstrated in Table 1, the refusal to implement the relocation scheme was a definite non-compliant behaviour.

Compared to the Czech Republic, Hungary has less infringement proceedings but more of them are referred to the Court of Justice of

Table 1 Recent infringement procedures in asylum and migration policy in the Czech Republic

<i>Date</i>	<i>Stage infringement procedure</i>	<i>Content</i>
September 2015	Formal notice art. 258 TFEU	Directive 2013/32/EU on common procedures for granting and withdrawing international protection
September 2015	Formal notice art. 258 TFEU	Directive 2013/33/EU on standards for the reception of applicants for international protection
November 2016	Formal notice art. 258 TFEU	Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers
June 2017	Formal notice art. 258 TFEU	Failure to implement correctly Council Decisions 2015/1523 and
July 2017	Reasoned opinion art. 258 TFEU	2015/1601 on relocation
December 2017	Referral to Court art. 258 TFEU	
July 2018	Formal notice art. 258 TFEU	Directive 2016/801/EU on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing

Source Author's own table based on the European Commission Database on infringement cases (European Commission n.d.)

the European Union and thus indicate a more severe form of non-compliance. Contrary to the Czech case, Hungary already received formal notices concerning the policy field before 2015 (see Table 2).

In 2013, the Commission sent a formal notice on grounds of non-compliance with EU asylum directives and the EU Charter of Fundamental Rights. A year later, it criticised the standards for the qualification of third-country nationals as beneficiaries of international protection. These formal notices were not followed by reasoned opinions, indicating that the instances of non-compliance were solved swiftly. However, in 2015, the number and scope of the infringement procedures increased remarkably. The Commission addressed Hungary in a formal notice as the country did not comply with the EU asylum and migration acquis, including several directives (Directive 2013/32/EU on Asylum Procedures, Directive 2008/115/EC on Return, on Reception Conditions) as well as several provisions of the Charter of Fundamental Rights (European Commission 2017a).

After a period of two months to respond to the Commission's reasoned opinion, the majority of the concerns raised had still not been addressed and the Commission referred the case to the Court of Justice of the European Union in 2018 (European Commission 2018). The failure to correctly implement the Council Decision 2015/1601 on relocation led to another infringement procedure that was referred to the Court of Justice of the European Union half a year later after Hungary had not taken any action at all since the relocation scheme started (European Commission 2017b). Further formal notices followed afterwards that also concerned third-country nationals for the purposes of, *inter alia*, research, training, exchange schemes, measures against illegal immigration and long-term residents (European Commission Database on infringement cases).

Comparing the compliance performance in the Czech Republic and Hungary in the field of asylum and migration, it can be summarised that in both countries, the infringement procedures considerably increased since 2015 when the European refugee crisis became politicised in domestic public debate. While more procedures were swiftly solved in the Czech Republic, the case of Hungary shows a more severe form of non-compliance.

Table 2 Recent infringement procedures in asylum and migration policy in Hungary

<i>Date</i>	<i>Stage infringement procedure</i>	<i>Content</i>
September 2015	Formal notice art. 258 TFEU	Directive 2013/32/EU on common procedures for granting and withdrawing international protection
September 2015	Formal notice art. 258 TFEU	Directive 2013/33/EU on standards for the reception of applicants for international protection
December 2015	Formal notice art. 258 TFEU	Incorrect Implementation of EU Asylum and Migration Acquis
May 2017	Additional formal notice Art. 258 TFEU	
December 2017	Reasoned opinion art. 258 TFEU	
July 2018	Referral to Court art. 258 TFEU	
June 2017	Formal notice art. 258 TFEU Reasoned opinion	Failure to implement correctly Council Decision
July 2017	Art. 258 TFEU Referral to Court art. 258 TFEU	2015/1601 on relocation
December 2017		
July 2018	Formal notice art. 258 TFEU	Directive 2016/801/EU on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing

Source Author's own table based on the European Commission Database on infringement cases (European Commission n.d.)

4 ACTION IN THE BACKGROUND: THE DE-POLITICISED ADMINISTRATION AS A MISSING PIECE OF THE PUZZLE

The previous sections suggest that the compliance in the very policy field cannot solely be explained by politicisation. Comparable levels of politicisation in both countries yielded different results. As I will argue in the following, this can be explained by considering the role of the administration.

As we know from quantitative studies and comparative case studies on compliance with EU law, the ECE countries generally outperform their Western counterparts. They transpose EU legislation faster and also settle infringement procedures more rapidly (Börzel and Sedelmeier 2017, p. 197ff.; Sedelmeier 2011, p. 26; Zhelyazkova et al. 2017, p. 223f.). It has been repeatedly shown that administrative capacity serves as an explanatory factor for this good compliance performance (Börzel et al. et al. 2010; Falkner et al. 2004; Hille and Knill 2016). Especially, in the policy field under scrutiny, the administration in ECE countries had a shaping power while the policy field was developed during the EU accession phase when it efficiently implemented the strict EU conditionality. According to this line of reasoning, ECE countries with a high administrative efficiency and specialised bureaucracy achieve good compliance as they successfully passed a stress test while adopting a huge amount of legislation in quite a short period (Börzel and Sedelmeier 2017, Zhelyazkova et al. 2017, p. 231).

Part of this explanation is the idea of a technocratic, non-political administration which focuses on the efficient implementation of law. Before Eastern enlargement, the reform of the ECE countries' centralised and then over-politicised administrations (Goetz and Wollmann 2001) was part of the EU conditions for accession. By setting a de-politicised bureaucracy as a precondition for acceding the EU, the Commission sought to prevent party patronage (Meyer-Sahling 2006, p. 9). It therefore closely monitored especially the de-politicisation of the senior civil servants in order to separate politics and administration in the higher ranks below the political leadership (Meyer-Sahling 2011, p. 239f.).

Scholars expected that this strong technocratisation in the accession process could be at the expense of elected political actors in the post-accession period (Lippert et al. 2001, p. 982f.). They assumed the decoupling of the administrative execution and party politics would

continue even after the EU accession. The costs of replacing the well-trained, de-politicised and well-connected personnel would have been too high to be replaced by—potentially less competent—party representatives: “The growing involvement of the ministerial bureaucracy in East Central European countries in EU policy, growing contacts, and increasing investment in the competence levels of officials suggests that the costs of replacing ministerial civil servants have been continuously rising rather than decreasing and that the size of politicisation-free zones in the ministerial bureaucracy is likely to grow” (Meyer-Sahling 2006, p. 25f.).

In fact, the Czech Ministry of Interior is considered an institution that was “perhaps the most thoroughly cleansed following the Velvet Revolution” (Shevel 2011, p. 196). It can be assumed that, among others, the migration and refugee policy-executing body was detached from party politics and the personnel had been exchanged before the EU accession. Experts confirmed that Czech asylum and migration has been a very apolitical field until the refugee crisis and was mainly administrative and bureaucratic (Author’s interviews, Prague, 23rd January 2018). The division responsible, the Department of Asylum and Migration Policy at the Ministry of Interior, has been led by Tomáš Haišman since 1993 for about 25 years (Shevel 2011, p. 197f.). It is considered that he was the main driver and most experienced person of the domestic asylum and migration policy. (Author’s interviews, Prague, 23rd January 2018)

In the Czech Republic, the new salience of the policy field provoked an enhanced public contestation of the government when the relocation scheme was announced in 2015. According to that, the mandatory model of the relocation mechanism was considered as problematic across official bodies (Author’s interviews, Prague, 23rd January 2018; 1st February 2018). In general, a compliant behaviour of the Czech government was not to be expected in that matter: “How destructive was the discussion about quotas as in our country. It destroyed the political will concerning a real contribution in the EU framework to the migration crisis” (Author’s interview, Prague, 18th January 2018).

Despite the politicisation of the policy field and the salience of the EU relocation scheme, it was the policy-executing bureaucracy in its daily practice which examined and decided upon asylum applications. As various administrative employees underlined, their application of the asylum law did not change (Author’s interviews, Prague, 18th January 2018; 29th January 2018). This puts the non-compliance of the Czech

government in the case of the relocation scheme in a different light. While the relocation mechanism was used by, *inter alia*, party politicians to further polarise the policy field as a salient public issue, the politicisation of the policy field did not lead to non-compliance because of an efficient and de-politicised bureaucracy.

In the Hungarian case, in contrast, it seems that the governmental strategy of restructuring the state administration and its politicisation of the policy field led to non-compliance. Though during the accession period, a de-politicisation of senior civil servants has been monitored by the Commission, the first Orbán government started to re-politicise the administration in 2001. Senior civil servants were chosen due to party preferences (Meyer-Sahling 2011, p. 247). When Orbán formed a government for a second time in 2010, the political executive continued to fill posts of the central government “with politically loyal, ‘reliable’ civil servants” (Hajnal and Csengődi 2014, p. 49). Thus, a decade later, the party politics of the governing parties and administrative executive have been further coupled.

The government used the EU relocation scheme as “a net internal game with a far reaching effect as it will push Hungary to the laggards of the EU” (Author’s interview, Budapest, 19th October 2017). While in the Czech Republic the administration in the policy field continued to operate as before, in Hungary, there appears to be a political influence on the relevant bureaucracy. As one of the interviewees from the Immigration and Asylum Office stated “Our office has to wait [...] and if in the future a positive result could come from this debate and we will participate in any way in the future relocation and resettlement programme, our office could participate in this programme [...] because we have the experience from our previous resettlement programmes. If the situation will be so, our office will be ready to implement” (Author’s interview, Budapest, 9th November 2017). These considerations let the non-compliance in the relocation scheme appear different to the Czech case, and the rejection of the relocation mechanism points to a more structural level of non-compliance in the policy field.

5 CONCLUSION

This chapter investigated the politicisation of the asylum and migration policies since 2015 and also examined the compliance performance in Hungary and the Czech Republic. Combining expert interviews and

findings from politicisation and compliance research, it suggests that the raising salience of an issue affecting party programmes can affect the compliance performance with EU standards, but that the level of the administration's politicisation intermediates this effect.

Empirically, the moment of the European refugee crisis and the rejection of the EU relocation scheme constituted a turning point. The formerly rather “technical” policy field that was mainly managed by the responsible administration became politicised. In the Czech Republic, some party actors actively responded to the raised issue and new parties emerged, although they would conform with the EU-critical position of the national government in this policy field. In Hungary, actors from opposition parties hardly mobilised and the issue was mainly raised by the government. However, in the Czech case, the politicisation of the policy field did not lead to a broader non-compliance, and so far, only the relocation scheme has not been adhered to. As for Hungary, non-compliance with EU law has increased.

To explain these differences, the chapter drew on studies on the accession process. They highlight that de-politicisation of the administration was a precondition to join the EU and that a de-politicised bureaucracy manages the implementation of EU law efficiently.

In the Czech Republic, this was undoubtedly the case, but in Hungary, the asylum-related administration, like other bureaucratic fields, has become increasingly re-politicised during the last decade. Since party politics of the governing parties and the administrative executive's action have been further coupled, the politicised state administration followed the government's approach of non-compliance with EU law in the policy field.

These results are of utmost importance for research on the relationship between the EU and its member states as well as domestic policy patterns. While studies of illiberal backsliding in ECE often focus on institutional reforms, administrations have received less attention. Future studies will hence need to observe their influence upon mechanisms of politicisation and compliance in greater detail (see also Chapter 14). Administrative action promises to be an important piece of the puzzle to this interrelation.

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Pro-Europeans and ‘Euro-Realists’: The Party-Voters Linkage and Parties’ Political Agendas in Poland, 2004–2019

Michał Dulak

1 INTRODUCTION

After the parliamentary election in autumn 2015, the coalition government under the right-wing Law and Justice (Prawo i Sprawiedliwość—PiS) party’s leadership undertook several decisions that put Poland’s government at loggerheads with the European Commission. Conflicts arose on a wide range of issues including the government’s attempts to curb the media, the logging of Europe’s oldest forest and the refugee relocation scheme. Among them, the most profound and widely commented on was the judiciary reform that led to triggering the Article 7 procedure of the Treaty on European Union and the rule of law related infringement procedures.

Such developments suggest that the EU rule violations are not isolated cases but rather reflect a strategy of transforming Poland from the model of a pro-integration East Central European (ECE) member state into

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another ‘trouble-maker’ in the time of crises rocking the EU boat. Put in the broader context of democratic backsliding in ECE countries (Rupnik 2007; Ágh 2014, 2015; Berend and Bugarcic 2015; Hanley and Dawson 2016; Krastev 2018), it can be hypothesised that the illiberal turn in Poland is linked with a process of de-Europeanisation which is being forced by the PiS government. This chapter examines if party manifestos are de-Europeanised and if this reflects the parties’ electorates attitudes.¹

In representative democracies, the political agenda is, *inter alia*, shaped by voters’ preferences. Since parties are interested in attracting a maximum of votes, the concept of party-voters linkage suggests that they are influenced by societal attitudes to de-Europeanise their political agendas or restrain from doing so. To test this assumption, this study covers Poland’s EU membership period from 2004 to 2019 and the two main political parties which were the leaders in governing coalitions since 2005, the liberal-conservative PO and the conservative PiS. Particular attention will be paid to the period of the conflicts with the EU during the second PiS government in 2015–2019, which so far has not been thoroughly analysed by political scientists. Interpreting the data with reference to the previous majority cabinets, when the Platforma Obywatelska-Polskie Stronnictwo Ludowe (PO-PSL) centre-right coalition government was at the helm, allows us to gain broader comparative evidence of the illiberal trends among political parties and societal attitudes in the last several years in Poland.

The first section lays down the conceptual ground of the study. It argues that the de-Europeanisation of parties’ political agendas can take different forms and theorises how parties react to societal preferences. Therefore, it uses a mainly qualitative approach to analyse the party-voters linkage. The second section sketches the development of party positions on various aspects of European integration and explains how far they reflect the preferences of the parties’ respective electorates. The third section does the same for the time since 2015 when the conflicts between the Polish governments and the EU increased. The chapter concludes with a summary of the main findings.

¹For further reflections on the linkages between parties and voters, see Chapter 3.

2 FORMS AND RATIONALE OF PROGRAMMATIC DE-EUROPEANISATION

The party-voters linkage is one of the fundamentals of representative democracies. In such systems, the political parties are the carriers of the representation and deliberation in parliaments. Voters express their expectations towards given political issues either in opinion polls or by casting their votes during the elections. Since the parties seek societal support for their political agendas, the voters' preferences can to some extent shape their programmes. The political agenda serves then as a code of conduct for the representatives in the legislature while deliberating, voting or controlling the government. This follows the standard rational choice explanation of human behaviour in democratic systems, which underlines that voters choose representatives that can maximise their preferences (Downs 1957). It can also be easily applied to political positions on European integration.

Democratic backsliding is marked by the weakening of political institutions of a democratic system, a decrease of quality in policy-making and the reshaping of political procedures in order to serve the objectives of an even more centralized and authoritarian government (Cianetti et al. 2018; Karolewski and Benedikter 2017; Sadurski 2018). As these developments collide with the EU's foundational principles, it seems likely that democratic backsliding affects Poland's European policy. In order to test this assumption, we can use the concept of de-Europeanisation. Originally, this term referred to changes in direction and content of the foreign policy of neighbouring EU countries, which turn their backs on the association or accession process. Today, de-Europeanisation has also become identified with the broader phenomenon of EU disintegration in the face of crises (Vollaard 2014, 2018; Schmitter and Lefkofridi 2016; Rosamond 2019).

It is commonly accepted that de-Europeanisation is not a simple linear process of reversing the achievement of Europeanisation (see also Chapters 6 and 12). The following analysis of de-Europeanisation of the political agenda pursued by parties, therefore, focuses on specific forms of de-Europeanisation (Jańczak 2010) and how they may influence a commitment of the member states regarding policies and decision-making in the EU (Schmitter 1970; Schmitter and Lefkofridi 2016). Following Jańczak (2010, pp. 102–106), de-Europeanisation is not limited to decreasing the current level achieved in a given field or the 'withdrawal'

from the EU, but can also include a refocusing, customisation and a new priority setting as distinct forms of de-Europeanisation (Jańczak 2010, pp. 104–106).

Refocusing refers to the reduction of public interest in EU matters. It occurs when parties succeed in putting other issues on the political agenda. They can do it by channels of communication like manifestos or media. The second form mentioned by Jańczak—customisation—relates to bottom-up Europeanisation. By forcing national rules and norms into EU policies and legislation, member states weaken the Europeanisation process. This form, however, does not necessarily mean withdrawal from pursuing the integration objectives of the whole EU or reducing the state's commitment. The customisation would be primarily used by a ruling party as the government has the power to coordinate European policy of a given country. The third form—modified priority setting—refers to the already successfully Europeanised fields where new solutions proposed by a member state collide with European ones or are a return to the old solutions. This form of de-Europeanisation can be implemented either by the opposition parties or by ruling parties; nonetheless, the latter are again more privileged as their proposals are often taken by the media and other politicians as a formal position of government.

When the de-Europeanisation of the ruling parties' political agendas influence the commitment of the member states regarding policies and decision-making in the EU, we are facing what neo-functionalists call a 'spill back' of integration, i.e. the withdrawal of a political actor from the original objective and downgrading its commitment in integration structures (Schmitter 1970, p. 840). Eventually, 'spill back' can end up with leaving the participation in a given policy and even with the voluntary exit of a member state from the EU. As Schmitter and Lefkofridi (2016, p. 3) argue, "(...) such 'spillbacks' are fervently advocated by parties on the radical left and right (albeit for different reasons)". De-Europeanisation connects with 'spill back' in such a way that the former precedes the latter.

Therefore, the milder forms of de-Europeanisation proposed by Jańczak (2010, pp. 102–106) can nevertheless ultimately result in parties' activities which eventually impede the commitment of the member states regarding EU policies. However, before the parties decide to pull the public interest away from EU matters (refocusing), to re-nationalise the European agenda (customisation) or to propose a new agenda which collides with already existing European solutions (priority setting), they will probably try to find societal support for such activities.

Hitherto, empirical studies have shown that in the field of European integration the party-voter link is not a one-way street and that the connection between party positions and voters' opinions is dependent on certain conditions. The party's responsiveness to changes in voters' opinions in EU-related issues (bottom-up relation) dominates when electorates have systemic and predictable preferences (Carruba 2001; Tillman 2004). Even if the voters' rationality is bounded by little information or disinterest, their positions on the EU are clearly guided by the extent to which they benefit from European integration (Gabel 1998; Gabel and Palmer 1995).

As European integration embraces more and more policy areas, it becomes increasingly complex and harder to understand by the public. In such a situation, a 'top-down' relation between parties and electorate dominates. Voters have limited ability to gain information on technical issues, and in consequence, to formulate structured positions on European integration. In this situation, voters can choose based on their left-right positions or using other shortcuts to make sense of the EU policy issue or take cues from the parties on what to think about a given issue (Carruba 2001; Van der Eijk and Franklin 2004; Gabel and Anderson 2004, pp. 13–31; Hellström 2008; see also Chapter 3).

Given these 'bottom-up' and 'top-down' relations between party positions and voters' opinions, we can identify three factors explaining the de-Europeanisation of the parties' political agendas. The first is based on a pragmatic approach. When voters do not care about EU issues, i.e. if an issue is within the electorate's 'zone of acquiescence' (Carruba 2001), parties do not compete on that issue (De Vries 2007, pp. 363–385). The second factor is rational. According to this approach, parties deemphasise EU issues if their party position is far from the average voter's attitude (Steenbergen and Scott 2004, pp. 165–192). EU issues are also neglected in the party's political manifesto when the voters are divided on EU-related questions (Hellström and Blomgren 2016, pp. 269–270). The third factor affecting whether or not parties emphasise EU issues is the scope of a party's voters' disunity on the given EU issue (Hellström and Blomgren 2016, pp. 265–282). When a party encounters severe internal conflict, or is split on the EU issue (Steenbergen and Scott 2004, pp. 165–192), and at the same time a parallel division does not occur among party voters, the party leadership can deter internal debate on EU issues.

All three above-mentioned situations lead to excluding or deemphasising EU issues from their political agendas, which are examples of the de-Europeanisation of parties' programmes. This elucidates that profound analyses of the parties' strategies must necessarily go into the details of a national context and interpret the data against the background of the national debates and domestic political processes. This is done in the following analysis which uses two types of qualitative data. First, the national social surveys on attitudes towards the EU in Poland. They have been conducted by one of the main social research centres—Centrum Badania Opinii Społecznej (CBOS)—since the beginning of Poland's EU membership. CBOS collects data annually, using the same questionnaires which provide detailed data referring to the specific EU issues dividing party electorates. The second type of data used in this section is the parties' political manifestos issued since 2004. These data are contextualised by more complex observations of the parties' actions and interplay.

3 PARTIES' POLITICAL AGENDAS AND VOTERS' ATTITUDES REGARDING THE EU IN POLAND UNTIL 2015

Political parties in Poland started to be more interested in specific EU matters with a delay, and their attention was dependent on the phases of the integration process. During the 1990s and until 2004, all parties generally declared that they fully support Poland's EU membership. The closer to the accession, the more the divisions between parties over the EU issues have become apparent. At the beginning of the twenty-first century, Polish politicians started commonly using labels such as Euro-enthusiasts, Eurosceptics or 'Euro-realists' in public debates. As the project of the Constitution for Europe failed and the following debate over the institutional reform proceeded, political parties in Poland also started to formulate more precise positions on specific EU policies. Since 2007, the parties' views on European integration and EU policies have been incorporated into the manifestos usually as a separate issue of the parties' political agendas but with strong links with internal policies as well as with foreign ones (Paczeński 2013).

Figure 1 shows that in 2007 the positive attitude of Polish society towards the country's EU membership was one of the highest. Since then, the percentage of declared supporters is between 80 and 90% no matter whether the government was conservative (PiS) or liberal-conservative

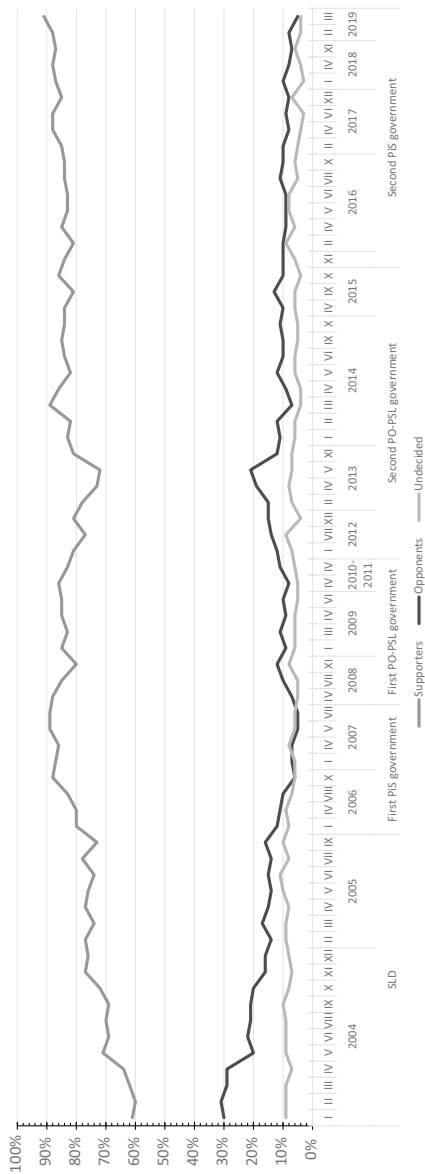


Fig. 1 General attitude of Polish society towards Poland’s EU membership 2004–2019 (*Source* Own study based on data from Centrum Badania Opinii Społecznej—CBOS [Social Opinion Research Centre], www.cbos.pl/. Survey question: What is your attitude to Poland’s membership in the EU?)

(PO-PSL). The only drop, where sceptical opinions for membership presented one-fifth of Poles, was visible between 2010 until the second half of 2013 (a decrease by 14 percentage points). One potential explanation for this drop is the increasing unemployment rate between July 2010 (11.5%) and February 2013 (14.4%). After this period, the situation on the labour market stabilised, the unemployment rate started to fall and the level of support for Poland's EU membership came back to the previous level.

A deeper analysis of the parties' electorates and specific issues which concerned them reveals that the PiS electorate is more diverse regarding their opinions on Poland's EU membership than the PO electorate. In the case of PiS (Fig. 2), attitudes correspond with the general trend displayed in Fig. 1. Since 2007, there was a slow decline of the number of EU supporters among the PiS electorate, which probably can be explained in this case either by the 'unemployment factor' or by being the opposition in the years 2007–2015. In comparison, the PO electorate's opinion on Poland's membership in the EU is more steady with a very modest rise

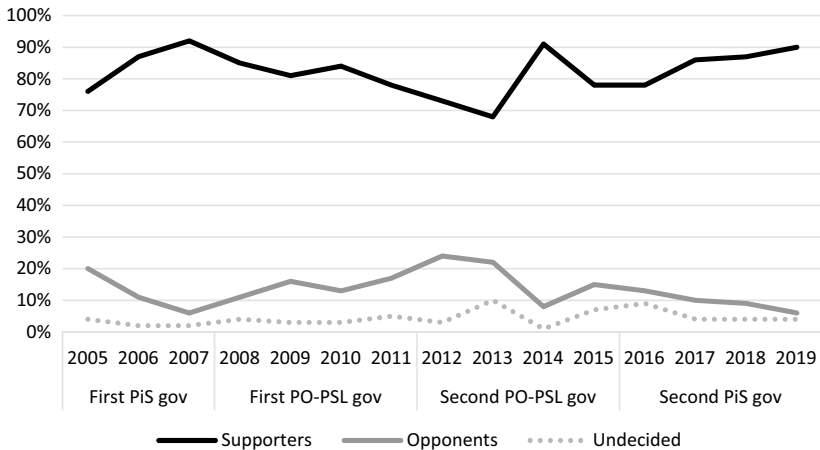


Fig. 2 Attitudes towards Poland's EU membership in PiS electorate 2005–2019 (Source Own study based on data from Centrum Badań Opinii Społecznej—CBOS [Social Opinion Research Centre], www.cbos.pl. Survey question: What is your attitude to Poland's membership in the EU?)

of opponents in the years 2012–2013, which can be explained by the aforementioned increase in the unemployment rate (Fig. 3).

The analysis of the electorate attitudes towards four specific issues regarding European integration and the EU—further deepening, national sovereignty, the future vision of Poland and the EU, and joining the EMU—shows that the PiS electorate is generally more divided (Figs. 4, 5, 6, and 7). The PO electorate, in contrast, is unequivocal in supporting the deepening of EU integration. PO voters obviously do not regard integration as a limitation for Poland’s sovereignty. The only issue causing reservations in the electorate of PO is joining the EMU and accepting the Euro currency.

Between 2004 and 2015, the status of the European agenda in the political manifestos of PO evolved from a barely mentioned topic to the issue that intertwined all aspects of political and social life (Master 2014, pp. 48–57). In its first programmes before the accession, PO viewed the EU not as something limiting national sovereignty but as a chance to protect and consolidate it (Master 2014, p. 49). In the 2005 and 2007 programmes, the party declared that the protection of national

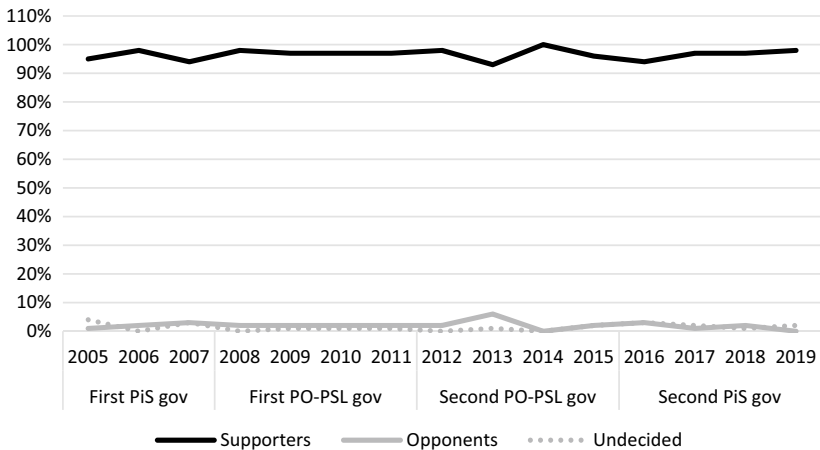


Fig. 3 Attitudes towards Poland’s EU membership in PO electorate 2005–2019 (Source Own study based on data from Centrum Badań Opinii Społecznej—CBOS [Social Opinion Research Centre], www.cbos.pl. Survey question: What is your attitude to Poland’s membership in the EU?)

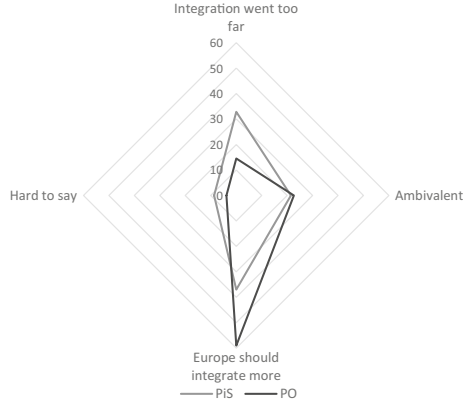


Fig. 4 Attitudes of PiS and PO electorate towards European Integration, percentage of average answers 2013–2019 (*Source* Own study based on data from Centrum Badania Opinii Społecznej—CBOS [Social Opinion Research Centre], www.cbos.pl; Question asked: Some believe that Europe should unite even more. Others think that the integration of Europe has already gone too far. And what is your opinion?)

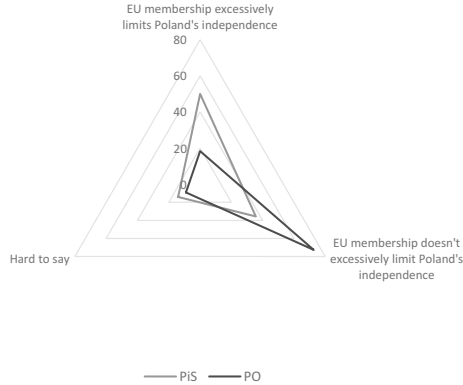


Fig. 5 Attitudes of PiS and PO electorate towards state's sovereignty in the EU, percentage of average answers 2014–2016 (*Source* Own study based on data from Centrum Badania Opinii Społecznej—CBOS [Social Opinion Research Centre], www.cbos.pl; Question asked: Which of the statements regarding the state's sovereignty in the EU do you agree with?)

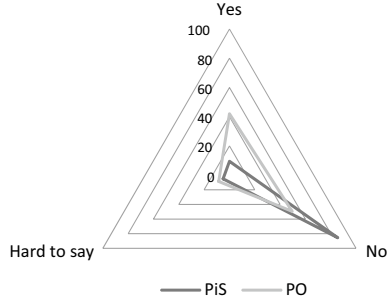


Fig. 6 PiS and PO electorate’s attitudes on the Euro, percentage of average answers 2017–2018 (*Source* Own study based on data from Centrum Badania Opinii Społecznej—CBOS [Social Opinion Research Centre], www.cbos.pl; Question asked: Would you agree to replace the Polish currency (złoty) with the Euro common to many EU countries?)

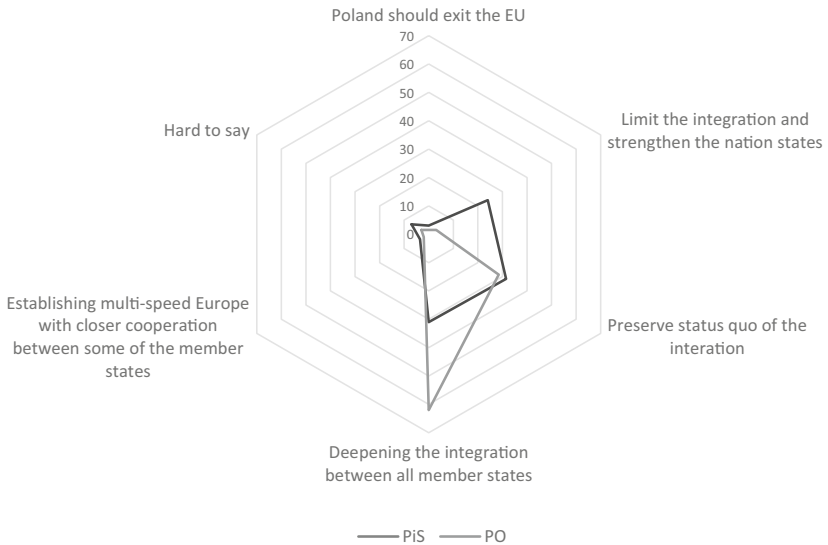


Fig. 7 Visions of PiS and PO electorate about the future of Poland and the EU, percentage of average answers 2017–2018 (*Source* Own study based on data from Centrum Badania Opinii Społecznej—CBOS [Social Opinion Research Centre], www.cbos.pl, Question asked: Which of the possible visions of the future of Poland and the European Union you personally most like?)

sovereignty is the main purpose of the Polish foreign policy, which could be achieved by Poland's membership in NATO and the EU (Instytut Państwa i Administracji 2005). Moreover, PO underlined the need for creating a new concept of Poland's sovereignty within the EU, which would strengthen the state's position and allow them to realise the *raison d'état* (PO 2007, pp. 10f., 74f.).

In both programmes, PO generally declared that Poland would join the EMU because of its positive impact on the national economy but simultaneously underlined that the country had not fulfilled all convergence criteria. Interestingly, the 2005 programme proposed a timetable for joining the EMU, while in the 2007 programme, PO resigned from fixing a specific date for accepting the Euro currency.

In both previously mentioned programmes, as well as in the 2011 programme, there was no concrete vision of the EU in the future. Such issues were mentioned only in speeches and declarations of members of the government, which are not analysed here (Master 2014, p. 53f.). In the 2011 PO political programme, no separate EU issues were highlighted and generally all proposals referring to national public policies were presented from Poland's perspective as an EU member (PO 2011; Master 2014, p. 52).

During the first two years of Poland's membership in the EU, the second party analysed in this chapter presented a more detailed vision of the national European policy and future of the EU than PO. In 2004, PiS adopted two manifestos especially prepared for the election to the European Parliament. According to them, the EU should be a strong association of sovereign nation states. Such a 'Europe of Nations' should be based on solidarity and Christian values which were also underlined by the founding fathers of the European Communities (Staszczuk 2016, p. 178).

In the 2005 manifesto, PiS presented a complex vision on EU matters, which were included in the chapter on foreign policy. It criticised the proposal of deepening integration presented in the Constitutional Treaty in 2004 and underlined the primacy of national law over European law. More precisely, PiS articulated six goals of European policy: accepting that NATO is a fundamental guarantee of Europe's security, the inviolability of Poland's sovereignty, maintaining the Nice system of voting in the Council, maintaining unanimity when deciding on treaty changes, maintaining the independence of Poland's economy within the common

market and maintaining the financial solidarity in regional policy of the EU (PiS 2005, pp. 38–53).

Those positions clearly put PiS in a neorealist paradigm (Staszczyk 2016, pp. 169–183). The party defined itself as a supporter of intergovernmental cooperation within the EU, who argues for the elimination of economic inequalities between 'old' member states and those which joined in 2004. The following manifestos from 2007, 2009 and 2011 did not refer extensively to EU issues. They generally repeated the political line exposed in previous programmes. Contrary to PO which saw the EU as a community, PiS perceived it as an international organisation: "The European Union and similar international organisations, although they can pursue various purposes for good, for obvious reasons are not able to become democratic structures replacing national member states; these countries must remain a strong anchor to prevent the abuse of European institutions for bureaucratic manipulations, forcing ideological utopias or for protecting strong nationalisms" (PiS 2009, p. 10).

Thus, PiS opposed all federalist tendencies within the EU, which should be rather the union of sovereign states (PiS 2011, p. 219). Despite this general intergovernmental stance, the party also stated that it is Poland's interest that the European Commission stays as independent as possible, serving as a decision centre which can resist the pressure from the strongest European players (PiS 2011, p. 223).

In its 2014 political programme, PiS again embedded EU issues within the broader context of Polish foreign policy but simultaneously tried to draw a new strategy for Poland in times of EU crisis. The core position was, however, unchanged and referred to the rule of solidarity among cooperating nation states under the international law and within the framework of national constitutions (PiS 2014, p. 155). PiS also presented a future model of the EU according to which the answer to the problems of European integration cannot be an urge for more integration, or more centralisation, but instead a call for more freedom and solidarity. The EU should strive to become polycentric with many regional centres, not the core one within the Eurozone where peripheries are dependent on it. The EU should be composed of equal nation states and the law should be deregulated. The EU should be democratic, open to new members and solidary, which for PiS means that the EU evolves with the pace of its weakest member. Finally, the EU should be built "(...) on the roots of civilisational identity, not social constructivism" (PiS 2014, pp. 158–159).

The Euro currency was addressed in all political programmes of PiS since 2005. The position, however, evolved from careful scepticism to hard rejection of any possibility to join the EMU. In 2005, PiS argued that Poland's economy was still adapting to the competitiveness conditions within the EU and that accepting the Euro currency would not be recommended until the benefits would be higher than the costs (PiS 2005, p. 62f.). In the 2011 programme, joining the EMU was no longer considered, and in 2014, the party made clear that Poland under the PiS government will keep the Polish Zloty and a quick decision on joining the EMU would be a political mistake and irresponsible for the Polish economy (PiS 2014, p. 74).

4 PARTIES' POLITICAL AGENDAS AND VOTERS' ATTITUDES REGARDING THE EU IN POLAND SINCE 2015

In 2015, a new issue dominated the political programmes of both parties. Migration to the EU hit its peak in October that year, causing pressure to the external borders of the EU and its asylum system. In Poland, the migration crisis coincided with the campaign for the parliamentary election. The positions on how Poland should commit to this issue were one of the main lines of political rivalry between PO and PiS. At that time, the polls showed that PiS had a growing chance to form a government after the elections in autumn.

PO chose a dual strategy. On the one hand, it defended the government decision on the relocation scheme from September 2015 underlining the need for solidarity among member states facing the humanitarian crisis in the Mediterranean. On the other hand, it emphasised that the national government should keep control over separating the legal and illegal migrants (PO 2015, p. 66f.).

In sharp contrast to its former programmes, EU issues formed one of the priorities for the PO in its 2015 programme. It straightforwardly declared itself as a pro-European party (PO 2015, p. 65) and stated that the EU organisational structures enable Poland to realise its national strategic interest: "We believe that effective pursuit of the implementation of Polish strategic goals does not consist in contesting the achievements

of a united Europe, but in efficiently putting our reasons into an all-European interest and maximising our impact on the course of events” (PO 2015, p. 65).²

PO generally supported intensifying European integration and opposed the Europe of a different speed or two-tier Europe. But instead of presenting a future vision of Poland and Europe, the proposal for deepening political integration referred mainly to the deepening of the integration of the common market and to limit protectionism (PO 2015, p. 66f.). A more integrated EU in those fields was also presented as a protection from outside threats. In 2015, PO described its position towards the Euro as ‘reasonable’, underlining that Poland should take care that the Eurozone will be open in the future for new members but at the same time emphasising that both sides need to be ready for joining the EMU.

In 2015, the PO position on the Euro currency highly corresponded with its electorate attitudes presented in Fig. 6. Generally, the call for deepening the integration in the common market is coherent with almost 60% of their voters. But at the same time, PO did not want to discourage the rest of their voters who were reluctant, ambivalent or supported the status quo. Similarly, PO followed its voters’ attitudes towards the concept of national sovereignty within the EU, although not using this term literally. The party stated that there is no contradiction between pursuing the national interest and supporting European integration.

It is worth highlighting that PO did not mention any proposal of deeper political integration, focusing instead on intensifying cooperation in the common market. This may be intentional as, since 2004, the party has not presented in its manifestos a precise and unequivocal position on a direction of political integration of the EU. Such ‘balance strategy’ seems to be a nod to the almost one-fourth of party supporters who are ambivalent whether Europe should further integrate.

In the election campaign of 2019, PO formed a broader political coalition named Citizens’ Coalition, but still it has been the biggest party within. The 2019 Citizens’ Coalition’s political programme called for a pragmatic European policy of Poland. Contrary to the 2015 manifesto, PO and the other smaller coalition parties did not label themselves as pro-European. Instead, they proposed that Poland needs to become again one

²All quotes from party manifestos are own translations. There are no sources in English.

of the leaders in the EU, because only in this way would it be possible to pursue Poland's interest and form alliances for the sake of the EU. Therefore, Poland's European policy should not be driven by "(...) ideological phobias and devastation of the rule of law as the PiS government does it nowadays" (PO 2019, p. 43). According to PO and Citizens' Coalition, Poland should closely cooperate with Germany and France, which would allow Poland to become a linkage for the Baltic countries, states from East and Central Europe and the Danube region. Similarly, as in previous years, in the programme from 2019 more detailed EU issues were interwoven in the sectoral agenda.

In the PiS political programme from 2019, Poland's European policy was presented as a part of broader foreign policy, similar to the programme from 2014. PiS for the first time labelled itself in a manifesto as a "Euro-realistic" party. This means, according to PiS, that "(...) Europe will be stronger thanks to the sovereign and dynamic Poland, but at the same time membership in any international organisation cannot infringe Polish statehood" (PiS 2019, p. 177). Following this rule, PiS has adopted a hard position regarding the relocation mechanism, sustaining Polish national currency, renegotiation of the energy and climate package in accordance of Polish interests and protecting the trade of Polish land from the speculation of foreign investors (PiS 2019, p. 178). According to PiS, Poland's membership in the EU is a historic chance to accelerate the country's development. Due to this fact, the PiS government in the years 2015–2019 struggled to dynamise the EU based on "(...) solidarity rule and cooperation of member states within the Lisbon treaty legal framework and basing on Poland's constitutions" (PiS 2019, p. 178).

Similarly to PO, PiS also seems to be consistent with its voters' opinions on EU-related issues. The strong focus on strengthening the identity and position of the nation states within the EU, which corresponds with the electorate's stances (Fig. 7), led the party to support de Gaulle's concept of a "Europe of Nations". This proposal, however, does not speak to those party voters who call for a more integrated Europe and do not see the EU as a threat to Poland's sovereignty. Instead, they can find in the last party manifesto, as well as in previous ones, proposals for a decentralisation of the EU, more solidarity referring to the cohesion policy and fostering the intergovernmental cooperation based on freedom. A strong connection between a party's position and its voters' opinions is most visible in the case of the Euro currency. Between 2012 and 2017, the opponents of joining the EMU among PiS voters rose by 10 percentage

points—from 74 to 84% and finally reached 87% in 2018. This was already mapped in the firm position presented in the 2014 manifesto.

In general, both PO and PiS try to maintain consistency between their political agendas regarding the EU or they focus only on the general aspects without going into the details of European integration and EU policies, both of which seem a safe solution either for the party majority or the majority of the electorate. However, one can also observe deviations from voters’ preferences.

PO urged for more economic integration, although the majority of the party’s voters support a more in-depth political integration, which, seeing as this party is labelled as pro-European, can be understood almost as consent for more federal solutions in the EU. PiS called for stronger cooperation of sovereign nation states based on freedom and solidarity, avoiding this way to show concrete areas where such type of cooperation will be implemented. This approach seems to be a nod to the 25–35% of PiS voters but does not include the positions of around 60% of the party’s voters who are supporters of a status quo of European integration or who declared themselves as supporters of a more integrated EU.

While PiS does not label itself as a pro-European party, its current self-positioning as a “Euro-realistic” party includes the maintenance of EU membership. The only issue which put the party’s proposal on divergent trajectories with the rest of the EU is the rejection of adopting the Euro currency. While such a position is coherent with the party’s electorate attitudes, it is an example of ‘spill-back’, as it goes against accession treaty obligations Poland has previously agreed on.

Other examples of de-Europeanisation of PiS policy agenda are customisation and refocusing of EU issues. PiS in its manifestos supports deregulation of EU law, more democratic solutions, openness to new members, references to the Christian roots of European civilisation, rejecting social constructivism and advocating more solidarity in the EU, which for PiS means that the EU in its political objectives should take into consideration a different level of development of some of the member states. Such an agenda is an example of introducing new topics into mainstream narration regarding the EU.

5 CONCLUSIONS

Starting from the observation that illiberal trends have deteriorated EU-Polish relations, the aim of this chapter was to examine whether these

developments went along with a de-Europeanisation of the programmes of the two main parties in Poland and whether this reflected their voters' attitudes towards the EU.

The contribution first described the theory of party-voters linkage and different forms of de-Europeanisation that go beyond the mere call for an EU exit as well as different strategies to respond to the voters' preferences. To capture these nuances, a qualitative study for the Polish case was conducted which focused on the party programmes and societal attitudes and embedded their interpretation in the deeper domestic political context.

The analysis has shown that in general, both PO and PiS try to correspond to their voters' attitudes be it by particular preferences or by formulating vague general goals concerning European integration and EU policies. PO positioned itself as pro-European while avoiding this term since 2015. PiS called for stronger cooperation of sovereign nation states based on freedom and solidarity and, in 2019, started to coin its position as 'Euro-realistic'. The only issue where the government openly rejects further integration is the Euro currency.

The data indicate that this restraint regarding further integration and the refusal to participate in another policy arena at the EU level is coherent with the party's electorate attitudes. Only PiS de-Europeanised to some extent its political agenda, which was related to differentiated positions among the party's electorate over EU issues. Examples of its customisation and refocusing of EU issues are its support for deregulating EU law, openness to new members, references to the Christian roots of European civilisation, rejecting social constructivism and taking into consideration different levels of development of some of the member states.

These findings suggest that as long as the support in Polish society for the EU membership is high, radical de-Europeanisation of parties' political agendas—like calls for withdrawal from the EU—seem to be rather unlikely. Instead, de-Europeanisation will be limited to customisation and refocusing of EU issues within the political manifestos. But this is only the rhetorical dimension of supply and support in the narrower set of EU-related issues. In practice, the mainly status quo-oriented EU programme by PiS went hand in hand with a confrontational policy by its governments vis-à-vis EU institutions. Thus, even pro-European declarations in parties' programmes do not restrain parties from running a policy of a different character (for differences between rhetoric and action,

see Chapters 5 and 6). In the long run, such a policy of confrontation might foster Eurosceptical attitudes in society with party-programmatic de-Europeanisation as a response (see Chapter 3). But so far, we have not found the respective empirical evidence.

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Same Same, but Different: Domestic Conditions of Illiberal Backlash Against Universal Rights in the Czech Republic and Slovakia

Petra Guasti

I INTRODUCTION

Across Central Europe, the ‘refugee crisis’, which dominated the media between 2015 and 2018, led to an increased mobilisation along the cultural dimension (Buščíková and Guasti 2017; Guasti and Buščíková 2020). The cultural dimensions can take on different forms: confessional versus secular (Poland), or cosmopolitan cities versus the more socially conservative and sometimes nationalistic countryside (Hungary, but to a lesser degree, most of the ECE region). Cultural conflicts can also revolve around ethnic minority issues (Roma, language rights—Romania, Hungary, but again to a lesser degree, across the region) and new minorities (LGBT, gender equality) (Jasiewicz 2007; Buščíková 2014, 2017, 2019; Guasti 2019, 2020; Guasti and Buščíková 2020).

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Even countries where the cultural dimension was dormant are experiencing its resurgence (Jasiewicz 2007, 2009; Brokl and Mansfeldova 1999; Guasti and Buščíková 2020; Norocel 2018). Conservative groups, the Catholic Church and the radical right, as well as radicalised mainstream politicians, are increasingly adopting the populist majoritarian anti-LGBT and anti-‘gender ideology’ rhetoric. Beyond the rhetoric, these actors are also blocking pro-universal rights legislation (marriage for all in the Czech Republic) and running political campaigns on the rollback of universal rights (restriction on abortion in Slovakia). These dynamics are an integral part of the illiberal backlash.

The illiberal backlash centres around the notion of sovereignty. It rejects demands for universal rights as foreign—forced on the country by the European Union or the Council of Europe (CoE). In this view, ‘members of “non-minorities” are discriminated against and deprived of basic civic freedoms’ (Normal Man Manifesto 2017¹). The ongoing backlash against the CoE Convention on preventing and combatting violence against women and domestic violence, the so-called Istanbul Convention, exemplifies how opponents are raging against the alleged spread of ‘gender ideology’ at the expense of sovereignty, traditions and customs. The European Union has been vilified for triggering an illiberal backlash in East Central Europe (ECE) because it has pushed the new member states to accommodate minority demands (Agarin 2020; Bochsler and Juon 2020; Kolev 2020).

However, using historical institutionalism for a comparison of domestic processes around minority rights in the Czech Republic and Slovakia, the present chapter will show that the European Union’s effect on the conflicts over minority rights is much weaker than suspected. While the EU and the Council of Europe provide a framework of LGBT rights and gender equality, the mechanics of the member states’ backlash against minority accommodation can be mainly attributed to the domestic clashes between progressive and conservative forces aided by their transnational allies. As a result of different domestic configurations, some European norms take root, while in other cases, domestic actors seek not only to prevent accommodation but increasingly to roll back rights. The 2006 registered partnership law and the law against domestic violence in the Czech Republic (2006) are examples of the former—the Slovak 2015

¹<https://www.normalman.cz/hamplproc>.

anti-LGBT referendum, the 2020 proposals of limiting abortion rights in Slovakia and the withdrawal from the Istanbul Convention in February 2020 of the latter.

In order to trace back the mechanisms leading to these diverging patterns of illiberalism and anti-EU politics, two case studies are conducted for the legislative handling of LGBT rights and the Istanbul Convention in both Czechia and Slovakia. They show that strong advocacy groups help to mobilise support for legal change. At the same time, the legal status quo persists if the political costs of minority accommodation become too high for domestic political actors and if a strong normative commitment and societal consensus is lacking. To demonstrate this, the chapter first theorises institutional change and describes institutions and the European legal framework regarding minority rights. Next, the case studies on LGBT legislation and the non-ratification of the Istanbul Convention are presented. A concluding chapter summarises the main results.

2 INSTITUTIONS AND THE EUROPEAN LEGAL FRAMEWORK

An institutionalist approach enables us to frame the dynamics between the European legal (and normative) framework and domestic actors (Mahoney and Thelen 2009; Hall and Thelen 2009; Streeck and Thelen 2009). It explains not only why change happens, but also why institutional inertia (i.e. lack of change) persists (cf. Guasti and Bušítková 2019). The key factor in change is the cost of changing the status quo, which determines the willingness of domestic actors. Sanctions are an important form of incentive. These might include the formal sanctions (Hall and Thelen 2009) of the European Union and Council of Europe.

The EU sanctions include anti-discrimination rulings by domestic Constitutional Courts and the Court of Justice of the European Union (CJEU), whereas the Council of Europe sanctions include rulings of the European Court of Human Rights (ECtHR). Both types of ruling are against states (Guasti 2017; Guasti et al. 2017; Guasti and Bušítková 2019). Sanctions by the EU and the CoE can help us to understand the behaviour of states, but they will not be as helpful in explaining the variation in behaviour of domestic actors.

While states are bound by European legal framework to eliminate discrimination, it is in their discretion to grant rights to LGBT citizens (registered partnership, marriage, adoptions). Institutional inertia persists if it ‘serves’ the dominant actors (Hall 2005). In political competition, this means that (vote-seeking) mainstream catch-all parties will be incentivised to adapt their behaviour according to the prevailing public opinion. If public opinion indicates that a population is split on granting adoption rights, or introducing gender education in schools, mainstream parties will refrain from engaging in this agenda to avoid injecting additional polarising cultural issues into the party competition.

The calculus of mainstream parties significantly differs from niche parties, especially the radical right. Unlike mainstream parties, radical right parties mobilise mainly on cultural cleavage. Saliency of cultural issues and increased polarisation along the cultural cleavage is beneficial for niche parties. The case of public opinion on the Istanbul Convention shows that even if the majority (two-thirds in the case of the Czech Republic in 2019) of the population has no opinion and the polarisation between proponents and opponents remains limited to about a third of the population, mainstream political actors will avoid action, and the radical right will push back against any new form of accommodation, maintaining status quo.

Institutions and practices do evolve and change. The impetus for change comes from actors, proponents and opponents of change (Hall and Thelen 2009, p. 15). The change in the institutional framework of other countries has essential spillover effects on domestic actors. The expansion of LGBT rights in numerous countries in Europe provides strong impetus for proponents of change. It also alarms its opponents (see Guasti and Buščíková 2020). An international treaty such as the Istanbul Convention, which came into force in August 2014, is yet another example of how change can be triggered—driven by international organisations. The diffusion of rights of sexual minorities and gender equality in Europe significantly alters the domestic opportunity structures for domestic change agents.

For East Central Europe, EU accession became a strong incentive to modify, or even to resolve the relationship between the majority and the established ‘old’ minority groups. The EU anchored the rule of law and civil liberties in the EU anti-discrimination framework (Vachudova 2005). The EU pressure to adopt anti-discrimination legislation was crucial, as the commitment of domestic elites to minority rights was lacklustre

(Agarin and Brossig 2016; Nancheva 2016; Rechel 2009; Börzel et al. 2015).

Minority accommodation evolved into a bargaining process, because the EU lacked common minority standards or a minority rights regime, and pre-accession funding that would directly target minority issues. The EU pressure to resolve majority–minority issues prior to accession evolved into a controversial double standard for the member states and the accession countries (Börzel et al. 2015; Nancheva 2016). To cope with the EU pressure, the East Central European countries adapted to the requirements of the EU oversight, adopting primary legislation, establishing institutions dealing with minority issues, building task forces and drafting action plans. Actual implementation of reforms addressing minority issues was not top of the agenda (Rechel 2009).

The strategy generally worked. When issues emerged, the EU selectively applied leverage to enforce compliance and resolve these issues. To illustrate, in 1998, the city of Ústí nad Labem erected a wall separating the majority population from the Roma minority. What started as a dispute of neighbours over trash collection and real estate values, escalated into a small ethnic conflict that captured international headlines. The issue was resolved in 1999. The wall was removed after the EU made clear that, as long as the embarrassing wall stands, the EU accession process will halt (cf. Mudde 2005, p. 41).

It is the agency of the domestic actors which accounts for the differences in the scope of minority accommodation across countries (cf. Börzel et al. 2015). Beyond protecting minorities from worse forms of discrimination (such as the case of spatial segregation in Ústí nad Labem), the EU conditionality also impacted minorities indirectly by empowering domestic actors. Civil society and liberal politicians were able to find allies—transnational as well as domestic—to implement reforms, and to demand that established anti-discrimination bodies actually pursue their agenda (Kelley 2004; Vachudova 2005).

After the accession, the EU leverage has decreased significantly, and the role of domestic actors further increased. The European Union continues to play an essential role in creating a legal framework of anti-discrimination. While the EU prescribes non-discrimination—the European Charter of Human Rights, adopted in 2000, gave the principle of minority non-discrimination a constitutional status—it does not provide guidelines for accommodation (Galbreath and McEvoy 2011; O’Dwyer 2018, p. 900).

The sanction mechanisms of the Court of Justice of the European Union and the European Court of Human Rights play an essential legal role by providing avenues for legal redress of minority rights violations. However, domestic actors ultimately enable and enforce the minority rights regime (cf. Guasti et al. 2017; Guasti and Siroky 2019). Minority accommodation is now entirely under the control of domestic actors—the courts (especially the Constitutional Court) and political actors. How this relates to the European level is now illustrated in the examples of LGBT rights and gender equality.

The EU anti-discrimination legislation concerning LGBT rights evolved from provisions to combat discrimination on the grounds of sexual orientation (Article 10 and 19 of the Amsterdam Treaty, Article 21 of the Charter of Fundamental Rights, in effect since 2009), Citizens' Rights Directive, Employment Equality Framework Directive and the European Court of Justice case law. Because of the freedom of movement, all EU member states must ensure that where same-sex marriage is not possible, employees in a civil partnership must be granted the same benefits as their married colleagues (equal treatment, ECJ 2008 case *Tadao Maruko v. Versorgungsanstalt der Deutschen Bühnen*; and 2013 CJEU case *Frédéric Hay v. Crédit Agricole mutual*, C-267/12). Furthermore, EU member states have to recognise same-sex marriage to EU citizens from other EU member states for granting residency (*Coman and Hamilton versus Romania* 2018).

Furthermore, over the past decade, the case law of the ECtHR evolved from recognising the right of same-sex couples to family life, but not their entitlement to registered partnership or marriage (2010 *Schalk and Kopf versus Austria*). The ruling also banned the exclusion of same-sex couples from a legal form of partnership, where those exist for opposite-sex couples (2013, *Vallianatos and others v Greece*). It set a precedent by establishing a legal obligation for states to provide legal recognition for same-sex couples (2015, *Oliari and others v Italy*) and reconfirmed that denial of marriage for same-sex couples does not violate the ECtHR (2016, *Chapin and Charpentier versus France*).

The sanction mechanisms to enforce the implementation of the ECtHR judgements are significantly less potent than those following the failure to implement the CJEU case law (Guasti et al. 2017). However, most of the ECtHR judgements resulted in the expansion of LGBT rights. For example, as of 2019, Austria and France allow same-sex

marriage, while both Greece and Italy provide same-sex couples the opportunity to enter into a registered partnership.

In this way, the EU legislation, the CJEU case law and, to a lesser degree, the ECtHR case law represent an essential impulse for institutional change in the EU and Council of Europe member states. Transnational legislation constrains the legal options of domestic actors that oppose the expansion of LGBT rights. At the same time, their existence also enhances the perceived threat from the attempts of LGBT advocates and their allies to change the status quo.

Actors, such as pro- and anti-LGBT advocacy groups and political parties, are key players to institutional change. The expansion of LGBT rights takes place because of the varying degree of agency of proponents and opponents of accommodation and their ability to find political allies. The agency of a pro- and anti-LGBT advocacy groups is significantly affected by two factors: resources (including international financial support) and calculation of political parties (costs and benefits of accommodation in terms of electoral support). Institutional change (the expansion of LGBT rights) requires the coordination between pro-LGBT advocacy groups and liberal political parties.

As regards gender equality legislation, the equal pay policy of the EU was launched in the Treaty of Rome (1957; Article 119) and evolved mainly in the 1980s and 1990s into the instrument of mainstreaming (Treaty of Amsterdam, Article 3). The focus was on eliminating existing inequalities between men and women in working life by adopting positive discrimination measures (Article 22). Since their onset, the gender equality-related policies of the EU were an instrument of the market—focused on economic recovery (EC) and increasing competitiveness (EU) (cf. Muehlenhoff 2017; Kantola 2010). The human rights aspect of gender equality gained momentum in the 1990s. Gender equality became part of the Copenhagen Criteria (1993) and the normative ‘self-image’ of the EU (Bal 2019). Via the Copenhagen criteria, commitment to gender equality became a condition of membership. The EU’s commitment to gender equality rooted in the EU law also became part of norm diffusion via international conventions, funding and other measures such as guidelines and policy recommendations (Fagan and Rubery 2018; Hastrup et al. 2019).

The EU legislation has been summarised by Fagan and Rubery (2018). It includes hard law (directives and CJEU case law), namely directives on equal pay (75/117/EEC), equal treatment in

employment (976/207/EEC, amended in 2002 and 2006), social security (79/7/EEC, 86/378/EEC amended in 1996 and 2006), self-employment including agriculture (86/613/EEC, amended in 2010), access to goods and services (2004/113/EC), maternity leave (92/85/EEC), parental leave (96/34/EEC repealed by 2010/18/EU), equal treatment of part-time workers (97/81/EC), working time (2003/88/EC) and a 2012 proposed directive on gender quotas for corporate boards (EC, 2012-COM[2012]614).

The EU soft law includes the European Employment Strategy (EES, launched in 1997), the open method of coordination, targets, guidelines and good practices. The key steps were the introduction of gender mainstreaming into the EES and national action plans with country-specific recommendations to meet EES objectives. The 2000 Lisbon Strategy set the female employment target to 60% by 2010, and 2002 saw the replacement of four EES pillars with ten guidelines, one of which is gender equality. In 2003, EES was integrated with the Broad Economic Guidelines European Pact (2011–2020) for equality between women and men annexed to Council conclusions (7166/11). The Pact reaffirms the EU's commitment to closing gender gaps in employment, social protection, providing better work-life balance to women and men, and combatting violence against women.

Good practice policy exchange mechanisms and guidelines include pay transparency (2014), work-life balance (2008), sexual harassment (2004) and reversing the burden of proof (1997, 2015). In order to support these measures, the EU includes gender equality among the funding criteria for European Social Fund and research funding Horizons 2020 and collects data across all relevant areas (employment, social conditions, political representation, research and innovation).

Combatting gender-based violence has been an integral part of the Council of Europe's agenda since the 1990s. The Council of Europe has launched several initiatives (2005 CoE Recommendation on the protection of women against violence), resolutions (2008 Vienna Declaration), recommendations (1817/2007) and Europe-wide campaigns (2006–2008, campaign to combat violence against women). Numerous national reports, studies and surveys highlighted the magnitude of the issue, the variation in domestic responses within different member states and the need for harmonised legal standards. In December 2008, the Committee of Ministers set up an expert group to prepare the draft Convention. The process included significant consultation with member states and civil

society and was concluded in December 2010 when the final draft of the convention was produced.

The Istanbul Convention (Convention on preventing and combatting violence against women and domestic violence) was adopted in April 2011 and opened for signature in May 2011. It came into force after being ratified by ten states (eight of which were CoE member states). As of February 2020, it was signed by 46 states. In June 2017, EU Commissioner Vera Jourova signed on behalf of the EU. The majority of the countries where ratification is pending are in ECE (and the UK). In 2018, the Bulgarian parliament ratified the Istanbul Convention, but later that year, the Bulgarian Constitutional Court found the Convention in breach of the Bulgarian constitution. In February 2020, the Slovak parliament voted to withdraw the country's signature from the treaty. As of March 2020, the Istanbul Convention has 45 signatories (CoE and non-CoE states such as Mexico, Canada and the USA, plus the EU), and in seven CoE countries, the ratification is pending. Among the Council of Europe member states, only Russia and Slovakia are not part of the Convention.

3 DOMESTIC DYNAMICS OF ACCOMMODATION AND BACKLASH²

This transnational legal context (EU and CoE) influences domestic opportunity structures, but it cannot guarantee its self-enforcement and particular effects. As for the equal pay policy, notwithstanding the EU legal measures, the gender pay gap in the EU remains at 16% (EU 28 average in 2019), with both the Czech Republic and Slovakia below the EU average with 21.1 and 19.8%, respectively. Overall, the Czech Republic currently occupies 78th place and Slovakia 63rd place in the Global Gender Gap Index (a 0.035 and 0.043 improvement from 2006, respectively) (World Economic Forum 2019). The strength in both countries is educational attainment and health, while economic participation, opportunity and political empowerment remain low. In both the Czech Republic and Slovakia, most criteria improved very slightly between 2006 and 2020, but not at the speed of other countries (causing a drop in ranking). The persistence of the gender pay gap and deterioration in the

²See also Guasti and Bušítková (2020).

Global Gender Gap Index indicates the limits of Europeanisation (cf. Chiva 2009; Lomazzi and Crespi 2019).

The majority of EU member states currently provide LGBT citizens full rights (i.e. marriage and adoption available in 16 EU member states as of 2019) and adopted the Istanbul Convention (34 countries across Europe and the EU ratified the Istanbul Convention as of 2020). The transnational legislation (EU, CoE) has to be implemented domestically, and effective sanction mechanisms exist (CJEU, ECtHR). Consequently, domestic opportunity structures for the opponents of LGBT rights and ‘gender ideology’ are getting narrower (Guasti and Buščíková 2019; Sekerák 2020).

Political actors weigh the cost of their actions and also consider other actors—political competitors and the agency of advocacy groups to sway public opinion. The key actors are mainstream parties resistant to accommodation due to fear of polarisation (the Czech Republic) or radicalising to fend off radical right challengers (Slovakia). Depending on the agency of proponents and opponents of universal rights, the sway of public opinion can go in both directions.

Two factors are critical in explaining the changes in minority rights accommodation. The first, exogenous factor is the EU anti-discrimination legislation, international treaties, as well as CJEU and ECtHR case law. The second, endogenous factor is the agency of progressive and conservative actors. The agency includes the ability to engage with the public (to shift public opinion) and political parties (that pass legislation).

As will be shown in the following, two strategies/processes are crucial in institutional change—defection and reinterpretation. Defection refers to a behavioural change of actors such as a strategic shift among Czech and Slovak women’s rights NGOs and pro-LGBT advocacy groups to engage in public outreach to the general population. The focus turns from lobbying parliamentarians to shifting public opinion—to create pressure on political actors to act. Reinterpretation is a strategy in which ‘the actors associated with an institution gradually change the interpretation of its rules, and thus its practices, without defecting from or dismantling the formal institution itself’ (Hall and Thelen 2009, p. 19). Reinterpretation is the success of niche radical right parties in Slovakia to reinterpret the Istanbul Convention as a danger to Slovak families (later pragmatically adopted by the governing SMER before the 2020 elections). In February 2020, in a significant U-turn, Slovakia withdrew its signature from the Istanbul Convention.

4 LGBT RIGHTS

Although the European Union provides a unified framework of anti-discrimination regarding LGBT, the shifts in policies are driven by domestic dynamics between progressive and conservative forces. While opponents and proponents used similar arguments, the cases differed. In the Czech case, public advocacy by the proponents of LGBT rights and increased media exposure to the everyday grievances facing ‘rainbow families’ resulted in the ever-increasing support for the rights of sexual minorities.³ In the more conservative Slovakia, the domestic conditions differed with the effect of a frozen institutional status quo (cf. Froese 2005).

Similarly to Slovakia, Czech political entrepreneurs strive to increase political divisions along the cultural dimension. The foes of the LGBT rights, such as the former President Václav Klaus and current President Miloš Zeman, utilise the LGBT issue as a symbol of conservative opposition to changes to the ‘traditional way of life’ and ‘discrimination of the majority’. For them, full equality of the LGBT minority represents a threat. In their view, sexual minorities do not belong to the ‘people’s sovereign’, the Czech nation. Nevertheless, Czech public opinion is increasingly supporting the expansion of LGBT rights.

The bill on registered partnership for same-sex couples was submitted to the Czech parliament four times: in 1998, 1999, 2001 and 2005. The cross-party support transcending not only party lines, but also government and opposition parties was crucial in enabling the bill to reach the floor of the parliament. The painstakingly built coalition in support of the bill was a result of intense advocacy by LGBT groups. It unravelled when the Social Democratic Prime Minister Jiří Paroubek claimed issue ownership just before the December 2005 parliamentary plenary debate. In the aftermath, some opposition MPs withdrew their support for the bill.

The analysis of the 2005 roll-call data provides important inference on the nature of the coalition (*ad hoc*, single-issue) and the dynamics between and within parties. While the PM cast himself as ‘a friend’, the Social Democrats experienced internal discord and opposition. No

³The LGBT advocacy adopted an effective strategy—shifting the discourse from a debate about “adoption in general” to the differentiation between adoptions of a partner’s child/children from institutional care. The shift positively resonates with the Czech public opinion (Guasti 2019).

Social Democratic MP was willing to defy the party leadership by voting no. Instead, 30% of the Social Democratic MPs opted for abstention—a way to balance party loyalty and their moral consciousness. The bill was adopted by a simple majority of 86 out of 200 votes in December 2005 (see Fig. 1). Then-President Klaus vetoed the bill, and the subsequent vote, which required a qualified majority (101 of 200 votes) to overrule the presidential veto, was dramatic. The bill was adopted in March 2006 due to cross-party support (social democrats, communists and liberals) and the imposition of strong party discipline among social democrats (almost no abstention).

This was a significant success for LGBT advocacy. For some within the community, mainly the male activists, this was the achievement of a goal. For many, mostly female activists, this was only the first step. The next was legal adoption, both adoption of a partner's child and open adoption. Furthermore, the adoption legislation, which allows single citizens and married couples, but not registered partners to foster children, led many lesbian couples to skip registered partnerships (Guasti 2019).

Adoption and same-sex marriage returned to the parliamentary agenda in 2016, as an amendment of the 2006 law on registered partnership. The authors of the bill were members of the governing coalition (a Social Democratic Minister and an ANO MP). The proposal excluded adoptions of children from institutional care but included adoptions of children

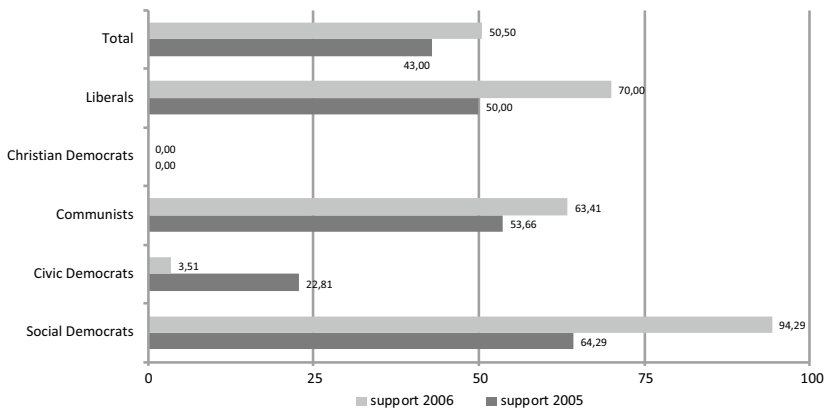


Fig. 1 Voting on same-sex registered partnership in the Czech Republic 2005 and 2006 (*Source* Roll-call analysis by the author)

of partners. In their opening address, the authors of the amendment highlighted their personal experience with the difficulties encountered by ‘rainbow families’—in education, health care and dealing with state bureaucracy (Guasti 2019). This approach, aiming at generating empathy for the rainbow families, backfired. It provided the conservative force an additional line of attack. Conservatives and especially the radical right attacked not only the bill but also its authors as ‘making laws for their friends’ and ‘conceding their electorate at the expense of ‘normal’ families’ (Guasti 2019).

Unlike in 2006, in 2016, the conservative forces mobilised and successfully pushed back against further accommodation. The bill failed to pass the first stage, and the 2016 debate revealed internal discord within parties and a lack of willingness to work across party lines. It also revealed new ad hoc configurations of friends and foes (Guasti 2019; Guasti and Buščíková 2019). Conservative forces, strongly supported by the President (Zeman), focused on maintaining institutional inertia. The President’s opposition to any form of LGBT accommodation signalled the need for a qualified majority. Given the composition of the Czech parliament after the 2017 election, this would only be possible with the support of the mainstream party. However, for ANO, which after 2017 was no longer courting liberal voters, the cost of support became too high.

The evolution of public support reflects the dynamics outlined above. In 2006, when the law on the registered partnership was passed, 61% of Czechs supported the registered partnership. However, only 38% of Czechs supported same-sex marriage, and only 19% supported adoption rights for same-sex couples. Over time, as the issue became increasingly debated (also because many countries expanded LGBT rights), the support for LGBT rights increased significantly. In 2019, 75% of Czechs supported registered partnership, and 47% supported same-sex marriage (in 2017, 51% supported same-sex marriage; the four per cent decrease is due to increased polarisation and success of the conservative campaigns against LGBT accommodation). Figure 2 shows the evolution of public opinion on LGBT rights in the Czech Republic over time.

On adoption, the LGBT activists changed their advocacy strategy around 2012–2013. In order to address acute issues facing rainbow families, the advocacy refocused on the adoption of the partner’s child. This was an effective strategy; by 2019, 60% of respondents supported the

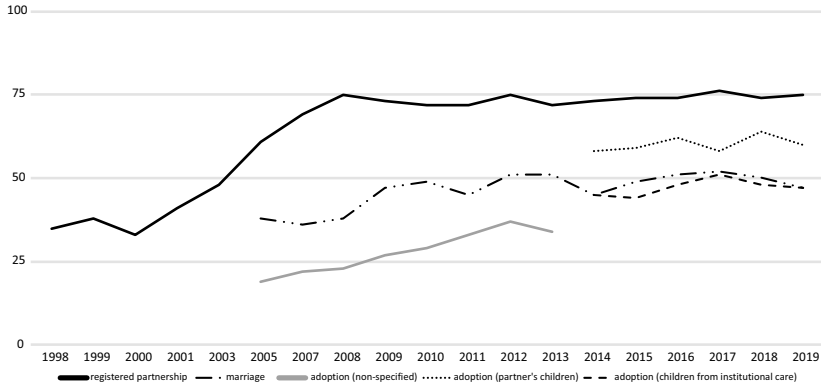


Fig. 2 Evolution of public opinion on LGBT rights in the Czech Republic (1998–2019) (*Source* Data compiled from the press releases of the Centre for Public Opinion Research by the author)

adoption of the child of the same-sex partner. The support for the adoption of children in institutional care by same-sex couples also increased (47%). As with same-sex marriage, the support for both forms of adoption decreased between 2017 and 2019.

Notwithstanding the recent drop in public support, the Czech Republic is on a path of expansion regarding the rights of sexual minorities. The LGBT accommodation in Slovakia is more contentious and challenging (cf. Sekerák 2017). Slovakia is socially more conservative and religious than the Czech Republic (Guasti and Buštíková 2020). Furthermore, the contestation of the rights of sexual minorities politicised the Slovak Catholic Church. This is reflected in the lack of expansion of LGBT rights beyond the EU anti-discrimination legislation.⁴ As a result of the interplay between transnational and domestic dynamics, Slovakia recognises same-sex marriages of foreign citizens with residency permits in Slovakia. However, it does not grant these rights to its own citizens (since 2018).⁵

⁴Slovakia adopted the anti-discrimination law in employment in 2004, the provision of goods and services in 2008, and the protection from hate speech in 2016.

⁵In June 2018, the Court of Justice of the European Union ruled that EU member states have to recognise a same-sex marriage from member states that legalised same-sex marriage for a residency permit. The decision applies if at least one partner is an EU

Similar to the Czech Republic, bills to recognise same-sex partnerships were introduced in the Slovak parliament repeatedly (1997, 2000, 2012, and 2018). Unlike in the Czech Republic, where the registered partnership was adopted in 2006, all of the Slovak bills were rejected. The only (minor) concession was archived in 2017, allowing recognition of unregistered cohabitation. While same-sex couples use this regulation, it was not explicitly designed as LGBT accommodation.

LGBT advocacy in Slovakia is concentrated under the LGBT umbrella organisation *Otherness Initiative* (Iniciativa Jinakost'). The advocacy by Otherness Initiative focuses both towards lobbying parliamentarians and raising awareness of discrimination and issues facing the LGBT community. Unlike in the Czech Republic, the Slovak LGBT activists were not able to secure the support of mainstream parties. On the contrary, as the politicisation along the cultural cleavage grew, the mainstream ruling party SMER repeatedly traded support for the status quo and backlash with conservative parties in exchange for concessions on other legislation.

Smaller liberal parties continue to support the expansion of LGBT rights. The two most recent attempts (2012, 2018) to pass the bill on registered partnership were spearheaded by the liberal and libertarian Freedom and Solidarity (SaS) party. In 2012, the draft legislation was rejected by the ruling SMER. It also produced strong backlash by the conservative forces. In an attempt to both maintain liberal credentials and not polarise voters, SMER established a committee to address the demands of the LGBT community as a forum for public debate in October 2012. This was straight from the pre-accession playbook. Nevertheless, even this feckless attempt generated backlash by the Christian Democrats and by the Slovak Conference of Bishops (Santa 2012).

The conservative forces perceived the lack of support by the mainstream SMER as an opportunity to strengthen the status quo and prevent future expansion of LGBT rights. The backlash intensified and peaked in 2014. The conservative group *Alliance for Family*, with the backing of the Conference of Slovak Bishops, collected 400,000 signatures for a petition against the progressive agenda. The petition included demands for a constitutional ban on same-sex marriage and registered partnership, adoption and raising of children by same-sex couples. It advocated for the

citizen, and the marriage took place in the EU. Slovak authorities were forced to bend to the ruling, and Slovakia complied with the CJEU ruling on recognition of same-sex marriage for granting residency permits.

rights of parents to prevent their children from receiving sex education in schools. The petition aimed to trigger a referendum on all four issues. Upon the intervention of the (independent) President Andrej Kiska, in the Slovak Constitutional Court removed the registered partnership ban from the referenda.

Simultaneously, Christian Democrats initiated an amendment to the Slovak Constitution banning same-sex marriage in the parliament. The ban succeeded after Prime Minister Robert Fico, the leader of SMER, offered Christian Democrats a deal. In essence, SMER would support the same-sex marriage ban; in exchange, Christian Democrats would support his reform of the judicial system. In June 2014, the deal was sealed (102 MPs voted for, 18 against), and the following change of the Slovak Constitution was approved: ‘Marriage is a unique union between a man and a woman. The Slovak Republic fully protects marriage as it aids its wellbeing’. This was a significant victory for the conservative forces (Burcik 2014).

The referendum took place in February 2015. Moreover, Slovakia became a conservative battleground. Both the progressives and the conservatives received support from international groups. International conservative groups from Europe and the United States (US Evangelical donors, Alliance Defending Freedom) financially supported the Slovak conservatives. The progressives were smaller and less organised than their conservative Christian counterparts but indirectly supported by European LGBT advocacy groups (ILGA).

During the campaign, progressives criticised the involvement of foreign religious groups as well as SMER’s ‘pandering to the populist religious homophobia’ as a distraction from economic issues. While the conservatives campaigned to win and freeze the progressive agenda for a considerable time, the progressives chose another strategy. It was evident that the support for the progressive agenda was smaller than the support for the conservative agenda. The strategy of the progressives, therefore, was to campaign for abstention in order for the referendum to fail the legal obligation of the minimum 50% turnout to be binding. This strategy was successful. The turnout was 21.4%, and the referendum failed. However, among the 945,000 citizens who voted in the referendum, 94.5% supported the ban on same-sex marriage, 92.4% the ban on adoption by a same-sex couple and 90% the sex education choice (Statistical office of the Slovak Republic). The evolution of public opinion on LGBT rights is displayed in Fig. 3.



Fig. 3 Evolution of public opinion on LGBT rights in Slovakia (2008–2017) (Source Inakost Initiative, Pew Research Center)

In 2018, progressives resubmitted the registered partnership bill. While the bill was defeated again, this time, Freedom and Solidarity MPs were joined by other smaller parties, including the Hungarian minority party, Most-Híd (Bridge). Without the support of the mainstream party SMER, both progressives and conservatives succeeded in preventing each other from achieving their goal. Until the 2020 elections, SMER was the leading political player. However, the Slovak 2020 elections dramatically changed the party landscape in Slovakia.

In the 2020 elections, the openly homophobic radical right (Kotleba's People's Party—Our Slovakia) and conservatives campaigned on the roll-back of liberal rights, including restricting access to abortion, but failed to make significant gains. The governing SMER again strategically shifted to the right by adopting some of the radical right rhetoric on cultural issues (on the withdrawal of Slovakia from the Istanbul Convention in the next section) but paid the price for its recent corruption scandals. Ethnic Hungarian party Most-Híd did not cross the 5% threshold, and the liberal parties weakened at the expense of the *Party of the Ordinary People and Independent Personalities* (OL'aNO). The Leader of OL'aNO, Igor Matovič, who ran on an anti-corruption platform, reiterated commitment to the conservative status quo and excluded any further accommodation of the LGBT rights. He also rejected the rollback on existing rights. Unlike in the Czech Republic, the Slovak conservative forces are stronger than the progressives.

5 ISTANBUL CONVENTION

The Istanbul Convention faces strong opponents in both the Czech Republic and Slovakia. The Czech Republic signed the Istanbul Convention on May 12, 2016, but until today (March 2020), it has not been ratified. The lack of ratification is the result of a lack of broad domestic support. Women and human rights organisations support the ratification, while conservative groups and the Catholic Church are vocal opponents. The same was true in Slovakia. While the European Union has, in the meantime, accessed the convention as a signatory, both countries (as two out of 28 EU member states) oppose the EU being part of the Istanbul Convention.

For the Czech proponents, the Istanbul Convention is a step towards fighting gender stereotypes and improving prevention mechanisms. For the opponents, it is a symbol of ‘gender ideology’. The issue is very salient, and the media attention contributed to improving information levels about domestic violence (such as that in the majority of rape cases the victim and the perpetrator know each other), the increase in the reporting of rape cases (in 2019 by approximately 20%; Hroch 2019) and the thematisation of persistent stereotypes (such as that a woman under the influence of alcohol/drugs, or ‘dressed provocatively’ shares the guilt for her rape (sic!)).⁶

For the opponents—mainstream Christian parties, Catholic Church, socially conservative and reactionary fringe groups—the Istanbul Convention represents a symbol of changes and triggers competition for the role of the real ‘defender of the traditional order’ and the status quo. Mainstream political opponents are led by Christian Democratic ex-Ministers Pavel Bělobrádek and Marian Jurečka. For them, the Czech Republic does not need the Istanbul Convention, because its legislation is satisfactory. Furthermore, for Bělobrádek and Jurečka, the Istanbul Convention represents an ‘attack on traditional family’ and a ‘social engineering attempt to eliminate the traditional roles of men and women’ (Hroch 2019). The pushback against these statements came from the Social Democratic Minister of Labor and Welfare Affairs, Michaela Marksová (before her political career, Marksová led a large women’s NGO).

⁶In a 2015 FOCUS survey, one-third of the respondents agreed with this statement (Geržová 2015).

Among the Church opponents, the Catholic Church led by the Archbishop of Prague, Dominik Duka and the Czech Conference of Bishops is the key actors. However, except for the Evangelical Church of Czech Brethren, the majority of evangelical churches and smaller Christian denominations also oppose the adoption of the Istanbul Convention, which they perceive as detrimental to the ‘natural order’ and a threat to the family. The May 2018 mass in the St. Vitus Cathedral by Monsignor Petr Pit’ha provided the following highlights:

This is to be enacted under the Istanbul Convention in the name of a powerful pressure group of genderists and homosexualists. Your families will be torn and dispersed. They will take your children and keep you from where they went, where they sold them, where they are imprisoned.

In a reaction to this sermon, women’s NGO Czech Women’s Lobby made a criminal complaint about the deliberate dissemination of an alarming message against Pit’ha. Pit’ha received backing and support from the Archbishop Duka and the Czech Conference of Bishops. In May 2018, the Czech Conference of Bishops published a pastoral directly attacking the Istanbul Convention:

We believe that the so-called Istanbul Convention puts men and women in a fundamental opposition and wants to see all behaviour towards women only in the light of the historically unequal balance of power between men and women. This international convention, the ratification of which will soon be discussed in the Parliament of the Czech Republic, as well as in other European countries, has a broad concept of gender identity, which is not rooted in the natural order and thus creates a space for questioning basic social conditions. We do not agree with this trend and do not want the ratification of the Istanbul Convention to be a threat to the life of the state and its institutions, especially schools, but also to the lives of families and individuals. (Tomek 2018)

Among the socially conservative groups, the *Union of Family Advocates* criticised some measures of the convention, which is interpreted as a danger to the privileged attorney-client relationship. The opponents often used misinterpretations or claims of faulty translation of the convention to magnify the threat the convention in their eyes presented to the status quo—the heteronormative order and the male-dominated public and political spheres. Socially conservative and conspiratorial media such

as CounterStream (*ProtiProud*) warned against the new world order in which ‘lesbians will strip men of their masculinity, families will be broken by force and men enslaved’ (Břicháček 2018; Rjabičenková 2018).

Under the mantle of balanced reporting, the public media at times provided space for the spread of disinformation, by encouraging discussions between the proponents and opponents focusing on conspiracies and misinformation. To prevent the spread of misinformation, which amounted to a coordinated campaign across Europe, the Czech government and the Council of Europe published information leaflets (in September and November 2018, respectively).

Notwithstanding the information measure, the majority of the Czech population remains uninformed about the Istanbul Convention (72% in 2018 and 68% in 2019). It has not formed any opinion regarding its ratification (69% in 2018 and 63% in 2019). Among those who have formed an opinion, the support for the ratification (18% in 2018 and 24% in 2019) outweighs its rejection (13% in both 2018 and 2019) (Centrum pro výzkum veřejného mínění 2019).

The coalitions of the proponents and the Istanbul Convention in Slovakia are, in no small degree, similar, like in the case of LGBT accommodation. In the political arena, the radical right, the mainstream right and the governing SMER compete for the role of ‘protectors of the traditional family’. Mainstream parties—both on the centre-right (Christian Democrats) and centre-left (SMER)—adopted some of the radical right rhetoric (Sekerák 2020). This includes backlash against LGBT and women’s groups and their political allies—liberal political parties.

The conservative forces, such as the *Alliance for Family*, portray the Istanbul Convention as a tool in a ‘cultural war’ waged against the ‘natural order’—i.e. the heteronormative status quo. The Istanbul Convention is portrayed as enforcing ‘gender ideology’ in areas such as legal framework and education; the former endangering the rights of parents and religious freedom, the latter ‘experimenting on children’ (Vasecka 2018 in Sekerák 2020).

The Slovak Catholic Church plays an essential role in the opposition to the Istanbul Convention. Similar to the Alliance for Family, it adopts the language of cultural war, waged by liberal forces against religion and tradition. The following is a quotation from a sermon by the Archbishop of the Slovak Greek Catholic Church, Mons. Cyril Vasil’, on 2 September 2018:

The new cultural war of the anti-religious liberal secularism of the modern West has not yet come to us in full strength, but only in some isolated peripheral expressions. Here and there, there is a shot, or rather a fad, but the actual fire and bombing are just about to happen. (Mikula 2020)

The Slovak Catholic Church equates contemporary development with the persecution of the Church during communism—Western liberalism is described as the ‘new totalitarianism’. It also portrays Central and Eastern Europe as the last bastion of defence of ‘real European values’ and calls for the return to the ‘natural and Christian roots’. In March 2019, the Slovak bishops and representatives of other denominations called on the government not only to reject ratification of the Istanbul Convention but also to withdraw the Slovak signature. In their argument, they portrayed the Istanbul Convention as a tool for the accommodation of ‘gender ideology’ and an attempt to further LGBT demands.

In March 2019, the Slovak parliament rejected the ratification of the Istanbul Convention, hinting at possible conflicts with the Slovak Constitution and the leader of SMER and former Prime Minister Fico claimed that the government could not adopt an international treaty that ‘does not respect the beliefs of the majority of Slovak citizens’ (Walker et al. 2019).

In November 2019, the European parliament called on all EU member states to speed up the ratification of the Istanbul Convention. On the same day, the Slovak parliament decided not to ratify the Istanbul Convention and asked the government to inform the European Union, which in the meantime became one of the signatories that Slovakia opposes to being part of the Istanbul Convention.

The Slovak vote was both a pushback against Brussels, but more so a reaction to the domestic pressure. The radical right politicised crimes against women to paint the government as weak on the ‘law and order’ agenda. In an attempt to adopt a strong stance, the (female) Minister of Interior called on women to be more considered and ‘socialise with greater prudence’ (on the similar performance of gender in other ECE countries cf. Norocel 2018). In a political struggle along the cultural dimension, victims of gender-violence are further victimised to score political points. The position of the Minister of Interior reflects Slovak public opinion, which views rape as justified under certain circumstances (in 2016, 40% of respondents agreed with this statement) (Gabrizova 2019).

In the campaign for Slovak parliamentary elections (29 February 2020), the radical right and socially conservative forces continued the politicisation of the Istanbul Convention. Christian Democrats proposed to restrict access to abortion. On the eve of the elections (25 February 2020), during an extraordinary session, the Slovak parliament rejected the Istanbul Convention with the simple majority of 93 of 122 votes.⁷ The majority of the governing SMER, Christian Democrats and the radical right voted against. Liberal parties and some members of the Party of Ordinary People and Independent personalities, which went on to win the elections, supported the convention (27 votes). The liberal President Zuzana Čaputová announced she would respect the decision of the parliament (Meuwissen 2020).

While the opposition of the Slovak conservative parties and the radical right to the Istanbul Convention is long term and ideologically driven, for the centre-left SMER, this was a strategy—a final attempt to win back conservative voters (cf. Malova and Vilagi 2006; Buščíková 2019; Buščíková et al. 2019; Kazharski 2019). The strategy of the radicalised mainstream failed—SMER lost the 2020 elections. On the night of his electoral victory, the leader of the populists’ anti-establishment OĽaNO, Igor Matovič, who ran mainly on an anti-corruption agenda and avoided taking a stance on cultural issues, endorsed the status quo. He refused both the rollback abortion rights, but also the Istanbul Convention.

6 CONCLUSIONS

The present chapter has shown that the effect of the expansion of the universal rights spearheaded by the European Union and the Council of Europe is contingent upon the type of groups and on configurations of domestic actors that either align with the policies of accommodation or seek to reverse them. The accommodation of demands for universal rights, such as LGBT rights and gender equality, creates a strong reaction. If used strategically by political entrepreneurs, it has the potential to polarise the electorate. Since the new groups are ‘alien’ to domestic constituencies at first, it is easy to associate the European Union and the Council of Europe with the imposition of new cultural norms.

⁷Analysis of the vote No. 15/2020 based on data of the Slovak National Council, <https://www.nrsr.sk/web/?sid=schodze/hlasovanie/schodze>.

Minority accommodation due to the implementation of the EU anti-discrimination framework, the CoE's Istanbul Convention and current demands by LGBT and women's advocates spark a backlash. While mobilisation around new issues can spike sovereignty anxieties, the lack of well-established divisions between the progressive and conservative forces and, in the case of the Istanbul Convention, lack of salience undermines the durability of the backlash. Political entrepreneurs are creative and quickly explore how new divisions can cohabit with older, more established configurations of interests (fusing anti-LGBT and anti-gender equality voices against the Istanbul Convention).

The backlash against universal rights and their (perceived) allies—the EU, CoE, and civil society organisations—remain in the repertoire of the radical right (cf. Cianetti et al. 2018; Guasti and Buštková 2020). The mainstream political parties are rarely foes of minority accommodation (Guasti 2019). The extent to which they act as allies or foes depends more on their political calculus than on their ideological orientation. When the costs of minority accommodation are high, mainstream parties shy away from pursuing the progressive agenda (ANO in the Czech Republic) or join the backlash (SMER in Slovakia).

In both countries, the European Union (and the Council of Europe) plays a secondary role in the process of LGBT accommodation and gender equality. It ensures anti-discrimination via hard and soft legislation and provides avenues for redress (litigation at the CJEU and ECtHR). The primary role belongs to the domestic politicians. Progressives find powerful allies—LGBT advocacy groups, women's groups and foes—against conservative groups and the Catholic Church.

In both countries, pragmatic populists strategically align themselves with what they perceived to be the winning side at a particular point in time (cf. Buštková and Guasti 2017; Vachudova 2019; Guasti 2019). In Slovakia, the mainstream SMER traded support for the same-sex marriage ban for its proposed judicial reform, and the insurgent OĽaNO reiterated commitment to the conservative status quo. In the Czech Republic, Andrej Babiš's ANO used the LGBT issue to strategically appeal to the liberal voters and, therefore, to expand its voting coalition. When these efforts proved futile, it abandoned the LGBT agenda. The mainstream political actors are not driven by ideology, but by situational strategies. In both countries, the cultural cleavage is here to stay, and the pursuit of universal rights will be lengthy and continue to face illiberal backlash.

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PART III

EU Reactions to Illiberal and Anti-EU Politics



Talking Past Each Other: On Common Misperceptions in the Rule of Law Debate

Attila Vincze

1 INTRODUCTION

Hungary is an *enfant terrible* of the European Union, an illiberal or hybrid regime (Krekó and Zsolt 2018), a quasi-Turkey or quasi-Russia in the EU, and many are perplexed how such a regime could be part of the EU sharing common values set out in Article 2 of the EU Treaty, which surely could not join the club today.¹ Whereas many analyses have described the changes experienced during the last decade, some others

¹Halmi (2018b, p. 16): “Model case of constitutional backsliding from a full-fledged liberal democratic system to an illiberal one with strong authoritarian elements”. See further Kochenov (2017). For a more popular account see *The Economist* (2019).

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lack basic factual knowledge or misunderstand facts² which again helps the Hungarian government to point out that condemnations are baseless allegations stemming from lacking knowledge or prejudice. Many more write from a moral high ground, which does not really help to understand the undergoing processes but instead exaggerates a value-loaded debate as clashes of cultures,³ and in doing so basically supports the denounced regime, which gladly points out that the critique is nothing more than further evidence of the Spenglerian Downfall of the Occident.

On the other hand, it is also baffling that the EU tolerates this regime as long as it does, if the latter (as it is alleged) so obviously violates the fundamental values. While there were surely measures intended to save the EU's core values, like the new Rule of law framework, the Justice Scoreboard and public condemnations, they have not proven to be effective.⁴ Many have written about lacking post-accession compliance (Schimmelfennig and Trauner 2009), or the ineffective procedure of suspending the rights of a member state according to Article 7 TEU (see also Chapter 1).

The following chapter is intended to show some misconceptions and misperceptions in the debate around Hungary as well as shortcomings of the EU policies vis-à-vis the country. It describes the present government's critique that the EU applies double standards when it comes to the rule of law and explores how the Commission might have contributed to

²Avbelj (2015, p. 51): "Much can get lost in translation across different epistemic sites between the narrators and the audience. Simultaneously, a lot can be added to the reports, thanks to normative biases of different sorts, which are especially present in the politically deeply divisive issues of the alleged cases of systemic defiance". These factual misunderstandings happen also in the case of renown institutions, such as the Venice Commission (cf. Vincze 2012), or in the case of the Sargentini report (cf. Ésik 2018; Bakó 2018).

³Poptcheva (2015, p. 3): "Some commentators and political actors tend to see the outrage of particular member states or EU institutions over specific developments in a given member state as ideologically motivated, as the battle between left-wing and right-wing convictions, or as a battle between different cultures (*Kulturkampf*)".

⁴Juncker greeting Orbán as "Hello, dictator" at the Riga Summit of the EU in 2015 is one of these examples, which showed less condemnation and more made the impression of getting used to the situation. The suspension of the membership of Fidesz in the EPP because of the very populist election campaign against Jean-Claude Juncker depicting him as a muppet of George Soros, and in doing so recalling anti-Semitic connotations, seems to be one of the very few examples of effective counter-measures.

this impression by remaining inactive when previous governments disregarded constitutionality and basic values. Moreover, the chapter depicts the argument that the EU's diagnosis of illiberal backsliding is too narrow. When assessing the quality of democracy in the country, the Commission almost exclusively focuses on recent legal changes and thereby overlooks other deficits such as corrupt tendering policies or questionable taxing schemes. Due to this incomplete diagnosis, the instruments currently being used to combat backsliding tendencies seem ill-suited or half-hearted. The chapter concludes by highlighting and discussing possible improvements of EU strategies towards backsliding states.

2 MISPERCEPTION ONE: BIRTH OF ILLIBERALISM

One of the prevailing narratives is that illiberalism, whatever the word might mean, was born after 2010 in Hungary,⁵ suggesting that the right-wing parties solely exploited a dissatisfaction with the former socialist government and the waves of the financial crisis of 2008, built up a mythos of failed democratic transition in 1989, and achieved a landslide victory enabling them to get rid of the old elite and to tailor-make the constitution.⁶ This narrative moreover suggests that the former constitution of Hungary was an embodiment of liberal values, had basically no crucial deficiencies,⁷ that the transition into a liberal democracy in 1989 was a successful one, and that the former socialist-liberal governments between 2002 and 2010 complied by and large with those very basic values of a liberal, democratic state governed by the rule of law. The widespread description of Hungary and Poland as “backsliding” the rule of law and liberal democracy also relies—albeit unspoken—on the proposition that the earlier constitution as a legal and a social (factual) construction complied with the European values. This reasoning is very tempting and easy to understand. However, the truth, as always, is a more nuanced one.

⁵Expressly so, e.g. Halmai (2018b, p. 15): “The weakening of liberal constitutional democracy in Hungary started after the landslide victory of the centre-right Fidesz party in the 2010 parliamentary elections”.

⁶See the argumentation of Halmai with further references who summarises the liberal narrative, e.g. Halmai (2018b, p. 16) or Halmai (2014). Also see Magyar (2013).

⁷See Note 8.

Neither the constitutional transition (at least in Hungary) was as impeccable as some suggest, nor was the former government a flawless guardian of the rule of law. The former constitution was a transitory patchwork, which served satisfactory but was very far from perfect. At least three basic issues⁸ of the political transition remained unsolved which fuelled not only criticism but conspiracy-theories as well: (1) the transition left the former leaders of the Communist regime basically untouched, and they were not made responsible for the injustices that occurred; (2) the files and documents regarding the agents and collaborators of the former communist secret police were not made public, and the wider public still has no reliable information in this regard, which not only fuels rumours, but also legitimate worries of extortion; (3) restoration of property ownership confiscated during communism was at least very meagre (Hanley and Treiman 2004). However, this is not the place to deal with these topics, and especially to answer the question as to whether a property restoration was viable. These were symbolic issues stimulating not only well-reasoned criticism but also bogus theories of a deep state run by former communist networks.⁹ Maybe economic performance like the German *Wirtschaftswunder* (Westad 2017, p. 217f.) could have healed the wounds of the transition. Yet the economic mismanagement of Hungary since 2002, leading to an underperformance and to necessary austerity measures since 2006 without escaping an economic collapse at the end of 2008, helped very much to blame the shortcomings of the political transition. According to some observers, and irrespective of the positive Freedom House scores (Kovács 2012), neither politically nor economically was the transition a success story.¹⁰ (On the other hand, the relative good economic performance of Hungary since 2010 and

⁸And there was a legion of further constitutional shortcomings and imperfections. One of the alleged problems with the new Hungarian constitutional system is the reorganisation of the organisation of the judiciary. Before 2012, there was a Judicial Office, an “institutionalised backroom” of the Supreme Court of Hungary, which was an independent body, and was thought to serve better judicial independence. Nonetheless, there is research showing that the reality did not live up to these expectations, cf. e.g. Fleck (2014) and Badó (2014).

⁹Very likely based on stories about an alleged network of former Nazi officials in Germany, which was very popularly dramatised, e.g. in *The Odessa File* by Frederick Forsyth.

¹⁰This was the conclusion of the recognised Hungarian political scientist, Péter Tölgyessy, see Bíró (2019) and Gergely (2017). Comparative economic data also suggest

the growth of disposable income may also explain why a larger part of the Hungarian population considers the democratic decline as a cost of economic performance.)¹¹

The right-wing government of Orbán is often—and not without justification—blamed for arbitrariness and lacking respect for constitutional institutions. This instrumental use of the law,¹² a rule by the law and not that of the law (Chronowski and Varju 2016), is often connoted with legislative measures adopted in order to appoint the right (politically suitable) “chap” for the right job (*The Economist* 2019), such as packing the Constitutional Court,¹³ the premature termination of the mandate of the President of the former Supreme Court of Hungary (Vincze 2015; Kosař and Šipulová 2018), or that of the Data Protection Ombudsman¹⁴ by amending the constitutional provisions (see also Chapter 10). Nonetheless, this kind of meddling with independent institutions was not alien to the former socialist governments of 2002–2010 either (Vincze 2018a). In 2000, a new financial supervisory authority was established during the first government of Viktor Orbán, and Károly Szász was appointed for six years as its president. In 2004, the newly elected socialist government wanted to dismiss him merely because he was appointed under the former government, and hence a new law was whipped through the parliament to this effect, which was also authorised by the Constitutional Court.¹⁵ And in the same year, the socialist government was trying to amend the law on the central bank in order to push over the governor of

that other CEE countries (Czech Republic, Poland, Slovakia or Slovenia) made much better use of the opportunities after the democratic transition.

¹¹ See instructively in this sense with a Central European comparison, Adamski (2019).

¹² For a broader theoretical understanding of law as an instrument of political aims, see Tamanaha (2006).

¹³ Vincze (2014), the effects of the packing are clear to see nowadays. The Constitutional Court applies very different standards if a private individual lodges a complaint and if a government body submits one. A very shocking example was the recognition of fundamental rights of the National Bank of Hungary in order to quash an uncomfortable judgement for the Central Bank and the Government, cf. Kovács (2019), Chronowski and Vincze (2019).

¹⁴ CJEU, Case C-288/12, *Commission v Hungary* (ECLI:EU:C:2014:237).

¹⁵ Decision of the Constitutional Court 7/2004 (III. 24.) AB.

the National Bank who was also appointed during the first Orbán government.¹⁶ These measures are essentially not very far from those of Orbán's government. The former socialist government simply lacked the necessary parliamentary majority to enact them on a constitutional level.

Moreover, the socialist PM Ferenc Gyurcsány secretly admitted to his fellow party members that he knowingly lied during the election campaign in 2006 and falsified data of the state budget in order to win these very elections. As this secret speech (*The Guardian* 2006; BBC 2006) came to light in the autumn of 2006, thousands demonstrated against the government in Budapest because of its flagrant disregard of democracy and the rule of law. Mainly due to the involvement of radical right groups and football hooligans, the demonstrations ended in violence, causing in turn fierce reactions of the police (Ilonszki and Kurtán 2007). During these events, the EU did not claim any violations of the basic values (such as democracy or the right to assemble), and therefore, the right-wing government of Orbán could easily allege that the problem was not the violation of the values but simply his person.

This narrative would be very similar to the problem of the European Monetary Union: it was built on self-reliance and hard budgetary constraints. However, they were quickly softened up as Germany and France broke the rules (Doukas 2005; Amténbrink and de Haan 2006). And precisely because the two largest member states got away with rule-breaking, no one cared all that much until Greece basically went bankrupt due to the subprime lending crisis.

3 MISPERCEPTION TWO: THE VALUES OF THE EUROPEAN UNION

As is well-known, Article 2 TEU stipulates some inherent values of the EU, the violation of which may lead to the suspension of the rights of the culpable member state. This procedure was introduced by the Treaty of Amsterdam but refined in the aftermath of the *Haider* affair (Lachmayer 2017; Schmahl 2000) and also in close proximity to the upcoming Eastern enlargement of the EU. It presupposes either a clear risk of a serious breach or an actual serious and persistent breach of the values of the Union, which begs the questions of what these values are, how far

¹⁶See nuanced Häde (2005).

may the member states determine their meaning for themselves, and what is the relationship among these values.

The list encompassed in Article 2 TEU consists of a number of open-ended, value-loaded expressions which oscillate within a very broad repertoire of possible interpretations. From a law perspective, the terminology of the EU Treaty (freedom, democracy and equality, etc.) is rather an invocation than a definition, even if they surely make a claim to be of a prescriptive, and not simply of a descriptive, nature. The vocabulary does not only evoke different meanings in different languages (von Bogdandy and Ioannidis 2014), but it also depends on the political attitude and thinking (Fekete 2016), which makes wishful thinking (attributing the own individual concept to these values) very easy.

It is questionable, on the one hand, as to whether the political actors (basically the member states in their capacity as masters of the treaties) could have agreed on anything more specific (precisely because of the contested meaning of these words). However, on the other hand, they have not let the judiciary define them (in contrast to some other open-textured expressions), because the proceedings in which these values are of eminent importance are political ones (membership art. 49 TEU, suspension of membership art. 7 TEU and partnership art. 8 TEU).

Not only freedom, democracy and equality but also the rule of law have very contested connotations¹⁷ even if we can agree what their core might be. There is a common understanding that rule of law is an antithesis of arbitrariness. But there is an ongoing debate as to what arbitrariness means, how determinate and precise legal rules must be in order to avoid arbitrariness, what the limits of the discretion of any administration are, and how these requirements are to be reconciled with other compelling principles such as checks and balances and parliamentary government.¹⁸ Very lively is the discussion as to whether the rule of law is more than obeying the black letter of the law, and if so, what inherent values does it contain which should have also been protected

¹⁷ See instructively Tamanaha (2004). Regarding its meaning in the EU-Treaty, see von Bogdandy and Ioannidis (2014, pp. 288–290).

¹⁸ Significantly, the very same debate goes on in European administrative law without, however, the emotional slips, see Franchini (2004); for a very similar problem in the context of the ECHR, cf. e.g. Hwang (2013).

against constitutional amendments.¹⁹ To put it otherwise, there is some plurality in the EU and different national legal orders embody different understandings of the substance of these values (Kombos 2010), and hence there is no value unity or uniformity in the Union despite the fact that member states share fundamental constitutional values (Avbelj 2015). It is necessary to pinpoint this circumstance as governments might easily find a definition of the rule of law which would comply with their own preference, and the alleged violations of the rule of law can be simply presented as cultural questions resulting from different (but basically equally acceptable) understandings of these values.

Similarly, one would understand democracy as a government of the people, but one might easily disagree as to whether democracy would require a certain form of direct or indirect involvement of the people, such as referenda (which in some member states does not exist) or a special kind of electoral system (proportional or majoritarian) (Morrison 2007). As there are many forms of democracy, there are many forms of the rule of law too (like formal and material, to mention the most obvious ones). There are also as many arguments in favour of a limited judicial or constitutional review as there are in favour of broader judicial powers (Griffith 1977; Tomkins 2005; Itzcovich 2015). Putting it more plainly, it is demanding to challenge the cut back of powers a constitutional court possesses as long as many member states have no such institutions at all.²⁰ And it is precisely because of this particularity that EU actors should have put much more emphasis on what exactly is contrary to the

¹⁹Without going into details, the *Rechtsstaatlichkeit* (the German equivalent of the rule of law) is part of the Austrian and German constitutional thinking, having a more formalistic content in the first case and more substantial one in the second, cf. Jakab (2009). Likewise, Di Gregorio (2019) points out how the rule of law was differently understood in the different Central and Eastern European countries during the democratic transition. The different understandings of the common constitutional values appear vividly in the administrative law which effectuates the constitutional values at a very operational level, and the member states seem to have several permutations of the same values.

²⁰Scheppele (2013) and Vincze (2014). This argument emerged in Hungary in 2019 during the Finnish presidency of the EU as, among others, the Prime Minister put forward that Finland should not criticise Hungary for the adopted model of the Constitutional Court because Finland has no such institution (Boffy 2019). This simplistic argument does not take into account the contextual differences between Central European and Scandinavian countries (see methodically, e.g., Kischel 2019). But precisely because of its simplicity, it is a very effective populist argument. Müller (2015), for instance, offers serious counter-arguments.

common European core of the rule of law: the lacking independence, the diminished ambit of powers or the governmental bullying.²¹

As there are many theoretically possible variations of how to implement the rule of law, the question is to what extent member states are allowed to apply their own definition or operationalisation.²² Taking into account that the EU was built upon the principle of conferral (art. 5 TEU), the first question is as to whether the EU may object to any shortcomings of the law of a member state if that particular issue does not belong to its competences, as these remain with EU countries. As it follows from Art 4(2) TEU, fundamental political and constitutional structures belong to the identity of the member states which are to be respected. The very uneasy piece is to define the limits of the constitutional identity referred to in Art 4(2) TEU, as this is an essentially contested and disputed concept (Rosenfeld 2012; Jacobsohn 2006; van der Schyff 2016). Nonetheless, it has turned out to be an effective ideological tool to express defiance as pluralism and non-compliance as identity (Kelemen and Pech 2018; Mader 2019), especially because the phrase was not coined by the rebellious rogue states to protect their disobedience from overwhelming power of the EU law, but by the German Constitutional Court in order to protect the allegedly higher German constitutional standards from the European ones (Mayer 2015). A massive body of case law evolved describing and clarifying the meaning of the German constitutional identity, and the circumstances under which it may justify an eventual disobedience, which nonetheless also inspired the Hungarian Constitutional Court to borrow this expression. In doing so, it stylised the protection of illiberalism as basically doing the same

²¹This is not an easy undertaking if, for example, the European Court of Human Rights declares the remedies available at the Hungarian Constitutional Court to be an effective one, cf. Szalontay vs. Hungary, ECtHR Judgement of 12 March 2019 Application no. 71327/13. A similar question arose in the case of Poland, as an Irish court questioned generally the independence of Polish courts and the effectiveness of judicial protection because of a reasoned proposal of the European Commission adopted pursuant to Article 7(1) TEU, indicating that there is a real risk of a breach of the fundamental right to a fair trial in Poland, see Judgement of the CJEU (Grand Chamber) of 25 July 2018 case C-216/18 PPU, LM ECLI:EU:C:2018:586. As Lenaerts (2020) points out instructively, the CJEU crystallised many aspects of the rule of law, especially regarding the judiciary during the last decade.

²²The European Court of Human Rights also accepts many different understandings of a “democratic society” and possible variations regarding the understanding of fundamental rights, see, e.g., Brems (1996).

as the well-renowned and esteemed German institution (Vincze 2018b; Halmai 2018a).

The pluralism argument of the many national variations of common European values is often coupled with a resourceful and shrewd exploitation of comparative reasoning. The Hungarian government is usually very keen on pointing out that nearly every legal provision it enacted is borrowed from another country, implying that a critique of the Hungarian legislation is only fair if the country of origin of the contested provision is also blamed. Thus, “Frankenstein legislations” are born, which, like the wretched creature in Mary Shelley’s book was a composite of body parts grafted together from cadavers, are cobbled together from different national laws of the member states into a monster which never originally existed (Scheppelle 2013). The argumentation is, however, very simple: if the Hungarian rules are bad, then those other rules must be bad as well. The argumentation of the Hungarian government is at least superfluous and rather often manipulative, as evidence also suggests.²³ But the real question is as to whether the nuanced and technocratic comparison can effectively counterbalance the simplistic communication.

There is a further strategy of softening up values, namely neighbourhood policy. The values of the EU according to Article 2 TEU are not only important for accession according to Article 49 TEU, but also for the neighbourhood policy (Bachmann 2019; Kellerhals and Baumgartner 2014). That is the reason why the Hungarian government is determined to point out how Ukraine violates the rights of the Hungarian ethnic minority (Gorondi 2018; McLaughlin 2018). Because the rights of the minorities are among the values enlisted in Article 2 TEU, a violation of them should require some steps of the EU in order to counter them. If the EU does not undertake these steps, Hungary can easily point out that the EU is not even-handed and the alleged violations of the rule of law are nothing else but a political witch-hunt.

A further (mainly neglected) dimension of values among those listed in Article 2 TEU is the conflict of hierarchy (Schorkopf 2016, p. 158). Art 2 TEU encompasses several equally weighted *prima facie* values beyond the rule of law, which, at least to some extent, have an uneasy relationship. Democracy and the rule of law, democracy and human rights (Jowell

²³See regarding the media regulation Brouillette and van Beek (2012).

2007; Saunders 2010), as well as freedom and equality, are concurring values, which nonetheless presuppose each other to some extent (*complexio oppositorum*). Democracy is basically a form of government by the people where decisions are made by the majority. The rule of law and human rights limit this freedom of the majority to decide whatever it finds proper,²⁴ but on the other hand democracy presupposes equality (Pöschl 2014, paragr. 18), and we accept only the rule of a democratically enacted law (Müller 2015). Preferring the rule of law as a yardstick of the violations of EU values might be explained by the circumstance that the rule of law has a less contested meaning than the other values mentioned in Article 2 TEU (Schorkopf 2016, p. 158). But the prioritisation also opens up the opportunity for populist politicians to even go so far to say that the EU highlights the rule of law and cares much less about democracy, precisely because it has serious challenges with its own democratic legitimacy, as the bulk of literature on its democratic deficit suggests.²⁵

4 MISPERCEPTIONS THREE: VIOLATIONS

From very early on, the European Parliament was especially keen to point out that the Orbán government violates basic values of the EU. As the new Hungarian media legislation was to be passed in 2011, many members of the European Parliament protested against it by taping their mouths with band-aids and holding up signs reading “censored”, suggesting that the modifications were evidence of an “authoritarian decay” (Schult 2011). Two years later, Rui Tavares, a Portuguese MEP, put forward a detailed report on Hungarian constitutional developments, which was approved by the European Parliament on 3 July 2013 (the Hungarian government claimed that the report was merely a conspiracy

²⁴ UK House of Lords, *A and others v Secretary of State for the Home Department* [2004] UKHL 56, para 237 by Baroness Hale of Richmond: “Democracy values each person equally. In most respects, this means that the will of the majority must prevail. But valuing each person equally also means that the will of the majority cannot prevail if it is inconsistent with the equal rights of minorities”. Finding an appropriate balance is not easy, as the Swiss referendum of 2009 on a minaret ban very persuasively shows. Also very (in)famous is the headline of the Daily Mail of 4 November 2016, describing the judges of the High Court as enemies of the people because they denied making use of the royal prerogative to trigger Brexit.

²⁵ Müller (2015) offers serious arguments against these allegations.

of the left). In 2017, Judith Sargentini submitted a detailed report about Hungary and a proposal to call on the Council to determine the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (Sargentini 2017). In January 2020, European Parliament voted for more vigorous actions against Hungary and Poland.

This eagerness is in sharp contrast to the reluctance of the Commission to initiate those proceedings (at least against Hungary; in the case of Poland, the Commission is much more proactive).²⁶ Article 7 TEU requires a serious breach of the values of the Union, which must go far beyond a simple violation of the treaties, such as a not implementing a directive, which raises a number of questions.

A serious breach of the EU's foundational values is not necessarily equivalent to a series of breaches of EU law. Nonetheless, a certain number of judgements of the Court of Justice of the European Union (CJEU) or the European Court of Human Rights (ECtHR) finding a EU member state continuously violating values of the EU may indicate that the given member state has seriously breached those values, and hence they may trigger a procedure according to Article 7 TEU (Gormley 2017, p. 75). This is a very tempting idea, explaining a serious breach precisely in this way, as it relies on court judgements which by definition are stemming from a neutral institution. That is why this argument deserves a closer look.

One serious objection—and this will rouse every “rogue government”—is that an infringement procedure according to Article 258 TFEU sufficiently deals²⁷ with an alleged violation of EU law, and that a further procedure according to Article 7 TEU is not only unnecessary but also illegal.²⁸ The government in question is obliged to “take the necessary measures to comply with the judgment of the Court” (art. 260(1) TFEU). If the government complied with the judgement of the CJEU, it will (like Hungary did) object to the consideration of these infringement

²⁶The reluctance might also be explained by rational calculation based upon expected behaviour, Closa (2018). Moreover, the general perception is that the Commission seems to have learned the lesson from the Hungarian case and is much tougher in the case of Poland, see e.g. with further references Adamski (2019, p. 652).

²⁷Kochenov and Pech (2015) allege the leniency of the Commission.

²⁸For serious counter-arguments for a parallel applicability, see Schmidt and Bogdanowicz (2018).

procedures as evidence of a serious breach of the fundamental values of the EU.

Firstly, a typical argument is that the Commission was satisfied with the compliance, and hence there is no reason to bury the hatchet. Secondly, it can be argued that taking these infringement procedures into account would violate the “*ne bis in idem*” principle, in not being prosecuted or punished twice for the same offence. *Ne bis in idem* is rather an individual right and therefore less applicable to states. But this distinction might not be as relevant as the relationship between Article 258 TFEU and Article 7 TEU. Even if both of these procedures aim to point out that a member state does not comply with the requirements of the European *acquis*, their relation to each other is much less like a second punishment for the same crime (as it is the core of the *ne bis in idem* principle), but rather punishing a reoffending recidivist. Thirdly, it can be asked how many successful infringement procedures within which period of time indicate a serious breach.²⁹ Going beyond the question of quantity, there is a harder nut to crack: the question of quality of EU law violations. In the case of Hungary, the forced retirement of judges was qualified by the Commission as a mere violation of the anti-discrimination directive³⁰ (the judicial independence was not even mentioned). Not only that, the Commission saw the reorganisation of the data protection ombudsman as an infringement of the independence of the data protection authorities according to the data protection directive, the vexation of the NGOs as a violation of the freedom of capital,³¹ and the dismissal of the President of the former Supreme Court of Hungary as no reason for an infringement procedure. Thus, the former President had to seek remedy before the European Court of Human Rights himself.³² Nevertheless, Hungary is not the only member state with compliance problems. Germany, for instance, infringed the same anti-discrimination directive in the case of

²⁹ Taking the example of Hungary, it might be argued that the forced early retirement of judges (CJEU, Case C-286/12, *Commission v Hungary*, ECLI:EU:C:2012:687) or the violation of institutional independence of Hungary’s data protection ombudsman (CJEU Case C-288/12, *Commission v Hungary*. ECLI:EU:C:2014:237) would not necessarily be enough.

³⁰ Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

³¹ Case C-78/18, *Commission/Hungary*, not yet decided.

³² ECtHR, 23 June 2016, *Baka v Hungary*, no. 20261/12.

prosecutors as Hungary did,³³ and was also found to be violating the independence of the data protection authorities. However, this alone does not qualify for an Article 7 TEU procedure.

Illiberal politicians very gladly apply these two arguments in case of any accusations: relativism and a very formal understanding of the rule of law. First, they highlight that the governments prosecuting and condemning them are not better at all, as they themselves are liable for similar infringements, so they simply pick and choose the newer or smaller member states to demonstrate some undeserved moral high ground,³⁴ but otherwise pursue transactional *Realpolitik* (let us call this argument *Quod licet Iovi non licet bovi*). Secondly, rogue governments claim that accusations are unfounded because their opponents are not able to define why the so-called rule of law was infringed, and therefore, no opportunity is given to discuss the accusation.

5 ILL-SUITED RESPONSES

As it was pointed out, the European Parliament was very eager to condemn the illiberal tendencies of the Hungarian government, and to activate Article 7 TEU. The Commission, on the contrary, was much more restrained. It did not push Article 7 TEU too much, and one is under the impression that the infringement procedures initiated by the Commission were rather half-hearted responses.³⁵ On the one hand, European institutions are engaged in shadow-boxing around the basic values of the EU and have adopted a Rule of law framework to prevent emerging threats to the rule of law (but have nonetheless abstained from a similar tool kit for the several other values enshrined in Art 2 TEU).³⁶ On the other hand, they have been rather shy engaging in a direct conflict

³³CJEU Case C-159/10 and C-160/10, Gerhard Fuchs and Peter Köhler v Land Hessen (ECLI:EU:C:2011:508).

³⁴Very similar was the situation in the case of Austria, which was severely condemned for the participation of Mr. Haider and his Freedom Party (FPÖ) in the federal government. But Italy, governed at the same time by the very controversial Mr. Berlusconi, was not condemned, see, e.g., Hummer (2013, p. 136).

³⁵Schmidt and Bogdanowicz (2018) also argue that the Commission has not made best use of the available remedies.

³⁶Or one might thus express ambivalence that there is a preference for the rule of law, Schorkopf (2016, p. 158).

in those areas where the Commission has real investigative powers and resources,³⁷ and could have achieved real success (at the cost of a real conflict, of course).³⁸

In fact, the European Commission missed the opportunities to shorten the Hungarian regime's money supply, which could have been much more efficient than some Rule of law frameworks and assessments which are good for condemning a regime morally. But these kinds of exercises do not help all that much if a regime itself is morally very flexible. It is built on crony capitalism (Rubin 2015), business thriving due to a nexus between the business and the political elite. The political elite narrows the field of real market economy and tilts the conditions in order to build monopolies or oligopolies, and the rent-seeking³⁹ business elite profiteering from these conditions becomes a generous partner of the political class and supports the political struggle. One speaks of a "symbiotic relationship between big government, big business, and big labor aligned in a cooperative enterprise in which the government picks economic winners and losers and subsidizes and protects particular favored industries, firms, and interest groups, has come to be known as crony capitalism" (Zywicki 2015, p. 78). This description would more or less fit Hungary, and many say that Hungary has shifted to a model where "business success is intertwined with political power" and is "becoming a miniature version of Vladimir Putin's Russia" (Buckley and Byrne 2017).

Crony capitalism and rent-seeking business oligarchs can only work if there are some political barriers for entering the market⁴⁰ precisely

³⁷The Commission is much more eager in the case of Poland than in the case of Hungary, since the bullying of the CEU and the NGOs the Commission seems to have become more rigorous (Case C-66/18, Commission/Hungary and case C-78/18, Commission/Hungary, respectively, none of them decided yet). Nonetheless it would be an overstatement to say that it made use of all available tools. Closa provides a rational explanation for the strategy of the Commission, see Closa (2018).

³⁸As the Commission achieved some success in the case of the forced retirement of the Hungarian judges by requesting accelerated procedures.

³⁹The concept of rent-seeking is basically an invention of Tullock, see Rowley and Houser (2012).

⁴⁰During the last decade, there was a massive CJEU case law regarding newly enacted state monopolies in Hungary which restrict market access, cf. e.g. case C-179/14, Commission/Hungary, regarding state monopoly on leisure and meal vouchers, case C-171/17, Commission/Hungary, regarding national mobile payment system; or the national tobacco concession, ECtHR Judgement of 13 January 2015, *Vékony v. Hungary* (Application no. 65681/13). Instructively Varju and Papp (2016).

because the rent-seeking makes the goods and services more expensive. Hence, under normal circumstances, the rent-seekers are less innovative and therefore less successful. Barriers to entering the market are in logical contradiction to the concept of the internal market without frontiers in which the free movement of goods, persons, services and capital is ensured, as it is required by the TFEU. Moreover, the internal market is the area where the Commission is the most powerful and could take—though politically less spectacular—more effective measures than have never-ending debates about the values of the Union.

Nevertheless, a series of dubious measures was not sanctioned by the EU. If the rapid enrichment of the son-in-law or the neighbour of Mr. Orbán is really the result of corrupt tendering practices, bid-rigging and anti-competitive behaviour, as many suggest, the Commission has all the power to investigate, even to launch infringement procedures. Even if the OLAF cannot launch a criminal investigation, it can produce a dossier for the Commission in order to facilitate an investigation, which again can make use of different tools should EU rules ever be violated, especially if EU funds were misused.

The same is true for the Hungarian sport subsidising tax scheme, through which, as many suggest, the business and political elite is very well connected. This scheme enables business to support even professional team sport instead of paying the same sums as taxes and explains how a football stadium appeared in the village of Viktor Orbán. Although the Commission investigated this tax scheme, because professional sport teams are under normal circumstances business undertakings, and to them the rules of the internal market are applicable (Parrish 2003), it was found to be compatible with state aid rules of the EU (European Commission 2011).

Very suspicious was also the Hungarian Golden Visa scheme (Martini 2018), which not only enabled one to get permanent residence in this Schengen country, but also profited handsomely for some close friends of the regime. The new Hungarian nuclear power plant to be built in the town of Paks could have raised not only environmental but also competition and security policy issues as well. Instead of being very scrupulous regarding Hungary's intention to involve Russian nuclear technology, the Commission, according to some sources, lent a hand to the Hungarian government on how to find a loophole in the EU public procurement regime (Valero 2017) and also approved Hungary's financial support for the construction of them (European Commission 2017).

A further issue was the creation of a gargantuan media holding in the summer of 2018, as many rich businessmen close to Orbán created a foundation (*Közép-Európai Sajtó és Média Alapítvány—Central European Press and Media Foundation*), and very generously donated their media undertakings for this entity. In doing so, they produced the largest media company in Hungary owning a number of print newspapers and magazines, TV and radio stations and news websites, which not only questions media plurality but that of competition law as well. Although national legislation created a loophole for this construction, being freed from the scrutiny of the competent national authorities, this should not stop the Commission from taking a closer look.

The recent initiative by the European Commission to protect the Union's budget in case of generalised deficiencies as regards the rule of law in the member states (European Commission 2018) rather satisfies the demands of old member states. Seeing as it might have a disciplinary effect, it can be seen as a step in the right direction. But there are still some caveats. The generalised deficiencies are at the very least unclear, which hampers its effectiveness. Moreover, it sharpens the conflict between new and old member states, because the new ones do not necessarily see the financial support as a generosity but as a bargained price for opening their infant markets for the developed Western countries by the accession, with EU funding simply offsetting the losses. Cutting these sources would mean an impetus, at least for the new member states, to introduce measures to protect their own markets, and, of course, to capitalise on them politically (describing them as punishment for defending the national interest) (Adamski 2019, pp. 645–649).

6 CONCLUSION

Since 2010, there has been an ongoing discussion in Europe as to whether Hungary is violating the fundamental values of the European Union, and if so, what to do with it. For some, Hungary is a deterrent example; for others, it is a guidebook on how to exploit the benefits of the membership and getting away with it.

The Hungarian government has a very transactional position in relation to the EU and is rather immune to discussions on its core principles.⁴¹

⁴¹Well-documented by Kelemen (2017).

It often describes them as pointless moral debates on diverging political philosophies.⁴² There are several circumstances supporting this value relativism. There is, on the one hand, no value unity in the EU, and no authority to define the so-called common values. The conceptual core of these values might be common, but there are so many niceties and particulars that it is very hard to establish a canon of these values. This inherent inhomogeneity of the European Union (united in diversity, as the motto goes) can be very easily exploited in a postmodern world of philosophical deconstruction by highlighting natural contradictions and variations, which might result also in the destruction of these values. This is being attempted by the Hungarian government.

Therefore, the EU should make an effort to neutralise the dispute⁴³ and to make the best use of those competences, powers and procedures which are rather immune to the sophistry of the Hungarian government, such as the internal market, competition rules. The Commission, while making some progress, has not effectively used its powers.

The conclusion comes very close to Kennan's long telegram: "We must have courage and self-confidence to cling to our own methods and conceptions of human society. (...) The greatest danger that can befall us in coping with this problem of Soviet communism, is that we shall allow ourselves to become like those with whom we are coping". One way out is the even-handed application of EU law for all member states, new and old, big or small.

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⁴²In worse cases, even calling it a political witch-hunt, see, e.g., Bakó (2019).

⁴³For a plea for a broad EU debate on its core principles, see Chapter 14.

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Does It Help to Call a Spade a Spade? Examining the Legal Bases and Effects of Rule of Law-Related Infringement Procedures Against Hungary

Lisa H. Anders and Sonja Priebus

1 INTRODUCTION

In view of the “rule of law crisis” (Reding 2013), politicians and scholars started discussing the EU’s tools to defend the rule of law and democracy in its member states. This chapter focuses on one of these tools, the infringement procedure.

Scholars agree that infringement procedures are generally an effective instrument to induce compliance with EU Treaty obligations and secondary law (Börzel 2003). Whether they are also a suitable means to

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enforce the EU's foundational values and to combat rule of law backsliding in EU member states is, however, still contested. Some regard the instrument as "too narrow to address the structural problems" of backsliding (Scheppelle 2016, p. 109), fearing that it forces the Commission to misconstrue rule of law problems as instances of non-compliance with EU secondary law (Pech and Kochenov 2019, p. 5). This would allow the targeted governments to downplay the severity of the problems at hand, react with minimal legal changes to satisfy the Commission's requirements and then proceed with their illiberal agenda. Some suggest that rule of law-related infringement procedures induce symbolic compliance at best (Batory 2016) and might even be counterproductive if the targeted governments succeed in framing the Commission's criticism as an illegitimate interference into domestic politics (Schlipphak and Treib 2016). Others, in contrast, are more sanguine, deeming infringement procedures a "powerful alternative" to the procedure under Article 7 of the Treaty on European Union (TEU) and expecting them to contribute to depoliticising conflicts concerning the rule of law (Schmidt and Bogdanowicz 2018, p. 1062). The Commission has also recently shown a renewed interest in the instrument, announcing that it would continue to use it in rule of law related cases (European Commission 2019b).

Our empirical knowledge about the deployment and actual effects of infringement proceedings in rule of law related cases is, however, still limited. So far, scholars have focused predominantly on the most prominent cases, while systematic studies are lacking. Thus, we do not know on what legal basis the Commission introduces these proceedings, whether it always refers to concrete breaches of EU secondary law as assumed in literature or whether it also cites more fundamental values. Furthermore, we lack knowledge about the targeted government's legal and public reactions. To contribute to closing this gap, we empirically examine all infringement procedures with rule of law significance launched against Hungary since 2010. Hungary is an ideal case to study since it has already faced seven rule of law-related infringement procedures. This relatively high number of cases enables us to examine the legal bases and effects of these proceedings and explore patterns over time.

The chapter is structured as follows. The next section briefly takes stock of research on infringement procedures and discusses the arguments for and against the deployment of this tool in rule of law related

cases. Section 3 examines the legal bases of the infringement procedures with rule of law relevance launched against Hungary since 2010, while Section 4 briefly sketches the Hungarian government's reactions. Section 5 is devoted to exploring the interplay between Brussels and Budapest over time. The concluding section summarises and discusses the main findings.

2 INFRINGEMENT PROCEDURES AS AN INSTRUMENT AGAINST RULE OF LAW BACKSLIDING IN EU MEMBER STATES?

The meaning of the rule of law is notoriously contested (see Chapter 9). A thin concept simply equates the rule *of* law with the rule *by* law. More common are thicker concepts relating the rule of law to checks and balances, the independence of the judiciary as well as the guarantee of basic human rights (Merkel 2012). It is exactly these principles that are being systematically attacked in Hungary. Since Fidesz and its coalition partner KDNP won a two-thirds majority in parliament in 2010, the country's constitutional order has been changed dramatically. The government has centralised power within the executive, turned the National Assembly into a rubber-stamp parliament and considerably weakened the Constitutional Court. Besides, it adopted an electoral law designed to favour Fidesz and passed several laws to strengthen the government's influence over the media and to curb the activities of civil society organisations (Ágh 2018; Priebus 2016). As a result, the former democratisation frontrunner is considered a prime example of rule of law backsliding¹ or even autocratisation (see Chapter 12). Against this backdrop, and in view of similar developments in other member states, a growing body of research discusses the EU's political and legal tools to tackle backsliding in its member states.

Compared to other tools, such as the “nuclear option” of Article 7 TEU, the infringement procedure has several advantages. Most notably, its decisional thresholds are much lower and the defiant member states

¹ Rule of law backsliding is defined as the process “through which elected public authorities deliberately implement governmental blueprints which aim to systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic state and entrenching the long-term rule of the dominant party” (Pech and Scheppele 2017, p. 10).

enjoy “a full set of procedural guarantees and rights” (Schmidt and Bogdanowicz 2018, p. 1065). The procedure starts with informal consultations between the Commission and the state suspected of violating EU rules. Then, the Commission can send a “letter of formal notice” to the member state concerned. If dissatisfied with the reaction to the letter, it can give a “reasoned opinion”, and, if non-compliance prevails, bring the case before the Court of Justice of the European Union (CJEU). Relying on informal consultations and persuasion, the Commission usually tries to tackle non-compliance in the early stages of the procedure and avoids open conflicts with non-complying member states (Closa 2019). In fact, the vast amount of cases are settled in the early stages of the procedure (Börzel 2003, p. 207), showing that the Commission’s enforcement actions are generally quite effective in inducing compliance with EU law (Panke 2010).

Infringement procedures can be initiated by the Commission if it “considers that a member state has failed to fulfil an obligation under the Treaties” (Article 258 TFEU). The Commission must base its proceeding on clear legal EU norms. The EU’s foundational values of democracy and the rule of law, however, are legally undetermined as Article 2 TEU mentions but does not further specify these terms (Magen 2016, p. 1051; Müller 2015, p. 147). This does not mean that the EU’s foundational values are explicitly excluded from the supervisory remit of the Commission (Hillion 2016). Yet, as these values do not provide a clear legal basis for their enforcement, the Commission has to look for a “more technical but more clearly established legal basis to prosecute the action” (Blauberger and Kelemen 2016, p. 325).

Whether the resulting indirect and piecemeal approach can restrain backsliding is questionable. As also stressed by the Commission, it is only a viable route when the concerns of the rule of law at hand “constitute, at the same time, a breach of a specific provision of EU law” (European Commission 2014, p. 5). Besides, critics underline that it misconstrues or miscategorises the problems at hand. Broader backsliding tendencies are not named as such but are reframed by the Commission as concrete breaches of EU law in individual proceedings (Scheppele 2016). This enables backsliding governments to respond “satisfactorily to the outstanding complaints without having to change anything essential about its illiberal reforms” (Jenne and Mudde 2012, p. 150). Others even posit that the targeted governments merely engage in symbolic

compliance and simply create the appearance of norm-conform behaviour (Batory 2016).

Besides, scholars debate how rule of law-related infringement procedures can be rhetorically exploited. Some contend that if the Commission sues backsliding states on more technical grounds and reframes rule of law problems as breaches of secondary law, it allows backsliding governments to downplay the actual conflicts by publicly presenting rule of law related problems as ordinary compliance difficulties (Jenne and Mudde 2012). Some scholars, therefore, suggest that the Commission should engage in systemic infringement actions and bundle “a group of specific violations together” (Scheppele 2016, p. 107) to highlight the systemic and persistent character of rule of law backsliding. Then, cases would not be miscategorised, providing the Commission with “greater options and a clearer message of response to rule of law backsliding” (Pech and Kochenov 2019, p. 5). Others, moreover, warn that rule of law-related infringement procedures might invite the errant governments to play a “blame game” (Schlipphak and Treib 2016). Governments could frame any EU intervention as a politically motivated, illegitimate interference “in policies beyond the remit established by the EU Treaties” (Dawson and Muir 2012, p. 473) and themselves as defenders of their nation, which, as a consequence, could alienate citizens from the EU. Whether governments really succeed with these strategies is doubted by others. Highlighting the high levels of public trust in the Commission and the CJEU, they suggest that infringement procedures might be welcomed by citizens and help to depoliticise current conflicts over the rule of law (Blauberger and Kelemen 2016; Schmidt and Bogdanowicz 2018).

In short, the concrete effects of infringement procedures as instruments against democratic backsliding remain unclear. Up until now, scholars have mainly focused on the most prominent infringement procedure (which addressed the lowering of the retirement age of judges) and generally concluded that infringement procedures are ineffective in remedying rule of law problems (Müller 2015; Scheppele 2016). Systematic empirical studies on the deployment and the legal effects of infringement procedures in all cases with rule of law relevance as well as on the government’s communication in these cases are still lacking (see Szente 2017 for an exception). This chapter contributes to fill this gap by analysing all rule of law-related infringement procedures launched against Hungary since 2010 (see Table 1). So far, studies on Hungary have identified six

Table 1 Rule of law-related infringement procedures against Hungary. *Source* authors' compilation

No.	Beginning IP ^a	Subject triggering IP
1	12/2010 ^b	Title: Media legislation Trigger: Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content + Act CLXXXV of 2010 on Media Services and Mass Media
2	01/2012	Title: Independence of Central Bank Trigger: Fundamental Law of Hungary + Act CCVIII of 2011 on the Hungarian National Bank
3	01/2012	Title: Independence of Judiciary: Retirement age of judges, prosecutors and public notaries Trigger: Fundamental Law of Hungary
4	01/2012	Title: Violation of Independence of Data Protection Supervisory Authority Trigger: Fundamental Law of Hungary
5	04/2017	Title: Violation of EU law by amendments to the Hungarian Higher Education Law Trigger: Act XXV of 2017 ("Lex CEU")
6	07/2017	Title: Violation of EU law by the Act on the Transparency of Organisations Supported from Abroad Trigger: Act LXXVI of 2017 ("NGO-law")
7	07/2018	Title: Violation of EU law by means of the Act VI of 2018 amending certain acts with respect to measures against illegal immigration and the 7th amendment to the Fundamental Law of Hungary Trigger: 7th Amendment to Fundamental Law of Hungary ("Stop-Soros") Act No VI of 2018

^aDate of letter of formal notice

^bThis case was closed before a letter of formal notice was issued. We take the letter written by then-commissioner Neelie Kroes to the Hungarian government as the starting date

such cases; we additionally consider another recent case, the infringement procedure launched against the so-called "Stop Soros" legislation.

Drawing on Commission press releases and public statements of Commissioners, we first examine the legal basis referred to by the Commission when starting infringement action in rule of law related cases. In particular, we analyse whether the Commission bases its infringement actions solely on "technical" Treaty obligations and secondary law or if it also refers to the rule of law or other fundamental values connected to it. Besides, using a database of Hungarian legislation (<https://net.jogtar.hu>) as well as the Official Gazette of Hungary (*Magyar Közlöny*),

we analyse Hungary's legal reactions to these infringement procedures. Furthermore, we take a closer look at the government's public reactions, relying on official press releases, summaries of government members' public appearances and full transcripts or summaries of interviews with government members issued within two weeks after each Commission's announcement of action against Hungary and published on the government's official website.

3 MISCATEGORISING THE PROBLEMS? THE LEGAL BASES OF RULE OF LAW-RELATED INFRINGEMENT ACTION

In all cases under examination, the Commission did not refer directly to Article 2 TEU, the EU's foundational values of democracy or the rule of law, but based its infringement actions on other EU law violations (see Table 2 in the Appendix for an overview). In most cases, however, it complemented technical references to breaches of Treaty provisions and secondary law with references to the Charter of Fundamental Rights of the European Union (CFR).

In this vein, the Commission framed the media legislation package of 2010 (case 1) primarily as an incorrect transposition of the EU's Audiovisual Media Services directive, but also stressed that "fundamental media freedoms such as freedom of expression and media pluralism" as enshrined in Article 11 of the CFR were endangered (European Commission 2011; Kroes 2011). This was in line with general criticism voiced by observers that the media legislation threatened the freedom of the press by establishing a politically biased Media Council, altering appointment procedures to ensure political influence on the public broadcasting service and demanding "balanced coverage" (Polyák 2015; Várnagy 2011).

Similarly, in the infringement procedure triggered by the restructuring of the Hungarian ombudsmen system (case 4), the Commission referred to both violations of secondary law and CFR provisions. Noting that the former data protection ombudsman's functions had been transferred to a new agency without the former guarantees of independence (Bánkuti et al. 2012, p. 266) and that the incumbent ombudsman for data protection had been prematurely removed from its office, the Commission argued that these provisions violated Article 16 of TFEU as well as Directive 95/46/EC codifying the EU rules on data protection. Additionally, it referred to Article 8 of the CFR guaranteeing the independence of data protection supervisors (European Commission 2012a).

In the case of the Lex CEU (case 5), which changed the rules for non-Hungarian universities and obviously targeted the private Central European University (CEU) founded by George Soros, the Commission primarily referred to violations of internal market principles. It argued that the law was incompatible with the freedom to provide services and the freedom of establishment as enshrined in Articles 56 and 49 TFEU, respectively, as well as in Directive 2006/123/EC on services in the internal market. At the same time, it also stressed violations of Articles 13, 14 and 16 of the CFR, namely academic freedom, the right to education and the freedom to conduct a business (European Commission 2017b).

Also in case 6, the infringement procedure launched in reaction to the “NGO law” (Act LXXVI of 2017 on the Transparency of the Organisations Supported from Abroad), the Commission communicated that it saw several fundamental principles of the CFR violated. The new legislation obliges NGOs receiving over 7.2 million HUF (about 24,000 Euros) per year from abroad to be registered by a court and to be officially labelled as “organisations supported from abroad” in any publications and on their websites. As for the Commission, this does not only constitute a violation of the free movement of capital, but also of the freedom of association as well as the rights to protection of private life and personal data (European Commission 2017c).

Reacting to the “Stop Soros” legislation (case 7), which further intensified pressure on civil society organisations by specifying that organisations or people who “support or promote illegal immigration” (Act VI of 2018, § 11) can be sanctioned with up to one year of imprisonment or even expulsion from the country, the Commission identified a violation of the Asylum Procedure Directive and the Reception Conditions Directive, a breach of Articles 20 and 21 (1) TFEU as well as the Free Movement Directive and the Asylum Qualifications Directive. Yet, just as in the aforementioned infringement procedures, it also saw a violation of the CFR, as the “Stop Soros” legislation introduced new non-admissibility grounds for asylum applications not regulated by EU law, thus restricting the right to asylum guaranteed in Article 18 (European Commission 2018).

In only two cases did the Commission frame rule of law related concerns solely as breaches of concrete Treaty obligations and secondary law. In the case of the Hungarian National Bank (case 2), an infringement procedure was launched because the new Hungarian Constitution in connection with Act CCVIII of 2011 on the Hungarian National Bank had introduced several provisions threatening its independence.

The Commission justified the infringement action by referring to Article 130 TFEU on the full independence of the national central banks and to Article 127(4) requiring consultation with the ECB “on any draft legislative provision in its field of competence” (European Commission 2012a). In the case of the lowering of the judges’, prosecutors’ and public notaries’ retirement age (case 3), which caused the premature retirement of several hundred judges, enabling the government to fill vacant positions with new and loyal candidates (Scheppel 2016, p. 109), the Commission framed the obviously politically motivated replacement of judges exclusively as a breach of Directive 2000/78/EC on equal treatment in employment, which prohibits age discrimination in the workplace (European Commission 2012a). In this case, rule of law related concerns were treated as a matter of age discrimination.

Overall, this demonstrates that even though the Commission did not justify the rule of law-related infringement procedures with violations of the rule of law or democracy as such, and even though it never directly mentioned Article 2 TEU, it also did not simply miscategorise the underlying problems by presenting them as being only breaches of technical legislation. Instead, in most of the cases, it stressed various rights and freedoms constitutive of a democracy, such as the freedom of expression and information (case 1), the freedom of assembly and association (case 6), the right to protection of personal data (cases 4 and 6) and academic freedom as well as the right to education (case 5). Obviously, the Commission made a clear effort to link its rule of law concerns to fundamental democratic prerequisites.

4 FROM LIMITED COOPERATION TO RESISTANCE: THE HUNGARIAN GOVERNMENT’S REACTIONS TO RULE OF LAW-RELATED INFRINGEMENT PROCEDURES

The Hungarian government’s reactions to rule of law-related infringement procedures underwent a fundamental change, both in substance and rhetoric. In the beginning, the government presented the infringement procedures as regular, policy-related procedures addressing ordinary transposition problems. It stressed that the Commission never directly referred to fundamental values or rule of law problems (Hungarian Government 2011) and reasoned that there was no conflict concerning

fundamental values such as the freedom of the press or the independence of the judiciary (Hungarian Government 2012a, b). Disagreements between Brussels and Budapest were explained in terms of differing perspectives on compliance problems, e.g. that the former saw the retirement age of judges as a judicial matter while the latter viewed it as a matter of pensions policy (Hungarian Government 2012d; Orbán 2012). The government underlined that apart from these slightly differing interpretations and smaller technical problems, the Hungarian legislation was overall compatible with EU law and that it just had to be properly explained to the Commission. In this vein, it framed the infringement procedures as a chance for dialogue and an opportunity to resolve conflicts (Hungarian Government 2012a, b). It also displayed its optimism regarding the Commission's "objective, impartial evaluation, which excludes double standards and is founded on a judicial and professional basis"² (Hungarian Government 2012c). Last but not least, it stressed Hungary's willingness to comply with the Commission's requirements and CJEU rulings (Hungarian Government 2012a, c).

In accordance with these conciliatory public statements, the Hungarian government changed some parts of the new media legislation package after bilateral talks and enacted these changes through Act XIX of 2011. It also complied with the Commission requirements in case 3, but only after a ruling by the CJEU had confirmed the Commission's position (EU:C:2012:687). In reaction to the Commission's criticism, Act XX of 2013 re-increased the judges', notaries' and public prosecutors' retirement age gradually to 65 within ten years and also made provisions for reinstating unlawfully dismissed judges unless the position had not been filled yet. In these cases, the former judges should be entitled to financial compensation. Measured solely against the Commission's concrete requirements, these two infringement procedures induced complete compliance.

In contrast, the government's reaction in the cases of the National Bank and of the independence of the data protection authority were mixed, yielding only partial compliance with the Commission's requirements. The Hungarian government deleted some provisions that would have curtailed the National Bank's independence but did not withdraw the criticised changes in the governor's remuneration scheme. Despite

²All quotes are own translations.

this obvious partial compliance, the infringement procedure was closed in April 2012 even before the legislative changes were enacted (European Commission 2012b). The government's legal reaction to the infringement procedure on the independence of the data protection authority provides another example of partial compliance. The government changed the dismissal rules, but left the issue of the data protection ombudsman unresolved. Even though the Commission's position had been confirmed by the CJEU in April 2014 (EU:C:2014:237), the former ombudsman András Jóri was not reinstated, but only given financial compensation. Nevertheless, the Commission silently closed the case in October 2014.

In all four cases mentioned above, however, the underlying rule of law problems have not been resolved. Despite the changes to the media legislation, the government's direct influence on the public broadcasting service has been maintained, as the Media Council's composition remained unchanged. As a result of this direct political influence, independent or left-leaning media were put under severe financial pressure, while a new government-friendly media staffed with public money was established (Várnagy 2017, p. 127). The National Bank's independence has also been severely jeopardised. By appointing the minister of economics György Matolcsy as new governor in 2013, the government managed to install a Fidesz-loyalist as head of the bank (Buckley and Kester 2013), thus ensuring government control despite the legislative changes made in response to the infringement procedure. The same year, the fifth amendment to the constitution merged the Central Bank with the Financial Supervisory Authority, increasing the government's influence on financial and monetary matters. Concerning the independence of the judiciary, the altered legislation remained rather ineffective in practice as the majority of positions had already been filled by then. Many judges, especially in high-ranking positions, therefore, could not return to their former positions. While formally complying with the Commission's requirements, the Hungarian government could still at least partly realise its objective of filling positions with new judges (Scheppele 2016, p. 109f.).

The communication on cases 5, 6 and 7, in contrast, was highly confrontational, with the government showing hardly any inclination of cooperation or willingness to comply with the Commission's demands. Increasingly, it presented the rule of law-related infringement procedures as political attacks on Hungary due to its resistance against migrants and the EU's migration policy (Orbán 2017a, b). Especially in cases 5 and 6, the government linked the two rule of law-related infringement

procedures with two asylum related infringement procedures launched in parallel (see the contribution of Beger in this volume). Reacting to the infringement procedure on the “Stop Soros” package, the government’s spokesman put forth that “those who protect Europe are punished while those who send for migrants are praised” (Hungarian Government 2018). Besides, from case 5 onwards, the alleged prominent role of Soros in orchestrating migration across Europe, the “Soros plan”, became the government’s dominant narrative. As the Prime Minister explained in summer 2017, “bureaucrats of Brussels want to take revenge on Hungary” as the country “is doing its job, is protecting its borders, is defending its citizens” (Orbán 2017a). He added that the bureaucrats “play by Soros’s music. There is a Soros plan” (Orbán 2017b). Now, Soros’s name figured in almost all public statements on the rule of law-related infringement procedures. EU institutions were repeatedly depicted as being infiltrated by “Soros’s people” and, therefore, as acting according to his plan. As the Secretary of State for Justice argued, “according to leaked data, George Soros has more than 200 reliable people in the European Parliament alone” (Völner 2017a; also Völner 2017b). Orbán argued similarly that “Brussels is under his influence” and that the “Brussels machinery is executing his plan” (Orbán 2017c). In short, all rule of law-related infringement procedures after 2015 were officially depicted as Soros’s “revenge” executed by EU institutions: “We see that the issue of the university, the issue of the ‘fake civil society organisations’ [...] as well as the issue of quotas lead us to one person called George Soros” (Orbán 2017d). The government has not changed this line of reasoning since; rule of law related criticism by EU actors is regularly depicted as an act to punish Hungary for its migration policy (Hungarian Government 2019; Varga 2019).

In line with its public rhetoric, the Hungarian government refused to change the objectionable legislation even slightly and let the Commission refer them to the CJEU. Regarding the Lex CEU, it insisted that there was no necessity to change the law (Hungarian Government 2017). The complaint against the “Lex CEU” was therefore lodged before the CJEU in December 2017. Similarly, in the case of the NGO law, the Hungarian government did not implement any changes after the Commission’s letter of formal notice and its reasoned opinion. Orbán called the Commission’s criticism “ridiculous” and far-fetched, saying that an “intelligent lawyer” would not even touch the Commission’s document (Orbán 2017c). Therefore, this case was also referred to the CJEU in December 2017

(European Commission 2017d), being without a ruling thus far. In the so-called Stop Soros case, the Hungarian government not only insisted on its position, rejecting legislative changes even if the case was referred to the CJEU (Hungarian Government 2017; Völner 2017b), the Prime Minister also proclaimed that the Hungarian government was not paying much attention to the matter, as due to the upcoming EP elections, the Commission's days were numbered (Orbán 2018). As a consequence, the Commission referred the case to the Court in July 2019, where it awaits its ruling.

5 ESCALATION AND LEARNING EFFECTS: THE INTERPLAY BETWEEN BRUSSELS AND BUDAPEST SINCE 2010

As demonstrated above, the limited cooperative stance of the Hungarian government between 2010 and 2013 has turned into grim resistance. While the first four rule of law-related infringement procedures were at least partly successful in legal terms, the last three procedures met fierce opposition. Starting with case 5 in 2017, the Hungarian government has decidedly refused to even slightly change the provisions violating EU law, causing the referral of all cases to the CJEU.³

It seems that during this ongoing escalation of conflicts, the Hungarian government's increasingly confrontational stance in the rule of law related cases led the Commission to reconsider its conventional approach of conflict avoidance. In line with previous studies, cases 2 and 4 demonstrate that the Commission first avoided going through all the stages of the infringement procedure. Despite the obvious partial compliance, it closed both cases and did not bring them before the court. However, this hesitant position yielded adverse effects. First, it gave the Hungarian government the chance to downplay the rule of law problems. As the cases were officially closed, it could argue that it had "a confirmation of our freedom of the press being okay, our media regulations being

³Hungary's overall compliance record has not deteriorated and referrals to the court remain an exception as a closer look at all infringement procedures launched against Hungary since 2010 reveals European Commission (2020). This corroborates earlier findings. Scholars have repeatedly pointed out that the new member states comply even better with EU law than the older member states (Börzel and Sedelmeier 2017). While the EU's influence on "hot topics" decreases, the member states' compliance performance in less controversial areas remains strong (Grabbe 2014, p. 42; see also Schimmelfennig and Sedelmeier 2019).

okay, our electoral law being okay, our constitution being okay” (Orbán 2017d). Similarly, and despite the ongoing deterioration of the media situation which resulted in the “effective take-over of once-independent media” (Joint International Press Freedom Mission 2019), the Secretary of State for International Communication and Relations Zoltán Kovács recently claimed, “if there’s a country that holds a certificate showing that its media regulatory system conforms to EU law, it’s Hungary” (Kovács 2019).

Secondly, it became obvious that governments can use the long time span between the lodging of a complaint and the court ruling to buy time and meanwhile continue to dismantle democracy and the rule of law. The Lex CEU is just one case in point. When the Hungarian Parliament adopted the law, the Commission acted swiftly and more decisively than before, sending a letter of formal notice to Budapest in April, just a few days after the adoption, followed by a reasoned opinion in July and a referral to the Court in December that year (European Commission 2017a, b, d). Since then, the court ruling is pending, while the government has achieved its goal of driving the university out of the country. Although the CEU fulfilled the new requirements for foreign universities, the government did not sign the document that would have allowed the university to run a campus in Budapest. In response, the university partly moved to Vienna (Bárd 2018).

Obviously responding to these adverse effects of recent rule of law-related infringement procedures (and without doubt also inspired by the Polish experience), the Commission has announced its intention to deploy the instrument in a more decisive manner and to pursue a “strategic approach”. According to the Commission, this strategic approach includes the request for expedited proceedings and interim measures “whenever necessary” (European Commission 2019a). This resonates with scholarly opinions according to which the Commission should “explore the untapped potential of increasing and interconnected infringement actions” (see also Bárd and Śledzińska-Simon 2019; Pech and Kochenov 2019, p. 5).

In addition, the Commission declared that it will “further build on the recent case law of the Court” (European Commission 2019b). In fact, case law is an important source to further determine the meaning of the EU’s foundational values and thus to make it a legal basis for rule of law-related infringement procedures. For example, with Case C-64/16, the CJEU developed clear yardsticks to assess the independence of the

judiciary in EU member states. This might further reduce the risk of miscategorising rule of law problems.

6 CONCLUSION

To contribute to the burgeoning body of research on the EU's tools against rule of law backsliding, this chapter has set out to systematically analyse all rule of law-related infringement procedures launched against Hungary since 2010. Our analysis reveals that even though the Commission did not once directly refer to democracy and the rule of law as enshrined in Article 2 TEU, it did not simply miscategorise the rule of law problems as ordinary instances of non-compliance either. In most of the cases, it referred to fundamental democratic prerequisites, namely rights and freedoms incorporated in the Charter of Fundamental Rights of the European Union.

Secondly, in all cases under investigation, the Hungarian government downplayed the Commission's rule of law concerns. In early cases, it repeatedly talked down the severity of the Commission's complaints by presenting conflicts with Brussels as differences of opinion on technical problems. In later cases, it did so by playing a blame game and adopting a victim narrative, according to which the EU was infiltrated by "Soros people" and going against Hungary because it wanted to punish the country for its restrictive asylum policy. This demonstrates that despite their legal character and formalised procedures, infringement procedures could not contribute to depoliticising the conflicts and thereby ease the strained relations between Budapest and Brussels. On the contrary, as things currently stand, the rule of law-related infringement procedures obviously bear the risk of politicising the judiciary by bringing highly controversial conflicts before the CJEU. It remains to be seen how Hungary will react to the CJEU judgements on the Lex CEU, the NGO law and the "Stop Soros" package.

Thirdly, especially the Hungarian government's open resistance in the last three cases casts doubt on the premise that the correct identification of rule of law and democracy problems could induce compliance with the Commission's requirements. These cases clearly demonstrate that the most important prerequisite for the procedures' effectiveness is the targeted government's willingness to comply. If this is lacking, the categorisation of cases—references to fundamental rights such as freedom of association, academic freedom and the right to asylum—cannot make a

difference. Nevertheless, the Commission seems determined to draw on recent case law and to establish a clearer link to the rule of law in future cases.⁴

Last but not least, our findings cast doubt on the suitability of another prominent suggestion, namely the creation of a new neutral institution or a “committee of independent experts” (Weber and Di Fabio 2019) as a “democracy watchdog” (Müller 2015, p. 143). If the Commission, the guardian of the treaties, is systematically presented as an agent of Soros, and if its infringement procedures are systematically framed by the Hungarian government as political attacks, there is no reason to expect that the same fate would not befall a new institution of neutral experts.⁵ The same seems true for systemic infringement procedures. While they enable the Commission to approach rule of law problems more systematically, they seem to be even more prone to politicisation and blame games by governments. By starting systemic infringement procedures, the Commission would focus exclusively on the rule of law as well as democracy issues, and the targeted government could easily present these as systematically orchestrated political attacks.

Overall, our analysis shows that the infringement procedures as a legal instrument against rule of law backsliding are not only futile but even counterproductive. It furthermore casts doubt on the premise that a proper application of the instrument will make a difference and yield the desired effects.

APPENDIX

⁴For a critical discussion of this, see Chapter 14.

⁵For the potential of supporting NGOs as watchdogs of democracy and EU membership, see Chapter 11.

Table 2 Rule of law-related infringement procedures launched against Hungary since 2010—trigger, the Commission’s critique and Hungary’s legal reactions. *Source* authors’ compilation

<i>Content of legislation triggering infringement procedure</i>	<i>Legal grounds of infringement procedures and Commission’s critique</i>	<i>Hungary’s legal reactions</i>
<p>Case 1 Merger of National Telecommunications Authority with National Radio and Television Commission into National Media and Infocommunications Authority (NMHH), whose president is appointed by the President of the State for 9 years. Establishment of Media Council (MT), responsible for media content regulation. MT-Members elected with 2/3-majority in parliament; NMHH president can also be MT president</p> <p>Regulation of media content and broadcasting services obliges media services to be registered by the NMHH, contains a vague obligation to balanced coverage, eases the rules concerning the protection of information sources and establishes penalties for offenders of the regulations. Institution in control of the application of the regulations is the MT</p>	<p>Incorrect transposition of the EU’s Audiovisual Media Services Directive; violation of Article 11 of the Charter of Fundamental Rights of the EU (CFR) Commissioner Kroes (2011) criticised that the requirement of balanced coverage also applied to on-demand services; that the country of origin principle was violated as new provisions applied to media firms established in other member states; that compulsory registration of all media services (including on-demand services) before starting to broadcast violated the freedom of establishment; that the provision according to which media content may not “cause offence” was too vague. She also stressed that the legislation threatened the “freedom of expression and media pluralism” (European Commission 2011)</p>	<p>After bilateral talks in February 2011, both sides agreed that on-demand services would be explicitly excluded from the balanced coverage provision; that media providers established in other member states could not be fined for violating Hungarian media provisions; that instead of a prior registration, a registration within 60 days after the beginning of operation would be mandatory; and that the scope of the provision on “causing offence” would be clarified, limiting it to situations of incitement to hatred or discrimination (European Commission 2011). Act XIX of 2011 adopted in March 2011 enacted these changes</p>

(continued)

Table 2 (continued)

<i>Content of legislation triggering infringement procedure</i>	<i>Legal grounds of infringement procedures and Commission's critique</i>	<i>Hungary's legal reactions</i>
<p>Case 2 Introduction of a clause to merge the National Bank (NB) with the Financial Supervisory Authority. Furthermore, new regulations strengthening the executive's influence on the NB's decision-making: responsible ministers can participate in Monetary Council (MC) meetings; the NB is obliged to send meeting agendas to the government in advance. Rule changes for the dismissal of the governor and MC members: the Prime Minister can ask the President of the State to dismiss them on vague grounds. Immediate reduction of the governor's remuneration</p> <p>According to observers, changes were introduced because the NB had not supported the government's economic and financial policy (Szente 2017, 466)</p>	<p>Violation of Article 130 TFEU and Article 127(4)</p> <p>Commission criticised that the possible merger of the NB with the Financial Supervisory Authority would degrade the NB governor to a mere deputy chairman; that the participation of ministers in MC meetings and the government's prior notification of the agenda would enable the government to influence the NB from within; that the changes in the remuneration scheme for the Governor were immediately applicable to the incumbent; that the rules of dismissal for the Governor and MC members were prone to political interference. In effect, all measures were deemed to strengthen the executive's influence on the NB (European Commission 2012a)</p>	<p>The first amendment to the new Fundamental Law deleted the provision on the merger of the NB with the Financial Supervisory Authority. Furthermore, an amendment to the Act on the National Bank (Act XCIX of 2012) abandoned the minister's right to participate in meetings as well as the obligation to send meeting agendas to the government in advance. The amendment also redesignated the rules for the dismissal of MC members, so as to limit the parliament's basically unrestricted discretion to dismiss members for vague reasons. Changes in the governor's remuneration scheme were not withdrawn</p>

Content of legislation triggering infringement procedure *Legal grounds of infringement procedures and Commission's critique* *Hungary's legal reactions*

Case 3	<p>Lowering of the judges', prosecutors' and public notaries' retirement age from 70 to 62. Establishment of a new National Judicial Council (NJC), whose president is elected by a 2/3-majority in parliament and has far reaching competences, i.e. transfer of cases to any court, selection of new judges and of court presidents (Somnevend et al. 2015, pp. 99–102). Renaming of the Supreme Court (SC) to Kúria</p> <p>Reforms enabled the government to fill hundreds of positions with new judges (Szente 2017, p. 466). The concentration of powers in the NJC president's hand was seen as a threat to the independence of the judiciary (Venice Commission 2012). The renaming of the SC entailed premature termination of the SC president's mandate</p>	<p>Breach of Directive 2000/78/EC on equal treatment in employment, prohibiting age discrimination at the workplace</p> <p>The Commission additionally criticised the premature termination of the former SC president's mandate and demanded further information on the new NJC president's strong powers (European Commission 2012a)</p>	<p>The Hungarian parliament enacted Act XX of 2013, which re-increased the judges', notaries' and public prosecutors' retirement age to 65 within ten years. It also provided for reinstating unlawfully dismissed judges unless the position had not yet been filled</p>
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(continued)

Table 2 (continued)

	<i>Content of legislation triggering infringement procedure</i>	<i>Legal grounds of infringement procedures and Commission's critique</i>	<i>Hungary's legal reactions</i>
Case 4	Replacement of the existing ombudsman system (four specialised ombudsmen for civil rights, data protection, national and ethnic minorities and future generations) with one general ombudsman and mere deputies. Restructuring put the incumbent data protection ombudsman's six-year term prematurely to an end. Delegation of data protection to the National Agency for Data Protection, controlled by the government	Violation of Article 16 TFEU and Directive 95/46/EC on data protection and of Article 8 CFR on the right to the protection of personal data. The Commission was specifically concerned about the new agency's independence as the agency's head could be dismissed by the Prime Minister and the President of the State on arbitrary grounds. It also criticised that the incumbent data protection ombudsman's six-year term was prematurely put to an end (European Commission 2012a)	The Hungarian government changed the dismissal rules through Act XXV of 2012, but left the issue of the data protection ombudsman unresolved. The Commission referred the matter to the CJEU (European Commission 2012b). Although the court confirmed the Commission's position (EU:C:2014:237), the former ombudsman András Jóri was not reinstated, but only given financial compensation
Case 5	Reform of rules for Non-Hungarian universities. Study programmes may be offered in Hungary with certified degrees only if (1) the operation is based on an international agreement between Hungary and the country of origin, (2) the university is accredited and running a campus in its home country, and (3) the university's terms of operation are stipulated in a treaty between the Hungarian government and the (federal) government of the university's home country. Additional modifications of name requirements and work permits. The amendment was clearly targeted at the Central European University (Bárd 2018)	Violation of the freedom to provide services as enshrined in Article 56 TFEU and Article 16 of Directive 2006/123/EC on services in the internal market, of the freedom of establishment laid down in Article 49 TFEU and Articles 9, 10, 13, 14 of Directive 2006/123/EC. Breach of Articles 13, 14, 16 of the CFR (right of academic freedom, right to education and freedom to conduct a business)	The Hungarian government insisted that there was no necessity to change the legislation (Hungarian Government 2017)

<i>Content of legislation triggering infringement procedure</i>	<i>Legal grounds of infringement procedures and Commission's critique</i>	<i>Hungary's legal reactions</i>
<p>Case 6 Reform of rules on NGOs. NGOs receiving over 7.2 million HUF (about 24,000 Euros) per year from abroad have to be registered by a court and be officially labelled as “organisations supported from abroad” in any publications and on their websites. Non-compliance leads to financial penalties or dissolution of respective NGOs</p>	<p>Violations of several fundamental CFR principles, especially the right to freedom of association. Breach or disproportional restriction of the right of free movement of capital as enshrined in the TFEU. The Commission also saw the right to protection of private life and of personal data endangered, as Hungarian authorities would receive and spread detailed information about the donors (European Commission 2017c)</p>	<p>The Hungarian government did not implement any changes</p>
<p>Case 7 New constitutional amendment restricts right to asylum. Asylum seekers coming to Hungary via a country where they are not exposed to persecution or the direct threat of persecution are no longer entitled to asylum in Hungary Organisations or people who “support or promote illegal immigration” (§ 11) can be sanctioned with up to one year of imprisonment or expulsion from the country (Act VI of 2018) The act was clearly targeted at organisations supported by George Soros</p>	<p>Violation of Asylum Procedure Directive and the Reception Conditions Directive. Breach of Articles 20 and 21 (1) TFEU as the package “unduly restricts the exercise of free movement rights of EU citizens without due regard for procedural guarantees or for the rights of the people affected” as well as the Free Movement Directive and the CFR. It also was a violation of the Asylum Qualifications Directive and the CFR (European Commission 2018)</p>	<p>The Hungarian government did not implement any changes</p>

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Safeguarding Democracy and the Rule of Law by Civil Society Actors? The Case of Poland

Claudia-Y. Matthes

1 INTRODUCTION

The judicial reforms which the party Law and Justice (Prawo i Sprawiedliwość, PiS) started directly after being elected into government in November 2015 targeted four institutions: the Constitutional Tribunal (Trybunał Konstytucyjny, TK), the Supreme Court (Sąd Najwyższy, SN), the National Council of the Judiciary (Krajowa Rada Sądownictwa, KRS) and the common courts. While there had already been a debate for years about the workload and efficiency of Polish courts, the content of changes shows that the government's goal was primarily to exert political control on them. Both the SN and the TK had gained a reputation as independent actors and defenders of civil rights and therefore, according to the government's blueprint to reorganise the state, courts were the first target. In line with these changes, the government re-merged the offices of the attorney general and the minister of justice who received additional powers of discretion. While the European Commission had waited a while until it took some action against similar changes in Hungary, it raised its

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voice very quickly in the Polish case and asked the government to rework the legislation.

However, considering the time that has passed since the European Commission launched the Rule of Law Framework and the Article 7 procedure against Poland in January 2016 and December 2017, respectively, and the meagre results that were achieved, these two instruments are generally assessed rather negatively and the EU does not perform well as a normative power in terms of rule of law principles (Ágh 2018; for a similar view regarding Hungary, see Chapters 9 and 10). Explanations reach from party politics and power plays inside the European institutions to the ineffectiveness of the EU's legal measures (Kochenov 2018, p. 4; Pech and Scheppele 2017). There are no legal mechanisms to enforce the values mentioned in Article 2 TEU and no effective means to fine member states that do not comply by the rules out of ideological reasons (Kochenov 2018, p. 10; Mader 2018). In addition, Commission, EP and Council often do not act along similar lines (Oliver and Stefanelli 2016; Bárd and Carrera 2017, pp. 7–9), and the requirement for unanimous voting on the question of if a member state shall lose its voting rights in the Council (plus the two-thirds majority in the Parliament) proves to be too high a hurdle to take a decision (Closa 2019).

Hence, in academia new forms of conditionality, such as a rule of law clause in the multi-annual financial framework (Halmai 2018), and a purely legal approach that trusts in the Court of Justice of the European Union (CJEU), are discussed (Kelemen and Blauburger 2017; De Schutter 2017; Niklewicz 2017, p. 286). Sedelmeier (2017) is one of the few authors who see some potential in the social pressure that the Rule of Law Framework exerts on member states if its formal, transparent and public nature were applied more consistently. A similar process of reflection is currently occurring in the Commission. In April 2019, it asked for responses from stakeholders on how to strengthen the rule of law (European Commission 2019a) and published a communication in July that lays, among other issues, an emphasis on civil society actors (European Commission 2019b, p. 6).

Now, the question is to what extent civil society actors in post-socialist countries are ready for such an active role. On the one hand, literature on the topic is relatively hesitant to assign them the ability to act across the levels of decision-making in the European polity (Kutter and Trappmann 2010). On the other hand, there are civil society actors in Poland that do

speak out loudly against the decline of the rule of law at numerous anti-government and pro-EU demonstrations (Mycielski 2016; Bień-Kacała 2017; O’Neal 2017).

The focus of the following chapter is to understand how and to what extent civil society, especially the civil rights movement, can serve as a further hinge for the Commission into a member state society¹ by articulating its protest on the domestic and the EU level. The next section sets out a theoretical framework for the analysis of civil society operating in the multi-level system of the EU. It is followed by a look into the domestic opportunity structure in which civil society actors operate in Poland and an analysis of their protest repertoire based on these groups’ publications, websites and secondary sources. The last section discusses the relevance of the findings for a possible improvement of the procedures to protect the rule of law.

2 THEORETICAL FRAMEWORK—CIVIL SOCIETY AND ITS POTENTIAL FOR A WATCHDOG FUNCTION

The involvement of civil society in EU governance and policy-making in general has become a widely investigated topic. Research on the issue can be divided into two strands of literature: one analyses the openness of the EU’s institutional setting for NGOs (Heritier 2003; Börzel 2010); the other, the domestic conditions under which NGOs operate and how these allow them to engage in the multi-level-governance game (Kohler-Koch and Buth 2011; Pleines 2010). Inside the European Union, the inclusion of civil society has become a topic since the implementation of the Maastricht Treaty in 1992. In order to increase the legitimacy of the EU, so-called soft-modes of governance that include civil society actors into policy-making were discovered as a solution to many of the then existing problems. Accordingly, civil society needs to have some organisational features that facilitate collective action, something that loose social movements or random gatherings of people in public are hardly able to do (Saurugger 2006). As Heidbreder (2012, p. 9) summarises, civil society on the EU level can have three functions: to complement existing modes of decision-making, to help to provide better policy-solutions and to

¹ Considering that PiS received just a relative majority of votes at the elections in 2015 (Fomina and Kucharczyk 2016, p. 62) and 70–80% of the Polish population is constantly positive about EU-membership (CBOS 2019), see Chapter 1.

increase the legitimacy of the EU polity. Here, the focus is not on policy-making, but on action against the decline of the rule of law, and both sides, civil society and European institutions, can increase their legitimacy through problem-solving.

Regarding the capacities of NGOs and interest associations in the democracies of Central and Eastern Europe (CEE) previous research showed that legacies of socialist times hinder them to act as watchdog organisations. Kutter and Trappmann (2010) and Pleines (2010) provide quite critical assessments of the ability of interest groups to use the EU system for their needs. According to their findings, legacies understood as social institutions, habits and discourses from the (post-)socialist period, compared with experiences made during the EU accession period and the various stimuli the EU provides to civil society, produce an ambiguous situation: some interest groups were able to adapt to the EU's expertise and bureaucracy-driven style of governance, while others still struggle with a new opportunity structure, an ongoing transformation of domestic state structures, clientelism and politicised bureaucracies. They also lack knowledge about the political process, the EU decision-making structures, language competencies, the ability to network in a multi-level arena and have only limited personnel.

Hence, on the one side, there are very outspoken civil society actors, in Poland and the region (Guasti 2016) that may have an impact. But on the other side, a fruitful EU-NGO relationship in the field of rule of law backsliding may be difficult to achieve. NGOs have to develop specific strategies in order to be able to handle the challenges of the multi-level system of the EU and they have to mediate two, partly contradicting tasks: to be professionalised Brussels-activists on the one side, and to be rooted in their national, regional or local stakeholder context on the other side (Heidbreder 2012, p. 11). Therefore, the idea to include civil society actors in order to achieve better or more legitimate policy outcomes is a normative goal and the realisation of which requires a very pragmatic and professionalised approach by civil society actors.

For the analysis, these reflections are operationalised by taking categories from the study of social movements: The civil society actors address an issue of grievance, the decline of the rule of law, and they have to operate in a domestic and European political opportunity structure (Kriesi et al. 1992) that has an influence on how they shape their protest repertoire and impact. The question is therefore, how the civil society actors respond, and how they are able to mobilise resources (McCarthy and Zald

1977) in terms of attention, supporters and access to decision-makers. So, under which circumstances did NGOs operate, which strategies or activities did they unfold between 2015 and 2019, and how did they approach the EU and the public?

3 CIVIL SOCIETY IN POLAND—ITS SHAPE AND CURRENT POLITICAL OPPORTUNITY STRUCTURE

Civil society in Poland has sometimes been described as weak, but has also been considered as vivid and resistive due to the legacy of *Solidarność* and civil disobedience practiced in socialist times. After 1989, during the economic transformation, trade unions, despite their tremendous decline in membership, remained an important actor that has frequently organised strikes or demonstrations in the course of privatisation and reconstruction (Ekiert and Kubik 2014, p. 51). The civil rights branch of *Solidarność* has survived as well, and today, several organisations operate in this field. Next to organised civil society, many less formalised grass-root initiatives and private networks exist (Jacobsson and Korolczuk 2017, pp. 4–5). The sector is characterised by a certain concentration since four per cent of NGOs account for 80% of the sector's income, and being engaged in a formalised organisation is an activity mainly conducted by urban, well-educated people. The reason for that being low levels of social trust and lack of resources (Matthes 2016, p. 295).

Rymsza (2016, p. 439) stresses the effects of this for formalisation and organisational advancement of civil society. She highlights the trend that Polish associations lose members and, at the same time, have to look for more professional employees, so they are forced to focus on donors and funding rather than collaborators. In addition, NGOs are struggling to get more positive media coverage and their dependence on close relations to public administration, especially on the local level, creates further obstacles for a more autonomous non-state sector.

Since PiS came to power, these opportunity structures for NGOs have become more restrictive. The government controls the state media, and thus, their reporting on NGOs that do not match the goals of the PiS, such as feminist, LGBT, environmental or human rights groups, is very negative. Smear campaigns in the media aim to create mistrust against the work of NGOs, making donors turn away from them. Then, the government introduced several structural changes that hamper the NGO-sector's work. Firstly, it established the Office of the Plenipotentiary for

Civil Society in early 2016. It was introduced as an institution to facilitate government-society relations and to assist with and channel state funding to the civic sector. Yet, in practice, it rather proved to be a body of control than support (Rymsza 2016, p. 444). Secondly, the hasty mode of law-making that PiS is practicing shows that it has no interest in true and intensive consultation with civil society actors, experts or stakeholders. This is possible because bills are often introduced by individual MPs, not the government, which allows to circumvent these hearings (Matthes et al. 2019). Thirdly, assembly rights were restricted because the mode of registering and permitting demonstrations now follows a certain hierarchy and two demonstrations at the same time may be forbidden.

The government also changed to the mode of financing the NGO sector. Since 2016, several cases of stopped or reduced public funding to NGOs were reported for organisations that work on topics such as domestic violence, migration or integration (Szuleka 2018, p. 16). The National Institute of Freedom, established in autumn 2017 with the task of distributing public funds, is another tool to regulate civil society (Matthes et al. 2019, p. 24).

Finally, the political constraints of the court system have implications for NGOs. Since December 2016, the Constitutional Tribunal, through changes of its internal procedures of decision-making and the composition of its judges, is no longer an independent institution. Many courts in Poland do not recognise its rulings, since they claim there would be no legal security, hence it is also no option to seek for domestic protection of the rule of law there. Rather, the minister of justice threatens those judges who do not accept the primacy of the TK (Davies 2018, p. 4; Sadurski 2018b; Czarny 2018). The Supreme Court is still struggling to maintain its independence, since the CJEU declared the governments' attempts to introduce a new retirement age unconstitutional and is now about to deliver a judgement on the introduction of two new chambers, the Disciplinary Chamber and the Public Affairs and Extraordinary Control Chamber² (Buras and Knaus 2018; Sadurski 2018a; Śledzińska-Simon 2018). All in all, the independence of the judicial system is

²These chambers can decide upon disciplinary measures against judges and reopen cases from the last 20 years. Their members are appointed by the Minister of Justice. The National Council of the Judiciary, responsible for the nomination of judges to fill void seats in any court, is now dominated by judges who are close to the government (Sadurski 2018a).

clearly curtailed, and so far the ruling party adopted only very cosmetic changes of the respective legislation, despite critical reports by the Council of Europe's Venice Commission (Venice Commission 2016a, b, 2017) and the European Commission's Rule of Law Framework. Hence, the ability of civil society actors to operate as watchdog organisations or to contribute to protest actions of social movements has been cut back by legal, structural and financial conditions.

4 CIVIL SOCIETY'S PROTEST REPERTOIRE—ACTIONS TAKEN BETWEEN WARSAW AND BRUSSELS

After the elections in October 2015, when the plans of the new PiS government to dismantle the rule of law and take control of the state media became more visible, civil society was unprepared at first but quickly became able to speak out in public. Existing watchdog organisations like the Helsinki Foundation for Human Rights (HFHR) or the Stefan Batory Foundation, both already established in 1988/1989, started to monitor the government, and a new movement emerged that gathered the protesters and called for demonstrations, the Committee for the Defence of Democracy (Komitet Obrony Democracji, KOD).³ The call for KOD as a movement that would defend democratic values came from the activist and writer Krzysztof Łoziński. An unknown IT-specialist, Mateusz Kijowski, launched a Facebook group in November 2015, which three days after its initiation, already had around 30,000 followers (Eriksson 2016). These different groups, NGOs and KOD, started to engage in several protest activities.

Demonstrations were the first, spontaneous reaction and KOD was very effective in mobilising many people in the larger cities of Warsaw, Craców, Poznań and later elsewhere, also outside Poland. The first large demonstration with 50,000 participants took place in December 2015 and all the following ones were held each time after a new law or action by the government or other relevant incidents occurred or on special dates, such as June 4, to commemorate the first half-free elections from

³KOD was named after the Committee for the Defense of Workers (Komitet Obrony Robotników, KOR) which was established in 1976 and advanced the larger Solidarność movement. It had helped imprisoned workers by raising money from Western institutions, providing legal support and organising protest and solidarity events (Karolewski 2016, p. 260).

1989 and to create a link between the freedom struggles from these years to today's situation. In February 2016, 80–100,000 participants gathered; on March 12, after a visit and report by the Council of Europe's Venice Commission, tens of thousands of people convened, as well as after their next visit in June 2016 with 250,000 participants and again in September. In July 2017, people even demonstrated for around ten days when amendments to the law on the Supreme Court were discussed (Amnesty International 2017).

At the demonstrations, direct references to the EU were made and people held European flags as well as symbols of the Polish Constitution, showing posters in defence of the latter. Nowicka-Franczak (2016, pp. 2–3) distinguished four different types of slogans: (1) liberal and democratic slogans, referring to democratic principles such as rule of law or free media; (2) historical and symbolic slogans that refer back to the opposition movement in socialist times; (3) anti-government slogans; and (4) slogans that have an ironic, pop-cultural connotation and again aim to create a bond with liberal, European values. The PiS-government responded with very polarising language, calling the protesters traitors of the Polish nation and tried to deprive them of their right to protest.

The participants in the demonstrations were somewhat middle-aged and older people with a memory of the previous authoritarian regime. For quite a while younger people were less visible. As election results and surveys show, a certain number of them were rather conservative or unpolitical and not interested in rule of law issues, or more leftist and therefore not attracted by KOD's more centrist approach (Nowicka-Franczak 2016, pp. 3–4). The leftist youngsters rather follow the movement Razem (Together) that was established in 2015 and was, opposite to KOD, more critical of the previous government, which Razem blames for its social policy failures (Pehe 2016).

Spreading information and rising attention about the decline of the rule of law was another means of protest. The civil society groups and the KOD movement issued press statements, used social media for different purposes and published their own judicial analyses on their websites that address the respective changes in each of the courts and show their impact on the work of judges (Szuleka 2018; Amnesty International 2017, 2019; Helsinki Foundation for Human Rights 2019; Batory Foundation 2018). All organisations also issue petitions and open-letters to Polish politicians, MPs in the European Parliament and the European Commission (Fleger 2017). At the peak of the demonstrations against the changes of the

TK, KOD-spokesperson Mateusz Kijowski gave plenty of interviews to many foreign newspapers in order to make this issue known to the world (Karolewski 2016, p. 260).

The tool of strategic litigation and the provision of pro bono legal support had been especially used by lawyers in the field of human rights in previous years, e.g. by the HFHR. Their strategic litigation programme has operated since 2004 and joins or initiates court cases that are of strategic importance to obtain fundamental judgements that can make a change in the field of human rights. Since 2015, this practice has become less relevant in Poland because of the political control of courts. However, HFHR is very active in referring cases and asking for preliminary judgements by the CJEU; several Polish lawyers are actively defending judicial personnel against accusations by politicians in Polish and European courts and they submit complaints to the relevant bodies of the UN (Helsinki Foundation for Human Rights 2018).

All these activist groups operated very internationally from the very beginning, although their framing of the situation aimed to highlight the similarities to the struggle against the communist regime back in the 1970s and 1980s (Fleger 2017, p. 13). They actively sought contact with the European Commission and the European Parliament. In January 2016, KOD had already met with the European Green Party to discuss the development in Poland. Shortly after, it published a letter to the European Parliament on its website and met with representatives of the Greens and the Liberals in the EP (Karolewski 2016, p. 263). When KOD received the European Parliament's European Citizen's Prize in June 2016, this was an occasion to meet with several notable individuals: Frans Timmermans, then First Vice-President and European Commissioner for Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights; Martin Schulz, then-President of the EP, and Donald Tusk as then-Representative of the Council. Finally, KOD opened a representation with an office in Brussels. In 2017, several other civil society actors sent an open letter to the Commission (Fleger 2017, p. 8) and human rights groups continued to lobby the Commission. They supported the idea to launch the rule of law procedure in January 2016 as well as the Article 7 procedure in December 2017 (Open Letter 2017). Several Polish and international NGOs met with Frans Timmermans and/or his aides on several occasions between 2016 and 2019 and discussed rule of law issues.

The collaboration between KOD and political parties inside Poland is somewhat ambivalent. On the one side, KOD was the main organiser of the demonstrations, at which opposition politicians, especially from the Civic Platform (Platforma Obywatelska, PO), the .Modern (.Nowoczesna), as well as from Polish People's Party (Polskie Stronictwo Ludowe, PSL) also participated. On the other side, it was not always clear where to draw the line between movement and parties. There was some debate if KOD should turn into a political party, or become part of PO or .Nowoczesna. Critiques of the movement were arguing that KOD was simply the prolonged, extra-parliamentary arm of the political opposition that used the streets to exert pressure on the government or where previous politicians were able to get some new attention (Karolewski 2016, p. 260, Nowicka-Franczak 2016, p. 5). On May 10, 2016, KOD, PSL, .Nowoczesna and leftist parties outside parliament formed the coalition "Freedom, Equality, Democracy", while PO did not join the network.

Considering these debates and the increased restrictions for civil society inside Poland, networking within the civic sector became more important. On June 4, 2018, first eight, then 12 organisations agreed to form a common platform, the Justice Defense Committee (Komitet Obrony Sprawiedliwości, KOS). They chose June 4 as a founding date to refer to the day when the first half-free elections in Poland had taken place in 1989. Their common aim is to protect judges, prosecutors and other legal professionals when they come under political pressure by reporting about such cases to the wider public, presenting opinions, holding press conferences and by providing legal support for them. KOS also sends letters to relevant Polish politicians and EU institutions (KOS 2019). This has become especially important, according to KOS, after the introduction of the new disciplinary chamber in the Supreme Court, and the new Law on the Ordinary Courts from April 3, 2018 that introduced a system of disciplinary liability of judges. In addition, the media, which is close to the government, came up with invented stories that aimed to discredit the reputation of judges in general or some judges as persons, including the billboard campaign "Just courts" (KOS 2018, p. 20).

KOS consists of associations of five legal professionals (Themis, Iustitia, LEX Super Omnia, Forum Współpracy Sędziów, Ogólnopolskie Stowarzyszenie Sędziów Sądów), three civil rights organisations (Helsinki Foundation for Human Rights, Amnesty International Poland, Forum Obywatelskiego Rozwoju), a think tank (INPRIS), two archives of legal

scholars that also consider themselves as actors having to secure the rule of law (Stowarzyszenie im. Prof. Zbigniew Hołdy and Archiwum Osiatyńskiego) and an activist movement of four lawyers, Wolny Sądy (Free Courts), that caught the public's attention through small films they post online showing the importance of free courts (<https://de-de.facebook.com/WolneSady/>). Convening KOS was also a reaction to the decline of KOD after its founder Kijowski faced some quarrels due to paying himself out of KOD's budget, billing it for computer services. Later, he stepped down as a chairperson (Cienski 2017); KOD lost some momentum but is still active in and outside of Poland (<http://www.ruchkod.pl/>).

5 IMPACT AND RESONANCE OF THE CIVIC ACTIVITIES

The existence of the protest movement did mobilise Polish society since plenty of people attend the demonstrations and support KOD's and other organisations' actions. According to a poll by TNS, 1.5 million (or 5%) of Poles took part in at least one protest event organised by KOD. 40% said they would support the movement, while 28% were against it and the rest had never heard of it (Eriksson 2016). Despite the restrictions in terms of personnel, money and capacities the associations are actually quite successful in their access to the public and do receive a lot of attention. Firstly, one of the reasons for their ability to overcome the structural restrictions was their intensive use of social media that helped them to disseminate their messages more easily and to react to the framing of a topic in the public sphere by the Polish government. Since it uses different types of public media and poster campaigns to spread negative messages about NGOs with the intention to produce a rally around the flag effect (Schlippak and Treib 2017), communication against these defaming messages was relevant.

Secondly, the civil society actors built networks with different domestic NGOs that can reach out to different segments of society and therefore produce a certain snowball effect regarding public attention. This networking enables the associations and movements to meet the challenge of being locally rooted and having networking-knowhow about the EU polity in an efficient way. Plus, NGOs based in Poland, such as the Stefan Batory Foundation that have access to European funding and networks, provide knowhow inside the country as well as material support for publications and maintenance of websites. Civil society actors also managed to

make use of broader networks, such as Civil Society Europe, or globally operating NGOs like Amnesty International.

This networking helped the Polish NGOs to become more known in Brussels, so that they were invited to hearings at the CJEU, meetings with Commissioner Frans Timmermans and the committees of the European Parliament, especially the LIBE committee that deals with rule of law issues. The NGO networks also use the Commission's representation in Warsaw as a shortcut to Brussels; they provide information, assessments on the legal situation and evidence about disciplinary procedures against judges and prosecutors.

Although the Polish government made only very few changes to the legislation on the court system, the actions of the civil society were not at all useless, neither in formal terms, regarding the material policies, nor in an informal way, regarding the mobilisation of the domestic public and the European decision-makers. The decision of the Commission to launch the infringement procedures, as well as the Article 7 procedure, can also be considered as successful agenda-setting of the Polish NGOs that were able to upload their demands into EU structures. Meetings with Commission representatives working around Mr. Timmermans will have at least reinforced the intention of the Commission to push forward with the respective measures.

Opposite to the more sceptical findings in the majority of the literature, following Wunsch (2016) and her analysis of Croatian NGOs, the Polish human rights groups are also not necessarily marginalised actors but could navigate strategically inside the EU's multi-level system. Now, it is the task of the new Commission, elected in autumn 2019, to continue the procedure.

However, despite these achievements, and although KOD claims to be politically neutral, it is a movement of urban, liberal-minded and politically centrist people. Some leftist politicians did participate because they felt the urge to speak out against the changes of the court system, but others did not. Hence, a considerable amount of working class people, or people who had not yet profited sufficiently from the system change since 1989, felt attracted by PiS's generous social policy, something that the previous PO and PSL government had neglected. So, while the collaboration between the liberal parts of civil society and the European institutions seems to be a fruitful tool in order to address and tackle the decline of the rule of law, there is an important message to learn: the European institutions should not only close ranks with like-minded NGOs, but should see

and address the society of a member state as a whole, in all its political facets and social needs and political attention; in addition, financial and other support should not only concentrate on one group of people.

6 CONCLUSION

The chapter explored the question if NGOs have the capacity to lobby EU institutions in order to uphold pressure on the Polish government and if they are strong enough to act as one of the counterforces against the decline of the rule of law. The expectation was that, considering the structural difficulties for civil society organisations to engage in the multi-level system of the EU, they may need to develop specific strategies to compensate for the challenges of this task, especially since the domestic opportunity structure for NGOs became even tighter due to the constraints implemented by the current government in the judicial and media sector. This means that the changes of the judiciary against which the NGOs act, at the same time, affect the opportunity structure in which they operate. The results found so far confirm the difficulties that NGOs have to struggle with, but also show that civil society gained quite some agency. By networking among each other and an early and intensive reach out not only to the national but also to the European level, along with the usage of social media and the collaboration with NGOs that already have a European network and can open access to the Commission, they were able to overcome shortcomings in national resources and opportunity structures.

The analysis also shows that social pressure from national interest associations is important to lift and to keep a topic on the European agenda. While it is a challenge for the Commission to find a working tool against a non-complying government when political majorities allow to simply ignore the “blaming and shaming”, civil society actors can serve as an alternative to political opposition parties inside member states as the Commission wants to stay impartial politically. Although only legal pressure through infringement procedures has stopped democratic backsliding on some occasions, and also in Poland, it is nevertheless crucial to engage with and invest in civil society associations that support and defend European values because they can generate and provide information, attention and support.

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PART IV

Theoretical Reflections and Conclusions



Contesting the EU, Contesting Democracy and Rule of Law in Europe. Conceptual Suggestions for Future Research

Luca Tomini and Seda Gürkan

1 INTRODUCTION

Over the past several years, a number of EU member states as well as some candidate states have experienced political transformations in a direction opposite to that of democratisation. In most of these cases, this phenomenon has been accompanied by the progressive detachment of these countries from the political, administrative and normative influence of the European Union (EU) and/or by a more overt and growing contestation over the EU or its policies. While these developments amounted to the EU's 'autocracy crisis' (Kelemen 2019, p. 35), multiple crises that hit the Union since 2009—ranging from the financial crisis and Brexit to the refugee crisis—limited the EU's ability to deal with these instances of autocratisation, that is, a political change towards

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autocracy, in and around the EU. And when the EU intervened to defend democracy and the rule of law in member states or candidates, this intervention into domestic affairs was met with a new form of contestation over the EU altering these countries' relationships with the EU.

These developments have led many scholars to question the puzzle of turning authoritarian while being a member or a candidate of the EU (Müller 2013) or to analyse the inherent problems related to the EU's instruments to address post-accession non-compliance (Sedelmeier 2014; Szente 2017). These studies have implicitly assumed that autocratisation and turning away from the EU are interconnected. However, the relationship between these two processes has largely remained understudied. Although it is well-known that both the contestation over the EU and autocratisation are multi-causal in nature, there is ample empirical evidence to suspect the existence of a causal relationship between the two as they occur simultaneously not only in acceding countries (Turkey being probably the most notable example) or potential candidates in the Western Balkans (Serbia under President Vučić) but also in some member states such as Hungary or Poland. Against this background, this chapter explores and questions this possible interaction and causal link between these two processes in times of a supposed declining quality of democracy in Europe.

It is argued that the profound crisis of fundamental values of the EU in and around the EU can only be grasped by studying two distinct but closely interconnected phenomena. The first process is 'autocratisation', which refers to the political changes that move countries towards autocracy. The second process is 'de-Europeanisation', which refers to the progressive detachment of some countries from the political, administrative and normative influence of the Union. Although these two phenomena occur simultaneously, they remain distinct and mutually impact on each other. Autocratisation is closely related to the internal dynamics of member states, and autocrats' domestic preferences, whereas de-Europeanisation refers to the changing relationship of a state with the EU, and it is largely about member state governments' response to the EU's impact in national politics. While autocratisation helps us to understand governments' declining commitment to the EU's values and norms, de-Europeanisation explains autocrats' changing attitudes to the European integration. It is the contention of this chapter that conceptual clarification between autocratisation and de-Europeanisation provides a

powerful explanation of why autocratic leaders in Hungary, Poland or Turkey contest the EU more and more.

In order to substantiate these arguments, in this chapter we first shed light on the distinction between autocratisation and de-Europeanisation by discussing both concepts, presenting their origin and tracing their development in the relevant scholarly literature. We then, secondly, discuss the type of relationship existing between the two and, in the final section, we discuss the theoretical and policy implications of these findings.

2 AUTOCRATISATION IN CENTRAL AND EASTERN EUROPE

The analysis of the politics of East Central European countries clearly shows the shift that has taken place within democratisation studies in recent years, from the traditional perspective focused on the challenges of democratic transition and consolidation to the current focus on the opposite phenomena of autocratisation.

These different phenomena can be causally interrelated, as various studies in the literature demonstrate (Tomini 2015; Bánkuti et al. 2012; Ágh 2016): paths of problematic democratic consolidation are reliable indicators of the likelihood of an autocratisation process. Nonetheless, although connected, these processes remain distinct, and it is clear that in the current debate, the question is no longer ‘What are the causes of the difficult democratic consolidation?’ in some of the countries of East Central Europe, but rather and more explicitly, ‘What are the reasons and the modalities of the beginning of the authoritarian turn?’.

The event that unquestionably changed the political and scholarly debate, as far as East Central Europe is concerned, was without any doubt the landslide victory of Fidesz in Hungary in 2010 and the birth of the second Orbán government, along with the constitutional and legislative transformations that followed in the subsequent years (Kornai 2015; Ágh 2016; Buzogány 2017) and with the influence that the Hungarian transformations had on other countries in the region and even beyond. Since that time, Hungary, and later other EU member states (Poland, above all, see Przybylski 2018) have become explicit examples of autocratisation, in addition to cases already studied in other regions of the world, such as Venezuela, or Thailand, among others.

There are multiple reasons to adopt the concept of autocratisation in order to define these processes of political change in an authoritarian direction. Even before moving on to the analysis of causes, modalities, actors and paths, it is necessary to address the ontological question of the very nature of the phenomenon under examination.

When it comes to analysing the phenomena opposed to democratisation, the literature is full of conceptual proposals: democratic breakdown, regression, collapse, backsliding, deterioration or demise, erosion, de-democratisation, loss of democratic quality and even more. The list is long (see Cassani and Tomini 2018), and the flourishing of often contradictory concepts is a good indicator of recent interest in this type of phenomenon. In this fragmented context, the use of the concept of autocratisation, which makes the exercise of political power more arbitrary and repressive and that restricts the space for public contestation and political participation in the process of government selection (Cassani and Tomini 2018), provides significant advantages.

First of all, it is a comprehensive concept that allows us to categorise, within the same framework, different phenomena brought together by the same direction of change (i.e. autocracy). Mirroring democratisation as a process of ‘moving towards this not entirely fixed future (democratic) state’ (Whitehead 2002, p. 3), autocratisation as a process of change can begin within very different political regimes (democratic and non-democratic¹) and end in the same way with the installation of different types of regimes in an ideal continuum ranging from liberal democracy to defective democracy, to electoral autocracy up to a closed autocracy. In this framework, processes of change that transform a country from liberal democracy to defective democracy, although different in many respects, can be compared and assessed against more radical transformations such as, for example, the transition between a defective democracy to a closed autocracy. This advantage is particularly useful in the case of East Central European countries, which historically have been the subject of exercises of comparison (both internal and with other regions). Therefore,

¹Although it may seem counterintuitive that a process of autocratisation may also concern a non-democratic regime, this in reality can take place, for example, in the transition from a so-called electoral autocracy to a closed autocracy in which the dimension related to political participation is further limited or suppressed, for example, through the *tout court* elimination of elections (as in military coups) or through manipulations such as the illegal extension of term limits that eliminate de facto the possibility for citizens to choose their representatives.

the possibility of using the same concept to analyse phenomena, albeit of different intensity, in Hungary, Serbia, Russia, Poland and even Turkey, must be considered as an added value.

Secondly, as defined above, it is a concept ready for empirical analysis. The presence of a negative change within one of the three constitutive dimensions (participation, contestation and executive limitation) is sufficient to identify a potential case of autocratisation. As a comprehensive concept, autocratisation is broad enough to capture developments—such as the attacks on independent media or to civil society organisations, as well as limitation to the political opposition—that go beyond the narrow erosion of rule of law. Furthermore, the extent of the change is easily assessed by examining which of the dimensions are involved in the process. A change from liberal democracy to defective democracy essentially concerns the dimension of executive limitation, in relation to the erosion of the boundaries within which an incumbent ruler exercises the political authority. In a different way, a change from defective democracy to closed autocracy also ends up involving the dimensions of contestation (the presence of a free and fair electoral process and the possibility of criticising and replacing the government in office) and participation (the capacity and possibility of citizens to actually choose the government of the country allowed by the guarantee of political rights).

Thirdly, the concept of autocratisation clarifies a certain normative ambiguity that characterises concepts such as democratic backsliding, regression or de-democratisation, which are defined in a negative way, as the loss of something positive (democracy), or as a backwards movement. In most cases, these processes do not restore previous regimes. Take, as an example, the case of Hungary: the process of change implemented by Fidesz does not constitute a backsliding or a regression towards something that existed in the past, but instead represents the creation of something new—a different type of regime.

Fourthly, the conceptualisation of autocratisation as a ‘regime change’ constitutes an explicit methodological and theoretical choice in favour of a case-oriented approach in which the selection and classification of the cases is made through a qualitative approach and each potential case of autocratisation is examined in-depth. This choice has the disadvantage of discarding political transformations that might represent a shift towards autocracy but do not amount to an outright change in the formal and informal institutions regulating how political power is assigned and exercised. On the other hand, this allows us to focus the analysis on real

cases of autocratisation, eliminating possible false positives. It is therefore a more selective approach that allows a more in-depth investigation of the selected cases, in which minor changes (which do not produce a change of regime, but only a change *within* the regime) are interpreted as warning signs of a process of autocratisation that may or may not occur. This approach is particularly useful, especially in the case of Central and Eastern Europe characterised by frequent institutional and political changes (e.g. the instability of the party systems of the region, the rise and fall of populist parties and leaders), because it separates the wheat (the real cases of autocratisation intended as a change of regime) from the chaff (the cases of political change to be interpreted in another sense, such as democratic performance deficit, see Fukuyama 2015, or de-consolidation phenomena, see Foa and Mounk 2016, including growing disaffection towards the elite).

The ongoing debate on the ‘rule of law crisis’ or ‘autocracy crisis’ in Central and Eastern Europe is, in its essential nature, a debate on the EU’s foundational values in which the stake is the contestation of a normative conception of liberal democracy based on participation, competition and rule of law intended as a guarantee of citizen protection against the state and as a balance and control between constitutional powers. The debate does not take place merely for academic reasons: it depends on the fact that, since the beginning of the twenty-first century, some governments of EU member states have embarked (for the reasons and causes that have been analysed in this volume) in a path of institutional, legislative and political change that moves them away from the values and founding principles of liberal democracy as understood above, and which can be effectively summarised with the concept of autocratisation.

3 DE-EUROPEANISATION IN CONTEMPORARY EUROPE

While autocratisation helps us to capture the changes related to both the exercise of political power and the spheres of public contestation and political participation, a more recent concept—namely, the de-Europeanisation process—sheds light on a new kind of contestation over the EU. Although most scholars defined this concept as the ‘reversal of the reform process’ or the ‘divergence from the EU norms and prescribed models’ (Yilmaz 2016; Wódka 2017), from a more sociologically sensitive perspective, we suggest conceptualising de-Europeanisation as a broader and deeper process, whereby de-Europeanisation takes place

not only in relation to a specific policy field or at the level of the recipient government and institutions but in the politics and society at large. This broader phenomenon is manifested in the form of a growing ‘indifference or scepticism’ in the society or among the political elite towards the EU (Aydın-Düzgüt and Kaliber 2016, p. 6). In this understanding, de-Europeanisation includes not only the reversal of the reform process, but also those instances where reform is ‘incurred without the need or even obligation to attain alignment with the EU, or where actors deliberately refrain from referring to the EU in justification of the reforms undertaken’ (Aydın-Düzgüt and Kaliber 2016, p. 6; Onursal-Beşgöl 2016). In other words, the EU ceases to have an influence on a given state because the nature of the relationship between the EU and state/society switches from a mutual engagement to a disengagement. Against this backdrop, we define de-Europeanisation as a process of mutual or unilateral disengagement between the EU and national level whereby normative reference to the EU and the EU’s political influence become increasingly irrelevant in the logics of domestic politics, formal and informal institutions, and public policy choices.

This definition has the following advantages. Firstly, by transcending the conceptualisation of de-Europeanisation as a mere backsliding in the reform process, the definition provides conceptual clarification. While scholars used autocratisation and de-Europeanisation interchangeably, our suggested conceptualisation highlights the distinction between de-Europeanisation and autocratisation, which, we argue, remain distinct processes. De-Europeanisation involves the changes in the relationship of the EU with the state or a given society, whereas autocratisation concerns changes in the relationship between the state and the society.

Secondly, de-Europeanisation understood as the reversal of the reform process might be easily confused with the terms used in the classical Europeanisation literature. In this respect, Radaelli’s typology,² which includes four different degrees for the measurement of the impact of the EU, might equally capture the idea of the reversal of the reform process through inertia or retrenchment (Radaelli 2003, pp. 37–38).³

²Radaelli’s typology draws on Börzel (1999) and Cowles et al. (2001). On the question of measurement of Europeanisation, see also Börzel and Risse (2007).

³These outcomes of Europeanisation include inertia, absorption, transformation and retrenchment (Radaelli 2003, pp. 37–38). Absorption refers to change as adaptation, which implies a low degree of changes without real change or transformation in the logic

Inertia happens in cases where the EU-level policies diverge from national ones, and there is a considerable resistance to adopt EU rules or policies (no change). Retrenchment refers to a paradoxical effect implying that national policies become less Europeanised than before (reversal). Whereas, in our conceptualisation, de-Europeanisation does not only encompass a mere backsliding in the reform process, but also a broader and deeper process of detachment from the EU affecting the society and state level. In other words, while retrenchment implies a negative change in policy, polity and/or politics, our conceptualisation of de-Europeanisation includes also the erosion of the normative attractiveness of the EU as a reference point for the political elite and among the society at large.

Thirdly, our suggested definition refers to a disengagement between the EU and the national level. Therefore, it can be applied to different empirical realities, including member states, candidate countries or states involved in the EU neighbourhood policy, with only one prerequisite: that the process takes place where previously there was some form of Europeanisation. It would not make sense to talk about disengagement if there had not been a process of progressive approach and mutual influence between the two levels before.

Fourthly, according to this definition, the de-Europeanisation process may take place in one or all of the three classic dimensions in which the impact of the EU on the national sphere unfolds: politics, policies and polities. In this perspective, de-Europeanisation may regard the process of reform of public policies, the institutional dimension, but also the normative and value-related dimension, thus integrating institutionalist and sociological approaches into a single analytical framework. Finally, our suggested definition conceptualises de-Europeanisation as a *process* (instead of an *outcome*). In this way, the definition shifts attention from the negative impacts (outcome) of the mutual disengagement at national level to a more incremental change in the relationship between the EU and state/society levels.

In accordance with our suggested definition, we expect to observe de-Europeanisation at two levels: as a result of a change either at the EU-state level or at the EU-society level, or at both levels. At the EU-state level, de-Europeanisation might take the form of the EU's disengagement from

of political behaviour. Transformation, on the other hand, indicates a fundamental or substantial change in the logic of political behaviour.

domestic politics, and/or a retreat of a state from the EU. As for the EU-society level, de-Europeanisation is expected to occur when support to the EU decreases in the society, and the society overwhelmingly turns away from the EU. For the purposes of the analytical focus of this chapter, we devote particular attention to the cases where the state deliberately turns away from the EU and its normative influence. In these cases, where the state (either a member or a candidate) disengages from the institutional structure of the EU or even contests the EU, we theorise that the main indicator of de-Europeanisation at the EU-state level is the political elite's declining commitment to the EU, and this is manifested in the form of a lack of or negative reference to the EU in the political elite's discourse. On the basis of these theoretical insights, and in the light of recent developments in Central and Eastern Europe, an essential question that needs to be answered is the relationship between these separate but supposedly interlinked phenomena: Does autocratisation trigger de-Europeanisation at the EU-state level or does distancing from the EU bear an impact on a given country's autocratisation process? In other words, what is the relationship between these two phenomena?

4 THE LINK BETWEEN DE-EUROPEANISATION AND AUTOCRATISATION: THE PRIMACY OF DOMESTIC POLITICS AS THE DRIVER OF DE-EUROPEANISATION

Since de-Europeanisation and autocratisation are different processes, there may be situations in which there is de-Europeanisation in the absence of a process of autocratisation. The most relevant example is perhaps that of the UK after the Brexit referendum. In this country, de-Europeanisation unfolds as a result of the choice made by British citizens in the 2016 referendum on the permanence of the UK in the European Union. The unilateral disengagement of the UK from the EU will probably result in the weakening of EU normative reference and political influence on UK domestic politics, policies and polity. At the same time, as de-Europeanisation unfolds, at the moment there are no empirical signs of forms of autocratisation, in the direction of reduced opportunities for public contestation, political participation and the erosion of the mechanisms of executive limitations.

On the other hand, empirical evidence shows that there are situations in which a process of autocratisation unfolds without a concomitant de-Europeanisation process. Serbia under Prime Minister Vučić is a good example of this occurrence, where a process of autocratisation is not accompanied by a disengagement between the EU and the national level. Several studies have shown how Serbia under Vučić's government has embarked on a process of autocratisation (Castaldo and Pinna 2018; Kapidzic 2020). At the same time, the government repeatedly restated its formal commitment to European accession and integration, although this approach has been considered instrumental to cover the ongoing autocratisation process. And thus, de-Europeanisation and autocratisation seem in no way mutually necessary to the other. There are cases of de-Europeanised countries that do not show evident signs of autocratisation, as well as cases of autocratisation without tangible signs of departure from the commitment to join, or remain part of the EU.

However, there is a third option, which is the most interesting for the purposes of understanding the puzzle of turning autocratic while being a member or a candidate of the EU: that the two processes occur relatively in the same span of time. By way of example, the cases of Hungary and Turkey are representative of the combined presence of these two phenomena. Despite the differences, both cases show a process of autocratisation. In the case of Hungary, this happens through a weakening of accountability and checks to executive power, while in the case of Turkey, through a reduction of civil and political rights, and the accountability of the executive. Both countries also show a de-Europeanisation process; in the case of Hungary, through a detachment mainly related to the dimension of some public policies and European values, while in the case of Turkey, through a gradual phasing-out of the perspective of membership, a detachment from European values and normative influence, and a hostile discourse of the government *vis-à-vis* the EU.

In these specific situations, in which we observe both processes in action, the question should be 'What type of connection is there between de-Europeanisation and autocratisation?'. Post-enlargement and post-2008 financial crisis Central and Eastern Europe is the ideal laboratory to examine the connection between the two phenomena, and to overturn the mainstream perspective of Europeanisation studies that focuses, in a more or less explicit way, on the EU as a starting point for any explanation of domestic changes.

The numerous empirical cases available in the region show that the ‘autocracy crisis’ experienced by the European Union in the last years has primarily domestic causes. Numerous studies show the mainly domestic origins of Viktor Orbán’s rise to power and of his anti-liberal political project (see Buzogány 2017 among others). The same home-made roots can be found in the explanation of the AKP’s rule and Erdogan’s authoritarian turn in Turkey (Sommer 2016); regarding the political crises related to the corruption scandals in Romania and the institutional tensions between president and government (Iusmen 2015); in the authoritarian turn of Vučić in Serbia (Castaldo and Pinna 2018); in the attempts to put the judiciary under the control of the executive in Poland by the government led by PiS (Przybylski 2018); or further back in the past, in Vladimír Mečiar’s authoritarian attempt in Slovakia in the late 1990s (Haughton 2003). These are phenomena that are distinct in scope and outcome, but similar for the mostly domestic origin of the causes. One more thing that is also similar, and which often leads to confusion in the analysis of these processes, is the context in which these domestic changes took and continue to take place; that is, the context of a process of European integration and of an increasing role of the EU in the domestic politics of these countries. However, the argument here is that the fact that these phenomena occur in the context of a growing role of the EU in national policies does not necessarily mean that the cause of them is somehow related to, or originated from the EU.

Autocratisation, in this perspective, logically and empirically precedes de-Europeanisation. As a consequence, the relationship with the EU (and the EU’s impact on these countries) is shaped as a function of leaders’ interests to pursue an authoritarian turn. This is the substantial difference: de-Europeanisation is not the result of a retrenchment or an inertia in the face of a stimulus, but it may be the consequence of endogenous processes within national political systems (such as autocratisation) which, only in the second step, has implications for the state’s relationship with the EU. In other words, when the two phenomena occur together in a given state, the nature of the European Union’s relationship with that state is not the cause of domestic level changes (the EU is not the explanatory variable). But the reaction or eventual inaction of the EU to the autocratisation contributes (among other factors) to define the outcome and the path of the process of domestic autocratisation (hence the EU is an intervening factor). And in this perspective, it should be emphasised that the EU’s crisis decade (Brack and Gürkan 2020) has arguably limited its ability to

respond to these authoritarian transformations, further aggravating their magnitude.

The EU intervenes in the cost and benefit calculation of domestic actors willing to turn authoritarian for domestic reasons, who have therefore already developed a normative preference antithetical to liberal democracy. In many cases, the more the political elite follow an authoritarian path, the more these countries' relations with the EU deteriorates because complying with the EU normative requirements in terms of democracy and rule of law becomes too costly for their project of authoritarian transformation. Hence, these worsening relations are also accompanied by a more hostile discourse of the ruling elite on the EU, especially when (and if) the European Union takes initiatives or measures to counter these domestic authoritarian turns, as shown by Hungary, Poland and Turkey. In these cases, the EU's reaction to authoritarian transformation may also become a tool in the hands of national actors and leaders who use it defensively to further strengthen their discourse, legitimising further authoritarian choices in the name of the defence of national interest and/or sovereignty.

5 CONCLUSIONS

The main contention of this chapter was twofold: firstly, it argued that autocratisation and de-Europeanisation remain two distinct processes, although in most of the empirical cases, they occur together and affect each other. Secondly, the recent phenomenon of contesting the EU and its values can only be grasped through a closer examination of the internal dynamics of a given state. Even in the case of a member state, a case where a state's legal and institutional system is closely integrated to the EU, the autocratisation occurs mainly because of domestic dynamics and is driven by domestic (autocratic) agents. However, once the autocratisation process starts taking place, turning against the EU or contesting its normative influence becomes the preferred option for autocrats as maintaining a value-based relationship with the EU becomes a highly costly option for autocratic leaders.

These observations on the puzzle of contestation over the EU in and around Europe have theoretical, methodological and policy implications. Firstly, these findings provide theoretical insights into the de-Europeanisation research agenda. Theoretically, the analysis of the

de-Europeanisation phenomenon needs to shift attention from EU-level explanations to domestic level actors because the driver of the de-Europeanisation process is ultimately the domestic political elite. Secondly, any study that aspires to analyse the phenomena of contestation over the EU or its values should carefully integrate in its explanatory framework two analytically separate phenomena (autocratisation and de-Europeanisation) as well as various levels that simultaneously interact with each other (international, EU as well as domestic levels).

Thirdly, these observations, in turn, have methodological implications. In the light of our main argument which suggests that domestic actors remain essential in driving the de-Europeanisation agendas of authoritarian states, the analysis of distancing from the EU in contemporary Europe needs to devote a particular attention to domestic agents. In order to explain autocrats' hostile attitude vis-à-vis the EU, carefully designed small-N comparative studies or single case studies need to trace separately both phenomena (autocratisation and de-Europeanisation), and bring in qualitative methods, such as discourse analysis or process-tracing.

Turning to the policy implications, as autocrats' declining commitment to the EU is mainly shaped and driven by their domestic agenda, the EU's ability to intervene in autocrats' cost and benefit calculus remains limited. And in cases where the EU criticises autocratisation in member states or candidates, this is usually backfired by autocratisation agents. As observed in the cases of Turkey or Hungary, EU's negative evaluations of autocratisation in those countries usually nurture a more nationalistic discourse by the political elite and an anti-European backlash in the society. Therefore, unless the EU can offer new incentives that will persuasively engage autocrats into a more democratic path, the EU's ability to mitigate the autocratisation process will be marginal. In other words, while restoring a firm political conditionality based on close monitoring, clear conditions and credible incentives appear to be the main panacea for deviating the autocratisation process in candidates. In addition, a similar post-accession compliance monitoring mechanism backed by incentives (or the withdrawal of incentives) remains essential for changing the incentive structure of autocratic leaders in member states.

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Towards a Political Theory of Democratic Backsliding? Generalising the East Central European Experience

Ireneusz Paweł Karolewski

1 INTRODUCTION

Since December 2015, Poland has been considered the second East Central European (ECE) country, after Hungary, to be in the process of sliding back from democracy into authoritarianism. This assessment followed a series of reforms implemented by the national-conservative PiS (Law and Justice) government despite protests in the country and critique abroad. The most controversial reforms aimed at a radical reconstruction of the court system in Poland and mimicked similar developments that have taken place in Hungary under the national-conservative Fidesz (Hungarian Civic Alliance) government since 2010. Scholars of democracy have been convinced that both Viktor Orbán and Jarosław Kaczyński—the dominant political figures in both countries—abandoned liberal democracy, dismantled checks and balances and hoarded power in the hands of their party loyalists and cronies to exert partisan control over

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public institutions (e.g. Sadurski 2018; Pech and Scheppele 2017). At the same time, both Fidesz and PiS have been able to generate high electoral support in national and European elections despite the recent authoritarian changes. The systemic changes have been accompanied by populist discourse promising to give the power back to “the true people” (Mudde and Kaltwasser 2017), claiming that liberal democracy after 1989 was an elite project amounting to a treachery of the Hungarian and Polish people by post-communist elites in league with the new liberal aristocracy and international bodies, such as the European Union (Sata and Karolewski 2019).

This strain of research suggests that the developments in East Central Europe are—due to the specifics of the transition process from communism to democracy—particular. However, similar developments, even though without the same degree of institutional change or the similar context of postcommunism, have been taking place in a number of other countries, both in Europe and beyond. Particularly striking are the cases of the US and the UK, that is, advanced and long-established democracies experiencing democratic backsliding themselves (Porritt 2019; Przeworski 2019; Dunleavy 2018; Huq and Ginsburg 2018). In both countries, populist post-truth rhetoric and disregard for liberal-democratic norms and institutions go hand in hand with attacks on checks and balances (Kaufman and Haggard 2019). Also, in the UK and the US, the once catch-all parties—the hitherto bearers of representative democracy—the Tories and the Republicans were able to secure majoritarian electoral support by embracing divisive and exclusionary policies (Huq and Ginsburg 2018).

In this perspective, Hungary and Poland can be regarded as part of a larger trend, rather than specific cases of democratic backsliding in weakly consolidated democracies where proper democracy has never really taken root. Against this background, this chapter argues that a general approach to democratic backsliding should be aimed for, rather than a strategy to identify only regional peculiarities, even though such certainly exist. I therefore suggest that a putative (rather than complete) theory of democratic backsliding should consider three aspects: (1) *the societal one* (what type of changes are underway with regard to the citizenry?), (2) *the institutional one* (what has been happening with the institutions of democratic government?) and (3) *the processual one* (what kind of process is democratic backsliding?).

Firstly, after a brief literature discussion on democratic backsliding as a universal trend, I problematise the changed role of citizens from active and engaged ones towards spectatorship favouring authoritarian responses from leaders. Secondly, I argue that in institutional terms, democratic backsliding can be identified as state capture that occurs in different forms and might not always be properly reflected in the indices of democratic quality. Thirdly, I focus on the process of democratic backsliding itself which I call retrogression to semi-democracy.

2 DEMOCRATIC BACKSLIDING AS A UNIVERSAL TREND

At first glance, democratic backsliding could be understood as a reverse development to democratic consolidation, intensely discussed in the early 1990s, when ECE countries were on their road towards democracy. A number of transitologists argued at that time that the democratic consolidation in the transition countries could be simply measured by a number of democratic elections held in the transition country in question. For instance, according to Samuel Huntington, two consecutive democratic elections would be a reliable sign of a consolidated democracy (Huntington 1991, p. 266). However, the debates of the 1990s paid little attention to the possible breakdown of democratisation processes in ECE (and if they did, they focused on possible military or executive overthrows), as they were heavily influenced by the arguments put forward by Samuel Huntington (1991) and Francis Fukuyama (1989). Huntington argued that democratisation comes in waves which are observable throughout history and for that reason reflect a macro-historical pattern. This logic of history finds its Hegelian “end of history” in Fukuyama (1989), according to whom democracy is the ultimate telos of history with no alternatives. Fukuyama (1992, p. XI) argued that liberal democracy represents the “end point of mankind’s ideological evolution” and the “final form of human government”. Consequently, to many authors—even those with less of a Hegelian leaning—democracy became a sort of default position of any political system, towards which all types of regimes would naturally lean sooner or later. Additionally, modernisation theorists have come to believe that modernisation processes would support democratisation.

Even in the 1950s, Seymour Lipset (1959) believed in a causal relation between modernisation—measured by the number of telephones in a country—and the chances of democratic consolidation, while Samuel

Huntington (1991, p. 313) determined a pro capita income of \$500–1000, which would promote democratisation. In the modernisation perspective, the transition from the defunct real existing socialism and its “economy of shortage” towards a market economy might also propel modernisation processes, thus stabilising democracy (for the opposite view see, for instance, Przeworski 1991). Against this background, democratisation in newly established democracies would—even if initially in some cases—constitute a self-reinforcing rocky process. While focusing on new democracies, this understanding of authoritarian change largely ignored the very possibility of democratic backsliding in consolidated democracies of North America and Western Europe that were continuously regarded as the normative standard to be aspired to.

These linear ideas about democratic consolidation came under criticism in the light of recent challenges to democracy (e.g. Bustikova and Guasti 2017), which are, according to some authors, not only typical for the countries in ECE but rather reflect a global trend (e.g. Diamond 2015; Levitsky and Way 2002). In this view, the peculiarities of the post-communist transition to democracy—or even perhaps its historical uniqueness—do not necessarily imply that the democratic backsliding in the region has to be specific as well. As mentioned above, this global trend also includes the so-called advanced democracies like the US and the UK, which renders democratic backsliding almost a universal problem (Mounk 2018; Levitsky and Ziblatt 2018). The 2020 Democracy Report of the V-Dem Institute markedly highlights this general trend as follows:

For the first time since 2001, there are more autocracies than democracies in the world. Hungary is no longer a democracy, leaving the EU with its first non-democratic Member State. India has continued on a path of steep decline, to the extent it has almost lost its status as a democracy. The United States – former vanguard of liberal democracy – has lost its way. (V-Dem Institute 2020)

The causes for global democratic backsliding are still being researched and the explanations include a number of hypotheses such as the growing polarisation of Western societies (Przeworski 2019), defunct political institutions (Norris and Inglehart 2019; Haggard and Kaufman 2016) and the failure of the political elites to address representation deficits of their political system (Albertus and Menaldo 2018; Levitsky and Ziblatt

2018). Recently, Krastev and Holmes (2020) offered a rather counterintuitive explanation for the global democratic decline by using the concept of imitation. In this view, illiberalism in Eastern Europe (first of all in Russia, but afterwards in Hungary and Poland) is a “resentment-fueled” response to “the presumptively canonical status of Western political models after 1989” (Krastev and Holmes 2020, p. 13). However, it does not remain an Eastern European phenomenon, as the election of Donald Trump changes the direction of imitation. Now, the US is emulating Eastern illiberalism, whereas the rise of China seals the fate of liberal democracy as a global normative standard.

I argue that the democratic decline is to be found across the globe due to the fragility of liberal democracy itself, rather than, for instance, as a result of a sequential imitation process. The “authoritarian diffusion” thesis has been falsified with regard to its inspirational movement from Russia to Hungary (Buzogány 2017) and seems to be doubtful of the US under Donald Trump being inspired by the developments in ECE. On the contrary, the oldest and (arguably) most advanced democracies—the UK and the US—have fallen prey to chauvinist populism, post-truth politics and attacks on institutions of liberal democracy (Huq and Ginsburg 2018; Freedom House 2019; Przeworski 2019) regardless of the developments in ECE. The UK and the US have been long viewed as *the* democratic standard for countries in transition to democracy, for instance, in the seminal civic culture study of the 1960s (Verba and Almond 1963). Systemically, this development is more remarkable than the progressing authoritarianism of Russia or Turkey, since it goes against the basic assumptions of research in democracy theory.

While the illiberal developments in the US and the UK have been a surprise to many observers, one can find certain clues about a principle fragility of democracy in some political theory writings. For instance, Gabriel Almond in his early work in the 1950s expresses serious doubts about some Western democracies (he calls them “continental democracies” in contrast to “Anglo-Saxon democracies” and means mainly France and Italy as opposed to the UK) remaining democratic, as he ascribes “Caesaristic breakthroughs”, that is, authoritarian tendencies, to these countries (Almond 1956, p. 408). Almond claims that “fragmented political cultures” and “immobilism” in Western countries make these democratic regimes less stable and prone to authoritarian or even totalitarian fractures:

[...] These systems tend always to be threatened by, and sometimes to be swept away by, movements of charismatic nationalism which break through the boundaries of the political sub-cultures and overcome immobilism through coercive action and organization. In other words, these systems have a totalitarian potentiality in them. The fragmented political culture may be transformed into a synthetically homogeneous one and the stalemated role structure mobilized by the introduction of the coercive pattern [...]. (Almond 1956, p. 408)

In this view, some democracies are principally prone to break down and others are structurally stable. Nowadays, Almond's optimistic belief in the Anglo-Saxon democracies is certainly unjustified. Whether democratic backsliding is a result of a specific "fragmented culture", as Almond suggested, is also disputed, since he apparently viewed culture as an unchangeable dichotomous structure, either endangering democracies or stabilising them. However, political developments can also affect cultures, rather than just reflecting them. Peter Wilkin argues in exactly this vein, when he says that "Hungary's current Orbánisation reflects an on-going tension between liberal and illiberal tendencies, the latter being part of the foundations of the modern world-system" (Wilkin 2018, p. 5). Moreover, Almond's differentiation of democracies that are structurally endangered and those that are stable by nature is of limited use. Instead, I would argue that we should identify democratic backsliding as a process, which can occur in every democracy but not necessarily to the same degree. In this sense, democratic backsliding would be a category of degree, rather than a category of kind. If democratic backsliding means gradual weakening of democracy, Hungary, for instance, can be viewed as an example of a more general trend, albeit one of the more pronounced cases thereof (Ágh 2016).

The degree/nature of democratic backsliding is also highlighted in more contemporary literature in political theory. For instance, Nadia Urbinati (2014, 2019) points out that all democracies (including the advanced ones) are subject to three potential disfigurations while the formal institutions of democracy can remain more or less intact: the epistemic disfiguration, the populist disfiguration and the plebiscitary disfiguration (Urbinati 2014, p. 8). The epistemic disfiguration frames democracy as a system of knowledge, in which mainly competent elites can make political decisions according to specific knowledge, and by doing so, they treat politics as a quasi-technical area to be removed from

mass politics. The populist disfiguration claims the will of the people for one specific group while excluding others (Urbinati 2014, p. 131). The plebiscitary disfiguration means that representative democracy is reduced to plebiscitary forms of citizens' participation. In this view, citizens become an audience observing the political decision-makers, rather than controlling them at the ballot box. These three disfigurations can occur to various degrees and even stop short of democratic backsliding, in case there is no change in the institutional set-up of a democratic regime. While I am not going to discuss Urbinati's "disfiguration approach" in full detail, I do take her "audience democracy" (or plebiscitary disfiguration) as a point of departure to argue that a political theory of democratic backsliding should consider three aspects: the societal (changes in the society), the institutional (changes in the institutional set-up of democracies) and the processual (the process of democratic backsliding itself).

3 THE SOCIETAL: THE RISE OF AUDIENCE DEMOCRACY

Political leaders do not always "hijack" democratic institutions generating democratic backsliding; they often modify them within the constraints imposed by institutions and with the support of voters. In this sense, political backsliding can thrive on how the citizenry behaves. To Nadia Urbinati, one of the key issues thereof is that citizenry becomes an audience acting through plebiscites on the popularity of politicians. Politicians are "in the eyes of the people", but at the same time, the citizens become passive by watching their leaders. This audience democracy replaces democratic accountability with popularity and the citizens are often likely to fall under the spell of authoritarian leaders who make the citizens react to political decisions in a yes or no manner: "The Roman plebiscitum was a yes-no decision by the plebs to a proposal that came from the tribune of the plebs" (Urbinati 2014, p. 176).

Audience democracy results from the alteration of traditional forms of political participation, such as party membership, engagement into party politics and electoral voting. Sadurski (2018) points this out with regard to Poland with the following argument:

Poland has one of the lowest numbers of party membership in Europe (only approx. 1 percent of the adult population, compared to 2.3% in Germany and 3.8% in Sweden); party loyalties by voters are extremely shallow and devoid of strong value meanings (e.g. 18% of those who

voted in 2011 for a left-wing SLD transferred their votes in 2015 to a right-wing PiS), and the dominant phenomenon of societal mobilisation in recent years was about single-issue protests, which were often episodic and non-institutionalised (e.g. about ACTA or the anti-abortion legislative initiative). (Sadurski 2018, p. 111)

This resonates with the current debate on citizenship, in which changes to how citizens see their role in politics are highlighted. In his widely discussed book “The People vs Democracy”, Yasha Mounk (2018, p. 100) argues that the crisis of democracy is (among others) correlated with citizens’ low interest in politics—particularly visible in young people—and their growing support for non-democratic regimes in the US (Mounk 2018, p. 105). Even though the picture is more complicated in Europe, Mounk suggests that increasingly more citizens are more open to non-democratic regime alternatives including military, technocratic and technological solutions. Particularly young people are more likely to wish for a technocratic dictatorial figure like Steve Jobs who would treat politics like a software problem—a sort of “Silicon Valley syndrome”—enforcing the best solutions. In this view, politics is perceived to be a question of a proper technical design, rather than citizens’ participation, the latter being a problem of finding optimal solutions. In this vein, the European Tech Insights (Center for the Governance of Change 2019) found that 25% Europeans favour letting an artificial intelligence make important political decisions about their own country. In countries such as the Netherlands, Germany and the UK, the percentage is even higher, as it reaches 30%. Interestingly, this preference is stronger with people who have university degrees (Center for the Governance of Change 2019, p. 11).

As John R. Hibbing and Elizabeth Theiss-Morse (2004, p. 4) argue, the citizenry as a whole tends to be quite indifferent to policy-making and therefore are not eager to hold the government accountable for its policies. Still, the people want to control the government but only under rare circumstances when they think politicians might benefit from citizens. Citizens just want to have the feeling that they can potentially control the government but the bulk of citizens do not have any “current intention of getting involved in government or even of paying attention to it”. In sum, citizens dislike sustained public involvement but want to have the illusion of control. Thus, Hibbing and Theiss-Morse refute the

widespread assumption that participatory democracy is the ultimate goal and preference of citizens.

Instead, we might be witnessing a transformation towards an audience democracy. Some authors think that this type of “ocular democracy” allows for a better control of the leaders. For instance, Jeffrey Edward Green (2010) stresses that citizens as spectators can effectively control the everyday performance of the politicians. While Green developed his argument prior to Trump’s ascent to presidency (with Trump being the perfect embodiment of celebrity-cum-politician), he clearly misapprehended the consequences of citizens being spectators. While Greene agrees that citizens are disinclined to rule themselves and want to be ruled instead, he claims that the spectatorship of “ocular democracy” can be an alternative form of democratic power, as leaders placed in conditions of publicity are more likely to reveal the truth about their intentions—a colossal misjudgement in times of post-truth politics.

On the contrary, I would argue that we can observe less democratic control of the leaders and more audience democracy (Mishra 2017). The spectators can be easily manipulated into politics of insecurity and exclusionary identity politics, which in fact occurs during democratic backsliding (Sata and Karolewski 2019). Citizens as spectators watch politicians in their spectacles organised specifically for the people. The spectacles operate through scandalisation and propaganda, in which the questions of political accountability are replaced by media interest in the private lives of politicians, their family matters and other trivia. This is not a new insight, as already in the 1990s (long before a Reality TV celebrity became US President) Thomas Mathiesen coined the concept of “the viewer society” (Mathiesen 1997). It is a further power mechanism supplementing the panopticon (the few people watch the many). But other than panopticon, synopticon seduces people into watching, rather than coercing them. In this way, citizens are replaced by spectators.

However, watching the leaders is not necessarily a mechanism of controlling politicians by the masses, as it promotes leaders who in fact strive for mass support through television and other forms of mass communication, such as Twitter. In an audience democracy, leaders often seek direct contact with the spectators, while undercutting power limitation and the division of power (Urbinati 2014, p. 174). As Urbinati points out, Hugo Chávez spent apparently 1500 hours criticising capitalism on a TV show, while Silvio Berlusconi was present on various TV channels on a daily basis during his years as Prime Minister. Moreover,

the audience is not only seduced into watching their leaders. They are also subjected to politics of insecurity and exclusionary identity politics, which are crucial for the support of democratic backsliding. In the politics of insecurity, the citizen-cum-spectator is often confronted with threat scenarios highlighting his/her shared destiny and group belonging. This promotes neurotic citizens (Isin 2004) who define politics in terms of its permanent insecurity and threat scenarios. Their preference for liberty and participation becomes surpassed by fears of survival in view of organised criminality, possible terrorist attacks, treachery and international conspiracies (e.g. Mancosu et al. 2017). As a consequence, citizens focus more strongly on reporting potentially dangerous situations and spying on other citizens, rather than on elections, public space and ensuring the accountability of the government (e.g. Douglas and Sutton 2018; Moore 2016). Furthermore, the audience democracy favours demarcation and a juxtaposition of the in-group in relation to the “other”. Through mass communication, leaders activate the “others” in the perception of the spectators, since the binary construction of “us” versus “them” allows for blaming and scapegoating strategies.

These developments might not constitute democratic backsliding itself and do not exclude traditional political activity by citizenry. An exact turning point of citizens’ democracy into spectators’ democracy is rather difficult to establish and it needs to be explored empirically, rather than a priori. However, a progressing audience democracy favours democratic backsliding, as the transformation of citizenry into audience promotes the plebiscitary democracy, in which citizens watch their leaders and accept their prior decisions. This is in tune with what Joseph A. Schumpeter (2006/1942, pp. 284–285) claimed democracy really is: “Democracy means only that the people have the opportunity of accepting or refuting the men who are to rule them”.

4 THE INSTITUTIONAL: LOOKING FOR STATE CAPTURE

While audience democracy seems to facilitate democratic backsliding by transforming parts of the society into spectators, state capture is the main institutional feature of democratic backsliding. Fukuyama (2014, p. 54) describes state capture as “the capture of ostensibly impersonal state institutions by powerful elites”. It occurs in many democracies to a varying degree. State capture occurs when political and economic actors take over

the institutions of the state and misuse them for their own narrow political and economic interests.

The government ceases to represent the societal interests and becomes a tool of influence in favour of vested interests subverting democratic decision-making processes. This can be viewed already as problematic in the case of corporate lobbying, particularly when it lacks accountability and transparency. It becomes even more problematic when, for instance, courts are used for the harassment of political opponents, anti-corruption agencies are disabled to undermine investigations against corrupt politicians in power or tax authorities are ill-used to secure tax deductions for oligarchs (who also exist in advanced democracies). This goes beyond simple clientelism (prevalent in many democracies), as the “hollowing out” of state institutions ensues and economic rents or partisan power are extracted from them (Grzymala-Busse 2008). The concept has largely been used in the research on financial-political networks in Russia and Ukraine, where economically powerful actors during the transition time colonised state institutions to promote their private business interests (e.g. Yakovlev and Zhuravskaya 2006). A prime example of state capture was the presidency of Viktor Yanukovich (2010–2014), during which oligarchs’ interests thrived symbiotically in league with the kleptocratic regime, until the Euromaidan revolution ended it.

Against this backdrop, Abby Innes (2014, p. 88) identifies two clusters of state capture in ECE based on two modes of dominance over state institutions: the party state capture (monopoly of a party exploiting significant state institutions for partisan gain, including courts, office of the general prosecutor and government agencies) and corporate state capture where public power is exercised mainly for private gain. In this regard, the Czech Republic, Slovakia, Romania and Bulgaria present cases of corporate state capture, whereas Hungary and Poland stand for party state capture—a re-monopolisation of the political system in favour of a party in power (Sata and Karolewski 2019; for an alternative typology, see Stanley 2019). Certainly, party state capture does exclude corporate state interests encroaching political institutions and vice versa. Parties can (and they do) become vehicles for personal enrichment (Hungary and Poland) and corporate interests can form political parties (the Czech Republic). Still, these two ideal types of state capture show distinct features that can explain specific behaviour of governments in democratic backsliding. A corporate capture aims at weakening or disabling policies, as it wants to suppress the activity of the state. It is also less likely to be interested

in changing the ideological core of policies but rather seeks institutional and policy stability, reflecting static corporate demands (e.g. the “the state as a firm” ideology by Andrej Babiš in the Czech Republic, see Bustikova and Guasti 2019). In contrast, party state capture intensifies policy implementation and responsiveness because party preferences are immediately turned into policies (e.g. the controversial decommissioning policies of PiS) (Sata and Karolewski 2019). The distinction between party state capture and corporate state capture can also explain why party state capture is more visible in the public space, because the institutional set-up of the state is subject to radical change. For that reason, international actors like the EU or the Council of Europe react mainly to the party state capture, rather than to the less visible corporate state capture.

The corporate state capture attempts to avoid the limelight, as it is based on problematic networks between economic and political interests, which do not want to be discovered. The party state capture undermines the independence of state institutions in the open, while backing it up with the propaganda of identity politics. The corporate state capture prefers secrecy to the public space, as it undercuts state institutions through their adaptation to the oligarchic interests. This is not only the case in ECE as we can observe plenty of examples of corporate state capture in the US since 2016. For instance, Donald Trump has been using state resources extensively to advance interests of his firm and his family, by placing his daughter and her husband in the White House system of decision-making and compelling state employees and foreign leaders to spend money in his hotels and resorts (e.g. Fahrenthold et al. 2020). Trends of party state capture are visible in the UK under the Boris Johnson government, for instance, with regard to the plans of the government to strip the BBC (as an independent source of information for citizens) of its funding (Cowburn 2020). This goes hand in hand with the support for Brexit and the Johnson government by Rupert Murdoch and his media empire.

While one of the differences between both types of state capture lies in their public visibility, they do not necessarily differ in their challenges to democracy. However, with corporate state capture, the relevant democracy quality indices (e.g. Freedom House) appear to be helpless, as they are unable to entirely reflect it. This also goes for the European Union that deals mainly with the institutional changes in Poland, Hungary and Romania (albeit not very successfully), while ignoring corporate state capture in other countries. As Hanley and Vachudova (2018, p. 276)

show, in contrast to Hungary and Poland, democratic backsliding in the Czech Republic lacks a powerful nationalist narrative, but there are crucial similarities with regard to tactics and forms of power concentration. Babiš and his party ANO use a technocratic rationale (“state as a firm”), but the goal is the same—hoarding state power and abolishing checks and balances. In the Czech Republic, it happens in the name of efficiency and modernisation, rather than in the name of bringing the power back to the people (Hanley and Vachudova 2018, p. 289).

5 THE PROCESSUAL: RETROGRESSION TOWARDS SEMI-DEMOCRACY

De-democratisation does not have to occur as a result of a military coup or a revolution. In many cases, it is a consequence of actions by democratically elected actors (Luo and Przeworski 2019). In this perspective, the challenges to democracy are likely to arise from the political elites themselves, even from the political mainstream (see Hungary, Poland and the US), rather than the military (like in Argentina in 1976) or foreign powers (like in Iran in 1953). As opposed to abrupt de-democratisation, democratic backsliding takes place in the process of little steps including political changes of formal and informal nature. As a result, civil rights, democratic elections and democratic accountability are eroded, rather than abolished overnight, which can take years, rather than days. This can apply to unwritten norms of democratic decision-making, such as abstention of the executive branch from influencing court decisions or limiting the rights of the opposition in law-making by using fast-track decision procedures under actual exclusion of opposition. All these changes have the goal of limiting political competition and hoarding power with the goal of skewing the political system to increase the chances of remaining in power for the incumbent actors (Waldner and Lust 2018).

Since the process of backsliding is not as abrupt as a military or executive coup, it is difficult to determine the tipping point, at which democracy ceases to be democracy. Usually, it takes a number of controversial laws and changes in the constitutional set-up—mainly the court system—that propel the process of democratic backsliding; the damage to liberal democracy can be seen only after these changes took an aggregated effect (Sadurski 2018, p. 5). The issue here is not an incremental constitutional change in democracies, which is the rule, but a series of problematic laws that are already individually controversial. Still, none of these laws

constitute regime changes comparable to, for instance, the Enabling Act of 1933 that gave Hitler plenary powers to enact laws without the involvement of the Reichstag (and which, together with the Reichstag Fire Decree, abolished most civil liberties in the interwar Germany).

As opposed to authoritarian overthrows based, for instance, on rigged elections or intimidation of political opposition through unlawful imprisonment or show trials (see Russia or Turkey), democratic backsliding often occurs as a result of systematic attacks on the rule of law and/or sweeping reforms of the court system, whereas elections still take place and opposition is free to organise itself. In this perspective, constitutions cannot protect democracies from democratic backsliding, since the very functioning of the constitutional institutions such as the constitutional or supreme courts are undermined without the need of formally changing constitutions. For instance, the functionality (or rather dysfunctionality) of a constitutional court can be achieved through *court packing*, that is, a modification in the number of judges allowing friendly judges and party loyalists to be put on the bench. Should independent courts come under the control of the government, they are often turned into tools for further democratic erosion, which can be labelled “oppressive constitutionalism”. In 2004, the number of judges of the Supreme Court in Venezuela was increased from 20 to 32, with the goal of changing the majority in favour of the government. In Bolivia, the president initiated an impeachment procedure against three judges of the Constitutional Court in 2014. The procedure was based on trumped-up charges but the president succeeded in removing the judges in question (Landau and Dixon 2019). In this regard, the development towards oppressive constitutionalism (Tushnet 2014) is likely to be a further central feature of democratic backsliding—quite the opposite of what the hopes of democratic constitutionalism in the early 1990s were (e.g. Elster 1991).

Freedom House has identified similar developments in the US since 2016, where the president and his supporters consistently attacked independent courts, the judiciary and law enforcement, while eroding public trust in independent media and the rule of law:

The [US] president has since urged the Department of Justice to prosecute his political opponents and critics. He has used his pardon power to reward political and ideological allies and encouraged targets of criminal investigations to refuse cooperation with the government. (Freedom House 2019, p. 20)

While such developments alone might not constitute a breakdown of democracy, they can be understood as retrogression in contrast to reversion, the latter being a rapid collapse of democratic institutions. The concept of retrogression has been introduced by Huq and Ginsburg (2018) to describe “a more subtle, incremental erosion to three institutional predicates of democracy occurring simultaneously: competitive elections; rights of political speech and association; and the administrative and adjudicative rule of law”. The key issue here is that no democracy is perfect and there are sometimes some violations of democracy, such as political corruption or problematic corporate lobbying. However, a series of such incremental violations in their aggregate effect can constitute a qualitative regime change subverting the very functioning of democracy without abolishing formal democratic institutions, such as cyclical elections. As Huq and Ginsburg (2018, p. 118) argue: “The precise point, however, at which the volume of democratic and constitutional backsliding amounts to constitutional retrogression will be unclear—both *ex ante* and contemporaneously”. Against this backdrop, I argue that the outcome of such development can be called semi-democracy, which is a regime that uses constitutional and democratic forms but in fact operates through significant violations of democratic rule, in particular the rule of law.

Semi-democracies guarantee free elections and refrain from the imprisoning of political opponents (even though the opponents can be harassed by use of court trials, politically motivated prosecutor’s measures and targeted controls by tax authorities). In this sense, semi-democracies are distinguishable from electoral autocracies, in which elections are subject to severe manipulation and opposition politicians undergo systematic repressions (Schedler 2013, p. 3). In semi-democracies, opposition forces still have a chance of winning elections and regaining the power, which is impossible without a revolt or a regime breakdown in electoral autocracies.¹

¹There are a number of adjacent concepts, such as defective democracy (e.g. Merkel 2004) or semi-consolidated democracy (e.g. Acemoglu and Robinson 2001). They all suffer from problems of “democracy with adjectives”, broadly debated in the transition theory some time ago. One of the conceptual problems of “democracy with adjectives” is that this notion implies that we deal with imperfect democracies (probably on their way towards fully fledged democracy), rather than distinct and stable regimes, such as semi-democracy (Collier and Levitsky 1997; Knobloch 2002).

Of all transitologists, Guillermo O'Donnell (1992, p. 19) and Samuel P. Huntington (1996) pointed to the possibility of the "slow death" of democracy, which was described as "a progressive diminution of existing spaces for the exercise of civilian power and the effectiveness of the classic guarantees of liberal constitutionalism". This *democradura* could still be able to secure electoral support, in particular through usage of plebiscitary instruments, such as referenda (see also Schedler 1998). Samuel P. Huntington also agreed that gradual democratic erosion would be more likely than an abrupt democratic breakdown in the third-wave democracies: "Threats to third-wave democracies are likely to come not from generals and revolutionaries who have nothing but contempt for democracy, but rather from participants in the democratic process. These are political leaders and groups who win elections, take power, and then manipulate the mechanisms of democracy to curtail or destroy democracy" (Huntington 1996, p. 8). Still, Huntington did not see any similar dangers of democratic backsliding in advanced democracies nor did he explore the conditions or paths of this type of democratic backsliding.

6 CONCLUSIONS

I have argued in this chapter that a putative theory of democratic backsliding should consider the societal, the institutional and the processual aspects. Regarding the societal aspect of democratic backsliding, I have pointed out that changes in the nature of citizenship towards spectatorship, passivity and plebiscitary understanding of democracy favour democratic backsliding, even though they might not constitute democratic backsliding on their own.

Considering the institutional aspect, I have focused on state capture, which I argue is the central feature of democratic backsliding. I have here applied the two-type differentiation: the party state capture and the corporate state capture, the latter discernable, for instance, in the Czech Republic and the US, while the former is more typical for Poland and Hungary. Even though these are ideal types, the difference between the party state capture and corporate state capture is not only of conceptual value, as some indices of democratic quality have difficulties reflecting the corporate state capture.

With regard to the processual aspect, democratic backsliding does not necessarily lead to fully fledged authoritarianism but rather constitutes a retrogression to semi-democracy, in which the dismantling of relevant

liberal-democratic institutions such as the rule of law goes hand in hand with cyclical elections preserving democratic standards in a broader sense (see also Chapters 1 and 14). This semi-democracy draws its legitimacy from electoral support but it can also lose it, paving a way for a return to liberal democracy.

I have also argued that democratic backsliding can occur in advanced democracies, which has actually been happening, for instance, in the US, though not to the same degree as in Hungary and Poland. In sum, I posit that we need to look at democratic backsliding as a category of degree, rather than kind, with a turning point between democracy and autocracy that is difficult to identify. Nevertheless, democratic backsliding can lead to semi-democracy as a stable outcome, rather than electoral authoritarianism.

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Illiberal Trends and Anti-EU Politics in East Central Europe: Major Findings and Avenues for Future Research

Astrid Lorenz and Lisa H. Anders

1 INTRODUCTION

When, in April 2020, the Court of Justice of the European Union (CJEU) ruled that Hungary, Poland and the Czech Republic had violated EU law by ignoring the refugee relocation quota, the reactions did not take long and followed the pattern typical of all recent confrontations between East Central European governments and the “rest of Europe”.

On the one side, the Hungarian Minister of Justice Judit Varga commented that the relocation scheme was “dead” anyway and found it shocking that only the three East Central European countries were sentenced while almost no EU member state had fully implemented the 2015 quota decisions (Stevis-Gridneff and Pronczuk 2020; Ministry of Justice 2020; Varga 2020). The Czech Prime Minister Andrej Babiš and

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his Interior Minister Jan Hamáček stated that the ruling was “not that important”. Babiš insisted that Czechia “will not accept any migrants” and concluded that “the quota system was cancelled mainly thanks to us” (Steviš-Gridneff and Pronczuk 2020; Prague Morning 2020). The Polish Minister Zbigniew Ziobro criticised that “some EU institutions are completely detached from reality” and proceeded that “Poland was right not to accept refugees” as it had to defend its “sovereignty against the foreign culture of Islam that they wanted to impose” on the country even though the European treaties would not oblige member states to accept refugee quotas (Tilles 2020). Prime Minister Mateusz Morawiecki added that Poland definitely will not accept any refugees (Tilles 2020).

On the other side, when recommending the ruling to the court, CJEU Advocate General Eleanor Sharpston drew similarly far-reaching conclusions and declared that disregarding EU obligations “is a dangerous first step towards the breakdown of the orderly and structured society governed by the rule of law”. She continued that the “principle of solidarity necessarily sometimes implies accepting burden-sharing” (Janicek et al. 2019). When the CJEU issued the ruling, the President of the European Commission Ursula von der Leyen stressed its importance. Contradicting the ECE government officials, she underlined that “all member states were required to participate in a temporary relocation scheme”. The court’s decision, she concluded, “will give us guidance to the future” (TVN24 2020).

Once again, these statements reproduced the general scheme of the public conflicts between EU officials and the ECE governments: the latter accuse the EU of applying double standards, of stretching EU law to promote left-liberal values, of instrumentalising courts for politically motivated rulings and of imposing its particular interpretation of EU law on member states against the will of their people. In their eyes, they are the true guardians of European values and European democracy. In the meantime, EU actors insist on their interpretation of EU law and the legitimacy of the Union’s decision-making procedures, and they criticise the ECE countries for destroying the rule of law as such and reproach them for lacking European solidarity while benefiting from generous EU financial aid.

The list of such conflicts is as long as the list of questions emerging from them: Are East Central European member states really increasingly or even generally unwilling to accept EU decisions and to adhere to European law? Do these countries really have less solidarity? Are the anti-EU

rhetoric and politics in ECE systematically related to the growing illiberal measures against counter-majoritarian institutions in the region? Do the governing parties follow their own ideological agenda when confronting the EU and liberal values, or do they respond to voters' preferences? And do the national publics in the four states share common perceptions of the EU and illiberalism or are regional commonalities less pronounced than politicians, media coverage and stereotype conflict narrations suggest?

To address these questions around the domestic causes and context conditions of illiberalism and anti-EU politics, the volume comprises qualitative and quantitative contributions from scholars of different disciplines with broad expertise in East Central European politics and comparative European sociology. Translating the aforementioned questions into more general tasks, the chapters aimed to explore the national contexts of illiberal trends and anti-EU politics, compare and contrast the dynamics in all four EU member states and analyse, especially with regard to the societal roots, if the differences between East and West are as sharp as often claimed. As laid out in the introduction of this volume, the overall aim was to capture the different facets of the illiberal trends and anti-EU politics in ECE countries to arrive at a more encompassing understanding of these phenomena. This concluding chapter summarises and discusses key findings of the volume as well as their implications for future research.

2 INDIVIDUAL CHAPTER FINDINGS AND CROSS-CHAPTER LINKAGES

The first part of the book dealt with the societal background of illiberal trends and anti-EU politics. The chapters show that the four states are quite similar in some aspects but clearly different in others. The quantitative analyses found no empirical evidence of a general lack of European solidarity (as suggested by the persistent refusal of the Visegrád governments to participate in the resettlement system). Nor did they provide proof that support for the EU would be particularly low in ECE countries. This is consistent with the observation made in our introduction to the book that the share of people who trust the EU either exceeds the EU average (Poland, Slovakia) or is comparably high (Czech Republic, Hungary). The study on anti-Muslim attitudes uncovered deviations from the "rest of Europe" while the general linkage between anti-Muslim attitudes and Euroscepticism is present all over Europe.

Based on the European Elections studies data from 2004 to 2019, Lars Vogel shows in Chapter 2 that the share of Eurosceptics, especially of hard Eurosceptics, is rather low in ECE. Despite the EU financial and migration crises, diffuse support for the EU has even increased within the last years while it decreased in the remaining EU countries. Policy-specific support, in contrast, is rather volatile. It decreased significantly in all ECE countries and also in the average of the other EU countries in 2014 and then rose again in 2019. Cultural issues, e.g. nationalist orientations or conceptions of democracy, were only in two of the ECE countries statistically related to public Euroscepticism, namely, in Poland and Hungary. Differences between countries are also apparent concerning the factors that explain Euroscepticism. The analysis of Euroscepticism determinants reveals country-specific rather than regional patterns, indicating that citizens base their evaluation of European integration on country-specific criteria.

In Chapter 3, Gert Pickel and Cemal Öztürk demonstrate that in many EU countries, voters of right-wing populist parties are the main bearers of the aforementioned linkage between anti-Muslim attitudes and Euroscepticism. They often support a Muslim ban and perceive that European unification has gone too far. In Eastern Europe, however, anti-Muslim sentiments are generally more widespread and shared by both voters of right-wing populist and mainstream parties. The authors highlight the risk of governments instrumentalising anti-Muslim attitudes to mobilise against the EU by claiming that it orchestrates a “Muslim invasion”. Their data demonstrate that even if governments refrain from such campaigns, a liberal-universalist European asylum and migration policy obviously collides with the deeply rooted Islamophobia of the electorate in ECE and probably results in EU criticism in this sphere.

Article 2 of the Treaty on European Union stipulates solidarity as one of the founding principles of European societies. Analysing citizens’ attitudes towards European solidarity, Florian K. Kley and Holger Lengfeld show that East Central Europe does not generally stand out from patterns in other EU countries. As Chapter 4 reveals, a majority of Slovak, Hungarian and Polish people support the idea of financial assistance for indebted EU countries as well as redistributive measures among EU member states. As in Southern countries, levels of support for an EU-wide reduction of territorial disparities in the three ECE countries even exceed the support of such measures for reducing differences within the country. The authors attribute this to the rational calculation of the

respondents as ECE countries might benefit from such a redistribution policy. All in all, the chapter reveals that the widespread assumption that ECE countries generally lack solidarity is not substantiated. Moreover, the approval of the ideas of solidarity differs across East Central European countries. This finding indicates that regional affiliation is not a relevant category for explaining attitudes towards European solidarity.

Taken together, the contributions of the first part of the book show that, on average, people in ECE are not more Eurosceptic than people in other member states. It seems, however, that the majority of citizens in the region have an instrumental understanding of European policy-making. According to such an understanding, European policies should serve the will and fit the values of the (national) majority. The chapters suggest that people in ECE countries accept further integration when expected gains are high. Accordingly, redistributive measures, which potentially benefit these countries, would generally be supported by a majority of people in East Central Europe. In contrast, any plan to further integrate asylum and migration policy in a liberal-universalist version will probably cause critique, while—just as a fictive scenario—a common European walling-off strategy towards Muslim migrants combined with a less restrictive policy towards non-Muslims might find support. As has been shown, the majority of people in East Central Europe are hostile towards Muslims and politicians exploit this deeply rooted Islamophobia to stir anti-EU sentiments. The instrumental approach to EU policies and institutions, therefore, is not only related to financial gains but also to how they fit to perceived values and attitudes.

The contributions of the second part of the volume explore the complex domestic processes around illiberal and anti-EU politics in East Central Europe. In contrast to the first part, they focus more on the agents of the current illiberal trends in the region, analysing the illiberal rhetoric and practice of politicians, parties and their linkage to voters, and the politicisation of administrations. They thereby show that illiberal trends are neither uniform nor determined by fixed regional characteristics but initiated and realised by domestic actors with diverging, sometimes flexible positions in varying political configurations. Despite some similarities, such as the politicisation of certain policies and attempts to increase executive power at the expense of the legislature, the countries do not form a coherent group with respect to illiberalism and relations with the EU. Often, illiberalism is not rooted in a strict and manifest illiberal agenda but can be attributed to pragmatic attempts to secure certain

policy goals or to generate electoral support by addressing voters' attitudes. In other cases, rhetoric and action do only partly overlap and illiberal rhetoric has little impact on actual policy.

In Chapter 5, Vratislav Havlík and Vít Hloušek shed light on the various facets of illiberalism in East Central Europe by studying the different ideologies underpinning the illiberal rhetoric and by comparing how ruling parties put more or less pronounced illiberal ideologies into political practice. Fidesz (Hungary) is assessed as having a flexible illiberal doctrine and PiS (Poland) a coherent illiberal ideology. In contrast, ANO (Czech Republic) and SMER (Slovakia) do not have an explicitly illiberal programme, meaning that their illiberal stances are a result of pragmatic choices. With regard to illiberal practices, the contribution shows that in all four countries, the ruling parties strengthened the executives while eroding checks and balances.¹ Concerning the other dimensions of illiberalism (e.g. measures towards media, courts and NGOs) practices vary. This clearly demonstrates that there is no coherent pattern of illiberalism and illiberal political practice in East Central Europe.

Focusing on Hungary and the Czech Republic, Chapter 6 by Paula Beger provides new insights into the politicisation and compliance of asylum and migration policy—a policy field which induced massive changes in party systems all over Europe. As the contribution shows, in both countries, the policy was shaped by pre-accession Europeanisation, when national administrations adopted EU standards in a technical and uncontested downloading process. Not until 2015 did questions of asylum and migration become politicised in the partisan and public sphere of both countries. Then, the comparable levels of politicisation in the two countries yielded different effects. In Hungary, the Fidesz-KDNP government exerted influence on the asylum-related administration which resulted in decreased compliance with EU law. The Czech administration, in contrast, has remained rather unpoliticised and therefore continued to comply with EU law. This suggests that an administration can—if it is able to act autonomously—secure the implementation of EU policies even if domestic governments are at loggerheads with the EU.

In Chapter 7, Michał Dulak also exploits the advantages of case study methodology. He delves into the details of Polish party politics from

¹ Another similarity is that in none of the four countries did the authors detect politically motivated interference with private property and the autonomy of proprietors' actions in the economy expropriation measures, which is one of their ten indicators of illiberalism.

2004 to 2019 to explain the phenomenon that an increasingly coherent illiberal party programme must not necessarily lead to programmatic de-Europeanisation. In fact, the manifestos of the main governing party PiS did not contain calls to leave the EU or other signs of hard Euroscepticism (the refusal of introducing the Euro currency is the only exception). This strategy is explained by PiS's intention to be responsive to the different positions on EU issues among its electorate. While the main opposition party PO also took a pro-European position, PiS declared itself as being "Euro-realist". This self-positioning of PiS in EU issues deviates from the observation by Pickel and Öztürk in that the party has not—at least in its programme—tied its restrictive preferences in asylum policy with general Euroscepticism. However, it is in line with the observations made by Vogel, Kley and Lengfeld regarding the general EU support which is partly based on instrumental or benefit-oriented calculations.

In another qualitative study, Petra Guasti illustrates the illiberal backlash against universal rights in the Czech Republic and Slovakia. Her contribution shows that the transnational legal context is marked by a liberal development and pro-universal rights, including LGBT rights and gender equality. This influences domestic opportunity structures, but it cannot guarantee the self-enforcement of these rights. Many domestic actors from the radical right to radicalised mainstream politicians are increasingly adopting a populist socially conservative rhetoric around the notion of sovereignty and reject attempts to increase minority rights as being imposed by the EU or the Council of Europe. This contributes to domestic polarisation. Despite similar levels of domestic polarisation in the Czech Republic and Slovakia, European norms concerning LGBT rights and the Istanbul Convention were accommodated to different degrees. Depending on the configuration of domestic party competition, mainstream parties partly transposed norms but resisted further accommodation due to fear of polarisation (Czech Republic) or, in a more religious society, radicalised to fend off radical right challengers (Slovakia).

Thus, in summary, it depends on strategies of domestic politicians if and how far the opportunities of the European legal framework are used in the national policy arena. Also, in the light of the findings of the first part of the book, this suggests that perceived deviations of European policies from habits and traditions of the domestic majority can result in anti-EU polarisation, but this does not automatically have to be the case. It depends on individual cost-benefit calculations of political actors within a given domestic context. Mainstream parties can refuse more

liberal-universalist policies or even radicalise, not because of a respective ideology, but in order to avoid polarisation over—what is interpreted by large parts of the public as—Europeanisation. Ideology-driven illiberalism, in contrast, does not necessarily entail a strict anti-EU course. As a result, there is no general lack of compliance or increased general anti-EU programme irrespective of growing illiberalism.

The contributions of the third part of the volume focus on the reactions to illiberal trends and EU-critical politics. All of them devote special attention to the interplay between actors at the European and the domestic level. Collectively, the Chapters 9 through 11 illustrate the various difficulties surrounding the EU's tools against illiberal backsliding. Instead of solving the rule of law conflicts at hand, they stirred an ever harsher dispute. In a more or less ritualised manner, EU actors strongly criticise the erosion of the rule of law while the Hungarian and the Polish governments stress the lack of a generally accepted definition of these terms. Essentially, all these disputes evolve around the diverging cultures, different political philosophies and different approaches to balance the (domestic) rule by the people and the (supranational) rule of law. Since many of the EU's instruments against illiberal backsliding are based on regular dialogue (Article 7 procedure, the Rule of law mechanism and infringement procedures), they currently seem to exacerbate rather than improve the situation.

In an important contribution, Attila Vincze critically discusses what he calls the “common misperceptions” in the debate on the rule of law in Hungary and Poland and also illustrates how illiberal governments can exploit them to justify their course of action. Orbán, for instance, can easily accuse the EU for applying double standards as EU actors did not claim any Article 2 violations when previous Hungarian governments meddled with political institutions before 2010. Moreover, as Article 2 TEU contains arbitrary and contested terms, some illiberal measures in ECE are not formally breaching EU law but still fall within the sphere of different interpretation. As values are declared but not operationalised, they give—counterintuitively—ground for value relativism. Against this backdrop, many EU measures to redress backsliding turned out to be ill-suited. The targeted governments could easily frame them as primarily political attacks. The Union, Vincze therefore concludes, should focus on using competences, powers and procedures which are immune to the Hungarian government's sophistry.

To complement this general assessment of the rule of law debate with an empirical analysis, Lisa H. Anders and Sonja Priebus investigate the suitability of infringement procedures to enforce the EU's foundational values. Their study reveals that rule of law problems were clearly addressed as the Commission explicitly referred to fundamental democratic prerequisites in most of the cases. The Commission, therefore, seems well aware that a mere reference to secondary law invites targeted governments to reject the rule of law relevance of the infringement procedures. Thus, the conventional view that the procedures lead to a miscategorisation of the rule of law problems seems unwarranted. Nevertheless, the procedures did not help to solve or to depoliticise the conflicts. On the contrary, the relations worsened and the Hungarian government increasingly exploited the infringement procedures to blame the EU for interfering in domestic affairs.

In the light of these apparent shortcomings of existing instruments against illiberal backsliding, Claudia-Y. Matthes focuses on a hitherto understudied aspect, namely, the idea to complement the EU's top-down tool-box with bottom-up approaches including civil society actors. In Chapter 9, she investigates for the case of Poland how civil society actors can hinge for the Commission into Polish society and, in doing so, contribute to safeguarding democracy and rule of law from below. As the chapter demonstrates, the opportunity structures for liberal civil society organisations are not too bright, especially since PiS has started to target them by restricting assembly rights and changing the mode of financing the NGO sector. Despite these measures, the Polish civil society organisations managed to provide information on illiberal backsliding and to keep the topic on the domestic and European agenda.

Taken together, the three contributions show that the EU's conventional top-down as well as newer bottom-up approaches could not redress the illiberal trends in Hungary and Poland so far. As the EU's foundational values are listed in Article 2 TEU but not further specified, governments can rightly argue that the meaning of the terms is contested and they often use this argument to frame EU actors' criticism concerning the rule of law as political attacks violating the rule of treating all member states equally. The role of civil society organisations in the struggles with the EU is also twofold. Actors fighting for liberal values are often perceived (by a large part of the domestic public) or labelled (by the national government) as EU-driven. Thus, assisting pro-democratic and liberal forces can also have unintended negative effects if domestic actors

point to the support of the EU to refer to the pro-democratic and liberal forces as “foreign agents” to mobilise against the NGO sector.

The concluding fourth part of the book addresses conceptual questions and broadens the perspective beyond the Visegrád region. The contributions discuss various terms and concepts to capture the deterioration of democracy and the rule of law, and they remind us that illiberal trends and anti-EU politics are not confined to ECE countries.

In Chapter 12, Luca Tomini and Seda Gürkan focus on the relation between the decline of democracy and de-Europeanisation. Their contribution argues that the term “illiberal backsliding” actually does not capture the de-democratisation processes properly as it implies that democracies revert to something that existed in the past. Against this background, the broader term of autocratisation might be more appropriate. Based on a comparison of countries with varying degrees of autocratisation and de-Europeanisation, the contribution furthermore shows that autocratisation usually precedes de-Europeanisation. Thus, de-Europeanisation scholars should focus primarily on domestic level explanatory factors; not only that, but the domestic agents especially deserve closer inspection as well. This is in line with the volume’s approach and also corroborates the finding of several chapters that democratic development cannot be taken for granted even if countries have oriented themselves towards the EU. Instead, domestic factors are highly relevant to the practice of democracy and its sustainability.

As Ireneusz Paweł Karolewski aptly describes, long-established democracies too can fall prey to populist politics and attacks on liberal democratic institutions. Against this backdrop, he reasons that we need a general approach to theorising backsliding. Drawing on the literature on democratic transitions and current research on illiberalism, he therefore develops a three-dimensional heuristic for future research on this topic. It puts the spotlight on the role of the citizens, types of state capture, the erosion of liberal democratic practices and their aggregate effects. As the author highlights, democratic backsliding does not necessarily lead to a fully fledged authoritarian system but can also result in hybrid regimes. His heuristic is in line with the outline of this book and also reaffirms the suitability of a more encompassing analysis of illiberal trends.

3 CONCLUSIONS, OPEN QUESTIONS AND FUTURE RESEARCH

What are the main findings of the volume and what are avenues for future research? Addressing these two questions, this section briefly presents selected key findings and promising paths for future studies. The structure follows the outline of the book, starting from societal issues, proceeding with politics matters, continuing with political reactions to illiberal and anti-EU politics and finishing with theoretical contextualisation.

Democracy rests on citizens. They need to participate in democratic decision-making and generally support the political system. In this vein, every liberal political entity depends on supportive beliefs that it cannot enforce without giving up the logic of freedom (Böckenförde 1976). The EU is no exception. As the contributions of the first part of the volume show, the strong focus on conflicts between the EU and East Central Europe obscures the fact that the people generally support the EU and are not more Eurosceptic than people in other member states. At the same time, the Visegrád governments' fierce opposition against the European asylum and migration policy is backed by large parts of the populations because anti-Muslim attitudes are widespread in the region. Hence, the appropriate addressees of the policy-conflicts between the EU and ECE are not only the governments of the respective member states but also the citizens. To our view, two aspects of the citizens' perspectives on illiberalism and the EU deserve special attention in future research.

Firstly, studies should address why people came to support illiberalism and how personal experiences influence their EU-related imaginations and attitudes. Thus, we need more research on the micro-foundations of individual perceptions and cognitive maps of (il)liberal democracy, EU policies and the EU as a whole. As mentioned in Chapter 1, illiberal trends are often marked by an increasing mobilisation along the social-cultural axis of political contestation (Havlík 2019; Vachudova 2019; Chapters 3 and 8). Many studies therefore highlighted changes in the distribution of political preferences and the increased importance of an axis of party competition that spans between libertarian and authoritarian sociocultural positions (Kitschelt 2003, p. 6f.) or a new cleavage between communitarian and cosmopolitan views (e.g. de Wilde et al. 2019). As we know, such phenomena, irrespectively of some similarities, can have different regional causes (Manow 2019, pp. 38ff.; Bustikova and Kitschelt 2009). In ECE, both the "cultural counter-revolution" (Krekó

and Enyedi 2018, p. 45) and the regular rails against the EU intrusion are at least partly motivated by the desire of citizens to emancipate themselves from perceived “Western” demands and expectations of how democracy and politics are done right.

We want to highlight the importance of studies on *individual* processes of position-(re)building on democracy and EU issues, and on how it reflects one’s own experience with transformation and EU membership. In East Central Europe, most of the citizens have not been engaged in politics since the early 1990s. There are two main reasons for that: they had not been socialised to individual autonomous political activism in the ancient régime and they faced the high demands of re-organising their personal life. Just like the political and economic systems (Offe 1994), citizens faced complex individual transitions. Thus, popular involvement in democracy (i.e. civic engagement and political participation beyond voting in elections) remained low (Bernhagen and Marsh 2007). This, in turn, fostered alienation processes between citizens and decision-makers. Some of the statements in European public opinion polls and voting behaviour seem to be inspired by the desire of citizens to teach decision-makers a lesson they will not forget and to correct their (perceived) lack of responsiveness. For these reasons, we suggest that future research on the individual attitudes on (il)liberal democracy, the EU and EU policies should not only consider the citizens’ present sociodemographic features² but also try to trace the long-term effects of individual transformation and EU enlargement experiences on current political views. At the same time, it would be interesting to know more about citizens’ individual weighing up of normative and rationalist motivations regarding the EU. Questions for further investigations could also be if individual opinions articulated in polls reflect manifest and coherent individual mindsets or if they are inconsistent and in flux.

Secondly, further empirical research is needed to explore what particular form of European democracy people prefer. This question refers to normative attitudes towards democracy (liberal-universalist vs communitarian-utilitarianist concepts) and its particular functioning in a multi-level polity. While the Eurobarometer, the European Values Study

²In fact, there is growing and valuable research on these issues (see, for instance, Kaltwasser and van Hauwaert 2020, who analyse the individual sociodemographic characteristics of populist citizens).

and other cross-national polls already provide valuable insights into attitudes towards European integration and other selected issues, it would be interesting and relevant for the Union's future to capture the citizens' preferences towards the particular constitutional structure of the EU: from unitarian republic up to a decentral Union of nation-states. Several contributions in this volume inform about the party positions concerning these aspects. But since most of the citizens are not organised in parties and voter turnout is rather low, EU- and democracy-related preferences cannot only be measured simply by looking at party preferences. Thus, more grass-root sociological research is needed to answer the questions (see, for promising approaches along these lines, Hurrelmann et al. 2015).

The contributions in the second part of the volume show in many ways that domestic political actors often do not follow a uniform illiberal agenda or a coherent anti-EU strategy. Besides, East Central European actors do not "make trouble" in all institutional questions or policy fields. Instead, they were interested in securing national veto capacity or regaining sovereignty in a limited set of issues. To date, these are the definition of (national) identity, citizenship, minority rights which all refer also to migration policy, as well as democracy and rule of law. These issues are highly politicised but the strong politicisation, also when combined with explicit anti-EU rhetoric, does not generally lead to non-compliance with EU-law. Obviously, there are differences between rhetoric and practice. Against this backdrop, we suggest that future research should include the following domains:

Firstly, the anti-EU rhetoric—its nuances and changes over time deserve closer inspection. As recent publications revealed, governments can simultaneously support the EU as an organisation, openly rail against its policies (or some of them) by arguing that EU institutions are dominated by liberal-leftist actors or ruled by George Soros and present themselves as the true Europeans (Mos 2020). It thus seems that we need a more fine-grained understanding of how politicians (and also the media) in ECE countries frame the EU and EU policies. It should also be explored in more detail how far the governments' anti-EU rhetoric reflects their responsiveness to attitudes that are widespread among the population and how far it is a means to activate and manipulate the citizens' latent attitudes to get their support. The contributions in this book provide evidence for both directions of influence, but more information to qualify the weight of both would be valuable. As for the

temporal dimension of politicising EU-related issues, it might also be discussed if the public contestation of these issues represents, at least to some extent, a kind of “normalisation” or, to use a less normative term, a revitalisation of political conflict on EU matters.³ As Chapter 6 and countless Europeanisation studies have shown, before EU-accession, the often newly founded political parties did not yet have elaborated positions on EU issues. Combined with the EU conditionality policy, this resulted in a technocratic top-down transposition of EU norms that was not accompanied by a broad domestic political debate. But public debate and conflicts on the justification of public policies are the main ingredients of democracy. Democratic choice requires visible alternatives.

Secondly, future studies on the causes and practices of illiberalism and the strained relations between the EU and East Central Europe should further explore the relationship between policy-makers and two types of actors: administrations and courts. To date, the attempts to diminish the powers of administrations and courts are in most cases explicitly and implicitly explained with reference to their counter-majoritarian function. Other potential explanations that would go beyond the mere idea of power accumulation have received less attention. Future research, therefore, should explore if attempts to weaken administrations and courts are also caused by diverging understandings of democracy and rule of law⁴ and the intention to revise former governments’ patronage policies or to block administrative officials’ and judges’ involvement into informal clientelistic networks. This might also explain why people do not oppose curtailing the administrations’ room of discretion and support, like in the Czech Republic, a political course to improve “state efficiency”. In the pre-accession phase and shortly thereafter, the role of national administrations for implementing EU law and public sector reforms received much scholarly attention (e.g. Zubek and Goetz 2010; Meyer-Sahling 2009; Ágh 2002; Dimitrova 2005). Processes within the administrations and their relationship vis-à-vis the political majorities after 2004, in turn, were

³Pickel (2009) proposes the term “revitalisation” as an alternative to “ormalisation” in his study on religiosity. The term “consolidation” of democracy also implies political competition and thus political conflicts, albeit within the “rules of the game” (Linz and Stepan 1996, p. 5f; Merkel 1998).

⁴For historical legacies, see, e.g., Miklóssy (2018), Meyer-Sahling (2009) and Bos and Póczya (2014).

covered to a lower degree. Early on, studies demonstrated the potential of such studies for better understanding domestic political tectonics (Grzymała-Busse 2003) and also recent analyses have suggested exploring the role of public administrations in backsliding processes (Bauer and Becker 2020).

The same is true for courts. In present publications, they are often almost exclusively referred to as targets of political restrictions. Like administrations, domestic courts are able to stop illiberal practices. Besides, they contribute to establishing a European legal framework by judicial interpretation (e.g. Thym 2017; Blauburger and Kelemen 2016; Jakab and Kochenov 2017). To do so, they can refer questions of EU law to the European Court and they can, to a higher or lower extent, refer to European law in their interpretation. The role of courts as “engines of integration” has often been described (Alter 2001). Due to the EU’s “over-constitutionalisation” (Grimm 2015), rights especially have been “developed exclusively in the inner judicial-legal sphere” (Schmidt 2017, p. 18). Such dominance of non-majoritarian decision-making runs the danger of weakening political “voice”. But “without sufficient backing by societal actors, rights cannot drive societal change” (Schmidt 2017, p. 18). Possible questions for further reflection therefore could be whether it is the courts’ relevance for these aspects that motivates governments to limit their autonomy or whether there are also other domestic causes for such measures, e.g. judges’ activism during transformation (e.g. Pospíšil 2020).⁵

Part three of the book showed that, so far, the EU’s tools against illiberal backsliding could not dissuade the targeted governments from their controversial reforms. Similar to the disputes on the asylum policies presented above, the conflicts on the EU’s foundational values are increasingly staged and perceived as a clash of cultures. They have become a symbol of fighting for the right to determine rights while no side is willing to compromise. Against this background, we suggest further research on the institutional design of sustainable mechanisms of conflict accommodation and potential ways for achieving political agreement in constitutional issues.

⁵To be clear, such research is not intended to somehow “excuse” illiberal measures or to identify the attacked institutions as the “true causes” of illiberalism but to explain the ramified roots of the emergence of illiberalism and why it is supported by parts of the opposition and citizens.

Future research should, firstly, investigate how instruments can be deployed or designed to prevent the impression of double standards. As the contributions in part three of the book revealed and as also the European Commission (2019) underlines, an even-handed application of EU law in all member states is crucial to avoid the impression of unequal treatment of East and West European member states, which can easily be exploited to rail against the EU's politically motivated interference in domestic affairs. Some recent publications go this way by examining, for instance, how the rule of law conditionality on EU funds—as proposed by the European Commission 2018—should be organised in order to yield the envisioned results (Blauberger and van Hüllen 2020; Neuwahl and Kovacs 2020). So far, most of these studies rely on theoretical approaches of the literature on EU enlargement and Europeanisation.

A fruitful approach to complement this evolving body of literature could also be to draw interregional comparisons and to borrow from neighbouring research areas by studying patterns of conflict accommodation in heterogeneous federations (e.g. Canada, Brazil, Australia). How do these cases manage to integrate territorial units by acknowledging their societal and cultural differences on the one hand and insisting on stable foundational principles of the interrelationship on the other hand? Existing multi-level systems, like federations, have established a variety of frameworks to balance legal unity and diversity and they provide insights on possible constitutional solutions (e.g. Bednar et al. 1999; Benz and Broschek 2013; Burgess 2006; Moreno and Colino 2010; Kymlicka 2007). While it is clear that the European Union is not a traditional state (Schmidt 1999, p. 19), learning from other political entities on an abstract level is always possible and could potentially provide fresh insights.

Secondly, future research should acknowledge that judicial reasoning starts from a given norm while democratic reasoning starts from the people establishing a norm. The vague constitutionalisation of certain EU norms as a compromise between the will to codify the fundamentals and the lack of will to agree on what they mean has not proved to be an equilibrium solution. When EU treaty provisions remain undetermined because governments cannot agree at the negotiating table, they usually rely on the European judiciary (Alter 2001; Grimm 2015; Schmidt 2017). The European Commission is currently also resorting to this strategy. To clarify the meaning of the EU's foundational principles, it draws on case law (European Commission 2014) and refers rule of law-related cases to the Court (European Commission 2019). This is problematic since the

selective self-expansion of competences by case law has already damaged the acceptance of court rulings (for an overview, see De Waele 2010). Moreover, it becomes questionable if the CJEU's jurisprudence will be accepted and complied when the court increasingly decides on politically sensitive and contested issues (Blauberger and Martinsen 2020).

It seems that the old conflict between the core logic of constitutionalism and the logic of democracy—some theorised ways to reconcile them (Habermas 2001)—is still clearly visible and increasingly fuelled by populists claiming to be exclusively dedicated to the will of the people. Against this background, future theorising should reflect on how to initiate and uphold a broad constitutional debate on the meaning of the EU constitutional principles and its multi-level government structure. A discussion is also needed on how inclusive such a constitutional debate should and can be. On the one hand, some have criticised the EU's constitutional process, which so far has failed to “place the citizen at the center” (Aziz 2009, p. 282). On the other hand, we know that inclusiveness, while it is to be welcomed in normative terms, potentially limits the scope for agreement.

Around the negotiations of the Convention on the Future of Europe, a body comprising representatives of member and candidate states (see, e.g., Wilga 2008), many interesting works on constitutional debates have been published (e.g. Closa and Fossum 2004; Landfried 2006; Maurer 2003; more general Eriksen et al. 2004). Along with studies of negotiations and deliberative aspects, some also promoted a societal approach to assess the emergence and role of constitutional and sociocultural norms (Wiener 2003). These studies should be reviewed in the light of current developments, continued and developed further by reflecting on how to enable and strengthen the communication between European citizens of different member states and their communication with EU officials, e.g. by deliberative fora beyond day-to-day politics.

More generally, such research also needs to address the following questions: To what extent should and ought critics be heard? Where to draw the line between those questions that necessarily have to be the subject of political dissensus to secure the very logic of democracy and those constitutional rules that determine the political order's existence, equality and freedom and therefore shall remain uncontroversial (Fraenkel 1974, pp. 184ff.)? While dispute is vital for any democracy understood as the dynamic, temporally bound choice of best political solutions by the people, the undisputable rules must rest on a basic societal agreement

(Dahl 1993, p. 133); they are no longer disputed because the struggles surrounding them were settled by political agreement (and not because there is an authoritative decision to do so).

The contributions of the fourth part of the book support these reflections. They remind us to regularly check whether our conceptual repertoire still adequately covers the subject under study. As highlighted in the chapters, illiberal trends do not automatically result in fully fledged autocracies. Yet, some countries investigated in the volume can no longer be classified as liberal democracies. This brings us back to earlier studies on regime change in the region and the elephant in the room. As already indicated, we think that research on the interrelationship between post-1989 system change and European integration, on their long-term effects and on their reassessment today, is worth being re-strengthened. The idea of a quasi-linear development towards liberal democracy also has to be adjusted to empirical reality (see Buřtiková and Guasti 2019).

While illiberal trends are not just East Central European phenomena, the chapters have shown that their particular form, the arguments surrounding them and the structure of support vary and are often rooted in national contexts. Questions to be addressed in future research therefore could be if universalist democratic beliefs, proactive bottom-up civic engagement, public debate, vital parliamentarism and a reflexive division of powers actually have ever been as relevant to political practice as envisioned by the model of liberal democracy (cf. Guasti and Mansfeldová 2018). As emphasised in Chapter 1, there have been critical studies on the state of democracy in East Central Europe, but due to the euphoria about Eastern enlargement, they received little attention (see, for instance, Greskovits 2007). In the light of current developments, it seems worthwhile to reassess older evaluations of the state of democracy in the region. Such an endeavour can also contribute to the renewed academic debate about the set of indicators for measuring the regime type or modes of gathering data properly (e.g. Coppedge and Altman 2011; Alexander et al. 2012; Knutsen 2010; Møller and Skaaning 2011) which also resulted in constructing new indices, like V-Dem. In line with recent publications, the findings of this volume suggest that those indices should place greater emphasis on the role of citizens (Mayne and Geissel 2018).

In order to address the links between post-1989 regime change and European integration and to further investigate their reverberations on current developments in the region, one should analyse how actors reassess domestic liberalisation, the EU accession negotiations and the EU

membership today and how this influences their political action. Illiberal party programmes in ECE can, *inter alia*, be attributed to disappointment with former governments' decisions or mistakes during transformation. Illiberal actors might also be motivated to correct past decisions against the will of the administration, courts and beneficiaries of former decisions. Favourable privatisation deals or the accumulation of positions in public administration (Grzymała-Busse 2003), for instance, are not just imagined agitation, but indisputable facts. Also, as enlargement was “not without domestic costs”, Grzymała-Busse and Innes had already concluded in 2003 that it “is this perception that “there is no alternative” that also underpins the rise of anti-EU politicians who substitute populism in lieu of substantial debate over ideology or policy in the new democracies of East Central Europe. In short, the demands of enlargement have both constrained responsive and accountable party competition and, as the character of enlargement became apparent, encouraged populists and demagogues” (Grzymała-Busse and Innes 2003, p. 64). Recent studies on the region have already taken up these ideas and advanced them in a promising way (Krastev and Holmes 2020).

When politicians follow an agenda of renationalisation and speak of “regaining democracy from corrupt elites” and courts perceived as having dominated the transformation process (Miklóssy 2018), or when they publicly argue that they intend to clean the branches of government from clientelistic and corrupt networks, this refers to a reassessment of former policies that can perhaps explain why citizens support them irrespectively of how liberal or illiberal their action is. As studies taking up these ideas would necessarily go beyond analysing the interplay of political decision-makers in the executive and legislative arena, they would benefit from the cooperation of scholars from various disciplines and with area expertise.

4 OUTLOOK

The present chapter summarised the main findings on illiberal trends and anti-EU politics in East Central Europe. We highlighted selected key findings and suggested paths for future research. It has become clear that the instruments to secure liberal democracy and compliance within the EU require modification. Such modifications should be based on both conceptual work and area expertise. A deepened understanding of national specificities will help to understand why certain tools—even if legally valid—work differently than originally envisaged and to adapt

them accordingly. Against this backdrop, we underlined the need for more research on the emergence of illiberal and EU-related attitudes, programmes and rhetoric and on unresolved transformation and enlargement conflicts in East Central Europe. On a more general level, a question for further reflection should also be how much conflict and diversity of views is necessary for a vibrant (European) democracy and where to draw the boundaries between disputable and indisputable issues.

As the chapters in this volume have shown, bringing societies back in and studying political developments from various disciplines and theoretical angles is a promising approach to achieve a comprehensive analysis of current challenges in Europe. To provide a more realistic impression of citizens' position-building, cognitive maps, party-voters linkages and decision-making processes on EU- and democracy-related topics in the EU multi-level system, future analyses should also move beyond the highly politicised conflict issues. The proposed topics for future research reflect and support the recent pluralisation of European Union Studies (Kreppel 2012). Broadening the questions and integrating domestic and area studies will require scholars to link different strands of research to make the best of their diversity for theory-building.

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