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# Backsliding in area of constitutional safeguards and independent institutions, corruption control, and general equality and minorities



**T**RANS**C**RISIS

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

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# **Backsliding in area of constitutional safeguards and independent institutions, corruption control, and general equality and minorities**

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## **Voice, Exit or Disloyalty: Democratic backsliding and the Rule of Law in Poland and Hungary**

**Nick Sitter**

The notion that political developments in EU member states might threaten the integrity of the organization is as old as the EU – or rather EEC – itself. European integration was in no small part an effort by the original six member states to impose some restrictions on their own freedom of action in the aftermath of three decades of war and international crises. Pooling sovereignty would help Germany, Italy, France and the three Ben-Ne-Lux states achieve peace and prosperity, and safeguard democracy. Two of them were recent dictatorships. Enlargement in the 1970s, 1980s and 1990s brought in both long-established democracies and the recently authoritarian Greece, Spain and Portugal. Despite one or two tense moments, such as the attempted coup d'état in Spain in 1981, all three new democracies consolidated rapidly. The EU is often accredited with playing an important part in this. After the collapse of the Berlin Wall, the prospect of enlargement to a dozen or more formerly communist dictatorship prompted new questions about how to ensure that these ex-authoritarian regimes could take their place in the EU's liberal democratic legal and normative system. The immediate result was the Copenhagen Criteria, laid down in the June 1993 European Council meeting in the Danish capital, which were designed to ensure that new member states were liberal democracies, respected human rights, had a functioning market economy and were capable of implementing the *Acquis Communautaire*. Combined with the obligation that all member states must be members of the Council of Europe, and a lengthy transition process, these rules should ensure that no new member state reversed its commitment to liberal democracy, free markets and the rule of law.

A quarter of a century later, *backsliding* has become a commonly accepted term both in journalism and in academia to describe reversals in transitions to liberal democracy. More to the point, elements of democratic backsliding have been documented in a variety of member states, old and new, across a series of themes. The *first policy paper in TransCrisis Work Package 6* analysed patterns of backsliding across the EU since the 2008 financial crisis, across three broad domains: the rule of law, corruption and corruption

Moreover, Viktor Orbán's Fidesz government had the 2/3 majority in parliament necessary unilaterally to change the constitution. It soon used this to centralize political power, and draw up a new tailor-made electoral system. The OSCE report on the 2014 elections concluded that: "The main governing party enjoyed an undue advantage because of restrictive campaign regulations, biased media coverage and campaign activities that blurred the separation between political party and the State".<sup>3</sup> Five years later the Polish government enjoyed less formal power, but lost no time to emulate its Hungarian role model. Both governments have been on the receiving end of substantial criticism from the EU, the Council of Europe and a range of member states, as well as non-EU states from Norway to the USA. And some of the language has been so severe as to be highly unusual among western allies. After the Hungarian prime minister set out his vision of an 'illiberal state' in a speech in 2014, Newsweek memorably labelled Viktor Orbán 'Hungary's Mussolini'.<sup>4</sup>

The first section of the paper elaborates on the definition of backsliding in the field of the rule of law, and the most important issues related to assessing backsliding in Poland and Hungary. The second section runs through the substantial points on which the two governments have been charged with backsliding in terms of what they set out to do and the limits to the independence of the judiciary, media, independent agencies and civil society that have arisen from new laws and policies. This section also explores the causes of backsliding in Poland and Hungary, and concludes that this has more to do with domestic party politics than with the financial crisis. The third section turns to the EU's reaction to backsliding in Poland and Hungary. Backsliding with respect to the rule of law is a potential cause of transnational crisis because it undermines the laws and/or norms on which the EU is based. Several actors have pointed this out, but there are important differences between the Hungarian and Polish cases in three respects: First, although Hungary's Fidesz and Poland's Law and Justice Party (PiS) share an ideology that is identical in many important respects, the former is a member of the European People's Party and the latter is not. Second, in 2010 the Hungarian issues could be interpreted as a one-off problem, the result of Hungary's electoral system and a social democrat government worn out after eight years in office. Parties on the European centre-right could dismiss Victor Orbán's posturing as hype rather than

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<sup>3</sup> OSCE Office for Democratic Institutions and Human Rights, "Hungary: Parliamentary Elections 6 April 2014", *OSCE/ODIHR Limited Election Observation Mission Final Report*, Warsaw, 11 July 2014, p.3.

<sup>4</sup> Hungarian Prime Minister's Office, "Prime Minister Viktor Orbán's Speech at the 25th Bálványos Summer Free University and Student Camp", 26 July 2014; Newsweek, "'Hungary's Mussolini' vows to make the EU member an 'illiberal state'", 20 July 2014

substance. By the time PiS took over in Poland five years later, the Hungarian case was more serious, and backsliding began to look like a pattern in the EU. Once (Slovakia in the 1990s) could be an accident, twice (Hungary in 2010) a coincidence, but by 2015 three times was – to borrow Ian Fleming’s phrase – “enemy action”. Third, Poland is too big a state to be ignored quietly. In addition, geopolitics and history meant that no Polish government could hint – as Orbán did – that too harsh a response from the EU might drive the country into the open arms of Vladimir Putin. Hence the focus on backsliding and the EU’s reaction to this in terms of EU crisis management, including analysis of the core elements in crisis management in the TransCrisis project: detection, sense-making, decision-making, coordination, meaning-making, communication and accountability.

## **Part 1 - Backsliding and the Rule of Law in the EU**

The rule of law is a fundamental building block of liberal democracy: the rule of the majority within legal and constitutional limits and constraints. All EU member states are committed to constitutional safeguards of democracy as a prerequisite for membership. If leaders of national governments in the EU invoke a crisis (be it the financial crisis, refugee crisis or the threat of terrorism) to limit the power of the courts, restrict media freedom, reduce the power of independent regulators or harass civil society, this may become a matter of democratic backsliding. If it breaches primary or secondary EU law, this can be defined as *hard backsliding*, whereas it is primarily a matter of a breach of EU norms (or EU laws that are not about democracy and the rule of law) then it can be defined as *soft backsliding*.<sup>5</sup>

Defining backsliding in the context of the rule of law is relatively unproblematic given the clear commitments to the rule of law that are laid down in the EU treaties, EU legislation, the requirements of membership of the Council of Europe and the Copenhagen Criteria. The Copenhagen Criteria for EU membership, Article 2 of the Treaty on European Union and the Treaty’s preamble state these norms clearly and precisely, and provisions to act against a member states that violate these rules and norms is set out in Article 7. In 2014 – in response to the European Parliament’s request that “Member States be regularly assessed on their continued compliance with the fundamental values of the Union and the requirement of democracy and the rule of

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<sup>5</sup> Nick Sitter, Agnes Batory, Joanna Kostka, Andrea Krizsan and Violetta Zentai, *Mapping Backsliding in the European Union*, p.9-10.

law" and Justice and Home Affairs Council's emphasis that "respecting the rule of law is a prerequisite for the protection of fundamental rights" and call for the Commission "to take forward the debate in line with the Treaties on the possible need for and shape of a collaborative and systematic method to tackle these issues" – the Commission set out "new framework to ensure an effective and coherent protection of the rule of law in all Member States".<sup>6</sup> This has become known simply as the Rule of Law Framework.

- The Copenhagen Criteria require that the candidate country must achieve, among other things, stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.<sup>7</sup>
- In the Treaty Preamble, the signatories of the EU Treaty confirm "their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law."<sup>8</sup>
- Article 2 of the Treaty on European Union states that: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."
- Article 7 establishes the procedure for dealing with breaches of the values set out in Article 2: "On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure."

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<sup>6</sup> Communication from the Commission to the European Parliament and the Council, COM(2014) 158 final/2, "A new EU Framework to strengthen the Rule of Law", 19 March 2014.

<sup>7</sup> European Council in Copenhagen, Conclusions of the Presidency, (21-22 June 1993, SN 180/1/93)12.

<sup>8</sup> Consolidated version of the Treaty on European Union, Preamble.

- The Rule of Law Framework of 2014 established a three-stage process, designed as a dialogue between the Commission and the member state in question: first, a Commission assessment; then a Commission recommendation; and finally monitoring of the Member State's follow-up to the Commission's recommendation. The first step entails collecting and examining information and assessing whether there are clear indications of a systemic threat to the rule of law, and if necessary issuing a Rule of Law Opinion. At the second stage, if the matter is not resolved, the Commission can issue a Rule of Law Recommendation, including a fixed time limit for the state in question to address the matter. In the third, follow-up stage, the Commission (or European Parliament or a group of 10 Member States) may resort to the Article 7 Procedure. The Rule of Law framework thus does not include any sanctions other than the threat of action under Article 7.
- Finally, Article 50 establishes the procedure for termination of membership: "Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements" and specified that, unless the European Council extended the deadline, membership would terminate within two years of an Article 50 notification. The British diplomat John Kerr, who drafted the original text, later pointed out that this was written to avoid legal chaos if a government that had turned authoritarian "stormed out" in reaction to the EU suspending its membership under an Article 7 procedure.<sup>9</sup>

The core of any definition of backsliding in the EU should therefore involve a member state developing policies or acting in a way that involved going back on EU commitments to the relevant part of the EU rules and norms as set out in the Treaty. If backsliding is defined as unilateral and systematic acts by a member state government that violates the laws and/or the norms of the EU, this means that there are several ways in which governments can backslide. The first, and most obvious way, is by government's adopting policies (laws, decrees, guidelines etc.) that limit the independence of national courts, independent national agencies (if independence is required by EU law), the media, or civil society institutions. The second involved the government putting forward policy agendas that are incompatible with EU law and norms, i.e. declaring an open rejection of EU values. The third, and least common, is a

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<sup>9</sup> "Article 50 author Lord Kerr: I didn't have UK in mind – The EU's divorce clause was designed amid concerns about a "dictatorial regime", *Politico*, 28 March 2017.

government's use of executive power, e.g. by making political appointments, in violation of EU norms.

An act that qualifies as backsliding can be classified as either *hard backsliding* or *soft backsliding*: If it violates both EU rules relating to the rule of law and EU norms, it falls under the definition of *hard backsliding*. If it violates EU norms, but only violates ordinary EU rules set out in, for example, directives on age discrimination, this could be categorized as soft backsliding. The central point here is that when it comes to the rule of law, the borderline between hard and soft backsliding is blurred and depends very much on the response by the European Commission, Council or European Parliament. If any of the three call for an Article 7 procedure, this would be indicative of their perceiving an act as a matter of hard backsliding: a violation of the rule-of-law related *acquis*. The same holds if the Commission begins a Rule of Law procedure. If the Commission opts for ordinary infringement, or EU leaders merely express concern about developments in a member state, this can be taken as an indication of soft backsliding.

Two developments in the late 1990s indicated that the EU might one day face problems in terms of some of its member states' commitment to the rule of law – whether in the form of hard or soft backsliding. The first was the Commission's 1997 assessment of Slovakia's progress toward meeting the Copenhagen Criteria: "Slovakia does not fulfil in a satisfying manner the political conditions set out by the European Council in Copenhagen, because of the instability of Slovakia's institutions, their lack of rootedness in political life and the shortcomings in the functioning of its democracy."<sup>10</sup> Slovakia was thus sent to the back of the queue for EU membership – the only country to be relegated in this was on the grounds of limited progress toward liberal democracy (as opposed to relegation on the grounds of limited institutional or administrative capacity). Only after a change of government in Slovakia, when the nationalist populist government led by Vladimír Mečiar was replaced by a broad anti-Mečiar coalition government, did the Commission proceed to recommend negotiations with Slovakia. The second warning came after the Austrian elections of October 1999, when the far-right Austrian Freedom Party (FPÖ) joined the conservative Austria People's Party (ÖVP) in government. The other 14 member states were at a loss to how to respond to this, and ended up with a combination of bilateral boycotts of the Austrian government

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<sup>10</sup> European Commission, "Agenda 2000 - Commission Opinion on Slovakia's Application for Membership of the European Union", DOC/97/20, 17 July 1997.



and a committee of three “wise men” appointed to report on developments.<sup>11</sup> In September 2000 the member states followed the recommendations of the former Finnish president Martti Ahtisaari, former Spanish foreign minister Marcelino Oreja and the German lawyer Jochen Frowein, and lifted the sanctions.

The Slovak and Austrian crises foreshadowed the political and economic debate about backsliding in the 2000s. The term has now come to encompass both political developments that threaten the EU’s core values (notably democracy and human rights) and policy developments that challenge the coherence of the *acquis communautaire*. Three developments – all in formerly communist member states – have been particularly contentious in this respect:

- In the summer of 2010, within months of winning a two-thirds majority in the parliament, the Hungarian government embarked on a series of legislative and constitutional changes that signalled a likely clash with the core values of the EU as set out in the Copenhagen Criteria and Article 2. The most dramatic development came in 2012, when the Commission referred Hungary to the Court of Justice for an infringement case concerning the retirement age of judges, prosecutors and public notaries. However, it opted to confront Hungary on a matter of age discrimination rather than a matter of the rule of law. Moreover, judiciary independence was only one of several issues relating to the concentration of political power. In December 2012, Commission President Barroso summed up the problem succinctly: "There are concerns about the quality of democracy in Hungary."<sup>12</sup> Although the matter of early retirement for judges was settled, the broader question of Hungarian backsliding would remain on the EU agenda.
- In 2012 Romanian politics was rocked by the clash between president Traian Băsescu and prime minister Victor Ponta, when the centre-left Social Liberal Union (USL) government accused the president (from the centre-right Justice and Truth Alliance, DA) of abuse of power, and had the parliament pass emergency decrees to have Băsescu removed from power. When the

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<sup>11</sup> Michael Merlingen, Cas Mudde and Ulrich Sedelmeier, “The Right and the Righteous? European Norms, Domestic Politics and the Sanctions Against Austria”, *Journal of Common Market Studies*, 39:1 (2001), 59–77.

<sup>12</sup> The Guardian, Hungary PM Viktor Orban faces EU backlash over new policies, Wednesday 18 January 2012, <http://www.theguardian.com/world/2012/jan/18/hungary-viktor-orban-eu-backlash>

Constitutional Court objected, its powers were reduced. The EU's reaction was swift and severe: Both Commission President Barroso and Council President Herman Van Rumpoy immediately criticized the Romanian government's failure to comply with judgments of the constitutional court, summoned Ponta to Brussels, and announced the prolongation of the Cooperation and Verification Mechanism. The prime minister eventually backed down from his effort to impeach the president.

- After the Polish Law and Justice party's (PiS) victory in the 2015 elections, the party swiftly launched a campaign to change the constitutional order. When it began to change the political order in the winter of 2015-16, the government drew immediate criticism from both the Commission and the European Parliament. On 23 December 2015 the Commission sent a letter to the Polish government asking to be informed about the constitutional situation in Poland; on 13 January 2016 it launched a dialogue under the Rule of Law procedure; on 1 June it issued a Rule of Law Opinion; and the Rule of Law Recommendation followed on 27 July 2016. Meanwhile, on April 13, MEPs passed a non-binding resolution calling on the Polish authorities to restore the ability of Poland's Constitutional Tribunal to uphold its Constitution and guarantee respect for the rule of law.<sup>13</sup>

Although the measures the Commission took against Hungary were based on ordinary infringement procedures, the then EU Justice Commissioner Viviane Reding made it clear in 2013 that she saw these kind of issues as "rule of law crises" that indicated problems of a systemic nature.<sup>14</sup> The only West European cases to which she drew attention was the French government's attempt in summer 2010 to secretly implement a collective deportation policy aimed at EU citizens of Romani ethnicity.<sup>15</sup> Commission President José Manuel Barroso had expressed similar concerns in this 2012 state of the union speech, when he warned of "threats to the legal and democratic fabric in some of

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

<sup>14</sup> Viviane Reding, "The EU and the Rule of Law – What's Next?", 2013, Press Release Database, available at: [http://europa.eu/rapid/press-release\\_SPEECH-13-677\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm)

<sup>15</sup> Viviane Reding, "The EU and the Rule of Law – What's Next?", 2013, Press Release Database, available at: [http://europa.eu/rapid/press-release\\_SPEECH-13-677\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm)

our European states".<sup>16</sup> However, Fidesz was a member of the European People's Party, and both the EP and the member state governments divided along party lines. For example, when the (liberal) foreign ministers of Denmark, Finland, Germany and the Netherlands wrote a joint letter calling for new measures to deal with states that violated fundamental EU democratic values, Sweden's (conservative, EPP) foreign minister Carl Bildt declined to join them.<sup>17</sup> Sweden's (liberal) Europe Minister confirmed that this was because Bildt would not criticize a fellow EPP member.<sup>18</sup> In contrast to the divisive votes on Hungary, the EP resolution passed by 513 votes to 142 with 30 abstentions, this time with the help of the EPP. On a vote that was 91% along party lines, only the Eurosceptic groups on the right and left flank and the PiS' own European Conservatives and Reformists (ECR) opposed the motion. All British Conservative MEPS present loyalty stood by their Polish ally.<sup>19</sup> Viviane Reding, now an EPP MEP, said: "Last January, I warned against the reforms of the Polish government aimed among others at dismantling the independent judiciary. Three months later, I remain just as worried. The attacks against the Constitutional Tribunal, media-freedom and women's rights, are steps in the wrong direction."<sup>20</sup>

At the same time, the academic literature coming out of think tanks and universities began to analyse the challenge of backsliding. This debate indicates that there is broad consensus on three points that are central to the question of whether and to what extent rule-of-law backsliding represents a crisis for the EU, or of democratization in general.<sup>21</sup> First, there is a range of populist parties on the left and right flanks of the party system across Europe that have ideological profiles and political agendas that are not fully compatible with all the core elements of liberal democracy – particularly the notion that

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<sup>16</sup> José Manuel Barroso, State of the Union 2012 Address, 2012, Press Release Database, available at: [http://europa.eu/rapid/press-release\\_SPEECH-12-596\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm)

<sup>17</sup> Westerwelle, Guido, Frans Timmermans, Villy Søvndal and Erkki Tuomioja, open letter to European Commission President José Manuel Barroso, 6 March 2013, <http://www.rijksoverheid.nl/documenten-en-publicaties/brieven/2013/05/13/brief-voorzitter-europese-commissie-over-eu-rechtsstatelijkheidsmechanisme.html>

<sup>18</sup> Sveriges Radio, P1, 13.03.2013

<sup>19</sup> Voting data from Votewatch, at <http://www.votewatch.eu/en/term8-situation-in-poland-motion-for-resolution-vote-resolution.html>

<sup>20</sup> Euractiv, "MEPs rap Poland over rule of law" 13 April 2016.

<sup>21</sup> For a more detailed review of this literature, see Nick Sitter, Agnes Batory, Joanna Kostka, Andrea Krizsan and Violetta Zentai, *Mapping Backsliding in the European Union*.

majority rule (as expressed in elections through representative parliaments) must be constrained by the rule of law (as determined by constitutions and interpreted by constitutional courts) and that liberal democracy requires an independent civil society (free from excessive political appointments or interference).<sup>22</sup> Second, most academics writing on the subject regard the danger of such potential crises as more acute in some of the EU's formerly communist member states, by and large because they see it as a matter of reversal of democratization processes that began with the fall of the Berlin Wall. Moreover, many argue that backsliding is a threat that the EU must take seriously.<sup>23</sup> Third, the most important causes of backsliding and rule-of-law crises in the EU are all linked to political ideology and populism. To be sure, the first controversial policy measures in Hungary, such as the extraordinary taxes that hit foreign companies disproportionately, were presented as a response to the domestic and international financial crises. But subsequent developments in both Hungary and Poland have been presented more in terms of defending national sovereignty and projecting the will of the people, and in opposition to liberalism and an international elite's dysfunctional policies (including, but not limited to, austerity policies).<sup>24</sup>

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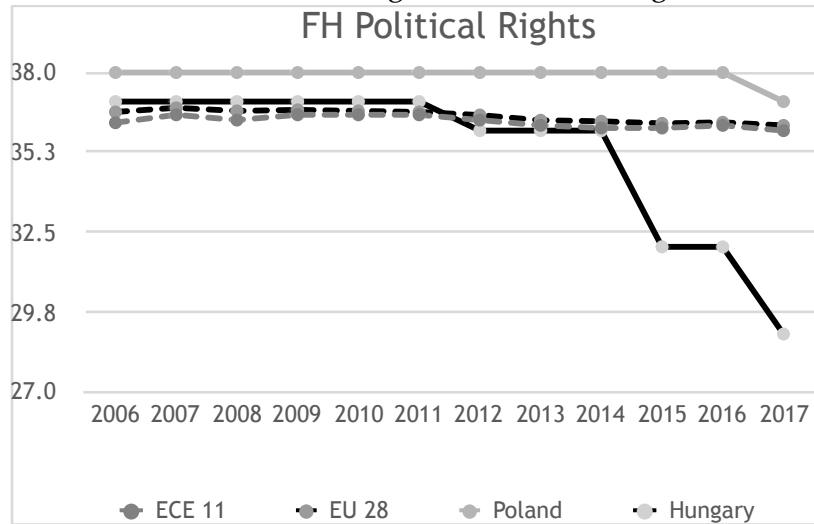
<sup>22</sup> Ulrich Sedelmeier, "Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession", *Journal of Common Market Studies*, 52:1 (2014), 105-121; Ivan Krastev, "The Strange Death of the Liberal Consensus", *Journal of Democracy*, 18:4 (2007), 56-63; Charles Gati, "Backsliding in Central and Eastern Europe!", *The Quarterly Journal*, Fall 2007, 107-120; Kim Lane Scheppele "The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work", *Governance*, 26:4 (2014), 559-562; Paul Krugman, "Depression and Democracy" *New York Times*, 11 Dec 2012; Paul Lendvai, *Hungary: Between Democracy and Authoritarianism*, London: Hurst & Co, 2012.

<sup>23</sup> Jacques Rupnik, "Is Central Europe Backsliding: From Democracy Fatigue to Populist Backlash", *Journal of Democracy*, 18:4 (2007), 17-25; Marc F. Plattner and Larry J. Diamond, "Is East-Central Europe Backsliding?", *Journal of Democracy*, 18:4 (2007), 5-6; Gordon Smith, "Transitions to Liberal Democracy", in Stephen Whitefield (ed.), *The New Institutional Architecture of Eastern Europe*, Basingstoke: Macmillan, 1993; Ulrich Sedelmeier and Frank Schimmelfennig, "Theorising EU Enlargement: Research Focus, Hypotheses, and the State of Research", *Journal of European Public Policy*, 9:4 (2002): 500-528; Jan-Werner Müller, "Should the EU Protect Democracy and the Rule of Law in Member States?" *European Law Journal*, 21:2 (2015) 141-160.

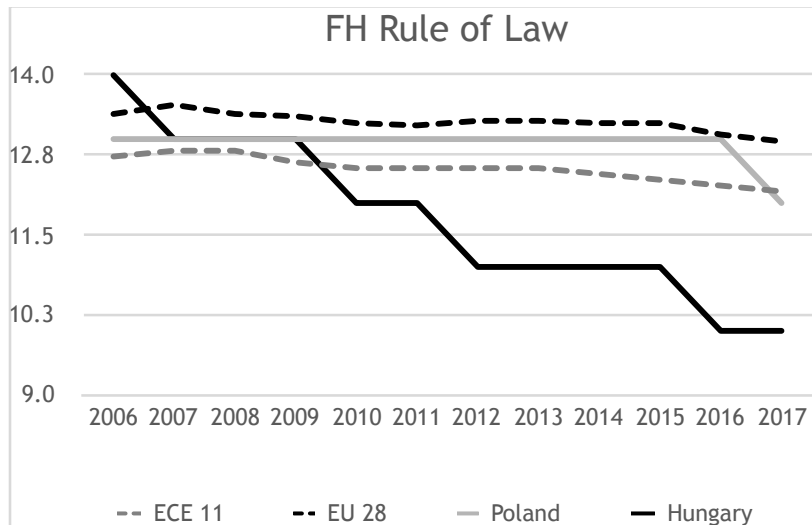
<sup>24</sup> Dawson and Hanley, "East Central Europe: The Fading Mirage of the 'Liberal Consensus'" *Journal of Democracy*, 27:1 (2016), 20-34; Bela Greskovits, "The Hollowing and Backsliding of Democracy in Central Europe", paper presented at Central European University, 9 April 2015; Agnes Batory, "Populists in government? Hungary's 'system of national cooperation'", *Democratization*, 23:2 (2016), 283-303; Atila Ágh, "De-Europeanization and De-democratization Trends in ECE: From the Potemkin Democracy to the Elected Autocracy in Hungary", *Journal of Comparative Politics*, 8:2 (2015), 4-26.

Two cases stand out in both policy reports and the academic literature – Hungary because of the long series of issues that have been raised time and again since 2010, and Poland because of the seriousness of both the government’s actions and the Commission’s response in the winter of 2015-16. Indeed, in the year 2016, the *Financial Times* featured a full 100 articles critical of Orbán’s illiberalism (to a mere 5 on other topics related to Hungary) and 27 articles critical of Kaczynski’s illiberalism (and 8 on other Polish topics). Two graphs, based on data from Freedom House, present a clear picture of developments in the two states since they joined the EU in 2004.

Freedom House Political Rights index (showing 27-39 of a full scale 0-40)



Freedom House Rule of Law index (showing 9-15 of a full scale 0 -16)



## Part 2 - Backsliding in Poland and Hungary: Between Voice and Exit

Fidesz and PiS have long been critical of important aspects of European integration, and are usually classified as Eurosceptic in the party politics literature.<sup>25</sup> However, although they have long voiced strong opposition to core EU values, neither has advocated taking their country out of the EU. In Hirschman's terms – they have opted for voice rather than exit.<sup>26</sup> Both criticize the club, and want to reform it, but neither is prepared to leave it. However, the EU system also leaves room for a third alternative to loyalty: creative compliance.<sup>27</sup> This involves a sufficient amount of compliance with EU rules to ensure that the state complies in form, while the policy content continues to go against the principles of EU rules. In other words creative compliance can be a form of soft backsliding – practices that violate norms of part of the EU *acquis*, without falling foul of EU rules to the extent that it becomes grounds for a Rule of Law investigation or Article 7 procedure. The following paragraphs provide an overview of the most controversial cases of Hungarian and Polish policies in the period since the Hungarian 2010 election

<sup>25</sup> Paul Taggart and Alex Szczerbiak (eds), *The Comparative Party Politics of Euroscepticism*, 2 vols, Oxford: Oxford University Press, 2008.

<sup>26</sup> Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*, Cambridge, MA: Harvard University Press, 1970.

<sup>27</sup> Batory, "Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU".

and Polish 2015 election that have drawn criticism from EU institutions on the grounds that they might breach fundamental norms and rules – either as soft or hard backsliding with respect to the rule of law.

1. Shortly after coming to power in 2010, the Hungarian government adopted a number of new taxes that disproportionately hit foreign companies in the banking, telecommunications, energy and food retail business. Although the government argued that this was legal under EU rules, it immediately raised questions about its commitment to the EU's rules and norms against discrimination on the grounds of national origin.<sup>28</sup> The Commission opened infringement procedures against the extra tax levied on the telecommunications sector, but based this on rules that require that specific charges on telecoms operators be directly related to covering the cost of regulating the sector. Two years later the Commission withdrew the case, after losing a somewhat similar case against France in the European Court of Justice. Although the tax was criticized in the financial press as discriminatory, the Commission opted to pursue it as a violation of rules that ban the use of telecoms taxes to generate additional revenue for the central budget.<sup>29</sup> In the end the tax thus did not qualify as backsliding, but the Commission's decision to focus on the least controversial aspect of the possible violation of EU rules foreshadowed its future preferences for treating policy problems a soft rather than hard backsliding.
2. The first major controversy related to the rule of law and independent institutions in Hungary was the media law of 2010, which drew widespread criticism in the international press.<sup>30</sup> The contentious points, some of which drew sharp criticism from the EP, included political control of the media regulator, limited protection for journalists' sources, ambiguous rules on content and sanctions that were open to abuse by the government, as well as political

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<sup>28</sup> Financial Times, "Hungary unveils 'crisis' taxes on business", 18 Oct 2010

<sup>29</sup> European Commission Press Release IP-12-286, Commission refers Hungary to Court for failure to end special tax on telecom operators.

<sup>30</sup> Der Spiegel, "Hungary's 'Orbanization' Is Worrying Europe", 28 December 2010.

allocation of radio frequencies.<sup>31</sup> The Hungarian opposition sought to take the battle to international forums, including the EU.<sup>32</sup> The Commission dealt with the problem as a matter of ordinary infringement related to the transposition of a media-related directive, not a rule-of-law matter, and a crisis was averted when the Hungarian government backed down. However, the adjustments to the Hungarian media law did little to prevent increased centralized political control of the media, culminating in the closing down of the main opposition newspaper *Nepszabadsag* in October 2016 – ostensibly on financial grounds.<sup>33</sup>

3. The next big confrontation between Hungary and the EU concerned judiciary reform, and particularly the early retirement of judges. The lowering of the retirement age from 70 to 62 effectively opened the way for a large number of new (political) appointments, and was duly criticized as a policy designed to weaken the rule of law.<sup>34</sup> The European Commission opted to deal with it as a matter of illegal age discrimination, and in due course the European Court of Justice did indeed find that the Hungarian law constituted unjustified age

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<sup>31</sup> CEU Centre for Media and Communication Studies, *Hungarian Media Laws in Europe: An Assessment of the Consistency of Hungary's Media Laws with European Practices and Norms*, CEU Centre for Media and Communication Studies, 2012; European Parliament resolution of 10 March 2011 on media law in Hungary; Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015); Council of Europe Commissioner for Human Rights, *CommDH(2011)10*, "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media, 25 Feb 2011.

<sup>32</sup> Agnes Batory "Uploading as political strategy: the European Parliament and the Hungarian media law debate", *East European Politics*, 30:2, 230-245.

<sup>33</sup> Financial Times, "Leftwing newspaper critical of Hungary's leaders shut down", 13 Oct 2016; BBC, "Hungary's largest paper *Nepszabadsag* shuts, alleging pressure" 11 Oct 2016; New York Times, "Newspaper Closes in Hungary, and Hungarians See Government's Hand", 11 Oct 2016; Gábor Győri, András Bíró-Nagy and Zoltán Pogátsa, *Hungarian Politics in 2016*, Budapest: Friedrich-Ebert-Stiftung and Policy Solutions, 2017, 63-67.

<sup>34</sup> Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session; Council of Europe, Commissioner for Human rights, "Hungary" press release 12 Jan 2012.



discrimination.<sup>35</sup> By that stage, however, the political effects were in place, regardless of the compensation due to individual judges.

4. Two other efforts to limit the independence of bodies for which EU rules mandate independence also drew censure from the Commission in 2012: the replacement of the Data Protection Commissioner's Office and planned legislation that would limit the independence of the Central Bank.<sup>36</sup> The Central Bank issues was resolved (with threats of infringement), whereas the data ombudsman decision was subject to the infringement procedure and the Commission's decision was confirmed by the Court of Justice in 2014.
5. The new constitution of 2011, the subsequent constitutional amendments, and the use of the new Cardinal Laws (that can only be changed by a 2/3 majority) quickly received heavy criticism by NGOs, academics, journalists and international organizations like the Venice Commission and Helsinki Committees.<sup>37</sup> When the European Commission picked up on a number of related cases, using ordinary infringement procedures, the Hungarian government backed down and modified the laws so as to ensure compliance with the letter (but not the spirit) of EU law: In 2013, protesting against EU interference, the government changed its new rules on the relocation of court cases, political advertising, and special taxes to raise money in the event of EU

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<sup>35</sup> European Commission Press Release MEMO-12-832, "Court of Justice rules Hungarian forced early retirement of judges incompatible with EU law", 6 Nov 2012; European Commission Press Release IP-13-1112, "European Commission closes infringement procedure on forced retirement of Hungarian judges", 20 Nov 2013.

<sup>36</sup> European Commission Press Release MEMO-14-267 "Court of Justice upholds independence of data protection authorities in case against Hungary" 8 April 2014; European Commission Press Release IP-12-395 "Hungary - infringements: European Commission satisfied with changes to central bank statute, but refers Hungary to the Court of Justice on the independence of the data protection authority and measures affecting the judiciary" 25 April 2012

<sup>37</sup> Den norske Helsingforskomité, "Democracy at stake in Hungary – The Orbán government's Constitutional revolution", 29 Feb 2012 and "Democracy in Hungary, neither saved, nor safe", Policy Paper No. 2-2014; Gábor Halmai and Kim Lane Scheppele, Opinion on Hungary's New Constitutional Order: Amicus Brief for the Venice Commission on the Transitional Provisions of the Fundamental Law and the Key Cardinal Laws, 2012;

finer.<sup>38</sup> By that stage, the Commission President had taken the exceptional step of sending a letter to the Hungarian prime minister underlining that “the Commission has serious concerns over the compatibility of the Fourth Amendment to the Hungarian Fundamental Law with EU legislation and with the principle of the rule of law.”<sup>39</sup>

6. In 2014, the Hungarian government was censured for the first time over violations of principles related to the rule of law, not by an EU institution but by European Economic Area state Norway. When Hungary changed the regime for overseeing the grants, Norway interpreted this as breach of the rules for the EEA and Norway Grants. The Hungarian police’s subsequent raid of the organization responsible for distributing the part of the EEA grants that goes to NGOs did not improve relations between the two states. In the diplomatic words of Norwegian Europe Minister Vidar Helgesen: “I am deeply concerned about the Hungarian authorities’ measures against civil society and their efforts to limit freedom of speech.”<sup>40</sup> This is the only case of unambiguously hard backsliding, since the Norwegian government responded by suspending all payments to the Hungarian Government (but maintained the NGO fund).<sup>41</sup> The episode prompted Helgesen to set out his criticism of the Hungarian government and the EU’s weak stance in a sharply worded letter to the Financial Times: “Hungary’s Government is turning its back on the West”, “launched a crackdown on civil society”, and “is now violating the terms of the agreement for these [EEA] funds”, adding that he was “puzzled and disappointed that a response from the

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<sup>38</sup> Batory, “Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU”, p. 692-693.

<sup>39</sup> Commission Press Release IP-13-327, “The European Commission reiterates its serious concerns over the Fourth Amendment to the Constitution of Hungary”, 13 April 2013.

<sup>40</sup> Utenriksdepartementet press lease «Bekymring for siviltsamfunn i Ungarn», 6 Juni 2014 («Jeg er dypt bekymret over ungarske myndigheters tiltak mot siviltsamfunnet og forsøk på å innskrenke ytringsfriheten»); Dagens Næringsliv, “Razzia mot ungarsk stiftelse som fordeler norske EØS-midler”, 8 August 2014.

<sup>41</sup> Norwegian Government, “Suspension of funds to Hungary” 3 Nov 2014 <https://www.regjeringen.no/en/topics/european-policy/norwaygrants/diverse-saker/Suspension-of-funds-to-Hungary/id2008980/> and “Suspension of EEA and Norway Grants payments to Hungary lifted” 11 Dec 2015 <https://www.regjeringen.no/en/aktuelt/suspension-of-eea-and-norway-grants-payments-to-hungary-lifted/id2467020/>

EU institutions has been largely lacking.”<sup>42</sup> When the Hungarian government eventually backed down and “accepted all the conditions” set by the Norwegian government, Helgesen drew a clear conclusion from this episode: “It pays-off to stand up for fundamental values. [...] We are under so much pressure externally that it’s even more important to ensure internally that we hold each other to account in Europe. The EU should take learning from that.”<sup>43</sup>

7. After the election victory on 25 October 2015, the new Polish PiS government lost no time in confronting the EU. On November 19, the Polish parliament used an accelerated procedure to amend the Law on the Constitutional Tribunal and introduce the possibility to annul the judicial nominations. It then proceeded to annul all five appointments to the constitutional court made by the outgoing parliament. Two weeks later the court ruled that three of the five could take up their seats (three seats were vacated during the old parliament’s tenure; two only subsequently), and obliged the president to take the oath of the three validly elected judges without delay. On 22 December, another a law amending the law on the Constitutional Tribunal followed, which raised the threshold for court rulings. The Commission responded the next day, with a letter that asked to be informed about the constitutional situation in Poland. In January, it followed up with a discussion on recent developments in Poland and the Rule of Law Framework.<sup>44</sup> Its Rule of Law Opinion duly followed on 1 June.<sup>45</sup> The Polish government effectively ignored the Rule of Law Recommendation in July and its three-month deadline, and took the view that it was, in prime minister Beata Szydło’s words “incompatible with the interests of the Polish state”.<sup>46</sup> The Commission’s giving Poland a new, two-month, deadline in December did

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<sup>42</sup> Vidar Helgesen, “EU: Time to stand up for the liberal Society”, *Financial Times*, 28 August 2014

<sup>43</sup> Politico, “Orbán backs down in battle with NGOs”, 10 Dec 2015

<sup>44</sup> European Commission Press Release MEMO-16-62, “College Orientation Debate on recent developments in Poland and the Rule of Law Framework: Questions & Answers”, 16 Jan 2016.

<sup>45</sup> European Commission Press Release IP-16-2015, “Commission adopts Rule of Law Opinion on the situation in Poland”, 1 June 2016.

<sup>46</sup> European Commission Press Release IP-16-2643 “Rule of Law: Commission issues recommendation to Poland” 27 July 2017; Politico, “Poland rejects Commission’s rule of law request”, 28 Nov 2016.

nothing to change matters, other than provoking the Hungarian prime minister to emphasize that he would block any attempt to use article 7 against Poland.<sup>47</sup>

8. The Commission's criticism of the Polish government's actions in violation of EU norms and rules on the rule of law also extended to the government's measures to limit the functioning of the Constitutional Tribunal by refusing to have the court's judgments published, thereby preventing constitutional court rulings from taking effect. This pertained to the court's judgment of 9 March 2016 to the effect that the law of 22 December 2015 was unconstitutional, as well as to subsequent court rulings.<sup>48</sup> Meanwhile the Venice Commission had also issued an opinion to the effect that it deemed the amendments of 22 December to be incompatible with the rule of law.<sup>49</sup>
  
9. In addition to its censure of Poland's measures relating to the organization of the judiciary, the Commission also raised concerns about the effectiveness of constitutional review of new legislation, with a view to the new controversial media law. It emphasized the necessity that "the Constitutional Tribunal is able to fully ensure an effective constitutional review of legislative acts."<sup>50</sup> Other controversial proposals included a law \designed to limit demonstrations."<sup>51</sup>

Over the last six years, backsliding has thus emerged as a third alternative to the binary choices of voice and exit: disloyalty. To be sure, the EU has long struggled with individual member states' occasional lack of compliance, but this has mostly been a matter of limited capacity or poor implementation in practice on the part of the member states. Open defiance of EU rules has been in extreme exceptions – as the 1995 'beef

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<sup>47</sup> Euractiv, "EU hits Poland with new rule of law deadline, sanctions remain 'in toolbox'", 21 Dec 2016.

<sup>48</sup> European Commission Press Release IP-16-2643 "Rule of Law: Commission issues recommendation to Poland" 27 July 2017

<sup>49</sup> European Commission for Democracy through Law (Venice Commission), Opinion no. 833/2015, "Opinion on amendments to the act of 25 June 2015 on the Constitutional Tribunal of Poland", 11 March 2016.

<sup>50</sup> European Commission Press Release MEMO-16-2017, "Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers", 1 June 2016.

<sup>51</sup> Financial Times, "Illiberal democracy on the Polish horizon", 21 Dec 2016

crisis' when the UK abstained from votes in the Council in protest over veterinary restrictions on beef exports testifies.<sup>52</sup> Nevertheless, in Hungary since 2010 and Poland since 2015, national populist governments have adopted a strategy of defying "Brussels" more openly, calling for a "cultural revolution" in the EU and promising to defend each other against Commission efforts to use the Article 7 procedure.<sup>53</sup> In the EU, whether a policy initiative amounts to backsliding in terms of the rule of law or the independence of institutions and civil society is very much in the eye of the beholder. Perhaps unsurprisingly, in light of its limited power, the European Parliament has been bolder than the Commission and the Council. However, even in the EP, many parties have been reluctant to – in the language of Article 7 – "determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2". The Commission opted for a softer approach in the Hungarian case, but quickly began to test its new Rule of Law instrument against Poland. The member states have been more divided, and very reluctant to criticize one of their own number. If backsliding is both a threat and a crisis in the eyes of the EP, the Commission's reaction hardly includes the element of urgency that is need to classify backsliding as a crisis. Almost no member state – the exception is EEA member Norway – has reacted in a way that merits the term *crisis management*.

The Commission's strategy with regard to the various cases that could qualify as hard of soft backsliding in Hungary has been to treat these cases formally as a matter of ordinary infringement.<sup>54</sup> At the same time, both Barroso and Reding were quite outspoken about the threat these developments – and Orbán's rhetoric – posed to liberal democracy and the rule of law. This amounts to a very cautious approach to backsliding, treating it as soft rather than hard backsliding, in contrast to the Commission's much stronger reaction to developments in Poland in the winter of 2015-16. In 2012, commenting on the Cardinal Laws, the Commission warned that: "As guardian of the Treaties, the Commission remains preoccupied that a number of the

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<sup>52</sup> "European Business - Beef ban veto bites", *Daily Telegraph* 29 May 1996.

<sup>53</sup> Financial Times, "Orban and Kaczynski vow 'cultural counter-revolution' to reform EU" 6 Sept 2017; "A counter-revolution Europe does not need: Poland and Hungary should beware of undermining EU values", 7 Sept 2016; "Horse stealing in Warsaw, Budapest and Brussels" 7 Sept 2017; "Orban invokes 1956 Hungarian uprising to resist EU empire building" 23 Oct 2016; "Illiberal democracy on the Polish horizon" 21 Dec 2016

<sup>54</sup> Batory, "Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU".

new provisions may violate EU law.”<sup>55</sup> That same year, Barroso said of the Hungarian prime minister that: “Those who compare the European Union with the USSR show a complete lack of understanding of what democracy is” and that they “fail to understand the important contribution of all those who have defended and fought for freedom and democracy.”<sup>56</sup> However, the most vocal criticism of the Hungarian government came from the USA, Norway and the Council of Europe, including US Secretary of State Hilary Clinton.<sup>57</sup> The Council of Europe’s Thorbjørn Jagland pointed out that the CE has a much broader mandate than the EU to act against violations of the rule of law and human rights.<sup>58</sup> Viviane Reding later defended the Commission’s soft strategy in an interview with Reuters: “I prevented worse [...] It did not change dramatically the nationalistic course of the Hungarian prime minister, but at least it stopped him dismantling the independence of the courts and the independent data authority.”<sup>59</sup> Jean-Claude Juncker’s greeting the Hungarian Prime Minister with a jovial “Hello, Dictator” at the 2015 Riga Summit could be taken as an indicator that the new Commission continued its two-track strategy of combining political pressure with ordinary infringement procedures.<sup>60</sup> On 22 March 2017, Commission Vice-President Frans Timmermans (whose portfolio includes the rule of law) made it clear that the member states must make sure that “these values serve not only as ornament or a bouquet of flowers. The Commission cannot do this alone. The member states have a responsibility too”.<sup>61</sup>

The European Parliament adopted a much more critical line, and issued a series of reports on developments in Hungary after the new 2011 constitution (the Basic Law) – which at that point had already been criticized in strong language by the Venice

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<sup>55</sup> Commission Press Release MEMO-12-9, “Statement of the European Commission on the situation in Hungary on 11 January 2012” 11 Jan 2012.

<sup>56</sup> Financial Times, “The EU Soviet? Barroso takes on Orban”, 16 March 2012

<sup>57</sup> Reuters, “Clinton concerned about democratic freedoms in Hungary” 30 June 2011

<sup>58</sup> Politiken «Demokratisk vagthund skal kulegrave Ungarns forfatning», 20 Jan 2012

<sup>59</sup> Reuters, “Analysis - Despite 'hello dictator', EU struggles to curb Hungary's Orban”, 8 June 2015

<sup>60</sup> Reuters, “'Hello, dictator!': Juncker tries humor to defuse Hungary row”, 22 May 2015; The Guardian, “'Hello, dictator': Hungarian prime minister faces barbs at EU summit”, 22 May 2015.

<sup>61</sup> Süddeutsche Zeitung, “ EU-Kommission erhöht Druck auf Polen und Ungarn”, 22 March 2017 (“Die anderen müssen klarmachen, dass diese Werte nicht nur der Zierde dienen wie ein Blumenstrauß. Das können wir als Kommission nicht alleine machen. Da haben auch die Mitgliedstaaten eine Verantwortung”).

Commission.<sup>62</sup> The EP's strategy was thus – even in the face of opposition by the EPP – to treat many of the developments in Hungary as a form of hard backsliding – a violation of both EU norms and EU rules pertaining to liberal democracy and the rule of law. The EP's 16 February 2012 *Resolution on the recent political developments in Hungary* expressed serious concern in relation to the exercise of democracy, the rule of law, and the system of checks and balances, referring to the new 2011 constitution (the Basic Law).<sup>63</sup> The Resolution of 3 July 2013 used much the same language.<sup>64</sup> Reding, who went on to become an EPP MEP, was particularly critical of her own party's rallying behind Fidesz, and confirmed that the EPP had considered expelling their Hungarian member: "It was always the political parties which helped the prime ministers I was acting against - the Socialists with Ponta, and the EPP when I acted against Hungary."<sup>65</sup> In 2015, the EP again condemned the Hungarian government's policies – now with reference to the prime minister's suggestion that the country might reintroduce the death penalty – and noted that a serious breach Article 2 values would trigger the Article 7 procedure. The EP then called for the Commission to activate the first stage of the Rule of Law framework and initiate "in-depth monitoring process concerning the situation of democracy, the rule of law and fundamental rights in Hungary."<sup>66</sup> Six months later, the EP followed up with another call for the Commission to activate the Article 7 procedure.<sup>67</sup>

Finally, the member states themselves, both individually and collectively in the Council of Ministers and the European Council, have been remarkably cautious. This is in sharp contrast to the strongly worded reactions of the US government (under Democratic president Barack Obama) and the Norwegian government (led by Conservative Erna

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<sup>62</sup> Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary - Adopted by the Venice Commission at its 86th Plenary Session ( Venice, 25-26 March 2011); Opinion on the new Constitution of Hungary adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011).

<sup>63</sup> European Parliament resolution of 16 February 2012 on the recent political developments in Hungary (2012/2511(RSP))

<sup>64</sup> European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)).

<sup>65</sup> Reuters, "Analysis - Despite 'hello dictator', EU struggles to curb Hungary's Orban", 8 June 2015

<sup>66</sup> European Parliament resolution of 10 June 2015 on the situation in Hungary (2015/2700(RSP))

<sup>67</sup> European Parliament resolution of 16 December 2015 on the situation in Hungary (2015/2935(RSP))

Solberg).<sup>68</sup> For example, in 2012 then Swedish Foreign Minister Carl Bildt replied to domestic critics of his reluctance to speak out against fellow EPP-member Orbán by arguing that this was a matter “between the Commission and Hungary” and anyone who called for governments to criticize other EU governments “misunderstood what the European system looks like.”<sup>69</sup> Around the same time, Der Spiegel reported critically on German conservatives’ reluctance to openly criticize fellow ‘conservatives’.<sup>70</sup> In 2013 the spectre of Fidesz’ expulsion hung over an EPP meeting, but in the end no formal calls for expulsion were made. An EPP source who asked for anonymity told BBC that “there were many supportive statements” for Orbán and “the outcome was quite positive for Mr Orbán and he received huge applause at the end”.<sup>71</sup> As a member of the ECR rather than the EPP, Poland’s PiS enjoyed considerable less protection in 2016. However, it could count on the support of the Hungarian prime minister in the European Council, and – to the extent that the party’s vote in the European Parliament is a guide to party policy – the UK’s Conservative government. Even in the Polish case – where Timmermans accused the government of peddling “alternative facts” – ideological, pragmatic or party political division among member state governments looked set to prevent any recourse to Article 7 in 2017.<sup>72</sup>

### **Part 3 - Rule of Law Backsliding, Disloyalty and EU Crisis Management**

The definition of a crisis in the *TransCrisis* project holds that a crisis must have three core characteristics: threat, urgency and uncertainty. By this definition, backsliding with respect to the rule of law in Poland and Hungary qualifies as a *potential* crisis for the EU. Since the threat and urgency elements are very much contested, even the notion of invoking EU crisis management is controversial. Indeed, the EU’s three main tools for managing backsliding with respect to the rule of law in a member state – ordinary infringement procedures, the Rule of Law procedure, and the Article 7 procedure –

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<sup>68</sup> Utenriksdepartementet press release “Unacceptable police raid on EEA and Norway Grants fund operator in Hungary”, 9 Sept 2014; Vidar Helgesen, “EU: Time to stand up for the liberal Society”, Financial Times, 28 August 2014; US White House press release, “Remarks by the President at Clinton Global Initiative”, 23 Sept 2014.

<sup>69</sup> Sveriges Radio, “Carl Bildt försvarar nu sin tystnad om Ungern”, 22 March 2012.

<sup>70</sup> Der Spiegel, “‘Booming Silence’ Europe’s Conservatives Fail to Criticize Hungary”, 24 Jan 2012.

<sup>71</sup> BBC, “Hungary row: EU party allies ‘back Orban’” 7 April 2013.

<sup>72</sup> Financial Times, “Brussels calls for common stand against takeover of Polish court” 23 Feb 2017.



therefore each equip the organization with a different set of crisis management capabilities.

The *threat* element of a crisis refers to fundamental values that may be undermined as a result of some form of adversity. Both the European Parliament and the Commission have emphasized the threat that certain laws enacted in Hungary pose to the fundamental values of the EU, including democracy and the rule of law. Likewise, both bodies emphasized the threat that country's new constitution represented to the rule of law. However, there has been no consensus among the member states on this. Some – notably Germany, Denmark, Finland and the Netherlands – have been more forthcoming than the rest. It is also in the nature of this kind of issue that the charges levelled by the Commission will be hotly contested by the target states – and any other state that regards itself as a potential target. Moreover, both in the EP and among member state governments, reluctance to criticize the Fidesz government has been higher among MEPs and government ministers that represent parties that belong to the European People's Party. The requirement that the remaining member states must agree unanimously on Article 7 measures against any given state therefore makes it unlikely that the European Council “determine the existence of a serious and persistent breach” in the event that two or more member states are under scrutiny for backsliding. When the Commission criticized Warsaw over its measures against the judiciary in January 2016, Orbán made it clear that “The European Union should not think about applying any sort of sanctions against Poland because that would require full unanimity and Hungary will never support any sort of sanctions against Poland.”<sup>73</sup>

The *urgency* element of a crisis refers to the perceived need for timely action to deal with the crisis. This is contentious in the matter of backsliding on the rule of law, not only because different actors hold different views about the degree of urgency, but also because the EU decision making procedures provide for a period of investigation and assessment before formal opinions are issued. Most of the Hungarian cases were treated by the Commission as ordinary infringements of EU law, even when they entailed measures that could be seen – and were seen by the Commission President – as threatening the rule of law. Nevertheless, in terms of placing an issue on the agenda, the Commission can take action remarkably swiftly. The Rule of law procedure followed within weeks of the Polish government's action on judicial appointments. When, on March 28<sup>th</sup> 2017, the Hungarian government tabled amendments to the Law on Higher

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<sup>73</sup> Financial Times, “Orban promises to veto any EU sanctions against Poland”, 8 January 2016.

Education targeted at the Central European University, Commission Vice President Timmermans raised the issue at the weekly meeting of the College of Commissioners the very next day.<sup>74</sup> In terms of detecting an emerging crisis and placing it on the policy agenda, the Commission therefore seems to have attached increasing priority to rule of law issues since the Polish election result in 2015.

The third element of a crisis – that it entails a degree of uncertainty – is less controversial in the case of backsliding and the rule of law. The notion that when a crisis occurs, there is there a lack of reliable information about its causes, its consequences and potential remedies certainly holds for issues related to threats to the rule of law. How to interpret the values set out in Article 2 is far from clear, and the Article 7 procedure remains untested. The Rule of Law framework was tested for the first time in 2016, and by the end of the year the consequences of this procedure remained as unclear as ever. Evidently the ‘dialogue’ between the Commission and the target state has little effect when that state in questions used a ‘disloyalty’ strategy. By March 2017, the Polish government had ignored successive deadlines set by the Commission in its Rule of Law Recommendation, but the road ahead was no clearer than it was a year earlier.

The very existence of a crisis – particularly in terms of whether there is a threat and how urgent it is – is thus in practice a matter of political contestation when it comes to democratic backsliding. All the EU’s policy tools were designed to deal with a situation in which a single state – like Slovakia under Mečiar or Austria after the 2000 election – might be deemed potentially problematic by all other member states, regardless of party affiliations. In a context in which the social democrat and conservative blocs in the EP divide along party lines to protect a member of their group, or in which two or more governments openly challenge Article 2 values, crisis management is by definition politicized. This means that the EU procedures lose much of their traction. The Commission’s powers and competences are strongest when it comes to ordinary infringement procedures, where it operates under guidelines that are tried and tested and subject to contestation in the Court of Justice after a decision has been made. The Commission’s capacity for swift reaction to backsliding is even stronger under the Rule of Law procedure, but here the EU’s decision-making powers are correspondingly weak. Likewise, other than pass resolutions, there is little the European Parliament can do. Conversely, the EU has considerable powers to sanction a member state under Article 7, but here the organization’s competence in terms of detection and sense-

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<sup>74</sup> Index.hu, “Brüsszelben is téma lett a CEU-ellenes törvény”, 29 March 2017.

making are weakened by operating in the shadow of the need for unanimity among the member states.

Table 1: Seven crisis management steps under three EU procedures for dealing with backsliding

	Infringement	Rule of Law	Article 7
<b>Detection</b>	Commission monitoring and complaints to the Commission	Commission monitoring	Commission, EP or member states monitoring
<b>Sense-making</b>	The Commission launches formal infringement procedure	Commission Rule of Law Opinion	Commission, EP and member states
<b>Decision-making</b>	Commission decision (and Court of Justice adjudication)	Commission Rule of Law Recommendation	The Council
<b>Coordination</b>	Commission cooperation with the target member state, monitoring and following-up		Untested
<b>Meaning-making</b>	Commission advice to the target state		
<b>Communication</b>	Commission dissemination of information		
<b>Accountability</b>	Commission's public accounts and case in the event of a Court case	European Council decision making under the Article 7 procedure	

**Detection** – the timely recognition of an emerging threat – is relatively similar across the three procedures. In the ordinary infringement procedure, the Commission can take action on the basis of its own investigations or act on complaints from a range of actors, including members of the public, businesses, NGOs, etc., as well as petitions of the European Parliament. Under the Rule of Law Framework, the Commission begins an investigation when it is concerned that a policy initiative might violate the rule of law – and ultimately Article 2. An Article 7 procedure can be put on the agenda by a reasoned proposal by one third of the member states, by the European Parliament or by the Commission. In effect, detection in all three cases depends on the media and reports from a range of organisation such as NGOs. In most of the case of backsliding cited

above, private or public actors complained loudly about the Polish or Hungarian government's acts (or planned acts) before the Commission or EP took up the issue. Compared to the press, NGOs and academia, the Commission, EP and Council have relatively limited capacities for independent detection of crises. In terms of leadership, the Commission has proven cautious, and the EP and Council riven by party political or ideological divisions. Although leading Commissioners (the president and the Commissioners in charge of the relevant portfolio) have spoken out time and again against backsliding in the rule of law, this did not translate into more than ordinary infringement in all the Hungarian cases. In the EP party loyalties have not prevented 'detection', as the left went after the national populist right-wing Hungarian and Polish governments and the right was happy to criticise the left in Romania. But in the Council, even detection of backsliding is impaired by consensus and/or party political ideologies. Only individual states have even raised the issue.

*Sense-making* – the collecting, analysing and sharing of critical information needed for a shared picture of the situation – is even more contentious than detection. In all three cases the main onus is on the Commission to investigate and assess the matter. The procedures are in place, but the Hungarian cases indicate that the threshold for invoking them is rather high. In the Polish case the Commission moved more swiftly, and collected, analysed and disseminated information about its findings concerning the PiS government's rule of law violations. In this case the Commission demonstrated that it has the capacity to analyse a potential threat, as well as the political will to exercise leadership. This is in stark contrast to the Hungarian cases, where the Commission seemed to avoid analysis of the potential consequences of the threat, and chose to focus on narrow potential breaches of directives on age discrimination, data protection and cross-border media operations. Although several Commissioners have made strong political statements, in terms of sense-making and leadership their action compares rather unfavourably to the Norwegian response to the crisis over the EEA and Norway grants. Indeed, in the Hungarian cases, much of the sense-making was left to civil society, the media, NGOs and even other governments.

If member state backsliding in the rule of law is considered a potential crisis for the EU, *decision-making* – the selection, making and implementation of strategic decisions that relate to the immediate crisis response and its aftermath – has been the main stumbling block for EU crisis management. In cases where the Commission opts for ordinary infringement, this is simply a matter of the Commission making a decision and the European Court of Justice acting as the final court of appeal. The procedures are well

established, and formally they worked well in most of the Hungarian cases. However, deploying a strategy of creative or disloyal compliance permitted the Hungarian government to adjust its rules so as to comply with the letter of the law but still achieve most of its goals – ‘European in form, but national in content’. Likewise, the Polish case demonstrated the Commission’s capacity and leadership ability as far as issuing opinions and reports is concerned. But in both sets of cases, the Commission held back from opening an Article 7 procedure on the grounds that it could not expect an Article 7 vote to pass in the European Council. If the Commission had the capacity and will (i.e. leadership) to consider invoking Article 7, the same cannot be said of the EP and the Council. In the EP it is clear that party politics repeatedly prevented recourse to Article 7, the EPP successfully protecting Fidesz and the ECR standing by PiS. In the Council other considerations contribute to limited leadership – publically stated reasons for not criticizing fellow governments include consensual norms, appropriateness, party loyalty and ideological commitment to national populist defiance of the EU.

Because the only action against backsliding that has gone beyond the decision-making state is ordinary infringement and the Rule of Law procedure, it is too early to say much about *coordination*, *meaning-making*, *communication* and *accountability* in the Article 7 procedures. Suffice it to note that coordination, meaning-making, communication and accountability would require joint action between the member states, the Commission and the Council President.

As for the ordinary infringement and Rule of Law procedures, the Commission’s capacity and leadership is not in question. The problem is that even after an infringement ruling (including confirmation by the Court of Justice), compliance in the EU system is based on the idea that the member state acts in good faith. The same is very much the case in the event of a Rule of Law Opinion – as the Commission’s difficulties with handling the Polish government’s dismissal of the whole thing in the autumn of 2016 showed. In both cases *coordination* – collaboration between partners – means that EU and the target state must work together loyally. In the Hungarian infringement cases the opposite happened. Indeed, the Commission’s normative power has proven much less impressive than much of the academic literature on the subject has assumed – both in terms of Hungary’s substantial (as opposed to merely formal) compliance with infringement rulings and of Poland’s response to Rule of Law Opinions and Recommendations.

*Meaning-making* and *communication* – the Commission’s formulating a key message that offers a convincing explanation of the threat – is likewise unproblematic in terms of formal capacities under infringement and Rule of Law procedures. However, in practice the Commission’s ability to formulate and communicate a message that resonates beyond the expert policy community might well be questioned. In both the Hungarian and Polish cases, the messages that reach the public in the two states is shaped almost exclusively by the very governments the Commission is acting against (indeed, political control over the media was one of key concerns in both countries). In other words, the Commission can (and does) provide plenty of actionable advice, both in the case of normal infringements and under the more exceptional Rule of Law procedure, but the problem is that the target states are – almost inevitably – not particularly disposed to follow it. In the Rule of Law case, the shadow that the unanimity requirement in the Council in the event of an Article 7 vote casts over any Commission action effectively waters down the impact of the Commission’s decisions as long as it can expect protection from one or more member states.

The Commission’s limited room for manoeuvre in terms of effective meaning-making and communication, in turn has direct consequences for *accountability* in crisis management. Although the Commission lacks neither the opportunity, capacity or leadership required to render an explanation in a public forum of relevant decisions and strategies that were initiated before, during and after the crisis, the very nature of clashes between the Commission and backsliding member states means that accountability is likely very quickly to turn into a blame game where the target governments blame liberal elite. Indeed, when the Hungarian government complies with infringements threats or rulings, the government’s line is normally that this is done under duress, in the face of oppressive and somewhat illegitimate force. In the Hungarian prime minister’s own words: “We bow to force, not arguments”.<sup>75</sup> In the case of the Commission following up a Rule of Law Recommendation by invoking Article 7, the *accountability* stage simply becomes the *decision-making* stage of the Article 7 procedure.

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<sup>75</sup> Süddeutsche Zeitung, "Wir beugen uns der Macht, nicht den Argumenten", 18 Jan 2012.

Table 2: Summary of issues related to EU crisis management capacity and leadership across seven crisis management steps.

Step	EU crisis management capacity	EU leadership and crisis management
Detection	Limited, but increased with the Rule of Law procedure	Politically divided and contentious
Sense-making	High thresholds	Reluctance to court controversy
Decision-making	Veto points	Too divided
Coordination	Weak procedures and enforcement	Limited will
Meaning-making	Little capacity or mandate	Does not resonate with recipients
Communication	No capacity for communication beyond elite	Resistance to actionable advice?
Accountability	Little effect beyond elite	Blame game

### **Conclusion: The Problems of Managing Disloyalty and the Spectre of Open Defiance**

The problem with member state backsliding with respect to the rule of law is that – almost by definition – this involves direct confrontation between the EU instructions and member states that challenge the very legitimacy of the EU’s fundamental rules and norms. Not all EU states comply with all EU rules all of the time. Sometimes this is because of limited capacity for implementation, and in some cases it even involves disputes about what the EU rule in question actually means. The EU’s ordinary infringement procedures were designed with this in mind, and in a large number of cases this never goes beyond the initial stage. The system is based on an assumption that member states seek to comply with the spirit of the law, even if they occasionally fall foul of the letter of the law. The problem with backsliding is that the reverse is often the case – a government might be prepared to adjust the letter of the law and formal procedures, but circumvent the Commission’s rulings and maintain the breach of the spirit of the law. The causes of backsliding are therefore not so much related to financial crises, a backlash against austerity policies, or even an anti-EU or anti-liberal political wave, as simply a matter of populist, Eurosceptic governments winning power as part of the normal pattern of alternation in government in countries where the main political cleavage is not socio-economic left vs right but liberal vs national populist. To the extent that such governments espouse the ‘illiberal democracy’ model advocated by Viktor

Orbán, the stage is set for confrontation over rule of law issues. Part of the logic behind Article 50 was that states for whom loyalty was impossible and voice was not enough, there would be an explicit exit option. Fidesz's political genius lay in the invention of a new strategy beyond voice but short of exit – disloyalty. The first seven years this strategy worked well for the Hungarian government, as it allowed the Commission to claim a degree of victory in Budapest by forcing formal compliance while Orbán could present himself at home as the defender of national interests against foreign agents as “we, the sovereign nations, stand in opposition to the federalists, and the voters stand in opposition to the Brussels bureaucrats”.<sup>76</sup> PiS' victory in Poland changed all this. Although the Polish election provided the Fidesz government with an ideological ally, it also drew renewed attention to the problems of backsliding and the inadequacies of the Commission's two-track political pressure-plus-infringement strategy. In contrast to the Hungarian government's ability formally to comply with EU rules, Beata Szydło's government and Lech Kaczyński's party seems determined openly to defy the European Commission. The question is whether the strategy of open defiance will, in the end, undermine the disloyalty strategy – or whether backsliding will persist, and perhaps develop further, until it presents the EU with something that the Commission, the EP and even the remaining member state can agree constitutes a crisis.

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<sup>76</sup> Hungarian Prime Minister's Office, “Prime Minister Viktor Orbán's State of the Nation Address [full text in English]”, 10 Jan 2017.



# **Backsliding in corruption and corruption control**

**Agnes Batory**

## **Abstract**

This chapter discusses whether we have witnessed soft backsliding in (particular forms of) corruption and corruption control in EU member states, and to what extent backsliding may be attributed to EU wide crises, in particular the economic crisis. It finds no evidence of a direct link between backsliding in corruption and corruption control and the crisis, although the latter had an indirect impact. The European Commission emerged as the key EU institution to assume responsibility for the policy area, but efforts to create a new plank of EU activity have been halted, suggesting that corruption as a policy issue is not perceived as sufficiently pressing to prompt more decisive intervention. The paper concludes that this underestimates the magnitude and nature of the negative impact of corruption on the EU's economic and political system.

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Annex 1

References

## 1. Introduction

A recent study conducted by Rand Europe for the European Parliament estimates that 'corruption costs the EU between €179bn and €990bn in GDP terms on an annual basis' (EPRS 2016). Even the considerably lower estimate of €120bn by the 2014 EU Anticorruption Report (EC 2014) is equal to roughly one third of all funding available for regional and cohesion policy in the 2014-20 period, for instance.<sup>77</sup> The European Commission warned in 2014 that 'up to a quarter of the value of public contracts in EU Member States may be lost to corrupt practices' (Malmstrom 2014). While variation in levels of corruption across the EU is wide, several EU member states score below Botswana and some below Jordan on Transparency International's Corruption Perception's Index, the most widely used indicator available.<sup>78</sup> Almost 4 out of 10 business people in the Czech Republic report having lost business because a competitor paid a bribe – roughly on par with India.<sup>79</sup> In 2013, one quarter of EU citizens felt corruption affected their daily life, and 56% felt the situation got worse over time as opposed to just 5% who said the level of corruption had decreased (European Commission 2013). Arguably, corruption has also acquired a more sinister form in recent years, at least in Central Eastern Europe. As Transparency International put it, 'the new face of corruption in Europe ... [is] not the lawless, 'anything goes' environment of the immediate post-Soviet period, but the deliberate shaping of the laws and institutions to favour a ruling party and its cronies – all under the guise of a nationalist, 'illiberal' agenda.'<sup>80</sup>

All this matters not only because huge sums of the taxpayers' money are diverted from their intended productive use in the EU, but also because corruption imposes high costs on European societies in terms of undermining trust in political institutions, weakening political legitimacy, and acting as a break on investment and economic growth – all of which suggest that corruption control should be high on the EU policy agenda.

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<sup>77</sup> Funding for regional and cohesion policy in 2014-2020 amounts to €351.8 bn. Accessed at [http://ec.europa.eu/regional\\_policy/en/funding/available-budget/](http://ec.europa.eu/regional_policy/en/funding/available-budget/) on 31 March 2017.

<sup>78</sup> Accessed at <http://www.transparency.org/research/cpi/overview> on 31 March 2017.

<sup>79</sup> Accessed at [https://www.transparency.org/files/content/feature/2012\\_LostBusinessDueToBribery\\_EN.pdf](https://www.transparency.org/files/content/feature/2012_LostBusinessDueToBribery_EN.pdf) on 31 March 2017.

<sup>80</sup> Accessed at <https://transparency.eu/cpi16/> on 31 March 2017.

The questions this policy paper investigates are whether the level and/or form of corruption is or should be seen as a crisis for the EU; whether there is evidence of backsliding in corruption and corruption control in recent years; and how the EU has been dealing with corruption as a policy problem. Specifically, the intention below is to review trends in corruption and corruption control in selected member states; to discuss possible causes and effects of backsliding (to the extent it can be demonstrated), among them the financial crisis of 2008; and to map efforts at detection and sense-making on the European level. This paper directly relies on and follows up conceptual work and mapping of empirical developments in 'TransCrisis Policy Brief D6.1: Policy paper mapping backsliding' (Sitter et al 2016), and the TransCrisis codebook (Boin et al 2016).

The next section (2) defines corruption and operationalizes backsliding in corruption and corruption control. Section 3 provides an overview of trends in corruption, focusing on the 'new' member states and distinguishing between administrative corruption on the one hand and high-level political corruption/state capture on the other. Section 4 reviews developments indicating a relaxation of anti-corruption efforts as another sign of soft backsliding. The subsequent section (5) discusses possible causes for backsliding, including the role of the financial crisis. Section 6 is devoted to policy responses on the EU level, discussing whether corruption constitutes a crisis and who/how has assumed responsibility for dealing with it. The final section (7) offers some conclusions and draws out the policy implications for action on the EU level.

## **2. Defining corruption and backsliding in corruption and corruption control**

### **2.1 Corruption**

The literature on corruption goes a long way back, and considerable attention has been paid to definitional issues, from Plato to contemporary political theory and policy studies. Reviewing this literature is clearly beyond the scope of this paper. It should suffice to say that most scholarly definitions in Political Science focus on the notion of public office and on deviations from the norms binding on those holding public office and thus harming the public interest (e.g., Heidenheimer et al 1989), while public choice theory discusses corruption in the context of rent-seeking. A widely used analytical approach is to frame corruption as a principal-agent problem, namely as the inability of a principal (normally a political leader) to monitor agents (bureaucrats) who, using their discretion, decide over public resources not in line with the principal's intended objective but rather for extracting private rents (eg. Klitgaard 1988). Although these conceptualizations have come under criticism lately - mainly from scholars approaching corruption as a collective action problem (e.g., Persson, Rothstein & Teorell 2013) - they remain dominant in policy-making. Major international actors on the scene, from the

World Bank to Transparency International, use a working definition of 'abuse of public office for private gain'. This is also the definition adopted by the European Commission (2014: 2) in its first Anti-Corruption Report, in line with international legal instruments, notably the UN Convention Against Corruption or the Council of Europe covenants.

This definition glosses over important distinctions in forms of corruption, such as petty vs 'grand' corruption; bureaucratic/administrative vs political corruption; and particularly sporadic or 'ad hoc' vs systemic corruption, 'legal corruption' and state capture. Some of these categories overlap. For instance, petty and administrative corruption both refer to 'bribery to bend the rules' (Karklins 2002), practices whereby bureaucrats 'at the implementation end of politics' enrich themselves, using their discretion in applying law and regulations for personal benefit (Andvig et al 2000: 18). In contrast, grand or political corruption 'takes place at the highest levels of political authority', involving political leaders who are in a position to tailor legislation to private interests, involving significant pay-offs for both politician and client (Ibid).

Another distinction is about how corruption is (or is not) organized. Bureaucratic corruption is not (normally) centralized; it is individual rent-seeking behaviour by public officials in an environment that allows or enables this. In contrast, state capture is highly organized, normally by a relatively small number of individuals in key positions of political and economic power, but encompassing most or the whole of the political system. Indeed, in the case of state capture a parallel, informal set of institutions functions next to the formal state institutions, diverting public resources on a huge scale to selected groups and hollowing out the transparency and accountability of formal state structures. As Karlkins (2002: 27) puts it: 'Systematic high-level political corruption may establish a hidden political regime at odds with the constitutional purpose of state institutions'; 'state capture tends to subvert, or even replace, legitimate and transparent channels of political influence and interest intermediation' (World Bank quoted *ibid*). As an influential study by the World Bank (2000: 13) put it, corruption comes to be 'woven into the basic institutional framework, undermining governance and weakening the credibility of the state' and enabling 'powerful firms and individual "oligarchs" buying off politicians and bureaucrats to shape the legal, policy, and regulatory environments ... [and] politicians abusing their authority to shift public resources to themselves and their allies through well-hidden stakes in a complex web of private and public companies'. State capture might entail legal (or legalized) corruption (Kaufmann and Vicente 2011). No law is violated, because the 'extractive rulers ... construct rules and durable practices of redistribution, budgeting and authority' and through legislation build institutions that serve rent-extraction (Grzymala-Busse 2008: 639).

These distinctions are important for analytical purposes, since they allow for describing different 'constellations' of corruption in a political system. For instance, there are countries where corruption is rife both among high level political decision makers and on street level. In others political leaders may successfully repress low level petty corruption while they carry on enriching themselves, possibly at far greater cost to the citizen than what would be imposed by corrupt practices encountered in daily life. In some political systems bureaucratic corruption might be tolerated by political leaders who are themselves relatively clean, for instance to ensure low level bureaucrats' support for the regime or simply to supplement low public sector wages (e.g., Huntington 1968; Maor 2004). And in the case of state capture, tight, small networks of individuals in business and politics essentially subvert the state in a highly organized and centralized manner to the extent that formal public institutions become little more than a façade.

These distinctions also have very important implications for corruption control. Viewed from a principal-agent framework perspective, corruption involving principals – the very people who are in a position to affect change – becomes an almost intractable problem. This is in essence the problem often described as 'lacking political will': high level political leaders who have a vested interest in maintaining a corrupt status quo will obviously do everything they can to block reform. Indeed, in these situations much of the literature focuses on exogenous sources of influence – be that from international organisations, or from external shocks – to move the political system to a new, less corrupt equilibrium. In contrast, with respect to cases where there exists an honest principal (for instance, a new political leader is elected who is not involved in rent-seeking) a host of policy measures have been found to be available for curbing corruption. Many of these were rooted in Public Choice and the New Public Management -- Susan Rose-Achermann's work (1999) is perhaps the best known in this respect --and belief in their effectiveness rose and fell together with the credibility of neoliberal economics and the 'Washington consensus' (see e.g., Rothstein 2011, Persson 2013; Batory 2012a). Be as it may, the point remains valid that on systemic level 'top heavy', organised corruption poses fundamentally different challenges for reform than 'bottom heavy' corruption.

## 2.2 Backsliding in corruption and corruption control

Defining backsliding has been the subject of our earlier TransCrisis paper (Sitter et al 2016). The literature reviewed there essentially uses the term to refer to a reversal of democratization and the weakening or undermining of the norms underpinning liberal democracy, including the rule of law. As our previous policy paper put it: 'Much of the work on reversal of democratization also focuses on the consequent decline in the

quality of democracy, including low transparency and state capture by elites. This is in effect a decline in good governance, or what Thomas Carothers (2007) calls “bad governance” and Ulrich Sedelmeier (2014) documents as “drops in democratic quality” (Sitter et al 2016: 4). In short, for the purposes of the Transcisis project, ‘Backsliding is defined as unilateral and systematic acts by a member state government that violate the laws and /or the norms of the EU’ (Sitter et al 2016: 8).

Our previous paper also made a distinction between hard and soft backsliding. *Hard backsliding* occurs when acts or policies violate the fundamental norms and values of the EU linked to liberal democratic governance *and* also directly violate EU primary or secondary law (the *acquis*). For instance, a member state government removing an ombudsman for data protection undermines checks and balances in a constitutional system and also, as the ECJ ruled with respect to Hungary in 2014, EU law guaranteeing the independence of the authorities responsible for the protection of personal data (Directive 95/46). In contrast, in the case of *soft backsliding*, member states’ acts or policies involve violation of their major commitments to the EU without directly violating the *acquis*, or at least the relevant part of the *acquis* (Sitter et al 2016: 9). For instance, the obligatory early retirement of judges may violate the relevant directive on discrimination in the workplace, again as the ECJ decided with respect to Hungary, even if, at least according to the Commission, it does not run counter to EU law pertaining to the protection of judicial independence, which is on the other hand clearly a liberal democratic norm that is foundational to EU governance.

Operationalising backsliding *in corruption* in the EU context is a complex task, and requires answering two preliminary questions: can member states be said to be bound by an EU norm to combat corruption (soft backsliding)? And is corruption control part of the *acquis* (hard backsliding)?

The quality of democracy is severely impaired by corruption in several ways. It undermines ‘distributive justice – namely the “impartiality principle”, whereby a state ought to treat equally those who deserve equally’ – as well as social expectations of a ‘rule-based administration’ (Kurer 2005: 222). The perception of wide-spread corruption undermines trust in institutions more broadly and may lead to resignation and apathy among citizens who feel that the political system is not responsive to their needs and preferences (Bauhr and Grimes 2014). Corruption may also empty electoral accountability of its meaning: if competing political parties are all seen, to some degree, corrupt then party choice and a change of government cannot be expected to bring significant improvement in public affairs. Unsurprisingly, a perception of wide-spread corruption therefore also suppresses electoral participation (e.g., Sundström and Stockemer 2013), and also goes hand in hand with lower levels of support for

democracy (Rose et al 1998). To the extent that democracy and the rule of law need to be underpinned by a functioning market economy, corruption imposes further costs in terms of depressing economic growth and output (for a review of this literature see EPRS 2016). Given this link with the quality of democratic (and economic) governance, a rise in levels of corruption or the (deliberate) weakening of existing anti-corruption policies and instruments can clearly be conceptualized as backsliding.

In terms of *soft* backsliding, there is strong evidence that combating corruption is both a norm in the EU and a commitment by the (new) member states. This can be traced back to several roots. First, all member states have an obligation to uphold the foundational values of the EU embodied in Article 2 TEU, which refers to the rule of law, respect for human dignity, freedom, democracy, equality, and human rights. Given the link particularly with the rule of law, corruption has an obvious relevance for member states' ability to uphold Article 2. Second, corruption control was seen to form part of the Copenhagen criteria, setting out the conditions for prospective new member states for joining the EU in 1993, which was then applied to judge the preparedness of the 10 'new' member states acceding in 2004/07, and since then Croatia. Although corruption was not explicitly mentioned, during the accession negotiations the Commission considered it being covered by conditionality (and indeed in the framework of the still active Cooperation and Verification Mechanism vis-à-vis Bulgaria and Romania). The justification was that wide-spread corruption can impact on each of the three areas evaluated by the Commission, undermining implementation of the *acquis communautaire*, the smooth functioning of the single market, and the quality of democratic institutions and core democratic values the Union seeks to represent, with most direct link with the latter, so-called political criteria.

Importantly, corruption control as a democratic norm, or rather a pre-condition for other norms to function, was derived not so much from existing EU law but rather the member states' international legal obligations. The most important sources of these are the UN Convention against Corruption (UNCAC) and the Council of Europe civil and criminal law covenants on corruption, as well as the OECD anti-bribery convention. During the accession negotiations the would-be member states in CEE were expected to accede to these international legal instruments – at the time when not all existing member states had done so. It was also later, in 2008, that the EU itself adopted the UN Convention on Corruption. This is also to say that the EU, lacking a strong and coherent legal base in EU law (with the exceptions noted below), 'borrowed' the content of member state obligations in corruption control from intergovernmental bodies and international law – in much the same way as the Commission refers to Venice Commission rulings and Council of Europe standards with respect to the rule of law or judicial independence.

This ambiguity of the legal status of anti-corruption is reflected in the academic literature. Writing in 2009, Vachudova (2009: 50, emphasis added) points out that, although 'EU members are now in agreement that a spirited fight against corruption should be required of candidate states',... 'the fight against corruption as such is *not part of the acquis*' since '[the member states] have never agreed to a set of EU-level anti-corruption policies' (see also Anagnostou and Psychogiopoulou 2014). In contrast, Kartal (2014: 944) takes it for granted that corruption control obligations are part of the *acquis* since accession negotiations treat them as conditions for entry. Indeed, the Commission's enlargement website makes it clear that candidates need to adopt 'all current EU rules (the "acquis")', including obligations under the rule of law.<sup>81</sup> This specifically entails, in addition to judicial independence, that aspirant countries' 'government and its officials and agents are accountable under the law and that political leaders and decision-makers take a *clear stance against corruption*; [and] the process by which laws are prepared, approved and enforced is *transparent*, efficient, and fair' [emphasis added].<sup>82</sup> The 2010 Stockholm Programme provided a mandate to the Commission to develop a comprehensive anti-corruption policy for the EU, but this has not happened (see section 6 below).

Putting aside the possible asymmetry between requirements for candidate countries and obligations binding on existing member states, some EU (secondary) law does exist in a few specific areas related to the anti-corruption field. These consist of, most notably,

- i) instruments for the protection of the EU's financial interests (a convention from 1995). In 2012 the Commission proposed a Directive in the same area in criminal law, which has been blocked by the Council, and not adopted to this day. Both primarily aim to combat fraud damaging the EU budget (not the member states');
- ii) a convention against corruption involving EU or member state officials obligating member states to punish active and passive corruption (bribery of officials, and acceptance of bribes) as a criminal offence;
- iii) a Council Framework Decision (2003) on combating corruption in the private sector, which mainly aims at harmonizing definitions across the member states;

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<sup>81</sup> Accessed at [https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en) on 31 March 2017.

<sup>82</sup> Accessed at [https://ec.europa.eu/neighbourhood-enlargement/policy/policy-highlights/rule-of-law\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/policy-highlights/rule-of-law_en) on 31 March 2017.



- iv) anti-fraud provisions in the directives regulating public procurement;
- v) legislation pertaining to the status and powers of OLAF (the European Anti-Fraud Office, a specialized agency of the Commission), as well as relevant parts of sectoral legislation on matters relating to fraud, corruption and other offences affecting the EU financial interests in the Structural Funds, agricultural policy and rural development funds, direct expenditure and external aid that form the legal basis of OLAF investigations.

Taken together, the patchwork of these legal instruments constitutes only a limited set of very specific obligations rather than a comprehensive EU anti-corruption framework. Even the existing legal instruments are not uniformly transposed across the member states and there are serious gaps in implementation and enforcement (EPRS 2016: 10). Moreover, much of the legislation constrains/compels member states only when EU funds are at stake; in other respects EU level legal rules aim mainly at the harmonization of certain minimum standards such as the criminalization of corruption offences. Consequently, backsliding in anti-corruption will mainly take the form of soft backsliding, and even in that respect the standard from which backsliding can be evaluated is clearer with respect to the member states that joined the Union under conditionality embodied in the Copenhagen criteria. These 'new' member states explicitly consented to making concerted efforts to combat corruption as a condition of entry, and were monitored in doing so before accession was allowed to take place. For these member states, a worsening corruption situation clearly involves going back on a commitment given to the EU and thus a reversal of pre-accession policy and practice.

In terms of indicators of what might constitute a worsening corruption situation (as compared to the pre-membership status), there are two lines of inquiry. On the hand, analysis needs to evaluate trends in the level and/or form of corruption in the member states and on the other, the quality of effort made by member states to control corruption. The two are obviously related, but do not necessarily point in the same direction at any given point in time. This is partly because corruption is a multi-causal societal phenomenon: a lot of factors are at play some of which are and some of which are not responsive to policy interventions. And it is partly because of a time lag between policy intervention and effect. For instance, it is possible that determined efforts to combat corruption are underway in a highly corrupt country, but before policy interventions bear fruit levels of corruption may stagnate or even rise. A notable example of this is the Italian magistrates' *mani pulite* campaign, which at least initially made Italy (seem) more, rather than less corrupt (Mungiu Pippidi 2016: 25). Conversely, governments may relax control measures without an immediate, visible eruption of corruption taking place. Also, given that corruption is a complex phenomenon it is

possible that policy interventions are effective against particular forms of corruption or in specific sectors, without decisive improvement being in evidence overall. For instance, as one observer comments about Romania, '[it] is the country where generalized corruption and the toughest anticorruption in Europe have been co-existing for the past ten years. The result is not less corruption, but crowded jails' (Mungiu-Pippidi, 2017: 5).

Observing trends in either field (corruption/anti-corruption) is made more complicated by the absence or weakness of quantitative benchmarks, as discussed in our previous policy paper (Sitter et al 2016). Indeed, as recent scholarly analysis concludes, 'the study of changes in levels of corruption is still in its infancy' (Escresa and Picci 2016). Bearing this in mind, the following section proceeds to provide an overview of levels and forms of corruption and control efforts in selected member states. As our earlier paper argued, this analysis focuses on the 'new' member states as it is among these countries, in addition to Italy and Greece, that existing quantitative indicators show corruption to be the most serious problem, albeit with considerable cross-country variation.

### **3. The state of play: Levels and forms of corruption**

The first question to investigate is whether we see more corruption in the EU now than in the years prior to the financial crisis. Unfortunately the most commonly used indicators, Transparency International's Corruption Perception Index (CPI) and the World Bank governance indicator Control of Corruption both suffer from widely recognized methodological weaknesses, which severely limit the possibility of comparing countries to each other as well as observing trends over time (see eg Knack 2007; Mungiu-Pippidi and Dadasov 2016). 'Although the statistical methods vary somewhat, both standardize corruption indicators from numerous sources to place them on a comparable scale, and compute an average (unweighted for TI, weighted for WBI) to obtain one value for each country' (Knack 2006: 262). It is consequently unclear what exactly these indexes measure, whose perceptions they report and what kind of sample biases they show, how the different data sources are integrated, and how and to what extent new developments on the ground feed into changing the scores.<sup>83</sup> Taken with this rather large pinch of salt, the appendices of our previous paper (Sitter et al 2016) show

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<sup>83</sup> Recent attempts to improve cross-national measurement include the Index of Public Integrity (Mungiu-Pippidi and Dadasov 2016) which indeed circumvents many of the weaknesses of the older indicators, but remains very broad (the IPI 'includes the following components: the degree of the *judicial independence*, the extent of *administrative discretion*, the level of *trade openness*, the degree of *budget transparency*, the *endowment of citizens with electronic means*, and the degree of *free media*' (Mungiu-Pippidi and Dadasov 2016: 418).

that most new member states stagnated or showed only short term improvement or worsening in corruption over the last decade or so. It is only a handful of countries that seem to have made visible progress in reducing corruption in general (Estonia, in any case one of the cleanest countries in the EU, and Poland), while some others (Hungary, Slovenia, Italy and Greece) are perceived to be more corrupt than before.

However, as pointed out before, generic corruption scores may mask important variation on country level in terms of the kinds of corruption societies may experience, with some forms possibly declining while others increase and vice versa. State capture and high level political corruption is particularly difficult to track. One data source that promises to provide some information in this respect is the World Bank enterprise surveys, which include questions on administrative corruption as well as state capture, with the limitation that the surveys are conducted with firms and therefore reflect a business perspective (Knack 2007). With respect to administrative corruption several questions pertain to the need for bribery in various sectors (e.g., taxation) and bribery depth (the percentage of transactions where bribery is expected) or bribery incidence (percentage where bribery is experienced). In early versions the state capture questions asked respondents' opinions on e.g. paying bribes to influence the content of new legislation. In more recent editions of the survey the relevant questions tap into exchanges to secure government contracts, i.e. corruption in public procurement (assuming that it is here that the centralized corruption that is likely to affect for instance large infrastructure projects would be most visible).

Using this kind of World Bank enterprise survey data, an earlier study observed that the post-communist countries made notable progress between 2002 and 2005 (roughly the years before the 2004 enlargement) in administrative corruption, but not in state capture (Knack 2007). More recent survey data are shown in Annex 1, and also confirm that countries that make progress in combating administrative corruption – the aspect that is most likely encountered by ordinary citizens in their daily life - are by no means certain to also roll back state capture. For instance, in Croatia the incidence of administrative corruption appears to have decreased while corruption in government contracting increased. In Hungary and Slovenia the administrative corruption situation stagnated, but in both countries state capture as indicated by government contracting increased by a very large volume. In contrast the data indicates that Poland curbed administrative corruption but shows no significant change in state capture. In Lithuania the former increased while the latter similarly stagnated. Finally, the Czech Republic, Estonia, Latvia and Romania improved with respect to both forms of corruption. The surveys also confirm that corruption generally remains a major constraint for businesses, as indicated by 26% of respondents in Lithuania, 27% in Bulgaria, and 46% in Romania – in contrast with just 3% in Estonia and 7% in Latvia (2013).

Additional information on state capture or institutionalized grand corruption is available for particular countries or groups of countries in some existing studies. Unfortunately systematic cross-country comparison is not possible but some of the findings are nonetheless worth reporting here:

- A 2014 European Commission report, edited by Balazs (2014: 35) finds that 'Unlike in most Western European countries, the danger of state capture (when external private interests take over public policy formation) seems to be a recurrent phenomenon in some Eastern European countries as shown by countries like Bulgaria, Croatia, Hungary, Romania and Slovakia'.
- A study of public procurement spending financed from EU funds in the Czech Republic, Hungary, and Slovakia finds that 'there is considerable market access restriction, hence likely institutionalised grand corruption, going on in all three countries during the 2009-2012 period, by and large following the same techniques and 'tricks' ... These results on their own demonstrate that corruption is systemic in public procurement in these countries' (Fazekas et al 2013). The methodology of the study draws on publicly available public procurement data, and analyses these data sets for the incidence of techniques used for limiting competition and favouring companies belonging to corrupt networks. As Fazekas et al (2013: 19) find, 'EU funding considerably increase[s] corruption risks in Central and Eastern Europe in at least two principal ways. First, by making a large amount of additional public resources available for rent extraction in public procurement; second, by failing to implement sufficient controls counter-balancing additional resources for corruption'.
- Another study by Fazekas and Toth (2014: 26) using public procurement data and network analysis for Hungary alone finds that 'state capture is [an] established, daily practice in approximately 60% of Hungarian public sector organisations conducting public procurement between 2009-2012' and that 'The networked nature of political corruption in Hungary makes any administrative fixes to corruption likely to fail'.
- An in-depth qualitative study of Hungary by Magyar (2016) describes the country's ruling party Fidesz as 'political apex predator', and the political system as a whole as 'post-communist mafia state', in which power and wealth are concentrated in the hands of a small group of insiders (a political 'family'), and where the insiders extract rents not through overt violence but through selectively targeted parliamentary legislation, legal prosecution, and taxation.

- Vachudova's (2009) study finds that 'What we observe today in Bulgaria and Romania are the ongoing consequences of an extended period of state capture'.
- A 2012 National Integrity System study on the Visegrad countries by Transparency International finds that
  - 'In Hungary we can find several grand corruption cases where powerful interest groups and national "minigarchs" are able to manipulate state laws and policies for their own benefits. Rent-generating cartels are typical in mega-projects such as large-scale motorway and bridge projects. As Hungarian examples suggest, corrupt economic cliques extract huge amounts of public money from the system through intentionally designed and professionally managed corrupt networks. In Poland the state-business relationship in corruption often works in the opposite direction. Here we can find several "state captures the business" cases when public officials extort bribes from business people or even seize private assets using illegal means such as blackmail. ... In Hungary beyond the "normal" 10–15% kickbacks for small public projects at local levels we can find intentionally designed and professionally managed corrupt network systems siphoning off huge amount of public money from large scale public projects' (Transparency International 2012b: 15; 21).

#### 4. Quality of anti-corruption efforts

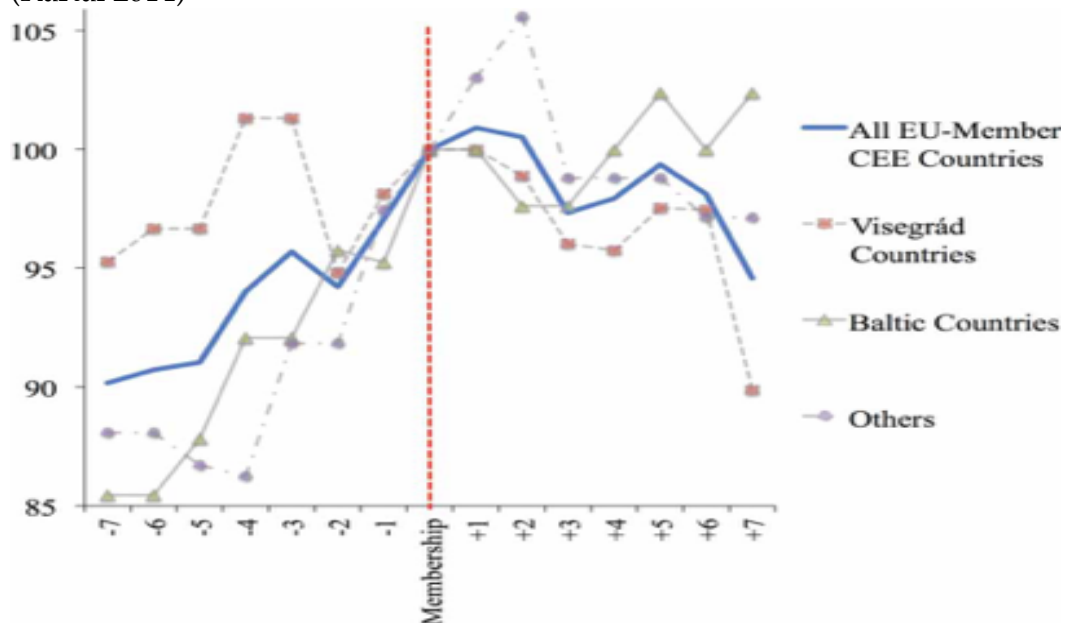
As argued above, soft backsliding in corruption is most likely manifested in relaxing efforts to combat corruption and/or deliberately undermining existing anti-corruption and transparency instruments. Benchmarking and comparisons across countries and time are equally difficult as capturing changes in levels or forms of corruption – despite the fact that a number of quantitative indicators purport to do precisely this. Measures such as the World Bank 'control of corruption' are also indexes drawing on surveys mapping perceptions, not an assessment of actual policy interventions in the anti-corruption area. The Freedom House Nations in Transit (NIT) 'corruption' measure (referred to below) is a composite of evaluations of legal frameworks against corruption but also of public perceptions and as such it is a relatively imprecise measure.

Bearing this in mind, there is nonetheless some existing work mapping possible trends in corruption control. For instance, Transparency International's flagship (largely) qualitative comparative National Integrity System study points out that 'Apart from Bulgaria and Romania, which continue to have serious integrity deficits, the majority of the newly acceded countries' can be classified as exhibiting mixed progress in the fight against corruption', but also that 'The evidence suggests that since accession to the EU

in 2004, there has been a rolling back on progress made in the fight against corruption in the Czech Republic, Hungary and Slovakia’ (TI 2012a: 16 and 17).

Kartal (2014: 945) uses NIT data to investigate whether backsliding has taken place in the new member states since they joined the EU, and finds that indeed, ‘the average level of corruption control increases prior to membership but it decreases noticeably afterwards’. He argues that the principal reason for backsliding is the weakening of the EU’s political leverage once membership is achieved. However, this does not explain why, according to the NIT data below, the Baltic states continued to strengthen anti-corruption efforts post accession while the Visegrad 4 did not, or why the latter group of countries seems to have experienced a temporary boost to corruption control in 2009-10. (This discussion feeds into the broader academic debate on whether domestic factors can counterbalance the absence of conditionality post-accession; see Batory 2010 and Sitter et al 2016 for a review of this literature).

Control of corruption in EU-member CEE countries before and after accession (Kartal 2014)



Source: Kartal 2014: 945.

Note: the data used is the Freedom House Nations in Transit ‘corruption’ indicator, which reflects expert assessment of ‘public perceptions of corruption, the business interests of top policymakers, laws on financial disclosure and conflict of interest, and the efficacy of anticorruption initiatives’ (Freedomhouse.org).

Going beyond quantitative data, one way to capture whether corruption control efforts increase, stagnate or fall back is to consider the fate of *anti-corruption agencies (ACAs)*,

which, where they exist, are at the pinnacle of control efforts. Indeed, ACAs are often portrayed as the sine qua non of effective anti-corruption, and the creation of these agencies – often due to policy transfer by global transfer agents such as the UN, the World Bank and the EU – is used by governments to signal their commitment to cleaning up public life (Batory 2012b).<sup>84</sup> However, as an earlier study of the ACAs in Latvia, Poland, and Slovenia shows, governments either create agencies that are very weak in terms of formal powers ('paper tigers'), or create strong agencies with the expectation that the agency will only damage opposition parties ('attack dogs') and whenever an ACA actually performs its job well governments make concerted efforts to undermine it or diminish its independence (Batory 2012b).

These observations are largely born out by the European Commission's 2014 Anti-corruption Reports, which mapped each member states' measures in place and evaluated the effectiveness of policies on the national level. The Report does not score member states' performance, but pinpoints areas that were deemed to be particularly problematic. As the excerpts below suggest (Box 1), most of the ACAs – in the member states that created specialized anti-corruption agencies – faced repeated attacks against their independence, which clearly indicates governmental intention to undermine the fight against corruption and thus constitutes backsliding from commitments made as part of the EU accession process.

Box 1: European Commission Anti-corruption reports (2014)

Excerpts (*italics added*)

Fighting corruption has long been a priority for Bulgaria, and legal reforms have resulted in the establishment of new structures. However, corruption remains widespread. The European Commission suggests that *Bulgaria should shield anti-corruption institutions from political influence* and appoint their management in a transparent, merit-based procedure.

Hungary has in place a number of tools to increase integrity and transparency in public administration. Some ambitious anti-corruption policies have been developed. However, concerns remain, such as those related to informal relations between businesses and political actors at local level.

<sup>84</sup> This is despite the fact that countries with ACAs do not necessarily perform better than those that do not have specialized agencies (Mungiu-Pippidi 2016).

Latvia has made progress in preventing and addressing corruption, with a searchable online database of political donations. It is developing and refining its anti-corruption laws. This ongoing work is positive, but there are concerns remaining about the implementation of the legal framework. The European Commission suggests build on the achievements of the *Bureau for combating and preventing corruption (KNAB)* by *strengthening its independence and protecting it from potential political interference.*

Poland has been implementing measures and fine-tuning policies against corruption, however a more strategic approach is necessary to ensure comprehensive solutions. Thus, in this report, the European Commission suggests implementing a long-term strategy against corruption, listing specific actions, the timeframe and resources for their implementation, and those responsible. ... The Commission also suggests that *Poland should strengthen safeguards against potential politicisation of the Central Anti-Corruption Bureau (CBA).*

In Romania, both petty and political corruption remains a significant problem. Although some positive results have been observed when it comes to prosecution of high level corruption cases, political will to address corruption and promote high standards of integrity has been inconsistent. In this report, the European Commission suggests that *Romania ensures that all necessary guarantees remain in place to safeguard the independence and continuation of non-partisan investigations into high-level corruption cases, including with regard to elected and appointed officials.*

Slovakia has made considerable efforts to improve the legal anti-corruption framework for criminal law and public procurement. However, several factors limit the effectiveness of anti-corruption work; problems with legislation, the perceived lack of independence of parts of the judiciary, and close ties between the political and business elite. In this report, the European Commission suggests that Slovakia should strengthen the independence of the judiciary.

Slovenia has been among the most active of the Central and Eastern European states in the fight against corruption, with a well-developed legal and institutional anti-corruption framework. However, recent years appear to have seen a decline in the political drive against corruption, amidst allegations and doubts about the integrity of high-level officials. ... The Commission is also suggesting that *Slovenia should safeguard the operational independence and resources of anti-corruption bodies and prosecution services specialized in combating financial crime*

(accessed at [http://europa.eu/rapid/press-release MEMO-14-67 en.htm](http://europa.eu/rapid/press-release_MEMO-14-67_en.htm) on 22 March 2017)



A country case that merits closer attention here is Romania, where the National Anti-Corruption Directorate (DNA), a specialized prosecution service, has achieved spectacular success in going after high level political corruption. Among the over 1250 indictments over corruption in a single year (2015), DNA has sent to trial a sitting prime minister, five ministers, 16 MPs and 5 members of the senate as well as several mayors, and seized over half a billion euro worth of assets, clearly signaling that high position or political connections alone are no longer sufficient to avoid prosecution.<sup>85</sup> There is also evidence that DNA prosecutes politicians from within the ranks of both the opposition and government parties of the day,<sup>86</sup> thereby diverging from the 'attack dog' pattern described that characterizes other powerful agencies in the new member states. It seems that what allowed this unusual combination (extensive powers and independence in operations) was a window of opportunity created by intense pressure from the EU, in the form of pre-accession conditionality directly before Romania's accession in 2007, the presence of a reform-minded minister of justice in office in Romania as well as the appointment of a particularly committed corruption fighter as head of the agency. The pattern observed elsewhere, of the agency being subject to intense political attacks to undermine its independence, does however hold. For Instance, the Commission's 2014 Anti-Corruption Report for Romania notes that in 2013 the then ruling government tried to use appointments to the agency as a way to put pressure on the DNA leadership in relation to on-going cases relating to high level politicians. So far the agency has however managed to push back against these attacks and maintain its level of activism.<sup>87</sup>

Another clear sign of efforts to weaken existing measures against corruption, and thus of backsliding, is efforts to *restrict freedom of information*, thereby making it more difficult for citizens and journalists to uncover evidence of malpractices. Hungary, which has no ACA, is a case in point. On the fringes of the sweeping changes undermining checks and balances and the rule of law in the country (Sitter et al 2016), Viktor Orban's government has also introduced legislative changes to restrict channels of public accountability. These consisted of, among others,

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<sup>85</sup> Accessed at <http://www.pna.ro/comunicat.xhtml?id=7128> on 31 March 2017.

<sup>86</sup> Accessed at <http://www.peterhfrank.com/political-corruption-in-romania-the-dna-database/> on 31 March 2017.

<sup>87</sup> Accessed at <http://www.politico.eu/article/the-dna-of-romaniyas-anti-corruption-success-eu-transparency-international/> on 31 March 2017.

- (i) replacing the independent data protection and freedom of information ombudsman with a data protection authority in 2011, cutting short the ombudsman's term and, according to the Commission (2012) at the time, 'creat[ing] the possibility that the prime minister and president could dismiss the new supervisor on arbitrary grounds'.
- (ii) In the wake of several data requests probing into a corruption scandal, in 2013 the government introduced changes into the FOI act making it easier for public bodies to reject information requests; subsequent amendments increased fees and waiting times for information requests; and an 2016 amendment exempted the state-owned postal service and foundations established by the National Bank of Hungary from FOI (both alleged by the opposition to be used for syphoning away public money) (see eg. Bertelsman Sustainable Government Indicators<sup>88</sup>);
- (iii) Adopting legislation to make donations to sports clubs that can be written off from the corporate tax a tax secret (according to Transparency International the scheme was used to channel funds to politicians in exchange for the donor being awarded lucrative public procurement contracts);<sup>89</sup>
- (iv) Intimidating NGOs; eg. raiding the offices of three non-government organizations that distributed EEA/Norway grants, received by NGOs seen as 'problematic for "leftist political ties", such as Transparency International, the Hungarian Civil Liberties Union or the investigative journalism portal atlatzo.hu'<sup>90</sup>; targeting specific NGOs with planned new legislation on 'foreign funded NGOs' – with the law explicitly aimed against organizations that conduct high-profile freedom of information/anti-corruption litigation, such as the Hungarian Civil Liberties Union and Transparency International Hungary.<sup>91</sup>

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<sup>88</sup> Accessed at [http://www.sgi-network.org/2016/Democracy/Quality\\_of\\_Democracy/Access\\_to\\_Information/Access\\_to\\_Government\\_Information](http://www.sgi-network.org/2016/Democracy/Quality_of_Democracy/Access_to_Information/Access_to_Government_Information) on 31 March 2017.

<sup>89</sup> Accessed at [http://hvg.hu/itthon/20151022\\_Transparency\\_a\\_TAO\\_a\\_korrupcio\\_melegagya](http://hvg.hu/itthon/20151022_Transparency_a_TAO_a_korrupcio_melegagya) on 31 March 2017.

<sup>90</sup> Accessed at <http://www.reuters.com/article/us-hungary-norway-funding-ngo-idUSKBN0ED1QW20140602> on March 2017.

<sup>91</sup> Accessed at [http://hvg.hu/itthon/20170111\\_nemeth\\_szilard\\_civil\\_szervezetek\\_tasz\\_helsinki\\_transparency](http://hvg.hu/itthon/20170111_nemeth_szilard_civil_szervezetek_tasz_helsinki_transparency) on 31 March 2017.

Following criticism from the group, in 2017 Hungary also withdrew from the Open Government Partnership, ‘a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, [and] fight corruption’ – the only country to ever do so apart from Russia.<sup>92</sup>

## 5. Causes and effects

In the previous sections a nuanced picture emerged, suggesting that while the corruption situation improved or at least did not get worse in the past years in a number of countries (notably Estonia, Latvia), there is evidence pointing at backsliding in some areas: even in member states that made progress against administrative corruption, high level political corruption/state capture seems to be entrenched (as seen in corruption affecting public procurement) and/or efforts to undermine anti-corruption and transparency mechanisms can be detected (e.g. Romania, Hungary). The question here is what might be driving these processes, and in particular, whether the 2008 financial and economic crisis (or other EU-wide crises) might play a role.

With respect to the latter question, the answer is probably “no” – at least there is no evidence of a direct link between the crisis and backsliding in corruption, other than the impact in terms of affecting the level of public resources devoted to corruption control. In Lithuania, for instance, the Special Investigation Service (STT) had its budget cut in 2009 to the extent that the STT management told the relevant parliamentary committee that ‘the level of funding compromised its ability to attract and retain experienced officers, to combat large-scale bribery, and to monitor political corruption’ (EC Anti-Corruption Report Lithuania 2014: 7). However, the cuts took place in the context of an austerity package that cut public sector agency budgets across the board, which does not suggest a deliberate effort to defang the agency (although the decrease in STT salaries to parity with other law enforcement agencies did have the effect that many experienced investigators left, thereby weakening the service; Kuris 2012a: 18). The story is similar in Latvia where the agency’s budget shrank by 30%, but also in the context of cuts affecting the whole of the public sector, and with the agency managing to realize savings without cutting operational staff (Kuris 2012b: 14). The fact that the Baltic republics remain among the cleanest of the new member states despite being among the hardest hit by the crisis also cautions against assuming a direct link.

As to what caused backsliding in corruption, where we do see evidence pointing to backsliding, there is no simple answer. As we pointed out in our previous report (Sitter

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<sup>92</sup> Accessed at <https://www.opengovpartnership.org/blog/ogp-support-unit/2016/12/07/media-briefing-government-hungary-withdraws-open-government> on 31 March 2017.

et al 2016), given the absence of an EU-wide trend, or at least a uniform trend characterizing a group of member states, the drivers will be found in a combination of country-specific factors and political dynamics. Here the 2008 economic crisis may have played an indirect role, in weakening electoral support for mainstream parties and giving a boost to populist and / or fringe parties and thereby making the wide consensus necessary for effective corruption control efforts (such as the establishment of genuinely independent control institutions) even more difficult to achieve. However, to date no systematic analysis has proven this link. On the other hand, econometric analysis provides support for the claim that (in transition economies in general) the volume of (administrative) corruption has grown because the crisis increased people's economic vulnerability which was in turn exploited by public officials extorting bribes (Ivlevs and Hinks 2015). Econometric analysis has also shown that the crisis has had an impact on perceptions of corruption: 'individuals in countries that experienced the worst of the economic crisis report more perceived corruption on the part of their governments' (Gugiu and Gugiu forthcoming).

## **6. Policy response on the EU level: does corruption constitute a crisis?**

According to the TransCrisis codebook, 'we speak of a crisis when a considerable number of people (including politico-administrative elites) agree that a certain situation constitutes a disruption of normalcy, a threat that requires an urgent response', where the potential disruption may concern 'fundamental values (e.g. security, health or integrity)' (Boin et al 2016: 5). The three key conceptual elements of crisis are threat, uncertainty, and urgency, all of which are subjectively constructed (ibid). A transboundary crisis is in turn a crisis that crosses boundaries either in a geographical or sectoral sense (ibid).

Regarding the first of the conceptual elements, the presence of a *threat*, corruption can clearly qualify as a crisis given its clear detrimental implications for the economy and the core values of the Union, particularly the rule of law, as discussed above. As the European Commission (2011: 3) put it in its Communication 'Fighting corruption in the EU':

'[corruption] harms all EU Member States and the EU as a whole. It inflicts financial damage by lowering investment levels, hampering the fair operation of the internal market and reducing public finances. It causes social harm as organised crime groups use corruption to commit other serious crimes, such as trafficking in drugs and human beings. Moreover, if not addressed, corruption can undermine trust in democratic institutions and weaken the accountability of political leadership.'

*Uncertainty*, the second element, is a given with respect to corruption, considering how difficult the phenomenon is to define, empirically capture and measure, and the fact that there is no consensus either in academic or policy analysis on what constitutes effective remedies against corruption. And there was at least one critical juncture when discussions about corruption as a policy and normative problem acquired an element of *urgency* – the final key defining feature of a crisis as per the Codebook. This critical juncture is the 1999 resignation of the Santer Commission in the wake of a huge corruption scandal. An independent expert committee appointed by the European Parliament uncovered evidence of wide-spread corrupt practices in the Commission. This led to a crisis of legitimacy and eventually to a raft of reform measures, embodied in the 2000 ‘White Paper on Reforming the Commission’ and introduced by the Prodi Commission under the direction of Neil Kinnock (Nastase 2013). Further changes were introduced as part of Sim Kallas’ European Transparency Initiative, which, among others, also aimed to overhaul the professional ethics infrastructure of the Commission (Nastase 2013).

Whether these reforms have gone far enough is hotly debated (see e.g. Transparency International EU 2014). Apart from the Commission, where revolving door problems and lack of transparency in lobbying seem to persist, the European Parliament too was rocked by the cash for amendments scandal in 2011, and reports of dubious if not outright corrupt expenses claims by MEPs commonly feature in the press. These kinds of doubts about the probity of the EU institutions overshadow the arguably equally, if not more, important agenda of controlling corruption in the member states, and provide ammunition to Eurosceptic politicians,<sup>93</sup> and to member state governments resisting any push from ‘Brussels’ to clean up public life in national capitals.

This may explain, at least in part, why progress on creating EU competences in the area of anti-corruption has been so limited. As summarised above (section 2.2), EU law pertaining to corruption is patchy, and key EU competences are missing for implementing and enforcing even the limited scope of legislation that is in force. Notably, the European Court of Justice does not have the power to rule on EU-level corruption cases; there is no EU level prosecution of transnational cases; and OLAF (the European Anti-Fraud Office) can only make recommendations to member states (TI EU 2013). This means that even when individual cases of corruption are uncovered, it is up to member states to decide what they do with the information – and apparently only

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<sup>93</sup> In the words of the head of the Leave campaign prior to Brexit, ‘Brussels is a very corrupt place full of bureaucrats’, accessed at <http://www.politico.eu/article/leave-campaign-head-brussels-very-corrupt-place/> on 31 March 2017.

46% of OLAF notifications are followed up by national authorities.<sup>94</sup> Another part of the explanation for limited progress on the EU level on anti-corruption is that while the problem is recognised as serious ('It is not acceptable that an estimated 120 billion Euros per year, or one percent of the EU GDP, is lost to corruption'; European Commission 2011: 3), it is not seen as urgent, or as urgent enough, given that corruption is (correctly) perceived to be as something that is, at least to some extent, always present in political life ('[t]his is certainly not a new problem to the EU, and we will not be able to totally eradicate corruption from our societies'; *ibid*).

Having said this, a number of 'crisis management' tasks can be identified as being undertaken on the EU level.<sup>95</sup> Detection obviously applies: corruption as a problem appeared on the policy agenda first with the scandal around the Santer Commission, and stayed on the agenda throughout the protracted process of Eastern enlargement, with the then member states and EU institutions highly concerned that the CEE countries joining would mean importing high levels of corruption into the Union – hence anti-corruption as a highly salient part of pre-accession conditionality. The EU institutions have also accumulated vast amounts of data on corruption ('sense-making'), to mention just a couple of examples, dedicated Eurobarometer polls (e.g., European Commission 2014) or qualitative studies (e.g. the Rand study commissioned by the European Parliament; EPRS 2016).

There are also clear signs that the European Commission would have liked to assume – and to some extent assumed - responsibility for dealing with corruption on member state level (coordination, meaning-making and communication as per the Codebook). This was based on a mandate the Commission received in the Stockholm Programme (2010), where the Council called on the Commission to 'develop indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption, in particular in the areas of the *acquis* (public procurement, financial control, etc) and to develop a comprehensive anti-corruption policy, in close cooperation with the Council of Europe Group of States against Corruption (GRECO)' (European Council 2010). This essentially treated corruption as a form of serious cross-border crime – which, in the terminology of the Codebook, constitutes a transboundary threat.

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<sup>94</sup> Accessed at <http://www.transparencyinternational.eu/wp-content/uploads/2015/03/2015-03-24-TI-EU-4-page-summary-of-EUIS-report.pdf>

<sup>95</sup> According to the TransCrisis Codebook (Boin et al 2016), crisis management tasks consist of the detection of the problem; 'sense-making' (collecting and analysing information about the problem); decision-making and implementation of a response; coordination among key actors; 'meaning making' and communication (communicating to citizens); and accountability (explaining and justifying the action taken).

Some of the key steps in what may have constituted a new plank of EU activity addressing this transboundary threat consisted of the following.

- i) The Commission's mainstreamed anti-corruption into membership conditionality at the time of the 2004/07 enlargement.
- ii) Using the mandate under the Stockholm Programme, in 2011 the Commission published a Communication announcing plans to step up efforts to monitor, implement and enforce existing anti-corruption standards; to mainstream a 'stronger focus on corruption in all relevant EU policies', and put 'a stonger focus on anti-corruption issues within the EU enlargement process' (European Commission 2011).
- iii) Following up the Communication, the Commission launched a framework for 'a reporting mechanism for periodic assessment' in 2011<sup>96</sup> and published what was intended to be the first round of Anti-corruption Reports in 2014. The reports, one on each member state, assessed the given country's strengths and weaknesses in the area and provided recommendations. While the exercise was relatively tame, the then Home Affairs Commissioner expressed hope that 'this will start a political process and will spur the political will and the necessary commitment at all levels to address corruption more effectively across Europe. The price of not acting is simply too high' (Malmstrom 2014). (Other relevant EU monitoring mechanisms such as the Justice Scoreboard are covered in a parallel TransCrisis report).
- iv) The Commission and the European Parliament pushed for the creation of a European Public Prosecutor's Office (EPPO), as a LIBE committee report in Parliament put it, 'as soon as possible, with the participation of as many Member States as possible, of an EPPO that is efficient and independent from national governments and the EU institutions, and protected from political influence and pressure' (EP LIBE 2016). The EPPO was seen as crucial for making EU action possible, given the unreliability of follow-up from national authorities in individual cases. A number of member states – including, unsurprisingly, Hungary and Poland – sought to block the initiative in the

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<sup>96</sup> Accessed at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/pdf/com\\_decision\\_2011\\_3673\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/pdf/com_decision_2011_3673_final_en.pdf) on 31 March 2017.

- Council but in early 2017 a larger group has decided to push on with the creation of the EPPO under enhanced cooperation.<sup>97</sup>
- v) Corruption features as part of the country-specific recommendations presented by the Commission to the Council in the framework of the European Semester of Economic Governance. On the basis of these the Council also adopts recommendations; the process is repeated cyclically. However, corruption is only a small segment of the reports which mainly aim to monitor public finances, and there are no hard sanctions against governments not implementing the recommendations (e.g. EPRS 2016: 84).

However, whatever momentum might have been present early in the decade it has been all but lost. The Commission's ambitions (or lack thereof) since then are clearly signalled by the GD Migration and Home Affairs website bearing the title 'Fighting corruption: a stronger commitment for greater results' – last updated in 2011.<sup>98</sup> An even stronger indication that anti-corruption is no longer a priority comes from the Commission's failure to publish the 2016 edition of the Anti-Corruption Reports. When the Reports were first published in 2014, the exercise was very explicitly meant to be periodic: as the press release accompanying the first Reports promised, 'The next EU Anti-Corruption Report will be issued two years from now'.<sup>99</sup> In a letter to the chairman of Parliament's LIBE committee, Commission Vice-President Frans Timmermans explained giving up the Commission's flagship anti-corruption initiative as follows: 'Given the complexity and evolving nature of corruption and its prevention, a more efficient and versatile approach would therefore be to complement the continued focus given to corruption issues in the European semester with operational activities to share experience and best practices among Member States' authorities and actively working in a wider context alongside international organisations such as the UN, Council of Europe, the OECD, G7 and others'.<sup>100</sup>

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<sup>97</sup> Accessed at <http://www.politico.eu/article/malta-wont-back-new-eu-corruption-prosecutor/> on 29 March 2017.

<sup>98</sup> Accessed at [https://ec.europa.eu/home-affairs/what-is-new/news/news/2011/20110606\\_en](https://ec.europa.eu/home-affairs/what-is-new/news/news/2011/20110606_en) on 29 March 2017.

<sup>99</sup> Accessed at [http://europa.eu/rapid/press-release\\_MEMO-14-68\\_en.htm](http://europa.eu/rapid/press-release_MEMO-14-68_en.htm) on 29 March 2017.

<sup>100</sup> Letter from Commission Vice President Frans Timmermans to the chairman of the EP LIBE Committee, 25 January 2017, accessed at <http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf>. Accessed on 31 March 2017.



In short, the Commission appears to push responsibility for anti-corruption to other (not corruption focused) mechanisms and to intergovernmental organisations active in the field.

## **7. Conclusion and implications**

Corruption remains a serious problem for the European Union. It is clear that the weakness (or absence) of common action at the European level imposes very significant financial costs on the EU (EPRS 2016). Over three quarters of EU citizens believe that corruption is widespread in their country (European Commission 2014). There is no doubt that this perception – and the reality of corruption, particularly high level political corruption – also has serious negative implications for legitimacy and the quality of democracy.

Whether the situation has worsened in the past few years cannot be answered with a simple yes or no. In a number of member states particular forms of corruption appear to have been curbed, but stagnation characterizes most political systems, and in others corruption has merely changed form. There are clear signs that it is common for governments especially in the new member states to have gone back on their pre-accession commitment to roll back corruption, as seen in efforts to undermine anti-corruption mechanisms or weaken channels of public accountability, particularly freedom of information. This paper argued that these processes constitute soft backsliding. There is no evidence that the financial crisis or other transboundary crises are directly responsible, but they may have played an indirect role by contributing to electoral swings empowering or strengthening populist parties.

The EU is relatively ill equipped to deal with corruption in the member states. EU legislation is patchy and weakly implemented in the area, despite the fact that already in 2010 there was clear recognition of the added value that would be represented by common European action. For some years, it seemed that a new plank of EU activity may emerge but in recent years the European Commission, the institution that assumed primary responsibility on the EU level, seems to have shied away from further attempts to forge a genuine European policy against corruption. The reason for this is that corruption as a policy problem is perceived to lack the urgency that is a critical ingredient for turning a problem into a crisis. EU leaders and EU institutions have been busy putting out more brightly burning fires. However, neglecting action against high level corruption and state capture now will impose high costs on European societies in the future.

**Annex 1: World Bank Enterprise Surveys\***

<b>Economy</b>	<b>Year</b>	<b>Average/SE/N</b>	<b>Bribery incidence (% of firms exp. at least one bribe payment request)</b>	<b>Bribery depth (% of public transactions where a gift or informal payment was requested)</b>	<b>Percent of firms expected to give gifts in meetings with tax officials</b>	<b>Percent of firms expected to give gifts to secure government contract</b>	<b>Value of gift expected to secure a government contract (% of contract value)</b>	<b>Percent of firms identifying corruption as a major constraint</b>
All Countries		Average	17.7	13.8	13.0	29.0	1.7	32.6
Europe & Central Asia		Average	18.0	14.0	13.7	25.1	1.5	23.5
High income: nonOECD		Average	7.3	5.5	4.6	8.7	0.3	23.2
High income: OECD		Average	1.9	1.3	0.7	14.3	1.8	10.5
Bulgaria	2002	Average	...	...	55.6	33.8	2.5	27.2
Bulgaria	2004	Average	...	...	...	...	...	...
Bulgaria	2005	Average	...	...	42.6	41.2	3.2	20.1
Bulgaria	2007	Average	6.7	4.7	6.1	19.9	0.9	45.9
Bulgaria	2009	Average	10.9	7.0	6.6	23.1	0.0	33.5
Bulgaria	2013	Average	8.9	6.4	6.0	28.2	0.0	27.5
Czech Republic	2002	Average	...	...	37.1	28.5	1.3	14.9
Czech Republic	2005	Average	...	...	36.0	40.4	2.1	25.9
Czech Republic	2009	Average	7.1	4.3	0.2	30.3	1.5	25.1
Czech Republic	2013	Average	3.5	1.5	0.4	11.2	1.3	15.9
Estonia	2002	Average	...	...	19.8	23.5	1.0	3.7
Estonia	2005	Average	...	...	13.7	8.5	0.2	4.3
Estonia	2009	Average	5.7	2.8	0.0	1.6	0.0	5.4
Estonia	2013	Average	0.0	0.0	0.0	0.0	0.0	3.2
Croatia	2002	Average	...	...	43.1	10.8	0.6	27.4
Croatia	2005	Average	...	...	20.1	7.6	0.2	17.4
Croatia	2007	Average	4.9	2.9	6.0	6.4	0.1	18.9
Croatia	2013	Average	3.9	2.5	0.0	14.0	1.1	19.1

<b>Economy</b>	<b>Year</b>	<b>Average/SE/N</b>	<b>Bribery incidence (% of firms exp. at least one bribe payment request)</b>	<b>Bribery depth (% of public transactions where a gift or informal payment was requested)</b>	<b>Percent of firms expected to give gifts in meetings with tax officials</b>	<b>Percent of firms expected to give gifts to secure government contract</b>	<b>Value of gift expected to secure a government contract (% of contract value)</b>	<b>Percent of firms identifying corruption as a major constraint</b>
Hungary	2002	Average	...	...	29.1	27.8	1.7	8.2
Hungary	2005	Average	...	...	24.2	28.8	1.5	8.6
Hungary	2009	Average	1.0	0.7	0.7	30.5	0.0	20.4
Hungary	2013	Average	2.1	1.1	0.0	51.8	14.1	11.0
Lithuania	2002	Average	...	...	29.1	26.7	1.4	18.7
Lithuania	2004	Average	...	...	3.8	...	0.3	27.6
Lithuania	2005	Average	...	...	35.4	31.6	2.1	16.5
Lithuania	2009	Average	7.2	4.4	3.4	14.5	0.4	38.6
Lithuania	2013	Average	10.4	9.8	10.9	12.9	0.3	26.5
Latvia	2002	Average	...	...	37.1	22.0	1.6	15.3
Latvia	2005	Average	...	...	30.0	24.1	1.6	12.8
Latvia	2009	Average	8.9	5.0	4.4	48.4	4.2	33.9
Latvia	2013	Average	3.5	2.3	0.9	5.8	0.0	7.7
Poland	2002	Average	...	...	28.3	23.6	1.7	26.4
Poland	2003	Average	...	...	0.0	12.9	0.4	38.4
Poland	2005	Average	...	...	30.4	12.3	0.3	20.6
Poland	2009	Average	8.2	7.1	4.8	18.0	0.8	24.1
Poland	2013	Average	1.9	1.8	2.1	18.7	0.9	13.0
Romania	2002	Average	...	...	36.1	23.3	1.5	36.1
Romania	2005	Average	...	...	27.4	14.7	0.3	30.7
Romania	2009	Average	19.7	14.1	12.1	38.7	1.1	52.3
Romania	2013	Average	9.8	6.1	6.8	7.1	0.5	46.1

<b>Economy</b>	<b>Year</b>	<b>Average/SE/N</b>	<b>Bribery incidence (% of firms exp. at least one bribe payment request)</b>	<b>Bribery depth (% of public transactions where a gift or informal payment was requested)</b>	<b>Percent of firms expected to give gifts in meetings with tax officials</b>	<b>Percent of firms expected to give gifts to secure government contract</b>	<b>Value of gift expected to secure a government contract (% of contract value)</b>	<b>Percent of firms identifying corruption as a major constraint</b>
Slovak Republic	2002	Average	...	...	43.4	54.2	3.2	30.6
Slovak Republic	2005	Average	...	...	31.3	37.1	1.9	13.3
Slovak Republic	2009	Average	5.7	4.3	3.1	40.9	5.3	31.1
Slovak Republic	2013	Average	4.4	4.0	2.5	22.1	0.0	19.0
Slovenia	2002	Average	...	...	15.8	11.3	0.4	4.9
Slovenia	2005	Average	...	...	14.0	13.3	0.2	4.8
Slovenia	2009	Average	2.3	1.7	0.0	2.4	0.0	9.8
Slovenia	2013	Average	0.2	0.1	0.3	31.5	1.6	12.2

\* data generated from <http://www.enterprisesurveys.org/Custom-Query>; corruption and informality indicators. An Enterprise Survey is a firm-level survey of a representative sample of an economy's private sector. The surveys cover a broad range of business environment topics including access to finance, corruption, infrastructure, crime, competition, and performance measures.

\*\* as indicated by corruption in public procurement.

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# **Policy paper summarizing findings on backsliding in equality policies and inclusion measures addressing gender, disability and ethnicity based inequalities**

*by Andrea Krizsan and Violetta Zentai*

## **1. Introduction**

Economic crises and their management is deeply gendered, racialized and impacting disproportionately on vulnerable groups such as disabled people, ethnic or racial minorities (Walby 2015). Backsliding of policies and commitments concerning gender equality, equality for persons with disability and equality for ethnic and racial minorities in the European Union and its member states in the context of the recent economic and financial crisis is seen by many as particularly distressing (Bettio et. al 2012, Karamessini and Rubery 2014, Lombardo and Kantola 2017, EDF 2014). Research in this field focused mostly on the social impact of the crisis on these vulnerable groups, but we know far less about its policy impact<sup>1</sup>. The question is whether in the context of the crisis governments went back on specific EU policy commitments in the field of equality policies, or whether the disproportionate social impact is only indirect impact of more general austerity measures. Our focus in this paper is to understand European retrenchment in equality policy regimes and particularly commitments to EU norms and their relation to the economic crisis.

This report analyzes backsliding in the equality policy regimes of five EU member states and looks at the nature and the causes of backsliding. Our approach leaves open the possibility of finding alternative explanations for backsliding rather than an exclusive causal link to the economic and financial crisis. We look at the extent to which backsliding uses crisis as pretext for change, or is a response to or part of crises management.

In Work Package 6 we define backsliding to mean governments going back on major commitments to the EU in a specific policy area. This can take the form of gradual slide away or major set-back; can mean various policy choices (including deliberate action or inaction) or lowering existing standards. We differentiate between hard backsliding where retrenchment involves direct violation of the EU acquis *and* violates the fundamental norms and values of the EU and soft backsliding when retrenchment involves violation of a member states' major commitments to the EU norms but without directly violating the acquis.

Equality and non-discrimination is a fundamental principle of the European Union. Equality between women and men is stipulated in article 8 of the Treaty on the Functioning of the European Union. The Treaty also affirms the principle of non-discrimination on various inequality grounds in its Articles 10 and 19. The EU adopted legislation against discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. This legislation covered all areas of life for ethnicity and also has extensive coverage for gender but it is limited to employment for the other four areas of discrimination. Historically, until 2000, the body of EU law only covered gender equality in the field of employment. In 2000 with the adoption of two new directives (the Employment Equality Directive for discrimination on the basis of sexual orientation, religious belief, age and disability in employment and the Racial

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<sup>1</sup> One exception for gender equality is the volume Gender equality and the Economic Crisis edited by Lombardo and Kantola (2017). But even this attempt looks at gender equality separately without a comparison with other equality policies.

Equality Directive for discrimination on basis of race and ethnicity) protection was extended to the other five grounds of discrimination.<sup>2</sup> In 2004, the Gender Goods and Services Directive expanded the scope of sex discrimination to the area of goods and services.<sup>3</sup> These Directives stipulate the prohibition of discrimination and prescribe action to promote equality including the establishment of independent equality bodies for gender and racial equality. In addition to this hard law a series of soft policy instruments set norms and define the framework for national commitments for all protected inequality categories.<sup>4</sup> This report focuses on three of the six inequality categories covered by EU law, the ones that are most widely regulated and also most extensively analyzed since the start of the economic crisis: gender, disability and race and ethnicity.

EU Member States have an obligation to implement EU law in their national legislation, and thus there is considerable scope for hard backsliding in terms of violation of the *acquis*. However, given the extensive body of soft law and the discretion left to member states in adoption of hard law, the field also allows substantial scope for soft backsliding: national measures that step back on commitments to EU norms but without a direct breach of EU law. In the three examined equality fields the reality is a mixture of hard and soft backsliding.

Two research puzzles emerge from our approach. First, why some countries face particularly strong backsliding in their equality policy regimes and others not, and how is this connected to the economic crisis and its management? In order to answer this puzzle we analyze comparatively the patterns of backsliding in our five countries looking at the three equality policy fields as constitutive of a wider equality policy field, in search for national level explanations.

The second puzzle is connected to differences between the three analyzed equality policy fields. These three fields while they have a lot of similarities and overlaps, they are marked by different patterns of development over time and complexity in policy measures, and different vulnerabilities to backsliding both at the national and the EU level. At the EU level the context of the crisis brings backsliding in commitment to gender equality and further questions about the centrality of gender mainstreaming as a European policy strategy (Jacquot 2017, Weiner 2017). The crisis is seen by many as a lost opportunity to reaffirming respect for gender equality and eventually creating a more gender equal European Union (Wiener 2017). At the same time both ethnicity and disability policy are marked by important progress around the time of the economic crisis. Rather than backsliding the field of ethnicity in the immediate post crisis period was marked by the launch of a common Roma<sup>5</sup> policy framework for the EU: the *Framework for National Roma Integration Strategies by 2020*, adopted in 2011. European disability policy also made important progress during this period: in 2009 the EU has become party to the *UN*

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<sup>2</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Official Journal of the European Union, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054>; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal of the European Communities 19.7.2000, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043>

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

<sup>4</sup> For a list of standard setting instruments on gender equality see [http://ec.europa.eu/justice/gender-equality/law/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/law/index_en.htm) For anti-discrimination see [http://ec.europa.eu/justice/discrimination/law/index\\_en.htm](http://ec.europa.eu/justice/discrimination/law/index_en.htm)

<sup>5</sup> Currently the largest ethnic minority of the EU. [http://ec.europa.eu/justice/discrimination/roma/index\\_en.htm](http://ec.europa.eu/justice/discrimination/roma/index_en.htm)

*Convention on the Rights of Persons with Disabilities (UN CRPD)*,<sup>6</sup> the first international legally-binding instrument setting minimum standards for rights for people with disabilities. UN CRPD sets the highest standards of commitments on Member States concerning the rights of disabled persons and most importantly makes explicit the EU level endorsement for a rights based approach to disability rather than charity and medical approach.

Based on these paths of European development one could expect backsliding on gender equality policies but progress on disability policies and policies dealing with ethnic and national minorities.

In addition to variation in the direction of change at the EU level, there is diversity in the various equality policy regimes that mediate the transfer of European norms, with different path dependencies, national actor constellations and priorities for various aspects of equality policy. Literature also argues that there is no one size fits all policy blueprint to these different equality policy fields (Verloo 2006). There may be differences between them on a variety of factors: the range of positions in each category; the common understanding of the origin of the social category; the possible location of the inequalities connected to it; the possible mechanisms producing and reproducing them; the norm against which they are compared, as well as in the strategies used to address them. The importance of redistributive strategies versus rights and recognition based strategies may vary for each of them (Fraser 1995). As such they might be differently vulnerable or resilient to the impact of the crisis. Understanding different patterns of backsliding across the three issues and explaining those will add to the potential of this analysis.

Finally, another important aspect to be considered when investigating different equality policy fields together is dynamics of competition or oppression Olympics (Martinez 1993) between the different equality policy fields, which may be particularly prominent in the context of scarce resources to be distributed between various inequality groups, and which may be reflected in policy outputs.

## **2. Research framework and methods**

Equality and non-discrimination is a relatively recent area for the EU and thus comparative methodology for measuring policy progress overtime continues to be limited. The majority of existent indicators measure social inequalities and progress or backlash along those lines, but very few capture policy outputs. In addition, while equality on different grounds can be perceived as an integrated policy field, its different subfields continue to be addressed in isolation. Gender equality, race and ethnicity, and disability are viewed as the major separate fields. The few, fragmented, and mostly one-off indicators that exist are in ‘silos’. This makes it difficult to capture trends and patterns of progress or development with standardized sets of indicators. Therefore the qualitative analysis of backsliding across these fields is imperative.

To capture backsliding we rely on conceptualization of policy progress used in the field of equality policies (Ferree and Gamson 2003, McBride and Mazur 2010). We use a dual set of indicators: we focus both on substantive content of policies and the extent to which they promote autonomy and rights of protected groups and on procedural elements, that is the extent to which actors advocating for the rights of these groups are included in policy-making. We rely on previous analysis done by academics, experts and NGOs for choosing critical elements to be examined for backsliding in the equality policy realm. First we look for legal changes in the

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<sup>6</sup> United Nations General Assembly, Convention on the Rights of Persons with Disabilities adopted on 13 December 2006, came into force on 3 May 2008. Available at: <http://www.un.org/disabilities/convention/conventionfull.shtml>

realm of anti-discrimination law. Institutional structures for equality policy and strategic planning were marked as particularly hard hit for all three equality fields. Gender equality policy agencies were closed, budgets of equality bodies cut, equality policy strategies stalled in several European countries. For all three fields we look at backsliding in this realm. Another hard hit field that is problematized by different protest movements and also mentioned in the literature concerns different distributive social policy measures that ensure equal opportunity or equality including care related schemes, pension schemes and protected employment (Bettio et. al 2012, Karamessini and Rubery 2014, Lombardo and Kantola 2017, EDF 2014). Finally the absence of ex-ante evaluations using a lens of gender, race or disability on austerity packages directed at cutting public sector employment, other public benefits, or amendment of tax schemes is also seen as problematic. In the absence of such ex-ante examinations the disproportionate impact of austerity and restructuring policy packages will inevitably impact more strongly vulnerable groups.

Literature on the crisis emphasizes the importance of participation of interest groups and representatives of vulnerable groups in crisis management and policy responses to the crisis (Walby 2015). The absence of inclusion and state closure to consultation processes reproduces the negative impact of the crisis on vulnerable groups, and as such is a critical indicator for backsliding.

Along these lines we used a series of more specific indicators for each of the three fields, which capture the above mentioned elements of backsliding. For gender we looked at the retrenchment of equality bodies and gender equality strategies, reduction in family benefits, reduction in maternity/paternity allowance, gender insensitive reductions in the public sector (wages/personnel) and gender insensitive pension reform. For disability we include reorganization and downscaling institutional structures and policy strategies, retrenchment in the de-institutionalization process, cuts in supported employment, cuts in support and care services, cuts in disability allowances, and the curtailing of needs assessment towards more limited definitions for disability. For race we cover retrenchment of legislation to combat racism and racial discrimination, retrenchment of specialized bodies, retrenchment of integration policies and as a background indicator also changes in the socio-political context in order to capture a potential surge in right-wing extremist groups and political parties, an intensification of hate-speech in public discourse, and an increase in violent acts taken against immigrants and racial minorities. We looked for backsliding in processes of inclusive policy making for all three fields.

Responses to the crisis may be framed in different ways. The literature on the gender politics of the economic crisis identifies three different patterns to frame responses to the crisis: the neo-liberal, the social democratic and the nationalist (Walby 2015, Karamessini and Rubery 2014). The neoliberal approach favours market deregulation, reduction of state intervention in the economy, and cuts in state funding for benefits and public services. The social-democratic framing favours state regulation of finance and the active intervention of the state to reduce inequalities through legislation and government spending, particularly for the people that are worst affected by the crisis (Walby 2015). A third, nationalist framing subordinates state intervention and subsidies to the nationalist project that favours ethnically pure demographic sustainability and a subordination of individual rights to collective national wellbeing. The three different frames project different configurations of retrenchment both with respect to redistributive and to recognition aspects of backsliding.

Not all countries witnessed retrenchment of equality policy regimes in the close proximity of the economic crisis and where retrenchment took place it was manifested in

different ways, and framed the crisis and the adequate response to it differently. In our analysis we look for such differences in whether there was any backsliding or not and if there was how was it framed and what were its implications for equality policy regimes.

We selected five European Union member states for our analysis: Hungary, Poland, Romania, UK and Spain. We identified these countries based on our previous summary mapping exercise in which we analyzed backsliding comparatively across all EU member states (Sitter et. al. 2016). In the mapping exercise, we found that these countries exhibited a variety of patterns of backsliding and their selection also served the regional diversity of our sample. In the mapping we found Poland to be a resilient country with no backsliding in the period following the breakout of the economic crisis (not until 2015). Hungary and Romania are both hard hit by the crisis, though in different ways: with Hungary exhibiting backsliding in all three policy fields, Romania remaining resilient for disability. Along the three CEE countries we also included two older member states of the EU, two countries that have a prominent record on equality policies and they are also considered to have been hit hardest by the economic crisis in the equality policy field: UK and Spain. We used the mapping data as preliminary indicators, open to being challenged by our in-depth qualitative analysis. In conclusions we come back to the table and suggest revisions.

**Table 1: Backsliding in equality policy regimes (source: Sitter et. al. 2016)**

<b>Member states</b>	<b>Gender</b>	<b>Race</b>	<b>Disability</b>
<i>Hungary</i>	↓	↓	↓
<i>Poland</i>	↔	↔	↔
<i>Romania</i>	↓	↓	MIX
<i>Spain</i>	↓	↔	↓
<i>United Kingdom</i>	↓	↔	↓

↓ - decrease in performance; MIX – mixed pattern; ↔ – no change in performance

Based on the analysis of these five cases we expect to understand more about why and how the economic crises is connected to backsliding of equality policy regimes, and why not. What are the patterns of crisis management? How backsliding may affect the three different policy realms differently and what are the similarities?

On the assumption that not all backsliding is directly caused to the economic crisis and the crisis is not necessarily leading to backsliding, in our analysis we consider a series of alternative explanatory factors for backsliding. Our case selection covers these factors and will allow us to look for their salience. These factors are:

- economic performance of the country when the crisis started,
- color and ideology of governments and impact of government changes and particularly the emergence of right wing populism,
- salience of pro-European Union discourses, and
- strength of mobilization against the negative impact of crisis management packages on vulnerable groups and forms of resilience.

The report will first present short summaries of the five cases. In a comparative chapter we investigate the cases along a series of factors. Conclusions will come back to the questions formulated for the report. The Annex 2 of the paper contains full length versions of the five case studies.

### 3. Five cases compared: Hungary

#### *Context*

Throughout the post-communist period, the Hungarian equality policy regime has placed most emphasis on addressing the cause of disabled persons and ethnic minorities, primarily the Roma. Gender equality has remained the least salient issue in Hungary, either marginalized or explicitly opposed. Meanwhile, Hungary has always been a good performer in following international norms, particularly EU norms, in the equality fields.

#### *Crisis management*

Hungary faced the economic crisis with high level public debt and weak growth capacities. A socialist-liberal government was restructured towards the end of its political cycle in April 2009. A technocratic government took over and functioned until the next parliamentary election in 2010 and introduced the first austerity measures. Retrenchment in equality policy regimes came about in two waves. Following the first wave of austerity measures in 2009, a second wave emerged under the right wing populist government starting in 2010. The two sets of responses differ significantly in their framing: the first set of austerity measures were framed with some sensitivity to inequality and gender issues despite the extensive budget cuts (2009-10). The second wave of retrenchment was framed in nationalist, familialist terms with particularly negative effects on gender and race issues. The austerity package introduced in 2009 kicked off a crisis management with economic growth stimulation, including labour market activation of women, disabled people and minorities. The conservative coalition from 2010 continued the austerity provisions in certain social policy fields but also engaged in a drastic revision of the whole political and welfare system. It used the crisis as a justification to carry out major reforms in an emergency manner. The new regime became increasingly hostile to gender equality and ethnic diversity, and increasingly favourable to the Hungarian middle class both economically and culturally. It has also marginalized democratic processes and blocked existent consultation processes with civil society groups representing the vulnerable. Hungary's Equal Treatment Authority (ETA), the agency enforcing the anti-discrimination acquis, suffered retrenchment under both governments. First, the pre-2010 government introduced financial cuts, and then the conservative government interfered with its scope of activities and expertise. The agency's leadership and personnel were replaced and its expert board dismantled. These changes resulted in shifting the focus towards discrimination based on disability and motherhood, rather than more sensitive issues such as gender equality, sexual orientation or ethnicity.

#### *Gender domain*

Gender equality policies were impacted by both waves of retrenchment, although framed in two distinctive ways. In 2008-2010, the gender equality institutional framework was stable. The government's tri-partite consultation body, the Council for Gender Equality continued its activity in several thematic groups, including consultations about austerity measures. The department for Gender Equality, though small and at low level of the hierarchy, was also operating within the Ministry of Social and Labour Affairs. In early 2010, the government adopted the first gender equality strategy since 1997, the National Strategy for the Promotion of Gender Equality 2010-2021. The conservative shift in 2010 resulted in dismantling most of these structures. The consultative Council was not convened after 2010. Any formalized consultation between the government and women's rights groups stopped, and starting from 2015 the most

prominent groups are persecuted as foreign agents. The governmental agency was dismantled and re-established under the deputy state secretary for Family and Population Policy. Gender equality policy framing was replaced by family policy one. All actions under the National Strategy were stalled. In 2011, a new constitution (The Fundamental Law) was adopted spelling out the right to life from the moment of conception opening the door to limiting the right to abortion; redefining family as heterosexual marriage, and ignoring the principle of equal pay between men and women. Differences were visible also in the realm of parental leaves. The first crisis management government followed a logic of labour market activation and reduced the length of paid parental leave from 3 years to 2 years. Family allowance was also frozen for two years. The conservative government brought a series of measures to assert the primary role of women as carers, such as reduced labour protection for mothers during pregnancy and early childhood, reinstatement of the 3 years long parental leave with limited possibilities to work in parallel, family taxation, pension reform to give exceptionally high credit for caring. Incentives were introduced for employers to assist employees in reconciling work and family life. Overall, the pre-2010 government focused on child poverty through increasing universal child allowance, family-related social assistance and decreasing tax credits, while the conservatives detached family policies from social policies and targeted them at increasing fertility rates among 'appropriate' working families.

#### *Disability domain*

This policy domain also witnessed retrenchment despite Hungary's pioneering ratification of the UN Convention (CRPD) in 2007. Retrenchment was followed by some progress after 2013. The Hungarian policy and institutional framework follows a medical and charity approach contrary to the rights approach of the UN CRPD and the European anti-discrimination standards. Strategic programming in disability remained continuous during the crisis: the National Disability Program 2007-2013 was followed after a short interruption by a new program for 2015-2022. At the same time the main consultative body, the National Disability Council ceased operating in early 2011. After years of blocked communication between the government and disability groups, the Council was reinstated in 2013, though consultations included only groups sponsored by the government. Its activity was also complemented in 2015 with the Inter-ministerial Disability Committee tasked with coordinating disability policy across departments. Unlike in the domain of gender and ethnicity, state grants support six national disability interest groups. The main principle of intervention under both crisis managing governments was reduction of cash transfers to disabled persons and their activation on the labour market. Disability reforms started in 2008 introducing obligatory periodic re-examinations for disabled persons, which later was extended to all beneficiaries. Around 30% of the disability pension beneficiaries lost their pension and only the half of them could receive temporary rehabilitation benefit. In 2012 disability pension was transformed into sickness allowance. The average amounts of allowance have also dropped. Services previously sponsored by the state became contracted out and the number of social workers decreased. Under the conservative government, two progressive processes can be noted: deinstitutionalization of disabled people and supported decision making was introduced in the Civil Code in 2010. Implementation in both processes generates criticism.



### *Race/ethnicity domain*

When the crisis started, Hungary had acted along a national strategy for Roma inclusion within the spirit of the transnational Decade of Roma Inclusion soft policy coordination mechanisms. The socialist-liberal government started to use the EU Structural Funds for territorially targeted development program for localities of sizeable Roma communities. By the same token, the government introduced a larger public work program by which it tied various social assistance benefits to low quality and low paid work separated from the open labor market. Under the conservative-populist government, a New Fundamental Law replacing the Constitution in 2011 stipulated that citizens are entitled to social rights through their ‘work responsibilities’. As an EU obligation, Hungary prepared a new complex and long-term strategy for Roma inclusion (2011–2020). The governmental change preserved and only moved the State Secretariat for Social Inclusion from Ministry of Labor to Ministry of Public Administration and Justice. In 2011, a Roma Coordination Council was established to provide a forum for dialogue and cooperation for all the stakeholders on the area of Roma issues. The Roma participants were selected by highly clientelistic and by-partisan methods. In 2012 the former independent institution of Parliamentary Commissioner for the Rights of National and Ethnic Minorities was abolished and became a Deputy Commissioner for Fundamental Rights. The personnel and budget of the main anti-discrimination complaint body, the Equal Treatment Authority was also cut. From 2013 on, social benefits for long-term and short term unemployed became tightened and reintegration into the regular labor market was further weakened. As the economic recovery moved ahead and the country received massive development support through the EU Structural Funds, the government started to provide the better-off families remarkable financial resources through tax credits despite the general cutback in social spending, meanwhile it terminated the earlier compensation for low-income earners. Until 2014-2015, the country received low number of migrants and refugees which did not create major policy challenges. Basic legal and policy infrastructure for migration and refugee affairs was measured as lower average in European terms according to the MIPEX index.

### *Conclusions*

In Hungary backsliding first took the form of a neo-liberal austerity package with some openness and sensitivity to equality concerns. From 2010 a conservative-nationalist approach took over, which subordinated cuts and restructuring to a nationalist agenda in which gender equality ethnic diversity were seen to undermine national sustainability. Cuts in the first wave left equality institutions and programming untouched or even improved across all three grounds though with more limited budgets. The second wave established a hierarchy in which disability remained a politically acceptable inequality ground, though framed in medical terms, but gender and ethnicity were hit hard, by blocked consultation, dismantled institutions and also ideologically driven reframing of social policies reaching to these groups.

## **Five cases compared: Poland**

### *Context*

Between 2007 and 2015, Poland had two consecutive pro-EU governments. In 2007 the center-right party the Civic Platform (PO) formed a government coalition with the agrarian Polish People's Party (PSL) to pursue strong commitment to ‘Europeanization’ of national policies. The next elections in 2011 marked a clear victory for the PO and ensured the

continuation of European-friendly policies. The PO's social opinions remained conservative, particularly on same-sex marriages, church separation from state, or abortion. Yet, in 2007-2014, Poland made impressive progress in all three main equality domains: gender, race and disability. It promoted anti-discrimination legislation, introduced electoral gender quota, ratified the CoE Istanbul Convention, and amended the Labor and Penal Codes to favor the position of vulnerable groups on the labor-market. As numerous member states progressed to dismantle their equality infrastructure, Poland demonstrated a high degree of 'resilience' which ended in November 2015 with the election of the Law and Justice Party to power.

### *Crisis management*

Although the spill-over of the crisis was reflected in unemployment and absolute poverty statistics in years 2008-2011, Poland experienced economic growth during this period. While the budget-related provisions of the laws of 2009-2010 indicated ongoing 'budget slimming', no cuts were made to social support and care services, and in fact certain areas (i.e. childcare services) saw increase in spending. Poland was one of only few member states that did not curb public sector employment. Cuts in the field of welfare provisions and integration measures (targeted at minorities and disabled persons) were avoided and efforts were made to strengthen reconciliation of family and working life and activation of disabled persons on the labor market. Finally, this period opened up a dialogue with civil society and allowed for creation of platform(s) where issues related to gender equality, non-discrimination, and treatment of minorities and disabled persons could be openly discussed.

### *Gender Domain*

After 2004, Poland had been delaying full implementation of the EU anti-discrimination regulations, which resulted in several infringement procedures by the European Commission. During the crisis years, Poland emerged as one of the countries in the EU where gender equality policy showed progress. New anti-discrimination provisions were passed, equality institutions established, and previous problematic policies amended. Passed in 2010 the new 'anti-discrimination' law generated amendments to the Labor Code and set up equality bodies (the Government Plenipotentiary for Equal Treatment and the Human Rights Defender). In 2012, Poland's first strategic National Program for the Promotion of Equal Treatment 2013-2016 was accepted. In 2015 Poland ratified the Council of Europe Convention on Preventing and Combating Violence against Women, and Domestic Violence. Most of the consultation mechanisms have been put in place. Further, women's groups established The Congress of Women (2009) with government funding. The Congress has become a regular consultation partner of the government on gender equality issues. In 2009 and 2011, Poland extended parental leave provisions and introduced reforms to support development of early childhood education and care. The public sector also escaped cuts. Following the European trend since 2010, Poland's total budget for public administration was frozen yet the share of employment in public administration in total employment remained stable.

### *Race/Ethnicity Domain*

Poland is a nationally and religiously uniform state without a long tradition and experience of combating racial discrimination and running integration programs. Despite small numbers of ethnic minorities, Poland has seen extreme nationalistic movements and right-wing organizations and parties gain influence over the last decade. The voices of the targeted groups

remain weak. This ‘silence’ is exaggerated by ethnic and religious biases strongly embedded within the majority of the population. Despite the hostile context, the 2010 anti-discrimination act not only regulated racial discrimination but also opened the door for legal amendments to strengthen the fight against hate crimes. The 2014 amendment of the 2005 Law protecting the rights of national and ethnic minorities introduced the social integration of minorities as a duty for public authorities (previously, civic integration existed). The Polish state also showed commitment to the integration of Roma: developed National Roma Inclusion Strategies and with the decision of the Ministry of Education abolished all forms of segregated education. In 2014 the Ministry of Education funded 53 local initiatives facilitating the integration of Roma children into the education system. Poland also adopted its first comprehensive migration strategy in 2011. An action plan was developed to the strategy in 2014 which specifies details of implementation including budgets and responsibilities. The policy was dismantled following the coming to power of the right-wing Law and Justice Party in 2015.

### *Disability*

Policies directed at persons with disabilities also escaped serious retrenchment in Poland and even showed some progress. Poland ratified the UN Convention on the Rights of People with Disabilities in 2012. Transposition of the Directive 2000/78/EC which prohibits inter alia discrimination due to the disability at the workplace and in other occupational activities resulted in new provisions in the Labor Code. The Government Plenipotentiary for Disabled People and the implementation of the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons received ‘stable’ financial assistance throughout the period of the crisis. It is noteworthy that a shift in the approach towards activation of disabled persons on the labor market resulted in decreases in spending for disability benefits. As a result, the number of employees with disabilities employed on the open labor market in the system of subsidized employment has been steadily growing while the number of those employed in sheltered enterprises has dropped. This redirection of funds was backed by the support of the Government Plenipotentiary Office for Disabled People. In 2013 amendments to the Act of Family Benefits increased the amount of nursing benefit for carers but also reduced the circle of entitled people to approximately half of the previous group. Protests and the Constitutional Tribunal (K27/13, K38/13) blocked the limiting aspects of the amendment.

### *Conclusion*

In Poland welfare reduction measures have been systematically applied to social policy areas related to care, education and welfare payments from the 1990s. While the recent global economic crisis often served as justification for the ongoing Polish neoliberal drive, there was little evidence during this period of "backsliding" on commitments to equality measures. The equality infrastructure in the executive powers got major boost during the crisis years. The critics of Polish reforms propose that reforms of the anti-discrimination fields resulted from the obligations of the European Union membership rather than from political convictions and grassroots demands. Moreover, the social welfare provisions, while more sensitive to reconciliation between work and family, continued to promote traditional family values and entrenched medical models of protecting the disabled. The new right-wing, Euro-skeptic government elected in 2015 began to swiftly dismantle the equality infrastructure particularly in the gender domain, where Poland saw a return to pro-family policy in traditional, catholic

understanding and full abandonment of anti-discrimination measures and institutional framework (across all three domains).

## **Five cases compared: Romania**

### *Context*

In Romania, European integration is viewed as an important framework and benchmark for both legislative and institutional changes in the field of equality policy. Key equality bodies specialized by grounds were established before the crisis. The National Council for Combating Discrimination (NCCD), the equality body established under EU *acquis* for the enforcement of anti-discrimination law in Romania experienced no major disruption during the crisis. Yet, austerity measures did target policy and institutional achievements that were young and feeble constructions, unable to stand against severe retrenchment.

### *Crisis management*

During the years of the crisis, Romania had several governments each using somewhat different crisis frame. The beginning was marked by a political framing that denied the existence and impact of crisis for Romania. In 2009 a new coalition government led by the Democratic Liberal Party changed the discourse and introduced a series of crisis management interventions mainly austerity measures. Upon signing an agreement with the IMF, reductions in public expenditure were implemented including freezes of public sector wages in education, health, and social care, cuts in social benefits, and VAT increase. Measures were mainly adopted without prior public consultation or any impact studies, through governmental emergency ordinances. The neoliberal government and the president of the country assumed a leading role, while the parliament was left behind. The Social Dialogue Act in 2011 abolished any cross-sector bargaining. Yet, outspoken protest became a key feature of the Romanian response to the economic crisis. Demonstrations occurred in 2010 against cuts of public sector spending, and in 2011 in response to cuts in gender based violence policies. In 2012 massive protests erupted in some major cities against a strategy to privatize the health care system. Feminist resistance was successful in achieving the inclusion of women's groups into policy discussions. In 2012, the neoliberal government enacting the austerity measures resigned. After several intermediary governments, elections in 2012 brought a series of Social Democratic Party led governments which reinstated some of the previously cut elements of the equality policy regime.

### *Gender domain*

Romania had a relatively progressive gender policy framework when austerity measures hit in. Law no. 202/2002 on Equal Opportunities between Women and Men set key priority areas for gender equality policy and established The National Agency on Equal Opportunities for Women and Men (ANES). Strategic planning for gender equality was continuous starting from the adoption of the 2002 law, and remained uninterrupted during the crisis. The National Strategy on equal opportunities between women and men was adopted in 2009 for the years 2010-2012. In addition to ANES the National Agency for Family Protection was established in 2003 for the enforcement of Law 217/2003 on the Prevention and Sanctioning Domestic Violence. In 2010, restructuring of the public administration dismantled ANES and also the

National Agency for Family Protection consequently halting adequate enforcement of policy measures in place. Gender equality was also inhibited by social policy retrenchment measures which included 25% cut in salaries in the public sector and 15% in pensions parallel to 5% increase of VAT. Progressive logic was not considered, irrespective of the horizontal and vertical segregation of the labor market. In 2010 social transfers were decreased for a range of social categories, from single parent families to families whose children have a poor school attendance record. Parental leave and childcare services were particularly hard hit. Families increasingly relied on informal care provided by grandparents, other relatives. The 2010-2011 budgetary cuts affected the length of parental leave and the terms of financial compensation during the leave. The retirement age for women was raised to 63 years and the contribution years to 35. Gender based violence policy was one of the gender equality fields most severely hit by the crisis in Romania. Yet, in response to sustained struggles of civil society actors, combating gender based violence witnessed important progress during the years of the social democratic governments. In 2012, the 2003 domestic violence law was amended to include the order of protection, and improved funding for organizations running shelters. In 2015, ANES was reinstated, this time with extended competences including the field of combating and preventing violence against women. In 2016, the Council of Europe Convention on preventing and combating violence against women and domestic violence was ratified by the Romanian Parliament. Overall by 2015 the gender equality domain recovered from the impact of the initial backsliding.

#### *Ethnicity/Race domain*

Policies on race and ethnicity in Romania address both the sizable Roma minority as well as several other ethnic minorities living in the country. Equality policy commitments towards the EU concern mainly Roma inclusion. The National Agency for Roma (NAR) was established in 2004 for central policy coordination. Unlike the main gender or disability bodies which were downgraded in 2010, during the same period NAR remained in place but became the site of political battles. The National Council for Combating Discrimination (NCCD), which is the equality body in charge for enforcing the anti-discrimination acquis also escaped dismantling, but faced budget cuts in the immediate proximity of the crisis and increase again following that, mirroring the generally high funding fluctuation of the institution between 2002 to 2011. In line with the EUs Framework Roma Strategy, the Romanian government prepared in 2011 a Strategy of the Government of Romania for the Inclusion of Romanian Citizens Belonging to the Roma Minority for 2012-2020. Funding, however, became thin from state budget both in 2012 and 2013. In addition to the disproportionate impact of wider austerity measures on marginalized Roma people, a retrenchment of integration policies can also be noted. Drawbacks occurred by cuts in support for school mediators, Romani language teachers, and health mediators. The decentralization of services generated backlash in local authorities' capacity to deliver policies. At the same time, progress of educational policies can also be observed. The crisis did not affect the Romanian government's affirmative action measure in education aimed at Roma students. Overall, however, due to the accumulated precarity of the majority of the Roma, their social exclusion worsened during the crisis. Scandalous eviction cases initiated by municipal governments also emerged during this period. Racism and hate speech endorsed by high level public figures marked the period.

#### *Disability*

The implementation and monitoring of the National Strategy on equal opportunities for disabled people was under the supervision of The National Authority for the Disabled People (NADP). Similarly to the gender equality body, this agency was also disintegrated and placed as a smaller office within the Ministry of Labor in 2010. People with disabilities were entitled for different social transfers, specific services, and for a personal assistant. Romania introduced the requirement of re-examination of disability status resulting in loss of status for one third of those concerned and, as a consequence, in reduced funding support. Not only social transfers were cut, but also the salaries of the professional caregivers were diminished by 25%. Payments were delayed by public authorities. Cuts in health care spending also had disproportionate impacts on the lives of people with disabilities, including the lack of compensated drugs. At the same time, there was little change in the employment status of people with disabilities or in approaches to promoting social inclusion. The austerity measures deepened poverty for disabled people and for their households. In 2013, the number of institutionalized persons increased. In the same period, Romania ratified the UN Convention on the Rights of Persons with Disabilities in 2011. In 2015, the NADP was reinstated as the main coordinating body for policies on disabled people (replacing the term ‘handicap’ by ‘disability’).

### *Conclusions*

In terms of governmental infrastructure, disability and gender equality bodies were dismantled opening wide doors to the retrenchment of gender equality and disability strategies. Their dismantling conveyed a negative message that these domains were seen as second class matters. The ethnicity/race dedicated institutions suffered due to reduced budgetary allocations that impeded the implementation of relevant strategies but also due to political battles. Still, ethnicity/race dedicated institutions were not dismantled by the austerity packages. It seems that the antidiscrimination coalition and Roma NGOs were more powerful than disability and gender equality NGOs. Women’s NGOs proved more active and effective in altering gender-based violence policies. Nevertheless, they were less influential in regards to preserving the status quo of gender equality or gender-based violence bodies. The measures enacted in Romania reflected the economic and social preferences of the international financial institutions and particularly the IMF towards austerity and public cuts. The color of the government also had a role: most cuts were done under a neoliberal government, whereas the following social democratic regimes reinstated some of the previous cuts including the gender and disability bodies. The lack of social dialogue fed into powerful protest reactions by society throughout the crisis years and may have also contributed to the reversal of the cuts.

## **Five cases compared: Spain**

### *Context*

The development of the Spanish economy from the second half of the 1990s until 2007 resulted in increasingly higher levels of employment, wealth and welfare state development, which translated into higher standard of living for the vast majority of Spanish citizens. Under the socialist government (2004-2010) gender equality, social inclusion and integration policies gained political leverage, leading to a significant expansion of equality infrastructure (in all equality fields) and transposition of European anti-discrimination legislation. Up to 2008, Spain's equality measures supported women's entry into paid work while funding for care workers created new employment opportunities. This meant that in a relatively short time span Spain had

become a good model in policies for gender equality in the EU context. Moreover, since at least 2003, the government pursued active social integration and inclusion of immigrants and minorities.

### *Crisis management*

Starting from 2008 Spain experienced economic, financial and fiscal crises with two peaks that triggered policy changes across different sectors. In 2009, the socialist government adopted an economic stimulus plan, however, these measures proved unsuccessful in curbing escalating unemployment and mounting public deficit. In May 2010, the government announced a package of austerity measures worth around 1.5% of GDP, including wage cuts for civil servants, cancellation of some welfare provisions and public pension freeze. Amidst protests and general strikes, the government also introduced a 2% rise in VAT and increased the retirement age to 67 from a previous 65. In 2011, the center-right People's Party won an absolute majority in parliamentary elections as voters punished the outgoing socialist government for the worst economic crisis in generations and the EU's highest unemployment rate. The conservative government launched tougher policy measures to regain the confidence of the markets and the EU. In 2011, the government approved major public spending cuts and increased VAT to 23%. In the same year, Spain's anti-austerity Indignados movement emerged spreading across the country and shaking the very core of politics. The movement managed to block some of the most drastic reforms in health care. It also filtered into city halls in major cities like Madrid and Barcelona through recent municipal elections. With the rise of Podemos and Ciudadanos, Spain's long-standing two-party system came to an end.

### *Gender domain*

In the context of the crisis, Spain witnessed a dramatic retrenchment of gender equality schemes (backsliding on five out of our six indicators). Various EU documents and reports show that gender was not mainstreamed in the design of policy responses to the crisis in Spain. Once the recession began to affect the service sector, women's unemployment rose rapidly and by 2010, surpassed men's. The Labor Reform increased unilateral opportunities for employers to introduce more flexible employment conditions and fire employees, especially those who take on most of the burden of care, i.e. women. Direct transfers, such as the "Baby Check", were stopped. The extension of paternity leave was delayed and eventually abandoned. Spending on health was reduced by more than 15% in real terms in only two years with various gendered consequences. The long-term care benefits governed by the 2006 Dependency Law were also suspended. Public pensions were frozen in 2011 when average pensions in Spain stand at only 63% of the EU-15 average. All these entailed the reorganization of care work largely with the increase of traditional unpaid services provided by women in the family. In 2010, equality infrastructure also began to be dismantled as part of public saving strategy. The central government budget dedicated to gender equality policies decreased at all governmental levels. In a spirit of 'rationalization and sustainability of local administration', the power of local government to pursue gender equality measures was restricted. Reproductive rights of women also came under attack during the conservative government. It is important to note that the participation of women in politics and decision making did not decrease during the crisis management.

### *Race/ethnicity domain*

Traditionally, the Spanish state respects territorial and cultural diversity and enacts a multicultural policy regime. The social integration model concerning ethnic minorities and migrants is seen as responsive to the different dimensions of integration. However ethnicity and race related policies are less salient on Spanish policy agendas and less developed compared to gender (Alonso et. al. 2012). Recession had an ambivalent impact on this domain. At the start of the recession, in 2011, Spain finally adopted legislation to comply with the requirements of EU Directive 2000/43/EC (Racial Equality) and Directive 2000/78/EC (Employment Equality) and established the Non-Discrimination Council/Racial and Ethnic Origin. In was the second wave of recession that resulted in backsliding on all previous integration commitments. While the formal anti-discrimination framework remained stable, budget earmarked for integration of ethnic minorities (i.e. Gitano [Roma]) and immigrants has been substantially reduced in 2012 (by 17%). The cut was a huge blow to Roma inclusion programs long recognized as ‘a model’ for integration across Europe. The reduction in co-financing of EU Structural Funds programs together with a general reduction in welfare provisions generated major setbacks in employment, education, health and housing objectives. The Spanish Integration Fund which forms the bulk of immigration inclusion spending, mostly disbursed through municipalities and regions, was first cut in 2011 to one third, and ultimately eliminated in 2012. With the Royal Decree Law 16/2012, almost a million undocumented migrants got excluded from accessing healthcare services except for exceptional circumstances. Furthermore, according to the penal code reform approved in December 2012, to host and protect an undocumented immigrant is a felony, rendering humanitarian aid and acts of solidarity punishable by the law.

### *Disability*

The Spanish state transposed all major EU and international conventions and directives concerning disability rights and policy norms and developed its own legislative infrastructure. In 2012 Spain implemented national budget cuts of 13.65% and regional budget cuts of up to 10% to health and social care services. As an immediate consequence, Spanish commitment to independent living was put at risk, local authorities postponed (or paused) the construction of residential care facilities and government funding for independent living projects in the autonomous regions was reduced by 22-29% in 2012 compared to the previous year. Employment services including supported employment faced overall 25% cut in funding. Finally, earlier investment plans aimed at improving the accessibility of public buildings, services and transport have been virtually paralyzed, further hindering independent living. Since 2011, entitlements to benefits for mildly dependent people with disabilities (including those affected by mental distress) have been tightened. Moreover, there has been a shift from personalized services towards more standardized minimum services, which hits the fundamental cornerstone of independent living. Currently, the law on the promotion of personal autonomy and care for dependent persons is under review which is likely to result in higher co-payment requirements and increased number of persons of co-payment duties. The austerity measures have caused significant delays in payments from the public sector to non-profit social service providers. In Spain, the public administration’s debt towards these organizations has put them in jeopardy, and as a result social services to people with disabilities are endangered (in fact termination or collapse of providers and services have been reported in Valencia and Andalusia).



### *Conclusions*

The austerity measures have unleashed dramatic backsliding in the equality policy regime which had seen major positive developments in the 2000s. Our research has found severe retrenchment in both gender and disability domains. While race/ethnicity protection policies showed progress right after 2008, by 2011 the new conservative government began to reduce integration programs and initiatives. Overall, crisis management measures introduced by central and regional governments were introduced without previous assessment of their negative impacts on women, ethnic minorities or disabled people. Budget deficits were regulated without the voice of those who are the most affected by the crisis. Backsliding reached for gender and disability policies both in the realm of recognition and in the realm of redistribution. For ethnicity we see an initial progress in the realm of recognition, but backsliding in the second stage in redistribution aspects.

## **Five cases compared: United Kingdom**

### *Context*

In spite of its always critical stance towards European policy coordination and convergence, the country observed all important human rights conventions and relevant norms of the EU equality acquis. More than that, the UK served as a vanguard of anti-discrimination and equality policies in Europe since the 1980s. Court activism, civil society advocacy and public service tradition positively influenced equality thinking and policies leading to progressive solutions such as positive equality duties in public administration and services. In 1997-2007, the government under Labor leadership significantly increased public spending including on vulnerable groups and equality. The explosion of the economic crisis in 2007 prompted the government to implement a stimuli package, following a mild Keynesian model.

### *Crisis management*

The international economic crisis in 2008 ushered the longest period of economic downturn in the UK in modern history. By denouncing the increase in public spending during ten years of the Labor government, the "age of austerity" was popularized by the British Conservatives as early as 2009. Following parliamentary elections in 2010, the Conservative-Liberal Democrat coalition government announced the biggest cuts to state spending since the Second World War, including significant reduction in social security and the planned cuts of 900,000 public sector jobs between 2011 and 2018. Moreover, in 2012 the institution of public consultation was undermined: the statutory 12 week minimum consultation period, which is part of a Compact agreement between government and the voluntary sector, was removed. The country moved to a new social policy regime which was not reversed with the start of economic recovery.

### *Gender Domain*

In the mapping exercise of our research, UK demonstrated backsliding on all indicators against solid former performance. Since 2010 the Government Equalities Office, previously a dedicated government unit, has been downgraded to a unit of the Home Office and more recently moved to the Department of Culture, Media and Sport. The main consultative body of the government, the Women's National Commission, was closed in 2010. In social policy reforms,

restrictions were introduced to strengthen work incentives and self-reliance by paying little attention to gender inequality consequences related to segregated employment, part-time work, and care responsibilities. Embedded in the 2010 Spending Review, the retrenchment in family and childcare provisions particularly affected women. As part of the Working Tax Credit (WTC) measures, in 2011 the government reduced the proportion of childcare costs (from 80% to 70%) and increased the threshold eligibility conditions for parents. It also abolished the Child Trust Fund stripping parents from access to investment vouchers. The government also closed the Health in Pregnancy Grant, and restricted the Sure Start Maternity Grant for low-income parents to first babies or multiple births. These changes reinforced traditional gender roles and decreased the assistance to childcare costs. The women's NGOs spearheading progressive changes in gender equality agendas faced the worst funding crisis in recent history of the UK. Their sustainability was seriously undermined while demand for services has increased. Parallel to these retrenchments, women's political representation has increased in the crisis years. Political parties can use women-only shortlists until 2030 alongside other voluntary action and encouragement.

### *Race/Ethnicity Domain*

The UK has a long tradition and experience of respecting social diversity, fighting discrimination and running social integration programs. In the crisis management process, anti-discrimination legislation and institutions remained intact, while integration funding has been chipped away. The cuts in integration programs reflect broader fiscal tightening and changes in political philosophy and priorities in the integration of migrants. The department of Communities and Local Government was ordered to cut its budget roughly to half by 2014-2015 (including transfers to local governments). This has resulted in the termination of several community cohesion programs. The Migration Impacts Fund, raised through a levy on immigrant visa fees, has been scrapped. The English for Speakers of Other Languages program faced both budget cuts and limitations on eligibility. Similarly, the Ethnic Minority Achievement Grant serving the integration of new arrivals has been mainstreamed into general education allocations. Like in the gender domain, NGOs working with migrant communities were hard hit by cuts in funding, some affecting core support, others directed at service provision. Refugee integration support services faced particularly severe pressure, with the Refugee Council's state funding reduced by 62% in 2011. In addition, the Refugee Integration and Employment Service ceased to exist after September 2011.

### *Disability*

While disabled people have entered the recession on a profoundly unequal footing to non-disabled people, their interests have been largely absent from national debate arising from the downturn. The welfare reforms reduced the numbers of people eligible for incapacity benefits, cut spending on care support services and independent living programs, and launched aggressive work activation programs. £2bn was taken out of the care budgets of local authorities even though demand for care services continued to grow. This was coupled with vast hikes in charges for essential services, including a 13% increase in meals and wheels charges, and a 33% increase in transport fees. The 2010 Emergency Budget launched an aggressive campaign to curtail eligibility criteria and force labor activation. The introduction of the Universal Credit removed financial benefits for disabled people who do not reach the required level of functional impairment in the work capability assessment (WCA). Those deemed fit-for-work were to

benefit from work related activities. It is estimated that 450,000 disabled people lost their status under the Universal Credit. Furthermore, the shift of resources to better targeting disabled people with the greatest need, resulted in cuts for families with disabled child (around £1,500 per year). Finally, in 2013 the government replaced Disability Living Allowance (DLA) with Personal Independence Payment (PIP). Other reforms in welfare support which intensify disability poverty risk include introduction of the Bedroom Tax, closure of the Independent Living Fund (which directly leads to re-institutionalization), the removal of automatic entitlement to Housing Benefit for young people, reductions in Disabled Student Allowance.

### *Conclusions*

Overall, the endorsement of austerity policies in the UK has negatively impacted all three domains. In the last 6 years, government support to equality and diversity issues was cut back at a time where tougher labor market conditions raised the salience of such issues. The Emergency Budget not only generated extensive cuts in safety nets but also shrunk public sector employment and integration programs (targeted at both ethnic/racial minorities and persons with disabilities). It has been widely documented that these measures disproportionately affected women, racial minorities, and persons with disability having weaker positions in the labor market, political representation, media voice, etc. Furthermore, the use of a voluntary rather than compulsory approach to equality policies has allowed for dismantling of progressive equality and diversity policies (most acutely felt in the gender domain). The case study endorsed the findings of the mapping exercise on considerable backsliding in both gender and disability domains. Ethnicity/race equality policies appeared relatively ‘protected’. An in-depth scrutiny unveiled, however, that while the legal anti-discrimination framework was not undermined, integration programs faced tremendous challenges due to decrease of state funding. The UK also faced unprecedented rise in hate speech and violent acts against racial and ethnic minorities, and rising xenophobic attitudes exploited by advocates of Brexit.

## **4. Comparison**

### *Trajectories of backsliding*

We see a variety of trajectories of backsliding in the five countries that we examined. Their analysis helps understand the nature of backsliding in equality policy regimes and its determinants. While the financial and economic crisis hit everywhere our mapping indicated (Sitter et. al. 2016) that backsliding did not occur in all European Union member states, and its length, scope and effect was diverse where it occurred. Backsliding did not only avoid the usual suspect countries such as the economically well off, and equality prone Nordic countries but had some surprising cases. Confirming the mapping data Poland emerged from our research as the only country among the Central and Eastern European new EU member states that witnessed progress in equality policy terms rather than backsliding during the period immediately following the economic crisis. Abrupt backsliding in Poland, particularly in gender and ethnicity policy issues, only started after the political shift to populist right following the 2105 elections.

Backsliding was devastating to equality policies and vulnerable groups protected by them in all the other four analyzed countries. In fact all four countries witnessed political or democratic crises along the line. However two of the countries that we analyzed could engage

with the opportunities that emerged from these crises in ways that ultimately resulted in stopping or even reversing backsliding, just a few years after its start. Romania surfaced from its continued political crisis with a reversal of some of the most important equality policy cuts, empowered civil society organizations and improved patterns of cooperation between these organizations and the state. New forms of resistance and political organizing in Spain could also stall some of the important attempts of equality backsliding and allowed Spain to maintain a progressive equality regime ultimately (Lombardo 2016). A complex set of circumstances including civil society resilience, electoral politics as well as economic factors contributed to these patterns of reversal. In both countries these are still ongoing struggles. No such reversal emerges in the UK where backsliding in equality policy regimes along with other consequences of austerity measures are followed by the Brexit political crisis and the ensuing de-legitimization of previous commitments on European equality norms.

Finally in Hungary backsliding is coupled with a political and democratic backsliding connected to the ruling of the Eurosceptic right wing populist government. Equality policy commitments along with more general European human rights commitments are increasingly questioned here with no prospect for reversal in the near future.

Starting from the indicator based findings of the mapping exercise (Sitter et al 2016) we analyzed in more detail changes in the equality policy regimes of the five countries. We looked in particular at how equality policy related measures were justified, what was their framing and impact on women, ethnic and racial minorities and disabled persons, and what was their assessment by concerned civil society groups or international actors.

### *Comparing backsliding in equality domains*

**Gender.** Gender equality has been the core equality value for European Union policy from the late 1970s onward. An extensive set of hard and soft EU norms emerged on gender equality by the late 2000s including complex transformative strategies such as the commitment to mainstream gender in all policy processes. Yet, gender equality policies were hard hit in the context of the crisis, both at the EU level and in several national contexts, and a mainstreaming of gender equality norms into crisis management has not occurred (Kantola and Lombardo 2017). Our analysis of five EU member states largely confirms this, with the notable exception of Poland. We witness backsliding in gender equality policies and institutions in all the countries we examined, except Poland. Poland enters the crisis period with a minimal level of compliance with EU norms on gender equality. During the crisis Poland witnesses one of its most progressive periods in terms of gender equality, with remarkable legal, institutional and policy progress as well as good relations between various government actors and women's movement groups. Poland's progressive period ends abruptly only in 2015, when the populist right wing Kaczynski government takes over and dismantles most of what has been achieved in the previous 7 years.

In the other four countries we see mainly soft backsliding. Gender equality institutions are targeted unequivocally. Governmental agencies responsible for gender equality and consultative councils and committees bringing civil society together with governments are dismantled (UK, Romania) or massively downgraded (Hungary, Spain). Importantly though gender equality bodies that are mandated under EU law to enforce anti-discrimination laws and policies remain in place and quite stable except for some curtailing of their independence and budget cuts. Implementation of existent gender equality strategies is stalled or slowed down due

to budget constraints and due to dismantling or downgrading of agencies responsible for their enforcement. Another important sign of giving up on commitments is the absence of mainstreaming gender equality considerations into crisis management.

Two main frames on gender can be captured in these backsliding processes: the neoliberal frame and the familialist/nationalist frame. The neoliberal frame focuses on activation on the labor market and cutting benefits that serve any inactive status including maternity leaves, or early retirement. At the same time throughout the examined countries this activation takes place without improving support institutions and particularly care infrastructure. We see the neoliberal frame used in the UK, in Hungary in the first period (until 2010) and in Romania. The familialist frame attempts to push women back to the private sphere encouraging their care roles as primary or limiting their reproductive rights. In the Hungarian context a nationalist undertone is added in that women are held responsible for national demographic sustainability and for increasing the birthrate. The familialist frame dominates in Hungary after 2010 and in Spain (Lombardo 2016). In Spain we see attempts not only to cut costs but also to curtail women's rights by re-familialization of care and challenging women's reproductive rights. Resistance in Spain manages to block several attempts in this direction. In Hungary after 2010 cost efficiency is overwritten by the ideological priority of demographic sustainability, and reinstatement of conservative gender roles.

A realm of gender equality falling under hard backsliding is retirement age. Equalizing of retirement age is discussed in both Hungary and Romania, but progress towards compliance with EU norms is limited even if no backsliding takes place.

**Race and ethnicity.** Protecting the rights and providing social inclusion for ethnic and racial minorities in Europe is a politically salient agenda Europe since WWII, yet it only became part of EU hard law with the EU Race Directive of 2000. There are good reasons for European societies to ensure high protection to this agenda. Overall, our in-depth analyses show that the domestic crisis management practices starting in 2008 was ambivalent in this field with progress in development of anti-discrimination policies and institutions, new social inclusion strategies for the Roma but backsliding in terms of enforcement and social integration programs for migrants. As a result of the transposition of the Race Directive, anti-discrimination laws in the member states have established a consistent set of rights and obligations across all EU countries. Further, all Member States have established specialized bodies to provide assistance to victims of racial discrimination and scrutinize the implementation of the main anti-discrimination norms in public affairs. We have not found any major retrenchment of legislation and specialized bodies assigned to protect ethnic and racial equality in any of the five countries observed. In fact, anti-discrimination legislation moved ahead in the observed period in Poland, Spain, and remained strong by repackaging previous anti-discrimination acts in the in UK, including the exemplary Race Relations Act. The independent equality bodies assigned to deal with the protection of victims of discrimination, as mentioned already above, have faced budget cuts and professional weakening in Hungary and Romania, and to some extent in the UK, but they developed during this period in Spain and Poland.

Ethnic and race equality policies are seen fundamentally important for two particularly important social categories/groups in the EU member states, the Roma and migrants/refugees. In addition to the protection mechanisms that the Race Directive set for the member states, the social inclusion measures regarding these two major social groups are considered as policy domains of potential soft backsliding in our inquiry. All EU member states were obliged to

elaborate their National Roma Integration Strategies in 2011 and to include Roma inclusion priorities in the planning of the European structural funds for 2014-2020. This development went against or occurred in spite of the economic crisis that Europe faced from 2008 on. Our case studies revealed that this massive European political and policy mechanism helped establishing some governmental coordination tools in Hungary, Poland, and Romania even if policy implementation has yielded mixed or low results in the years 2011-2015. A more subtle examination unveils that governmental coordination mechanisms remained weak or superficial in all countries in our sample and in Hungary participation mechanisms for Roma in policy processes moved to a scheme closely controlled by the government.

In the field of migration and refugee protection, the regular host countries in our study, Spain and UK have tightened their citizenship regimes and moved from multiculturalism to civic integration approaches. The idea of civic integration implies that immigrants understand and internalize wider societal norms and laws as autonomous individuals and they practice religious and cultural freedom in the private lives. Social inclusion is a reward for compliance with norms and performance of civic obligations (Scholten et al. 2015). Civic integration policy models have become more popular since the start of the economic crisis both in UK and in Spain. It is debated if the civic integration frame implies backsliding in the field of ethnic and racial equality as recourse to assimilationist integration. In addition, both Spain and UK have introduced heavy cut-backs in integration programs in language teaching, migrant education, and awareness raising for the mainstream population in particular in the regional and municipal budget allocations, and Spain has even criminalized civic support for undocumented migrants.

It is imperative to mention that socio-political contexts in all observed member states demonstrate tangible surge in right-wing extremist groups and political parties, an intensification of hate-speech in public discourse, and an increase in violent acts taken against immigrants and racial minorities. Some worsening of the wider political conditions across the board in European countries is evident, which could hardly be addressed by anti-discrimination laws.

**Disability.** Disability stands out from the three fields by the remarkable progress this field has achieved at the EU level during the period of the crisis by the ratification of the UN Convention on the Rights of Disabled Persons (CRPD). Yet, despite the window of opportunity to step up EU policies on the field from a largely medical and protectionist model to a human right model, we witness backsliding in this field as well. Backsliding in the field of disability also exhibited a series of typical patterns. Once again in this field we observe soft backsliding rather than hard. The EU sets no requirement for governments to create equality bodies for disability, and the *acquis* only extends to formal anti-discrimination measures and only in the field of employment. Mirroring the EU progress in formal policy terms all of the analyzed countries witnessed major progress in the field of disability policy: in parallel with EUs endorsement they all ratified the UN CRPD. Meanwhile in terms of implementation and *de facto* rights equality they all went back in terms of commitments.

Backsliding followed different patterns. Redrawing the boundaries of the protected group so that much fewer people qualified for benefits and support was a practice used in Hungary, Romania, Spain and the UK alike. Reform packages were largely framed in labor market activation terms: levels of benefits and number of people qualifying were reduced with reference to the need for active participation on the labor market to the maximum possible level. Governmental institutions in charge for disability policies were also downgraded or dismantled. Strategic policy processes including de-institutionalization processes were slowed down or halted in Romania, Spain and the UK, but to a certain extent also in Poland. Another general

trend was cutting the budget of service providing NGOs and budgets available for care personal. Somewhat similarly to the gender equality policy field, under the pretext of labor market activation and in the absence of adequate support infrastructure (for care, housing, and labor market integration) backsliding stalled or even reversed the positive tendencies initiated by the UN Convention. So rather than a move away from a medicalized policy approach towards a human rights and autonomy based policy model, four of the analyzed countries witnessed loss of autonomy and independence of disabled persons, mainly due to cut services and infrastructure and stalled de-institutionalization. It is noteworthy though that much of the disability infrastructure and policy processes were reinstated following the peak of the crisis both in Hungary and in Romania, and Hungary speeded up its de-institutionalization process after 2013.

Overall in the disability field backsliding stalled or slowed down transformative policy processes towards a rights rather than charity and welfare based understanding initiated by UN CRPD.

### *Inclusive policymaking*

Partnership with civil society is a fundamental norm in the EU<sup>7</sup>. Inclusive policy processes are even more important in the case of vulnerable groups, women, ethnic minorities or disabled, whose interests are underrepresented in the normal policy process (Fredman 2002). Yet we find critical backsliding in the realm of inclusion, consultation and partnership compared to previous practice in all three fields and in all countries except Poland. Backsliding takes a variety of forms. Most direct challenge is dismantling or blocking formal consultation structures such as councils or committees established for sustainable communication between civil society groups representing the various groups and governments. Formal consultation mechanisms are particularly hit in the field of gender equality where we see dismantling of institutional frameworks in UK, Hungary and Romania. In UK the time available for consultation is also trimmed for all policy processes. In Romania even Parliament is sidelined by decision making through executive orders.

Formal consultation processes can also be curtailed by selective access to consultation based on government preferences. Selective inclusion of civil society actors leads to the exclusion of rights based groups in Hungary from consultation in all three policy fields. Another way of blocking the input of concerned civil society groups is their disempowerment by cutting their funding or replacing regular funding patterns with tendering in which rights groups can easily lose to organizations working for lower prices, but often without expertise in the field. Cuts of funding emerge both in the disability and in the gender equality field in one way or another in Hungary, Romania, UK and Spain as well. This limits capacity of these organizations to provide services but also curtails their availability for consultation processes. Finally in Hungary important gender equality, Roma and disability rights groups are not only excluded from consultation but persecuted by the government through tax and financial audits and negative media campaigns launched by the government.

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<sup>7</sup> Stated also specifically for purposes of crisis management Article 8, Regulation (EU) No.472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability.

These different patterns of action limiting cooperation between governments and civil society and their use in all four countries points to a tendency of applied crisis management approaches towards state closure in these difficult times. It also highlights the vulnerability and weakness of hard achieved pre-crisis inclusion arrangements.

Following the peak of the crisis in some of the examined countries, consultation patterns improved, mainly upon pressure coming from protests. Widespread and repeated protests in Romania achieved improved standing for civil society groups in all three policy fields which was further enhanced by the incoming social democratic government. In Hungary we also witness a reopening of consultation platforms for disability issues, importantly though consultation only includes groups selected and sponsored by the government and continues to exclude rights groups. In the UK new forms of consultation are introduced that rely on new media and are seen by the government as more efficient, yet are heavily criticized by women's groups (Women's Resource Center 2013). Finally, Poland shows impressive improvement in consultation processes in all three realms during this period including financial support for some of these platforms (Krizsan and Roggeband 2017). The Polish state closes to consultation only after the 2015 elections.

State closure to democratic consultation emerges as an important crosscutting element of backsliding, which is not only problematic in itself but also has serious consequences for the substantive content of crisis management packages and post-crisis processes. The use of opportunities for protest and subsequent improvement of inclusion deserves special mention and further research to understand its nature.

### *Comparing three equality policy fields*

Cross-sectoral analysis of gender equality, race/ethnicity and disability policies showed a series of similarities. Backsliding on previous policy commitments took place in all three fields in four out of the five analyzed countries. However, *backsliding in all three policy areas was limited in matters that are regulated by hard law at the EU level*. In all three fields commitments that were not respected belonged to the level of soft strategic objectives, which were until recently nevertheless unquestionable standards for the EU and most EU member states.

We also found relatively cautious backsliding in formal policies, little in terms of cutting previous achievements on paper. It rather took the form of neglecting the implementation of existent policies or not funding them. As such the bulk of backsliding had a redistributive character rather than backsliding in policy salience of these issues. Backsliding took place primarily through the reframing of the various equality policy issues in ways that may challenge rights based and equality of outcomes approaches.

Reframing of policy agendas is quite evident for both gender and disability but to a certain extent also race and ethnicity. In gender equality we saw the trend towards re-familialization of care under the constraints of austerity and the language of activation, and upsurge of defense for traditional gender roles. The nationalist framing of gender roles, as it emerged in Hungary, is yet another step further away from rights based commitments in the field. In disability we witness backsliding from a rights and autonomy based framing towards a medicalized, charity based approach where once again autonomy and independence are downgraded (largely due to costs and cutting of support services).

For race and ethnicity, in the field of Roma inclusion, the EU framework encouraged member states to use a progressive social inclusion framing in the middle of the crisis when



crafting their own domestic strategies in 2011. Yet, countries in our sample often experienced and even endorsed racialization and securitization of ethnic inequalities in their political and wider public discourses. Regarding the inclusion of migrants and refugees, the dominant policy framing often moved, although not in a linear way, towards the concept of civic integration with some permeable discursive borders to securitization anxieties. Backsliding and the ensuing reframing of policy agendas come as warning about the need to reexamine the *progress bias in equality policy thinking*. Backsliding that we found has shown the vulnerability of governmental institutions and equality policy strategies as well as government consultation mechanisms long seen as the direction for progress. We found vulnerability to cuts in funding across the three issues. Limited funding for institutions and for strategic targets undermines most equality policy objectives in all three fields. As a result of budget cuts, either in budgets allocated to policies, or in budgets allocated to enforcement agencies, policies may become symbolic instruments of window dressing but without substantive reach.

Questioning the need for partnership between states and civil society organization representing these vulnerable groups is yet another common feature of backsliding in these countries and across all these issues, and another challenge to long accepted principles of equality policy making.

Differences and divergence between the paths of the three issues were contextual. In the different contexts, different hierarchies of inequalities may emerge. In Hungary disability was the inequality field least hit by backsliding if we look at formal policy and institutional retrenchment, whereas gender was to most hit. Disability field could recover from institutional retrenchment, and also launch progressive action as long as that was framed in resonance with government terms. Gender remained a difficult field for the conservative government, where resonance between government frames and civil society frames was difficult or impossible to achieve. Disability especially if framed in medicalized and charity terms proved to be the comfortable equality policy field. In Romania it was ethnicity that was least hit, while gender and disability were massively affected. Yet, protest action strongly politicized gender, allowing it a recovery after 2012. In Spain gender was most politicized and resilient which migration was hard hit and exhibiting little resistance to backsliding, particularly in the context of the upcoming refugee crisis.

## 5. Causal aspects

Is the backsliding in equality policy regimes that we identified in four out of the five examined countries caused by the economic and financial crisis? In the following, we look at possible alternative causes for backsliding and examine what circumstances have supported its avoidance or its reversal after the initial retrenchment. We look at factors that emerge as critical from our five country review and that are also supported by various strands of literature. We analyze the following factors:

- the severity of the economic hardship in the context of the crisis and the pace of recovery following the crisis;
- the political ideology of governments that manage the crisis;
- European norm compliance; and
- social resistance and protest.

Table 2 at the end of Section 5 demonstrates the country variations of backsliding in equality policy domains and the identified causal factors behind.

### *Economic hardship*

The policy change literature suggests that the severity of the economic crisis largely influences what policy responses governments opt for. Yet, from among the major types of policy responses, it is not evident if governments turn to the harshest austerity measures as opposed to social protectionism or muddling through (Bauer and Knill 2014). A recent comparative study on crisis consolidation measures in 14 European countries confirmed the earlier findings of the OECD (2012) that the size of the general fiscal consolidation measures was primarily related to the size of the fiscal crisis measured by budget deficit and debt. The worse the economic situation and the worse the budgetary situation, the more drastic and far-reaching were the consolidation measures that had to be taken by the governments (Kickert, Randma-Liiv, Savi 2015).

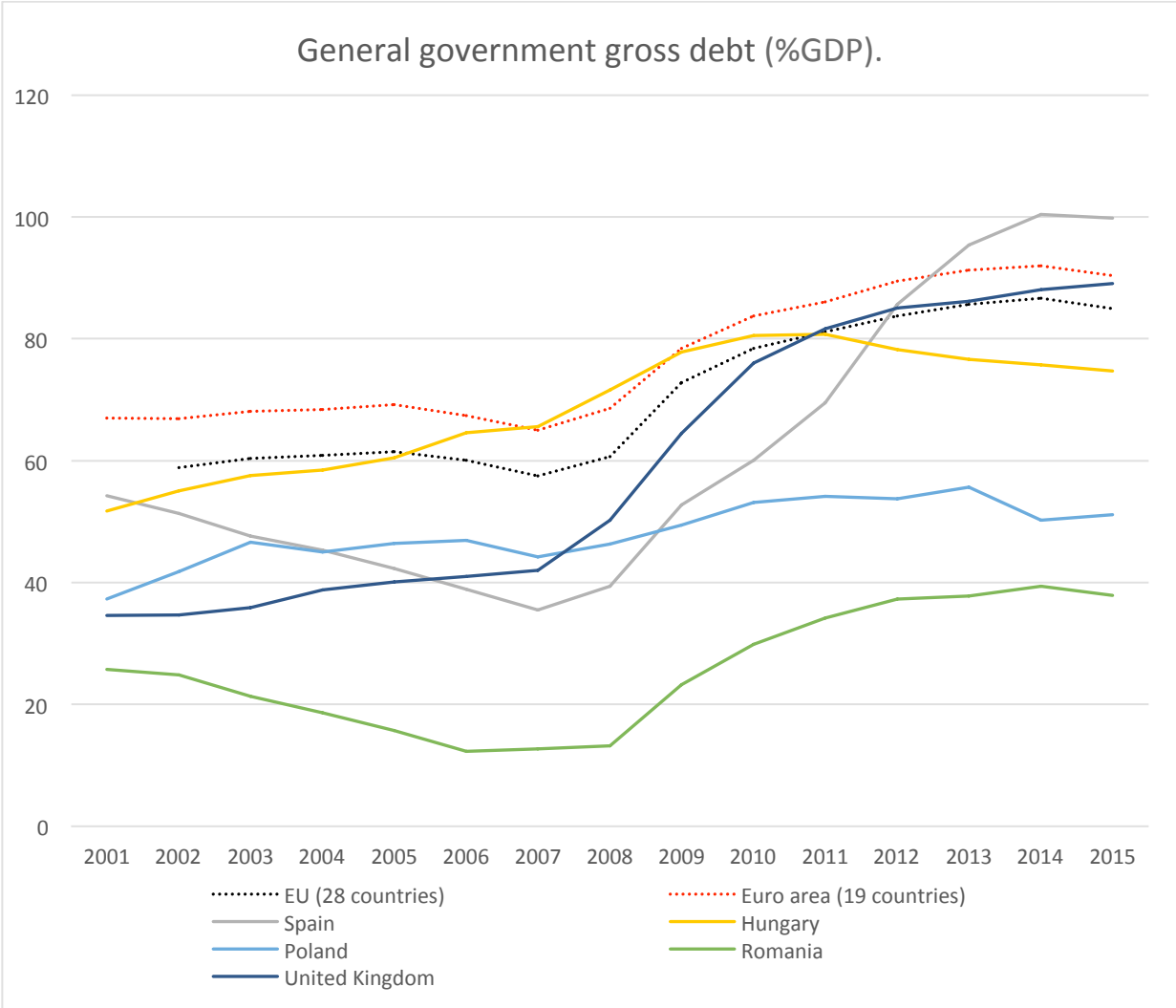
Hungary, Romania, Spain and the UK faced the very first waves of an economic crisis in 2008-2009. In 2009, the year with the strongest impact of the crisis, real GDP per capita fell by close to 7% in Hungary and Romania and by 5% in the UK. Spain's economic hardship largely copied the European average at that time generating 4.4% GDP decline. The governmental gross debt was the highest in Hungary, above the EU average (77% vs. 72%). At the same time Poland, was the only European country boasting GDP growth that year. All countries in our sample started to recover with positive per capita GDP growth in 2010 except for Spain which became subject of a European sovereign debt crisis starting the same year. Debtors in the Eurozone faced excessive national debt levels coupled with lenders' increasing interest rates on state bonds. In return for the bailout by the ECB for its banking sector, the Spanish government was forced to introduce serious fiscal austerity. A second, less drastic wave of recession came in 2012 hitting Spain the most among the five countries concerned. In 2013-2015, a slow recovery took place everywhere, putting Romania and Poland to the top, whereas letting the UK climb up slower than the EU average with steep rise of governmental debts. By 2015 Spain also achieved relatively high GDP growth but with high indebtedness. (Charts 1 and 2 below present the figures used in this section and see Annex 1 for more details.)

Our case studies reveal that absence of economic hardship clearly sets apart Poland from the other four countries and as such may at least partly justify absence of backsliding there until 2015. Meanwhile the case studies also reveal that economic hardship and the speed (and price for) of recovery only partly explain the scope of backsliding on equality policy measures. In the hardest year, the governments in office in Hungary, Romania and Spain tried to avoid the hardest responses and experiment with modest interventions. Pressing economic troubles pushed incoming new governments to act more forcefully in the second and third year of the crisis. Temporarily resisting polities, like Spain, surrendered in the second crisis year, in 2012.

Correlation between economic hardship and equality policy backsliding is also supported by the evidence that quick recovery of growth in Romania seems to back the reversal of backsliding from 2013. An economic pressure based explanation to backsliding, however, does not hold in the case of Hungary and for the post 2015 regime observed in Poland. Here we have to assume the influence of other factors. Finally, the 2010 UK coalition government started a fundamental restructuring of its welfare regime first with relatively large, later diminishing public support. The cut-back in state provisions dragged UK spending below the 40 per cent

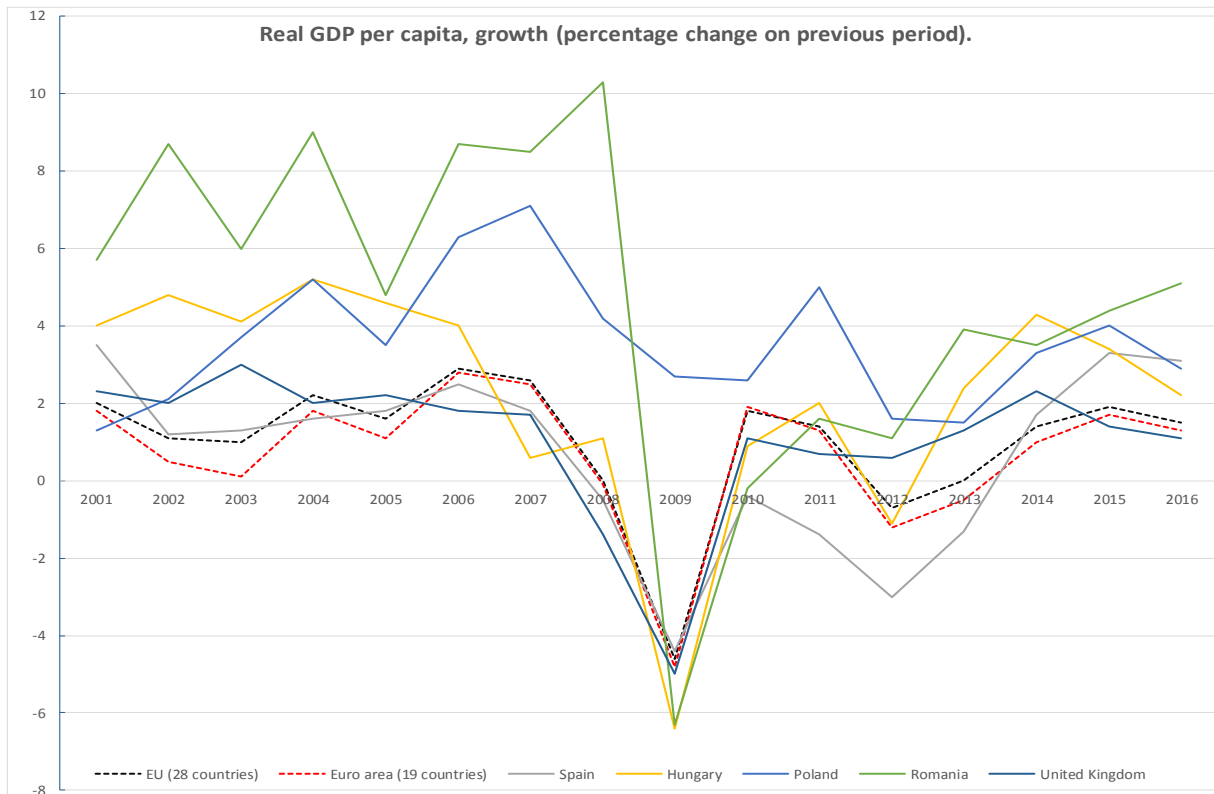
GDP trend-line of the postwar period which makes the country an outlier among the main European countries and falling below that in the USA (Taylor-Gooby 2012). This demonstrates a major regime change in societal vision on inequalities and social policy regime in the UK which has not been reversed in spite of the slow yet steady economic recovery.

Chart 1: General Government Gross Debt in EU 28 and five Member States 2001-2015



Source: Eurostat  
<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&plugin=1&language=en&pcode=tsdde410>

Chart 2: Real GDP Per Capita Growth in EU28 and Five Member States 2001-2016



Source: Eurostat

<http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tsdec100&language=en>

### *Political ideology*

According to the literature, governments dominated by leftist ideological tenets are less likely to downscale social and equality policy as opposed to those allied with rightist ideologies. This is demonstrated with aggregate evidence in the welfare reform literature (Korpi and Palme 2003; Finseraas and Vernby 2011). Some authors argue that experiences of welfare state retrenchment in different countries (Starke et al. 2013) show that policy dismantling are sensitive to organized interests. Others argue that the influence of political parties is limited because welfare state retrenchment initiatives are rarely popular among electorates. Thus, radical change especially resulting in restriction is highly unattractive regardless of the party affiliation (Jæger 2012).

Larger comparative research on explaining varieties of retrenchment policies during crisis only partly confirms that right-wing governments are more inclined and capable than left-wing governments to take drastic cutback decisions. It shows that the influence of the Troika in imposing cutbacks overrode the ideologically driven choices of these governments (Kickert, Randma-Liiv, Savi 2015:17). In three countries of our sample (Poland, Spain, UK) from 2010

conservative or conservative-liberal regimes ruled and implemented various step-backs in equality policies. This experience upholds the usual ideology and social policy associations.

The first, left-wing crisis government in Hungary introduced welfare benefit cuts in 2009 yet it did not touch or even actively promoted equality policy progress through institutional and legal provisions on all three grounds. The conservative-populist government from 2010 enacted a new social and political regime which cared little about the most vulnerable in general but without ideologically addressing the disabled, introducing counter-framing to gender equality, being ambiguous about ethnic and race discrimination. The Romanian neo-liberal governmental regime introduced harsh austerity measures impacting all three major equality domains observed without specific ideological backing. The social democratic government coming to power in 2013 reversed some of the previous cuts in equality policy.

Challenging common ideas about relationship between ideology and equality policy progress, in Poland, the liberal-conservative regime up to 2015 achieved remarkable progress in equality policies during the crisis years. It is also noteworthy that some authors argue that Spanish conservative governmental politicians' strategies were pragmatic and short-term-oriented rather than inspired by large retrenchment based ideological convictions (Jordana 2014). Some initiatives showed, however, quintessential conservative rationale yet not always with successful implementation (e.g. abortion restriction proposal). Taylor-Gooby's (2012) analysis of the UK coalition's government program suggests that restructuring of welfare benefits and public services was more than a quick response to economic hardship, rather an ideologically embedded state reform package.

### *European norm allegiance*

Three of the five countries analyzed in this report are new EU member states, entering the crisis with a recent accession track record. As equality policy developments in these countries were strongly related to EU accession, and conformity with EU norms backsliding during the crises period might have to do with the relative importance of EU and conformity with its norms for these countries. Pro-EU stances of governments are strongly correlated with party ideologies. The three countries take relatively different paths in these terms. Romania was an exceptionally diligent complier with EU equality norms particularly during the 2001-2004 period where the bulk of its equality law harmonization took place. This approach was maintained during the years. The neoliberal crisis governments followed the EU instructions in terms of economic restructuring as instructed by the Troika. But as soon as the economic pressure put on the country decreased Romania new pro-EU social democratic government reversed some of the previous measures that went against previous commitments towards EU norms (for example by reinstating the gender equality and the disability rights agency).

In Poland position of governments diverged on how pro-EU they were. The conservative government following the accession was extremely slow on harmonizing norms with the EU *acquis* particularly in the field of equality policy. The pro-EU Tusk government coming to power just before the crises was tasked to do many of the harmonization tasks, to catch up with the other new member states of the region on equality policies. Progress during the crisis period in Poland is a somewhat delayed version of the accession progress many of the other new member witnessed right before their accession moment.

The post 2010 FIDESZ Hungarian government went furthest in distancing itself from EU norms in democracy performance and developing a skeptic and later hostile attitude to Brussels.

The political costs of this behavior were offset by the EU's continued avoidance of material sanctions. The Hungarian government's gender equality framing and drawbacks resonated well with the weakening EU attention to gender, whereas its Roma inclusion compliance was ensured with active role in establishing the European frame strategy.

In the case of Spain and UK, post-accession EU appeal was not relevant. For UK policy formations in equality matters the growing EU skepticism had some imprints on equality policy debates but the high achievements before the start of the economic crisis made the country more protected against possible hard backsliding.

### *Social resistance*

Social pressure can be effective in countering democratic backsliding (Della Porta 2013). The recent economic and financial crisis has sparked a range of new social movements, most importantly in the worst affected countries by experimenting with new forms politics (Hyman 2015). These movements embrace a variety of social groups, including young people, migrants, and the unemployed experiencing 'precarious conditions by being affected by the crisis. In a global inquiry, Ortiz et al. (2013) observe intensive social protests in high-income countries', among those the largest taking place in France, Italy, Portugal and Spain. In the majority of European countries, the first austerity plans faced with protest and resistance from the trade unions and other interest groups affected. This made governments postpone planned policy cutbacks or reverse them in some of the countries, such as Spain and Romania in our sample (Kickert, Randma-Liiv, Savi 2015).

As we argued above, our case studies show that the cutback measures circumvented, neglected and in some cases deconstructed the public consultation processes. Because of depth and breadth of the policy changes, often enforced by external economic policy actors, it is questionable if those consultation could have altered the courses of action. The trade unions and traditional interest groups had some power at the start of the crisis in the old member states, such as UK and Spain with some but limited interest and capacities to speak for gender and ethnicity based inclusion as well. Further, those worst affected by the crisis, in particular young people, those with precarious contracts, women, immigrants, are least likely to be unionized. Therefore, the three particular equality groups had to rely mostly on their own civil society based advocacy groups and wider social movement acts.

Continued protest became a key feature of the Romanian response to the economic crisis. Opposition emerged as early as 2010 against cuts in income and then in 2011 in response to release of data showing the disproportionate impact of austerity measures on women. The peak was reached in January 2012, when massive protests erupted in some major cities, with Bucharest as the core. Protests could challenge some of the problematic human rights aspects of the austerity package and also political corruption. The presence of gender equality and Roma rights and other human rights groups was particularly strong in these protests. Although these protests could not stop the march of a neoliberal reconstruction up to 2013, they demonstrate that under certain conditions social pressure can lead the government to redress breaches of liberal democratic principles. Protests lead to policy progress in gender equality field, an improved standing for civil society organization in consultations with the government and the reinstatement of some equality policy instruments cut by austerity measures after 2013, when the new social democratic government came to power.

The most transformative social movement mobilization took place in Spain. The *Indignados* or *Movimiento 15-M* developed from demonstrations on 15 May 2011 and initially mobilized activists with critique against globalization combined with voice against the Iraq war, which was supported by the right-wing Spanish government in power. Mobilizations around larger urban centers in 2011-2013 stopped the privatization of health care services. Women's groups and other rights groups participated in protest waves. Gender equality was mainstreamed into protest actions and claims<sup>8</sup>. Protests managed to block some of the measures that run against gender equality including the ban on abortion (Lombardo 2016). Resistance was institutionalized and channeled into city governments in major cities like Barcelona and Madrid with the 2015 elections.

In UK major anti-austerity protests took place in 2011. However they could achieve no reversal on important equality policy related aspects. In Hungary, critical public voices did not come together in spontaneous or organized mass protests or civil society coalitions. Human rights groups appealed to the international public time by time to contest non-action or retrenchment in some of the main equality domains. These movements could not stop any major equality retrenchment measures after 2010. In Poland the period between 2009 and 2015 was one of the most fruitful since 1989 in terms of cooperation between rights groups and the government.

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<sup>8</sup> Oral presentation by Laura Sales Gutiérrez (SURT, Barcelona) at the conference Gender and the Economic Crisis, Central European University, 15-16 September, 2016.



**Table 2: Backsliding trends in equality policies and causes in five EU member states**

	<b>Hungary</b>		<b>Poland</b>		<b>Romania</b>		<b>Spain</b>		<b>UK</b>
Period	2008-2009	2010-	2008-2015	2015-	2008-2013	2013-	2008-2009	2010-2015	2008-2015
Crisis management in equality policies	<b>Mixed</b>	<b>back-sliding</b>	<b>resist</b>	<b>back-sliding</b>	<b>back-sliding</b>	<b>reverse back-sliding</b>	<b>back-sliding</b>	<b>back-sliding</b>	<b>backsliding</b>
Economic hardships	Severe	severe /improving	mild	mild	severe	improving	severe	severe	severe improving
Political regime	left-liberal	conservative	liberal-conservative	conservative	neo-liberal	social democratic	socialist	conservative	liberal conservative
EU norm appeal	Positive	adverse	positive	adverse	positive	positive	NA	NA	NA
Movement and resistance	Weak	weak	NA	increasing	significant	significant	significant	significant	weak

## 6. EU crisis management

Major European civil society actors unequivocally attribute recent backsliding in equality policies to the crisis and they envision a role for the EU in equality sensitive crisis management. Already in September 2009 the European Women's Lobby (EWL), the largest coalition of women's organizations in the European Union (EU), called policy makers "to recognize women's role in shaping the post crisis framework which, one year after the collapse of the financial markets, continues to ignore the gender impact of the crisis on the real lives of women and men".<sup>9</sup> They note how the recovery plans failed to integrate the gender perspective and argue that equality "must be an inherent part of European [...] recovery plans as well as the transition towards a longer term holistic vision of the post-crisis era". Also the European Commission, in its 2009 Report on equality between men and women, asserted that 'the economic slowdown is likely to affect women more than men'. The Women's Rights and Gender Equality Committee of the European Parliament argued in 2013 that the impact of the crisis on gender equality needs to be addressed specifically and voted on a non-legislative resolution on the impact of the crisis on women in which they are calling Member States and the Commission to "implement a set of measures to address the "double punishment" women suffer since the beginning of the crisis."<sup>10</sup>

European Disability organizations have also come together and created in 2011 the EU Alliance Against Disability Cuts, which is meant to work "to expose this Europe-wide social and human rights crisis, by raising awareness about it and putting it higher on the European political agenda". They argued that "EU policy instruments such as the European Semester should be used to enhance Member States policies towards the realization of inclusive societies where citizens with support needs are empowered to become active contributors and are not left behind."<sup>11</sup> Their work towards a Resolution of the European Parliament addressing the effect of cuts in public spending on disabled persons in the EU remained unsuccessful.

While evidently the Member States bear the main responsibility for violations of rights due to crisis management measures some analysts argue that "when these measures have been imposed upon them by the Memoranda of Understanding and loan agreements, creditors also bear some responsibility for these violations." (Ghailani 2016: 177) Analysis shows however that in recent years "the importance attached to human rights has declined together with state budgets, but that, unlike national budgets, these rights have not benefited from bail-out plans." (Ghailani 2016). Gender and other equality priorities were integrated in EU crisis management processes only to a very limited extent and selectively. The European Court of Justice and the European Court of Human Rights have both been reluctant to examine austerity measures from the perspective of fundamental rights and brought decisions that subordinated rights priorities to the exceptionalism of the crisis and primacy of economic recovery (Ghailani 2016: 175-176). Europe 2020 and the European Semester, the European Commission strategy on employment, productivity and social cohesion, set the framework for monitoring member states' economic policies. Here "targets are translated into country-specific objectives through national reform and stability programs, where each member state sets the policies that it intends to implement to achieve the 2020 targets, and sets out the country's budget for the coming three or four years.

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<sup>9</sup> European Women's Lobby Women, the Financial and Economic Crisis - the Urgency of a Gender Perspective (September 2009). <http://www.womenlobby.org/Women-the-Financial-and-Economic-Crisis-the-Urgency-of-a-Gender-Perspective>

<sup>10</sup> <http://www.womenlobby.org/The-impact-of-the-crisis-on-gender-equality-needs-to-be-addressed-say-Women-s>

<sup>11</sup> <http://enil.eu/news/enil-press-release-eu-alliance-against-disability-cuts-news/>

The European Commission sends country-specific annual recommendations to member states and monitors implementation, imposing financial sanctions to non-compliant states. After this European Commission monitoring, the European Council issues an individual recommendation to each member state to guide further reform. The changes required touch upon issues such as public finances, employment, education or pension reforms.” (Lombardo 2016:5). Systematic monitoring of rights could have been included under this framework, but this was not the case (Lombardo 2016).

A light review of country specific annual recommendations delivered by the European Council to the governments of the five countries between the years 2011 and 2014 confirms the limited importance of equality issues in this EU crisis management exercise. Our analysis shows that monitoring paid only marginal and selective attention to special equality priorities along the detailed recommendations concerning economic recovery. Terms gender equality, disability, race/ethnicity, migrants are not mentioned one single time in the examined 20 sets of recommendations. There is a remarkable difference between recommendations delivered to old and new Member States. Spanish and UK recommendations are silent on inequality concerning any of our target groups. As an exception UK reports (2011, 2012, 2013) mention the problem of limited and expensive childcare in the context of labor market activation policies. This can be seen as indirect reference to women’s inequality though recommendations mainly speak about this in relation to poor and single income families, not women. Spanish recommendations lack any such references.

Hungarian recommendations are the most extensive on these topics: they repeatedly refer to the outstanding level of inactivity of women on the labor market and scarcity of childcare. Discrimination against Roma is another recurring issue: poverty, access to education, structural problems on the labor market (including public works) are repeatedly brought up in relation to Roma. At a more structural level the need to mainstream Roma National Inclusion Strategy priorities (2012) and social inclusion (2013), as well as the need to improve consultation processes (2013, 2014) are also mentioned. Romanian recommendations are initially also very poor on these aspects but become more complex over the years. Initially the focus is only on low Roma employment (2011). By 2014 recommendations issued to Romania discuss equalizing pension age for women, low labor market participation and limited access to childcare for women, the slowdown of the de-institutionalization processes for disabled persons, slow implementation of the National Roma Inclusion strategy including lack of funding and coordination, as well as poor consultation processes. Finally Poland’s reports repeatedly focus on women’s labor market participation and insufficient childcare facilities to serve that but also include praises on improvements.

To sum up: European crisis management paid limited attention to rights and particularly equality issues, despite the EU’s advanced normative framework. The emergency and severity of the crisis have overwritten rights issues. Even in the countries where monitoring covered certain equality matters (in Hungary and Romania), these were selectively picked and had limited scope.

## **7. Conclusions**

This report analyzed backsliding in the equality policy regimes of five EU member states and investigated the nature and the causes of backsliding. Our approach stemmed from the assumption that the economic and financial crisis is one but not the only cause of backsliding in

equality policy domains. We also explored country variations by zooming on five cases that we have selected through an EU 28 mapping of backsliding trends in 2008-2015 completed at a former stage of the research (Sitter et.al.2016). We also compared convergence and divergence across three particular equality policy domains (gender, ethnicity/race, disability) that are constituted at different intersections of economic, political and social practices in societies and have partially different paths of development in the wider European Union's political and policy arenas.

Our comparative research has confirmed that there is a considerable scope for hard backsliding in equality fields in terms of violation of the *acquis*. There has been even more space for soft backsliding due to the extensive body of soft law and the discretion left to member states in adoption of hard law, that is to step back on commitments to EU norms without a direct breach of EU law. In the three examined equality fields, the crisis management generated a mixture of hard and soft backsliding. Cross-sectoral analysis of gender equality, race/ethnicity and disability policies showed a series of similarities. Overall backsliding on previous policy commitments took place in all three fields in four out of the five analyzed countries. It is noteworthy that backsliding in all three policy areas largely avoided policy matters that are regulated by hard law at the EU level. In all three fields, we have found step-backs from commitments within soft strategic objectives which, however, were until recently unquestionable standards for the EU and most EU member states.

We have observed relatively mild backsliding in formal policy commitments, it has rather taken the form of neglecting the implementation of existent policies or significantly cutting their funding. A major bulk of backsliding measures have had a redistributive character rather than backsliding in policy salience of these issues. Tangible backsliding took place through reframing various equality policy issues in ways that may challenge rights based and equality of outcomes based approaches which achieved wide, although not undisputed, recognition in the last two decades. Backsliding and reframing of policy agendas warrants to reconsidering the progress bias in equality policy thinking. Backsliding that we found has shown the vulnerability of governmental institutions and equality policy strategies as well as government consultation mechanisms long seen as the direction for progress. Limited funding for institutions and for strategic targets undermines most equality policy objectives in all three fields. Further research may venture to explore whether serious institutional reductions for equality policy coordination and monitoring within governmental mechanisms is a consequence of across the board administrative spending cuts or more deliberate efforts to reduce possible executive resistance to austerity interventions.

The different patterns of action limiting cooperation between governments and civil society and their use in all four countries points to a tendency of applied crisis management approaches towards state closure in these difficult times. It also highlights the vulnerability and weakness of hard achieved pre-crisis inclusion arrangements. State closure to democratic consultation emerges as an important crosscutting element of backsliding, which is not only problematic in itself but also has serious consequences for the substantive content of crisis management packages and post-crisis processes. The use of opportunities for protest and subsequent improvement of inclusion deserves special mention and further research to understand its nature.

Regarding the causes of differential crisis managements, we have found that the severity of economic and financial crisis has major impact indeed on the intensity of backsliding in equality policy domains. The significance of ideological backing of governmental regimes, however, remains important for choosing a mix of hard and soft backsliding initiatives, especially if public

debt burdens are manageable for a government and the major task is to manage economic downturn and lack of growth. Ideological tenets influence the balance and hierarchy of crisis interventions among the three major equality fields. Further, the economic crisis might give a legitimating environment for major regime change in wider social policy and equality affairs rather than a single causal factor behind it.

Civil society resistance and voice may also play a role in slowing down or putting some limits to backsliding or claiming its reversal, although not being able to halt it. In our sample this could be traced –interestingly– in two quite different contexts. In Spain, it is major transformation of politics due to societal movements, mobilized by the crisis, within a frame of a strong yet relatively new democracy in Europe. In Romania, it is the formation of politics in a new democracy of Europe, fragile both in crisis and growth.

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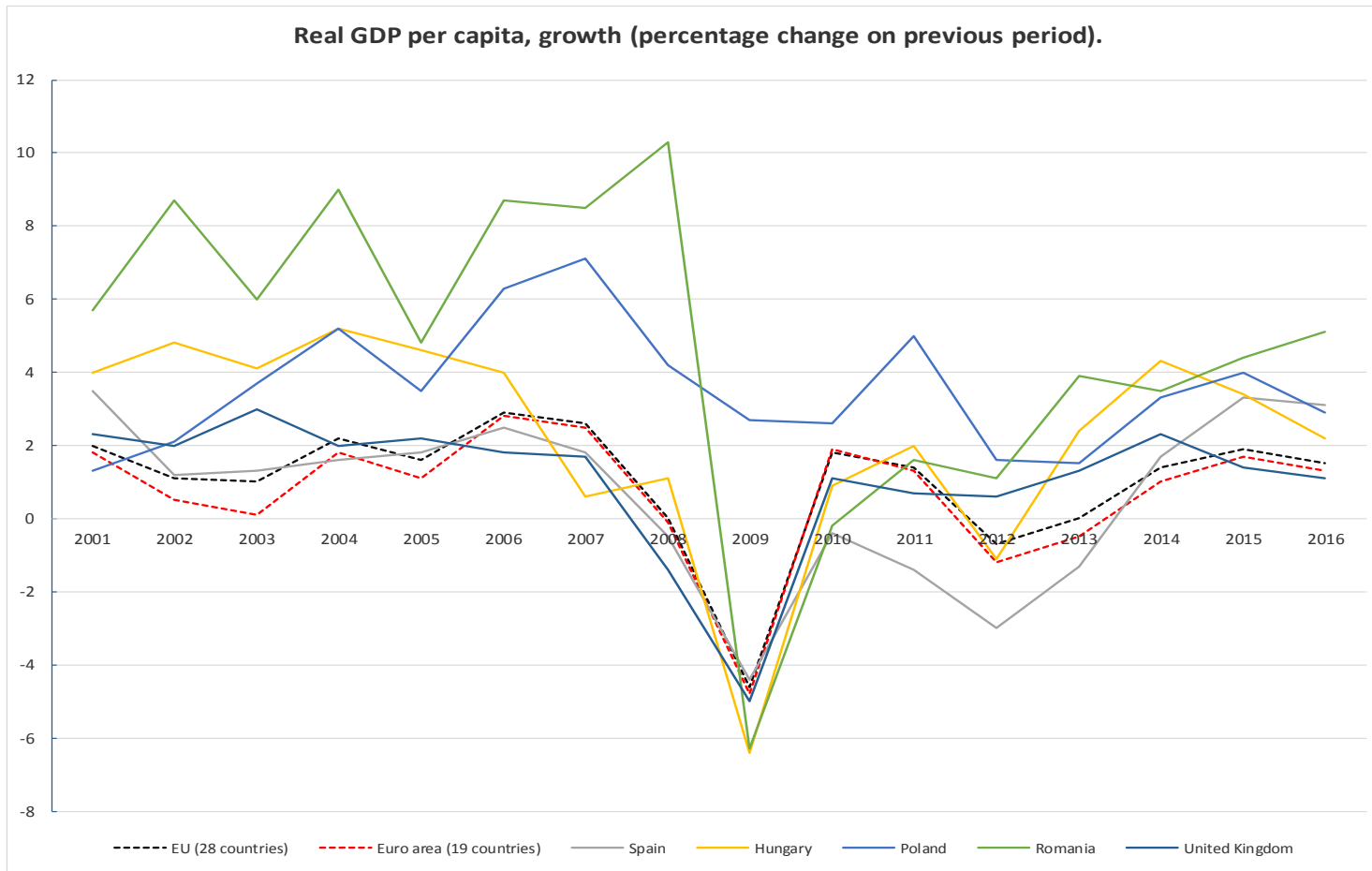
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**Annex 1:**

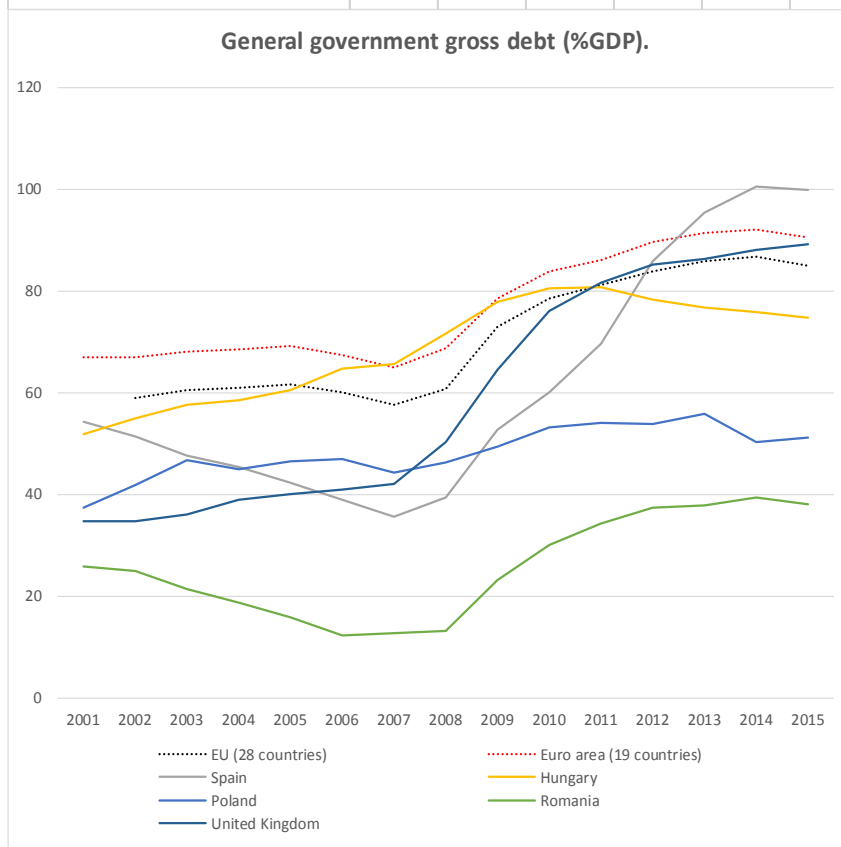
Chart 1: Real GDP per capita growth rate in EU 28, Euro area, and 5 member states (Eurostat)

Chart 2: General government gross debt in EU 28, Euro area, and 5 member states (Eurostat)

Real GDP per capita, growth rate and totals																			
Percentage change on previous year, EUR per inhabitant																			
Chain linked volumes, percentage change on previous period, per capita																			
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016			
EU (28 co	2	1.1	1	2.2	1.6	2.9	2.6	0	-4.6	1.8	1.4	-0.7	0	1.4	1.9	1.5			
Euro area	1.8	0.5	0.1	1.8	1.1	2.8	2.5	-0.1	-4.8	1.9	1.3	-1.2	-0.5	1	1.7	1.3			
Spain	3.5	1.2	1.3	1.6	1.8	2.5	1.8	-0.5	-4.4	-0.4	-1.4	-3	-1.3	1.7	3.3	3.1			
Hungary	4	4.8	4.1	5.2	4.6	4	0.6	1.1	-6.4	0.9	2	-1.1	2.4	4.3	3.4	2.2			
Poland	1.3	2.1	3.7	5.2	3.5	6.3	7.1	4.2	2.7	2.6	5	1.6	1.5	3.3	4	2.9			
Romania	5.7	8.7	6	9	4.8	8.7	8.5	10.3	-6.3	-0.2	1.6	1.1	3.9	3.5	4.4	5.1			
United Kin	2.3	2	3	2	2.2	1.8	1.7	-1.4	-5	1.1	0.7	0.6	1.3	2.3	1.4	1.1			



General government gross debt															
% of GDP and million EUR															
Percentage of gross domestic product (GDP)															
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
EU (28 countries)		58.9	60.4	60.9	61.5	60.1	57.5	60.7	72.8	78.4	81.1	83.8	85.7	86.7	85
Euro area (19 countries)		67	66.9	68.1	68.4	69.2	67.4	65	68.6	78.4	83.8	86.1	89.5	91.3	90.4
Spain		54.2	51.3	47.6	45.3	42.3	38.9	35.5	39.4	52.7	60.1	69.5	85.7	95.4	99.8
Hungary		51.7	55	57.6	58.5	60.5	64.6	65.6	71.6	77.8	80.5	80.7	78.2	76.6	74.7
Poland		37.3	41.8	46.6	45	46.4	46.9	44.2	46.3	49.4	53.1	54.1	53.7	55.7	51.1
Romania		25.7	24.8	21.3	18.6	15.7	12.3	12.7	13.2	23.2	29.9	34.2	37.3	37.8	37.9
United Kingdom		34.6	34.7	35.9	38.8	40.1	41	42	50.2	64.5	76	81.6	85.1	88.1	89.1



## **Annex 2: 5 Country case studies (full)**

**A. Hungary Case Study**

**B. Poland Case Study**

**C. Romania Case Study**

**D. Spain Case Study**

**E. UK Case Study**

## A. Hungary Case Study

*By Andrea Sebestyen, with contributions from Andrea Krizsan and Violetta Zentai*

### Introduction

Throughout the post-communist period, the Hungarian equality policy regime has placed most emphasis on addressing the cause of disabled persons and ethnic minorities, primarily the Roma. Gender equality remained the least salient issue, either marginalized or explicitly opposed. Meanwhile, Hungary has always been a good performer in following international norms, particularly EU norms, in the equality fields. Hungary faced the economic crisis with high level public debt and weak growth capacities. A socialist-liberal government was restructured towards the end of its political cycle in April 2009<sup>1</sup>. A technocratic government (Prime Minister Bajnai) took over and functioned until the next parliamentary election in 2010 and introduced the first austerity measures. Retrenchment in equality policy regimes came about in two waves. Austerity package during the first wave earmarked a cut of about 600-900 milliard HUF from state expenditure. The primary goal was to stop overspending due mainly to the extensive social benefit system, the luxurious operation of the state, and the leverage of debt repayment. Short-term goals included taking protective measures to maintain working places and to make use of the available EU funds in a more targeted manner. Following the first wave of austerity measures in 2009, a second wave emerged under the right wing populist FIDESZ Hungarian Civic Alliance led government starting in 2010.

The austerity package introduced in 2009 kicked off a crisis management with economic growth stimulation, including labour market activation of women, disabled people and minorities. The conservative coalition from 2010 continued the austerity provisions in certain social policy fields but also engaged in a drastic revision of the whole political and welfare system. It used the crisis as a justification to carry out major reforms in an emergency manner (Inglot, 2008 in Szikra). The new regime became increasingly hostile to gender equality and ethnic diversity, and increasingly favourable to the Hungarian middle class both economically and culturally. It has also marginalized democratic processes and blocked existent consultation processes with civil society groups representing the vulnerable. In January 2012, a new Constitution, the Fundamental Law (*Alaptörvény*) came into force, leading to important human rights and social policy changes many of which drew strong criticism both at home and abroad.<sup>2</sup>

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<sup>1</sup> The Socialist Party group submitted a 'constructive no-confidence motion' against the Prime Minister and at the same time appointed Gordon Bajnai (at that time the head of the Ministry of Development and Economics) as a new prime minister

<sup>2</sup> "These criticisms concerned issues both of and beyond EU legislative competence, including transparency and legitimacy concerning the adoption of the new constitution; the use of 'cardinal laws', which require a two-thirds, rather than the typical simple majority, for passage in parliament; the limitation of the independence of three ombuds institutions; the protection of Hungarians living abroad; the exercise of government control over the media; and the free exercise of religion." Equinet Annual Report 2012 - FOCUS: The European Union as a Community of values: safeguarding fundamental rights in times of crisis

## 1. Gender domain

Major differences emerge between the austerity measures introduced under the two governments. The Bajnai package mainly affected redistributive aspects of gender equality but brought improvement in recognition terms that is in institutional, policy and consultation matters.

The Orban government in power from 2010 made fundamental changes to the legal framework which mark a strong conservative turn. The new *Fundamental Law* had several points which impacted on gender and family life. It removed the previous explicit protection of equal pay between men and women as the former constitution did. It stated that the family shall be based on the marriage of a man and a woman (Article L) thus excluding non-heterosexual relationships from constitutional protection. Also its “General Principles Guiding Hungary’s Constitution” a specific provision protects the fundamental human right to life from the moment of conception. Resonating with the new Constitution the new *Family Protection Bill* in force since 2014 was framed in strongly Catholic terms both in its definition of marriage, and concerning protection of foetal life from conception. A significant amendment of the *Labour Code* was accepted which allows the dismissal of employees raising children under 3 years with justification, which was prohibited earlier. The protection from dismissal for expectant mothers and mothers on maternity leave was also endangered by the plans, but was kept partially. Meanwhile from 2012, the Labour Code obliged employers to accommodate requests for part-time jobs for parents of under 3. Another problematic amendment in 2012 stipulated that recipients of maternity related social benefits could not be registered as job seekers.<sup>3</sup> This was particularly problematic because education programmes, trainings were only offered for jobseekers, meaning that parents (mainly mothers) who are at home with children lost the opportunity to benefit from courses provided by employment services.

It was during the Hungarian Presidency that the EU’s *Convention on preventing and combating violence against women and domestic violence* was signed by some member states, but Hungary was not among them. Hungary signed in 2014, and has not ratified yet the Convention. In fact during 2011, the government closed off 40 places for battered women in crisis shelters from the previous 80, although according to international standards there should be more than 1000 in a country the size of Hungary.

### *Strategy*

The Bajnai government adopted the *Hungarian National Strategy for the Promotion of Gender Equality – Guidelines and Objectives 2010-2021*<sup>4</sup> which was the first comprehensive Hungarian gender equality strategy since 1997. The first action plan referring to the first 2 years has also been accepted just before the second round of the national elections in April 2010. Although the Strategy is still in force the new government completely blocked its implementation and its cabinets repeatedly brought measures that went against its guidelines. According to the Strategy the government was supposed to be mainstreaming gender in its

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<sup>3</sup> Act about the advancement of employment and social support for unemployed A foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról szóló 1991. évi IV. törvény

<sup>4</sup> 1004/2010. (I. 21.) Korm.határozat a Nők és Férfiak Társadalmi Egyenlőségét Elősegítő Nemzeti Stratégia - Irányok és Célok 2010-2021



activities<sup>5</sup>. Women's NGOs took active part in preparing the Strategy and the government incorporated most of their observations and suggestions.

Contrary to its predecessor in the centre of the Orban cabinet's mission is to stop the declining birth rates, to reach a boom in fertility rates. Women are seen primarily in their reproductive capacities. In government communication, the Hungarian family is a core value and the state supports it in different ways. Gender mainstreaming was now replaced with 'family mainstreaming' as a strategic principle. The Orban government also maintains that the 'liberalization' of family relationships is the main reasons behind declining birth rates. This leads to the strategic priority to reinstate traditional family values and fight gender equality and non-heterosexual relationships (Szikra, 2014). These strategic principles inform legal and policy changes on gender equality since 2010.

The present head of the sub-department 'Women Policy' within the State Secretary of Family and Population Policy declared<sup>6</sup> stated that in Hungary the problem of equal opportunities is not primarily the problem of women and men but is one between employees with children and those without. During the Hungarian Presidency of the European Council in 2011 a high-level gender themed meeting was organized 'Europe for Families-Families for Europe' which solely concentrated on demography, work-life balance and motherhood. As the expert of the Hungarian Women's Lobby puts it; „the Hungarian message was clearly that only an increased birth rate can fight against demography decline in Europe (as opposed to immigration)” (Juhász, 2012). In one instance the government went directly against EU norms in this domain. In the spring of 2011 the government launched an anti-abortion and pro-adoption campaign for which it use European Union's Progress fund under the heading 'improvement of gender mainstreaming in national policies and programmes.' The Commission has contacted the Hungarian authorities to stop the campaign immediately, and informed about the consequences of inappropriate use of Progress funds<sup>7</sup>.

### *Institutional infrastructure*

Prior to 2010 a small and relatively marginal yet operational department for *Gender Equality* existed within the Ministry of Social and Labour Affairs. The conservative downsized the department and its portfolio to 'policies affecting women' (*Nőpolitika*) and transferred it under Deputy State Secretary of *Family and Population Policy* in the Ministry of Human Resources. Currently the body concentrates primarily on the role of women as mothers within the family of their motherly responsibilities. The minister of National Economy in 2012 appointed a *Ministerial Commissioner in charge with Advancing Women Participation on the Labour market* with a 2-year length mandate. Her role was to identify barriers to women's participation in the labour market and initiate programmes. According to civil stakeholder's reports<sup>8</sup> this position has no weight, and during its mandate the question of gender equality has never been raised.

<sup>5</sup> The Strategy centres around six main objectives: to reach the economic independence of genders; to achieve a balance of private and family life with professional career; to decrease the disproportion of participation level between genders in political and economic arena; to fight for ending violence against women; to support eradicating gender stereotypes; the planning of social equality strategy should be based on professional merits.

<sup>6</sup> dr. Kormosné Debreceni Zsuzsanna in her official presentation (19 February 2014) - available online – stated in Hungarian: „Jelenlegi értelmezésünk: a férfi és a nő közötti egyenlőség és harmonikus együttműködést hangsúlyozzuk, familista megközelítésben”

<sup>7</sup> <http://www.womenlobby.org/EU-Commission-calls-on-the-Hungarian-authorities-to-stop-anti-abortion-campaign>

<sup>8</sup> Alternatív Jelentés ENSZ CEDAW Bizottsághoz, 2013

The equality body in charge for the enforcement of anti-discrimination policy in Hungary is the *Equal Treatment Authority*.<sup>9</sup> Was set up in 2005 to receive and deal with individual and public complaints on unequal treatment and to implement the principles of equality and nondiscrimination. The anti-discrimination act lists 19 protected grounds including sex, gender, motherhood and pregnancy (being under reproductive treatment) and familial status. Gender based claims are not frequent, mainly including equal pay and sexual harassment cases. The Authority favors the ground of motherhood thus communicating widely those cases in which it has terminated employer practices hindering women's employment. The financial independence of the Authority was increased in 2013 when it became a central budgetary agency invested with the legal status of a managing body. Thus the Authority has a separate line within the budget. Austerity impacted its budget to a limited extent only in 2010-11. Its planned budget since its foundation was the lowest in 2010:198,5 Million HUF and in 2011:187,4 Million HUF. (2009: 204M; 2012: 210M; 2013: 210M; 2014: 265,8M). A decrease can be found in the number of the Authority's staff dealing with equality issues during the so- crisis years (2010:13, 2011:11, 2012: 8, 2013: 10, 2014: 9, 2015: 10). The Equal Treatment Advisory Board was also removed in the first half of 2012. It consisted of outstanding experts and gave opinion primarily on concepts and regulatory plans related to the enforcement of equal treatment and laws affecting the protection of vulnerable groups of the society.

### *Civil Participation*

A major retrenchment in the field came in consultation processes. In 2011 the *Law on Civil Societies* about financing and administration of NGOs, was also amended. As a result many NGOs (including women's rights groups) lost their „public interest” status, and small income NGOs (typically women and gender NGOs) were cut off from state funding (mainly from the National Civic Fund). State political control increased to the disadvantage of civic control (Juhász, 2012). The *Council for Gender Equality* existent since 1998 and re-established in 2006<sup>10</sup> was a tripartite body including representatives of ministries, NGOs and of independent experts serving as a consultative forum for discussing issues of gender equality. The Council operated as a consultative body discussing legal and policy proposals and evaluating the impact of past and current policies about women and men. Under the Bajnai crisis government the Council was very active, political intention was to include its members consultations about the New Hungary Development Plan 2007-2013<sup>11</sup>. Since the change of government in 2010 the Council was not convened, thus interaction between the government and women's organizations has stopped (Juhász, 2012; Szikra 2013). According to OXFAM/EWL 2010 report<sup>12</sup> observations, women's NGOs do not get any funding from the national or local governments. The only project calls open to women's groups are from EU development funds, but few women's NGOs have the necessary cash flow to avoid bankruptcy. The second Orban government is the first Hungarian government for many years without any female member.

<sup>9</sup> The Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (the general Hungarian anti-discrimination act, so called Ebktv.) came into force on 27 January 2004. The Hungarian Equal Treatment Authority has been working since 1 February 2005 chaired by Judit Demeter who has been replaced by the conservative government to Ágnes Honyecz.

<sup>10</sup> Based on the founding government decree 1089/2006 (IX.25).

<sup>11</sup> 'Új Magyarország Fejlesztési Terv' (2007-2013) Bajnai Gordon as a Government Commissioner for Development Policy attended the inaugural meeting with the minister of Social and Labour Affairs, Péter Kiss

<sup>12</sup> Invisible crisis? 2010

### *Provisions*

Welfare provisions serving gender equality were cut under both governments. The Bajnai austerity package shortened the length of the *paid parental leave* from 3 years to 2 years in order to increase the participation of women on the labour market. The pack rendered the amount of the *family allowance* (*which is an automatic entitlement for families raising children in Hungary*) frozen for 2 years. Together with the above-mentioned cuts, the government announced its intention to extend the *infrastructure of early childhood care*, since measures like creation of new crèches, and the development of the family day care system with targeted allowances could contribute to women re-entering labour market. More *complex and targeted employment programmes* were also announced, which could help the most vulnerable groups: citizens with lower educational level, citizens above 50 years, women and Roma.

The Orban cabinet restored long parental leaves to give back the 'right of mothers' to stay at home with their children (Szikra, p 9). A time limit has also been introduced for work in parallel with receiving parental allowances: the mother who is on leave and whose child is older than one could do no more than 30 hours a week paid work. Meanwhile the ombudsman reported in 2010 that the *day care system for children* could not provide equal access and quality for all.

As numbers indicate: out of the 3145 towns of the country, only 230 had its own crèches, thus only 9% of the children aged between 0-3 had a place within the system. The development of the family day care system was disregarded without governmental intention to support it. As the 2013 CEDAW shadow report says policy „gradually pushed the financial burden of reconciliation of work and family on the family: first by increasing the prices of *meals in nurseries*, kindergartens and schools (these state institutions are free of charge, only charge for meals), then, by amendment plan made public in November 2011, by making it possible for self-governments to charge parents for the *nursery*, up to 25% of the per person income of the family.” As a perfect example of ‘family mainstreaming’ in January 2011, a *16% flat personal income tax* was introduced with generous child tax credits in line with the number of children. Another manifestation is an amendment made in pension law (in December 2010) covering the opportunity of women’s retirement after 40 years of work, regardless of their age (the pension limit is 65 since 2010 for both sexes). These years include the time spent on maternity leave but not the time spent in higher education. This confirms the idea that the government appreciates women through motherhood. Somewhat contrary to this the cabinet introduced a *new Start Bonus programme* which provides the opportunity to employ (new contracts) returning mothers for a year without the obligation of paying allowances. Since 2011 those who re-employ mothers could apply for a special support for a 3-year length period if the employment is part-time and creates another part-time job.

## **2. Race/ethnicity domain**

The Socialist Party between 2002 and 2010 introduced policies sensitive to the special needs of the Roma community. The second socialist-liberal government (2006-2009) paid high attention to fighting against discrimination in parallel to providing protection against hate speech. In 2008, the Ministry for Social and Labour Affairs introduced an equal access based financial supporting system in the distribution of the EU structural funds. The Bajnai government (2009-2010) started crisis management interventions by implementing short-term measures.

Parallel to this, it also embarked on using the EU Structural Funds for territorially targeted development programs for localities of sizeable Roma communities.

### *Legislation, strategy and institutional framework*

The most significant changes in the legal system under the conservative-liberal (second Orban) government started with passing the *Fundamental Law* in April 2011. The text renders the process of ‘catch-up’ (*felzárkóztatás*) equally relevant to the principal of equal opportunities. Further, citizens are entitled to social assistance only if they fulfil their work responsibilities. Article 19 limits social rights to a ‘set of risks’ including employment, but only in cases of ‘not caused by citizens’ own actions’. Furthermore, the nature and extent of social subsidies are to be determined according to ‘the usefulness of the beneficiaries’ activities for the community. In 2013, the Act on Equal Treatment and Promotion of Equal Opportunities was amended, introducing the principle of ‘catch-up’. Roma rights groups expressed concern that a ‘catch-up opportunities’ approach could confer legitimacy to de facto segregation which affects Roma children.

Under the Hungarian presidency of the EU, in 2011 the European Commission adopted the *EU Framework for National Roma Integration Strategies 2011-2020* focusing on four key areas: education, employment, healthcare and housing. Accordingly, Hungary prepared its long-term strategy for Roma inclusion adding two extra policy areas: public security and culture. The *National Social Inclusion Strategy of Hungary (NSIS): Extreme Poverty, Child Poverty, the Roma (2011–2020)* was followed by an action plan for the period of 2012-2014 and a second one for 2015-2017.<sup>13</sup> This could be conceived as a major policy progress in the middle of the crisis period by massive EU backing. The implementation of the NRIS primarily relied on the sources of the EU Structural Funds, of which Hungary was a major beneficiary in the financial cycle of 2007-2014. The government signed a framework agreement in 2011 with its exclusive Roma consultation partner, the by-partisan National Roma Self-Government (NRSNG).<sup>14</sup>

Under the socialist-liberal government, the Ministry of Social and Labour Affairs was responsible for coordinating the Roma inclusion policy. In 2010, a State Secretariat for Social Inclusion was created in the Ministry of Public Administration and Justice. Later the Secretariat was moved to the Ministry of Human Affairs. An Interdepartmental Committee for Social Inclusion and Roma Issues was also established as the main governmental coordinating tool specifically for the execution of the National Roma Integration Strategy. Parallel to this, in November 2011, the National Anti-Discrimination Network were also terminated, which provided legal aid and counselling for free in 44 offices across the country since 2001. In 2012 the formerly independent institution of Parliamentary Commissioner for the Rights of National and Ethnic Minorities was abolished and became a Deputy Commissioner for Fundamental Rights, responsible for the protection of the rights of nationalities living in Hungary. The Equal

<sup>13</sup> See: National Social Inclusion Strategy: Extreme Poverty, Child Poverty, the Roma. [http://ec.europa.eu/justice/discrimination/files/roma\\_hungary\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_hungary_strategy_en.pdf)

<sup>14</sup> Framework Agreement Between the Government of Hungary and the National Roma Self-Government [http://romagov.kormany.hu/keretmegallapodas-intezkedesi-terve/download/a/5f/10000/Korm%C3%A1ny-OR%C3%96\\_2011%2005%2020%20.pdf](http://romagov.kormany.hu/keretmegallapodas-intezkedesi-terve/download/a/5f/10000/Korm%C3%A1ny-OR%C3%96_2011%2005%2020%20.pdf)

Treatment Authority<sup>15</sup> faced a decrease in staff dealing with equality issues during the crisis years (2010:13, 2011:11, 2012: 8, 2013: 10, 2014: 9, 2015: 10)<sup>16</sup>. The Equal Treatment Advisory Board ceased to exist in the first half of 2012. It was consisted of outstanding experts and gave opinion primarily on concepts and regulatory plans related to the enforcement of equal treatment and laws affecting the protection of vulnerable groups of the society.

### *Civil participation*

The fourth amendment of the Fundamental Law (2011), by changing the terminology of the Equal Treatment Act, relabelled the by-partisan National Roma Self-Government as a civil society organisation paving the road to a hand-picked and exclusive status of the organization to represent the Roma. The organization, which looks as an exemplary democratic institution, in almost all election cycles it has been led by a prominent personality supported by one of the parties. In the current cycle, the president of the NRSRG is also the head of the Lungo Drom National Gypsy Advocacy and Civic Association, which has been in permanent election cooperation with the current governing party for 12 years. The NRSRG acts as a national political representation body, a policy coordination agency, and a larger project beneficiary. The experiences show that the NRSRG does not have the competence to fulfill the latter two functions.

The NRIS Strategy states that it is key to the long-term success that the Romani community at all levels of policy-making, implementation and evaluation of the policy-making actively participates. The Strategy names the National Civil Program (recently renamed as National Cooperation Fund) as the key funding resource for civil society support. The funding decisions of this Program became more and more by-partisan after 2010 through non-transparent and clientelistic resource allocation for civil society actors. In June 2013 the government established an Anti-Segregation Roundtable with the involvement of several church representatives, educational experts and NGOs. The goal is to review current issues of educational integration and segregation; to discuss civil, religious, local and state government actors' competencies and role-taking opportunities; to jointly review current professional standards; and, where appropriate, to propose new directions. Since its start, two NGO representatives have resigned from the roundtable, referring to the thin policy content of the meetings and non-responsive attitude of the government.<sup>17</sup>

### *Social benefits and inclusion*

Hungary's Public Education Act of December 2011 sought to optimize the Hungarian educational system. Among its legislated changes was a lowering of compulsory school-age from 18 to 16, making it easier for students who were struggling in school to opt out of education.<sup>18</sup> The maintenance of education institutions, formerly decentralized, was re-centralized under the Public Education Act of 2011. The declared objective was to equalize

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<sup>15</sup> The Act CXXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (the general Hungarian anti-discrimination act, so called Ebktv.) came into force on 27 January 2004. The Hungarian Equal Treatment Authority has been working since 1 February 2005.

<sup>16</sup> Its planned budget since its foundation was the lowest in 2010:198,5 Million HUF and in 2011:187,4 Million HUF. (2009: 204M; 2012: 210M; 2013: 210M; 2014: 265,8M).

<sup>17</sup> Civil Society Monitoring report 2012. p 11.

<sup>18</sup> 2011. évi CXCV. törvény a nemzeti köznevelésről (Law on education No. CXC. 2011). Accessible at: [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100190.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100190.TV)

funding and professional oversight. Notwithstanding, every fourth school in smaller settlements face segregated education to growing over-representation of Roma in primary education due to white flight which is not only not tackled but endorsed by educational policy management. By the summer of 2015, in response to an unfavorable European Court of Human Rights verdict, the government of Hungary essentially legalized segregation with another amendment to the Public Education Act, allowing it to redefine what equal treatment means. Disturbingly, it allows classes to be segregated on the basis of religion, ideology or ethnicity, and has led to more church-run schools opening across the country.

It was already under the socialist-liberal government that social benefits became tied to active labor participation. Long-term unemployed started to propel to public work jobs with low perspective of reintegration into the regular labour market. After 2010, the conservative government declared a significant attitude-change regarding the social benefit system to enhance individual responsibility and non-cash benefits. The amount of the universal family allowance (which is an automatic entitlement for families raising children in Hungary) has not been indexed since 2009 and has lost about 20% of its value. Modification to the public work program in 2012 introduced Subsidiary Assistance Replacing Employment conditioned on that the recipient must have had an employment relationship at least 30 days in the previous year.<sup>19</sup> Those who are no longer eligible for social benefits lose their eligibility for state-funded health-insurance, too. Local governments of the settlements may impose an additional requirement that the recipient's living environment must be kept tidy. Unemployment insurance was reduced from 9 to 3 months which is the shortest period within the EU. From 2012 local governments were not allowed to provide local housing allowance. From 2011 better-off working families have been able to claim remarkable financial resources through tax credits, whereas the earlier compensation for low-income earners was terminated. All these measures together siphoned further resources from social assistance to the most vulnerable and left them in more and more miserable coping conditions.

### *Employment incentives*

Before 2009, the focus of the policy on stimulating labour market supply included the reduction in the amounts of numerous benefits, the strengthening of job seeker's activity and services offered by the Public Employment Services. In 2009, the Way to Work complex program was introduced aiming to reintegrate those depending on the permanent social assistance and long term unemployed. A supply-driven labor market measure was introduced called Start program which provided support for employers who hire members of disadvantaged groups. The program also exempted employers from paying employer's contribution for 3 years. The conservative government replaced the active labour market policies with a punitive public works program. The proportion of funds spent on public employment from the fund available for labour market instruments increased to a record high amount. The number of participants in public work was 186,000 in 2010, 265,600 in 2011, and 311,500 in 2012. Sub-national Employment Centres are involved in organising public work on the operational level, whereas the mayor's office make decisions about the recruitment, tasks, and working conditions in

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<sup>19</sup> According to the main civil society monitoring report, it is practically impossible to meet by those unemployed people who live in tiny villages and cannot get into public work. Civil Society Monitoring Report 2012, available at: [http://romadecade.org/cms/upload/file/9270\\_file8\\_hu\\_civil-society-monitoring-report\\_en.pdf](http://romadecade.org/cms/upload/file/9270_file8_hu_civil-society-monitoring-report_en.pdf).

smaller (thus most of the) settlements concerned. Thus, the opportunities for employment depends on arbitrary decisions with no chance for legal remedy. As a conclusion of a project entitled Dignity of Work, the opinion of the Commissioner for Fundamental Rights and a TÁRKI-TUDOK survey revealed, Romani job seekers may become subject to direct, indirect discrimination and possibly victimization on several occasions. Public workers are not protected by the labour code, and refusing public work offered or violating the obligation to cooperate with the Public Employment Centre could be sanctioned by two years of exclusion from the system.

Until very recently, Hungary did not have any overall policy document on migration and integration. However, in October 2013 the Government adopted a Migration Strategy for the years 2014 to 2020, setting out actions and goals in the fields of admission, residence, integration, international protection and return. Basic legal and policy infrastructure for migration and refugee affairs was measured as lower average in European terms according to the MIPEX index. Until 2014-2015, the country received low number of migrants and refugees which did not create major policy challenge. This fundamentally changed in 2015.

### 3. Disability domain

In Hungary, the medical approach to disability still holds in policies despite the pioneering adoption of a law on Equal Opportunities for Disabled Persons as early as 1998<sup>20</sup> (henceforth Disability Act). The Parliamentary Commissioner for Human Rights stated in his report called ‘Dignity of Work’<sup>21</sup> (2013:51) that the effective legal background on disability does not correspond fully to the Europe 2020 Strategy, furthermore it does not comply with important UN endorsed principles such as independent living or inclusion by the community. The basic elements of regulation are available, but these are not synchronized, and consequently their effectiveness is low. Hungary ratified the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as CRPD or Convention) among the very first state parties in 2007. However since ratification there was limited political will to upgrade the structure and transform professional and public discourse in the spirit of the Convention. As the Hungarian Disability Caucus says: “Hungarian law and policies consider persons with disabilities, above all, a burden for society. They do not actively respect the difference of the person with disability, nor do they recognize his or her value as part of human diversity. They attribute essential significance to the prevention of disability, to normalization and to rehabilitation.” (2013:17)

The most problematized dimension of the disability policy during the years of the crisis was the high financial burden imposed on the state by allowances for disabled persons. The proposed objective was to cut the burden on the state budgets by fighting against inactivity rates, (re)integrating those who were capable to work. The responses varied from cutting subsidies to narrowing entitlements or encouraging employers to integrate disabled persons with incentives. The socialist-liberal coalition governing in 2008/09 used the narrative that Hungary could not anymore afford the high budget for social disability pensions as it did in the past. They committed to filter out those who were receiving the state aid illegitimately and to advance the labour market integration of those who were still capable of work. The cabinet introduced (in January 2008) austerity measures – the so-called disability reform – which reduced significantly the number of those who were entitled for state allowance based on their impairment or reduced

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20 Act XXVI of 1998 on Equal Opportunities for Disabled Persons.

21 A JB Projektfüzetek, 2013/4: A Munka Méltósága projekt

work capacity. The austerity pack of Bajnai's crisis government (2009) declared the intention to continue the reconstruction of the social disability pension system started in 2008. The FIDESZ government's CRPD country report (2012)<sup>22</sup> stated the objective to return people with "poor health" to active labour market positions, to thus replace their passive disability pension. The conservative government now framed the system of subsidies as a form of sickness-allowances.

### *Disability equality law, strategy and institutional framework*

The process of harmonization between the UNCRPD and Hungarian disability law was the main disability policy priority for Hungary during the crisis period. Progress in policy commitments through the ratification took place along with backsliding on certain aspects of disability rights and stalled implementation. Ratification of the conventions was not followed up with harmonization of the Disability Act<sup>23</sup>. The Hungarian act continued to use an exhaustive medical definition, considerably restricting the circle of persons with disabilities, failing, for instance, to include psychiatric patients with (long-term) mental impairment. Other definitions also remained in use, for example in the field of employment the term 'employees with changed/reduced work capacities'. The medical model used prescribes a threshold criterion for the impairment in contrast with the UN CRPD human rights approach to disability. The policy also prioritizes the "correction" of the individual, rather than the transformation of the environment, as a solution for equal opportunities. The issue remains for now in the charitable domain rather being a fundamental rights question.<sup>24</sup>

This has consequences for compliance with EU acquis. The Anti-discrimination act provides for the prohibition of discrimination on grounds of disability (in accordance with EU Employment Directive), however the problematic definition of disability makes submission of claims problematic. Paper based medical evidence of the nature and scale of impairment is required to bring a claim. The concept and requirement of reasonable accommodation is included in the Anti-Discrimination Act and in the Labour Code but the content specifications are still missing. Thus, when implementing employers face not only financial challenges but they are without proper guidance on how to fulfil this obligation.

According to the disability act the Parliament is obliged to pass long-term strategy documents on disability: *National Disability Programmes* every seven years in order to establish the framework for disability policy. Unlike in the field of gender equality, strategic programming in disability policy remained continuous during the crisis: the National Disability Program 2007-2013<sup>25</sup> was followed after a short interruption by a new program for 2015-2022.<sup>26</sup>

No major backsliding can be noted in the institutional structure in charge for disability policy either. Moreover after 2015 some progress can be noted. The governmental agency in charge for disability policy is located within the *Ministry for Human Resources*, and the *State*

<sup>22</sup> Committee on the Rights of Persons with Disabilities Implementation of the Convention on the Rights of Persons with Disabilities Initial reports submitted by States parties under article 35 of the Convention – Hungary -

<sup>23</sup> 1998. évi XXVI. törvény a fogyatékossgal élő jogairól és esélyegyenlőségük biztosításáról

<sup>24</sup> As the Hungarian Disability Caucus (in its CRPD alternative report, p 17) says: "Hungarian law and policies consider persons with disabilities, above all, a burden for society. They do not actively respect the difference of the person with disability, nor do they recognize his or her value as part of human diversity. They attribute essential significance to the prevention of disability, to normalization and to rehabilitation."

<sup>25</sup> Országos Fogyatékosügyi Programról szóló 10/2006. (II. 16.) OGY határozat

<sup>26</sup> Országos Fogyatékosügyi Programról szóló 15/2015. (IV. 7.) OGY határozat



*Secretariat for Social Inclusion and Social Affairs* which is responsible for advancing social equality. It oversees the areas of equal opportunities and employment rehabilitation of disabled persons and ‘employees with changed working capacities’. In addition to the executive agency in 2015 the *Interdepartmental Disability Commission (Fogyatékosügyei Tárcaközi Bizottság)* was created<sup>27</sup> to coordinate the work of several ministries on disability issues and help mainstream the priorities of the disability programme. According to the initial proposal to establish this body constant cooperation and communication was foreseen between this Commission and the National Disability Council which is the main consultative body for disability policy. The adopted version of the decree creating the Commission does not mention this cooperation, which is a signal of downscaling the importance of consultation.

Indeed, consultation mechanisms witnessed serious downscaling during the years of the crisis. According to the 24. és 25. § of the Disability Act until 30 September 2013 the National Disability Council (*Fogyatékosügyei Tanács*) (*NDC*) was a consultative body serving the government. Initially its 17 members consisted of representatives of 7 ministries (represented by state secretaries) and civil society organizations of disabled persons. The council was in charge for drafting the national disability program for the Parliament. Based on a government decree about the revision of public bodies<sup>28</sup> the Council members’ governmental representation was terminated in 2011, dismantling the legal basis for this consultative platform. Articles 24. § and 25. § were also removed from the disability act in 2013. The mandate and operational conditions of the Council are since defined by a government decree<sup>29</sup>, which means a lower level of legal regulation. The Council remained a consultative body, its president is the minister and its members are delegated by formally accepted national disability interest groups covering all field of impairments. Consultation processes exclude all other civil society groups including the main disability rights groups. The budget of the NDC was almost halved from 9.1 Million in 2009 to 5 Million HUF in 2011 and cut altogether in 2012. The CRPD Committee’s response to the Hungarian CRPD report 2012<sup>30</sup> regretted the insufficient participation of persons with disabilities and their representative organizations in the review and design of disability-related legislation and policies. Their recommendation for the government was to take effective measures to consult with and actively involve persons with disabilities, furthermore provide them adequate funding. In the national budget (for the period 2009-2012) there are 7-8 permanent disability interest organizations which received state support continuously. The budget allocated dropped in 2010, but in the following years it was corrected to the pre-crisis levels<sup>31</sup> Organizations funded by the state did not include disability rights groups.

<sup>27</sup> Gov. Decree 1432/2015. (VI. 30.)

<sup>28</sup> A jogszabállyal vagy közjogi szervezetszabályozó eszközzel létrehozott testületek felülvizsgálatáról szóló 1158/2011. (V. 23.) Kormány határozat

<sup>29</sup> Országos Fogyatékosügyei Tanácsról szóló 1330/2013. (VI. 13) Korm. határozat

<sup>30</sup> Committee on the Rights of Persons with Disabilities (2012) Concluding observations on the initial periodic report of Hungary, adopted by the Committee at its eighth session (17-28 September 2012).

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHUN%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHUN%2fCO%2f1&Lang=en)

<sup>31</sup> The *Hungarian Association for Persons with Intellectual Disability* received 138 HUF Million in 2009 and 70 HUF Million in 2010. The *Hungarian Association of the Deaf and Hard of Hearing* received 177 HUF Million in 2009 and 70 HUF Million in 2010. The *National Federation of Disabled Persons’ Associations* received 160 HUF Million in 2009 and 105 HUF Million in 2010. The *Hungarian Federation of the Blind and Partially Sighted* received 207 HUF Million in 2009 and 97,5 HUF Million in 2010.

### *Provisions*

Disability provisions were dramatically transformed to serve activation, numbers of beneficiaries reduced during the period of the crisis. Before 2008 the state subsidy based on the scale of impairment and the personal capacity for rehabilitation was the *disability pension*.<sup>32</sup> The pre-2009 socialist liberal government introduced the rehabilitation annuity<sup>33</sup> for those who were deemed to be potentially rehabilitated. They also initiated periodic obligatory re-examinations of benefit recipients to filter out those who benefitted unlawfully. In 2012, the Fidesz government continued the revision of the disability pension' system. They were driven by the same purposes as their predecessor: (re)integrating those who are capable of work and filtering out free-riders. Disability subsidy started to be contextualized as a kind of sick-allowance. The Constitutional Court opinion<sup>34</sup> confirmed by arguing that disability pension is not a basic right but a replacement for the loss of income caused by health damage provided for those in active age. From January 2012<sup>35</sup>, the disability pension was abolished. In the new system, those who were at the age of retirement started to receive a regular pension. Persons with changed/reduced working capacities were entitled to receive rehabilitation subsidy if rehabilitation was possible (for about a period of 1-3 year) and to receive disability subsidy if rehabilitation was not suggested. The amount of the benefits was decreased. Based on MEOSZ<sup>36</sup> statistics the average amount of the disability pension in December 2011 was around HUF 70.000, in the first quarter of 2012 the new disability subsidies was around HUF 55.500. Compulsory re-examinations continued, speeded up and extended to all the beneficiaries. As a result, one fifth of all beneficiaries (38.000 persons) was cut from further disbursement because of not reaching the required 40% threshold of impairment and around 15% of them were declared capable of rehabilitation.

No alternative benefits were introduced to help those who were left without any kind of support as a consequence of the reform. The act about social care<sup>37</sup> lists 'basic services' aimed to give assistance through social work. Support service cover daytime care or home assistance service and emergency home assistance service. From 1 January 2009 support services and from 1 January 2010 emergency home assistance services started to be tendered instead of given previously used regular grants. Because of limited absorption of financial resources the number of social workers was significantly decreased; their working hours dropped. The national budget line for 'other medical services aid' highly relevant for disabled persons also dropped in 2010, but was levelled back by 2012<sup>38</sup>.

The most significant changes took place in incentives for employers provided to advance labour market participation of disabled persons. These included the wage support which was initially introduced in November 2005 and could grant up to 40-100% of the wages for disabled employees. This was suspended from 1 September 2009 with the possibility to prolong existent

<sup>32</sup> rokkantsági nyugdíj

<sup>33</sup> rehabilitációs járadék

<sup>34</sup> "A rokkantsági ellátás ugyanis jövedelempótló jellegű ellátás, amely abban az esetben segíti a megváltozott munkaképességű személyt, ha az állapota miatt egyáltalán nem képes arra, hogy keresőtevékenységet folytasson, vagy képes ugyan munkát vállalni, de az abból származó jövedelme a megélhetési minimumot sem biztosítja számára." 40/2012. (XII. 6.) AB határozat (utólagos normakontroll; indítványozó: Dr. Szabó Máté, az alapvető jogok biztosa

<sup>35</sup> According to the Act CXCI. (2011)

<sup>36</sup> National Federation of Disabled Persons' Associations (MEOSZ) – Beadvány az Ombudsmanhoz available: <http://msmke.hu/hirek/pdfs/MEOSZ%20beadv%C3%A1nya%20az%20ombudsmanhoz.pdf>

<sup>37</sup> 1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról

<sup>38</sup> Was 37 005 HUF Million, in 2010: 28 185 HUF Million, in 2011: 38 872 HUF Million, in 2012: 38 213 HUF Million.

contracts until 30 June 2012. Rehabilitation contribution increased significantly as of January 2010 and now equals the minimum wage (2009: 177,600 HUF; 2010: 964,500 HUF/year). This encourages employers with more than 20 employees to meet the requirement of filling 5 percent of their positions with disabled employees, though only for part time work. According to the Hungarian CRPD report (2012), those persons living with disability who are unable to enter the open labour market can appear in various sectors of the protected labour market. Financing for social employment is available for them, although in a tender-system since 1 January 2010.

During the post 2010 period two notable progressive processes could be noticed in the disability policy field. Both of these are drawing on UN CRPD principles. One is support for independent living. The program of *Deinstitutionalization* – transformation of large disability institutions into community based settings – has started after 2011. Unfortunately, according to a recent TASZ report (2016)<sup>39</sup> implementation is slow and there is a little chance to terminate the first phase of the process in accordance with Article 19 of CRPD. The government has spent significant amount of EU sources between 2007 and 2013 on supporting community-based living, but the effects of these remained largely invisible because of underfinanced complementary basic services. The report stated that provisions were changed positively and professionals have learnt a lot about the essence of deinstitutionalization but this was not sufficient for a quality planning and coherent execution. The designated coordination bodies (Intézményi Férőhely Kiváltás Koordináló Országos Testület (IFKKOT) and Fogyatékos Személyek Esélyegyenlőségéért Közhasznú Nonprofit Kft. (FSZK)<sup>40</sup>) were not capable of coordinating the operative process.

Move towards the principle of supported decision-making (to replace substitutive decision-making) was the other important shifts that the CRPD brought to the Hungarian policy paradigm, meaning the legal recognition of interdependent autonomy. At first time, the 2001 amendment of the Civil Code<sup>41</sup>, then the new Civil Code<sup>42</sup> introducing an option to the chapter on legal capacity as of restricting it for certain types of cases and rendering the social, familial background of the persons to be investigated also, which were important steps towards the new paradigm, so it was welcomed by civil society actors in the field. However, as the Hungarian Caucus stated, to this day, most orders for placement under guardianship involve the deprivation or the general limitation of the legal capacity (2010:21).

Overall disability was a controversial field which witnessed some important progress and somewhat less backsliding than gender in formal policy terms. However de facto retrenchment and restructuring of benefits ultimately limited autonomy and independence of disabled persons, despite the stated objectives of the government of labour market activation and independent living.

## Conclusions

<sup>39</sup> Az Európai Unió támogatásainak a szerepe az intézménytelenítésben és a férőhelykiváltás eddigi tapasztalatai, Kozma Ágnes – Petri Gábor – Balogh Attila – Birtha Magdolna, TASZ, Társaság a Szabadságjogokért (2016)

<sup>40</sup> FSZK is a non-profit organization with the task of advancing equal opportunities, social integration and complex rehabilitation of the disabled. Development programs guided and executed by the organization are funded by the national domestic budget (Új Széchenyi Terv, az Országos Fogyatékosságügyi Program). Their professional work based on the UN Convention and the EU Disability Strategy 2010-2020. Their high priority projects are about developing employment opportunities, supporting the entrance into labour market, providing quality education and equal access, working for social inclusion and strengthening participation.

<sup>41</sup> 2001. évi XV. törvény a cselekvőképességgel, gondnoksággal összefüggő egyes törvények módosításáról

<sup>42</sup> az új Polgári Törvénykönyvről szóló 2013. évi V. törvény

In Hungary backsliding first took the form of a neo-liberal austerity package with some openness and sensitivity to equality concerns. From 2010 a conservative-nationalist approach took over, which subordinated cuts and restructuring to a nationalist agenda in which gender equality ethnic diversity were seen to undermine national sustainability. Cuts in the first wave left equality institutions and programming untouched or even improved across all three grounds though with more limited budgets. The second wave established a hierarchy in which disability remained a politically acceptable inequality ground, though framed in medical terms, but gender and ethnicity were hit hard, by blocked consultation, dismantled institutions and also ideologically driven reframing of social policies reaching to these groups. The two sets of responses differ significantly in their framing: the first set of austerity measures were framed with some sensitivity to inequality and gender issues despite the extensive budget cuts (2009-10). The second wave of retrenchment was framed in nationalist, familialist terms with particularly negative effects on gender and race issues. The conservative coalition continued with austerity provisions in certain social policy fields but also engaged in a drastic turnover of the whole political and welfare system.

## **B. Poland Case Study (by Joanna Kostka)**

In Poland welfare reform measures have been systematically applied to social policy areas related to care, education and welfare payments. Their origins can be traced back as far as the 1990s (shock therapy<sup>43</sup>) and while the recent global economic crisis has often served as justification for the ongoing neoliberal drive, there has been little evidence of "backsliding" in terms of the states' commitments to equality measures. In fact in the period of 2007-2014 Poland has made some progress in strengthening its anti-discrimination law and equality infrastructure (in all three domains of gender, race and disability). The introduced changes, however, were formalistic, limited to legislative alterations, and diverged from trends unraveling across the EU. As numerous member states (including France, Ireland, Spain and UK) progressed to cut back their equality infrastructure, Poland demonstrated a high degree of 'resilience'. However, it is important to note that Poland has not experienced negative growth of the GDP during the crisis. The situation was instead interpreted as an economic slowdown. Although the spill-over of the crisis was reflected in unemployment and absolute poverty statistics in year 2008-2011, according to the CIA World Factbook<sup>44</sup>, Poland experienced 4.8%, 1.7%, 3.8% and 4.4% growth in 2008, 2009, 2010 and 2011, respectively. The same source shows that the EU as a whole experienced 0.8%, negative 4%, 1.8% and 1.6% growth in the same years. This situation at least partially could explain Polish resilience. This case study takes an in-depth look at the developments of this period.

### **Political Context**

On October 21, 2007 the center-right party the Civic Platform (PO), gained more than 41% of the popular vote in parliamentary elections. PO proceeded to form a majority governing coalition with the agrarian Polish People's Party (PSL), with PO leader, Donald Tusk, taking over the prime ministerial office. European issues had a high profile in the elections and the pro-EU attitudes were espoused by the newly formed government. While equality issues were not prioritized in electoral campaign, the PO's program showed strong commitment to 'Europeanization' of national policies. Moreover, the government vouched to bring greater predictability and professionalism to foreign policymaking and shed Poland's image as an 'awkward partner' within the EU. While the raise of PO was celebrated by civil society and equality advocates it is important to remember that PO's social opinions remained conservative. Social liberalism has not been promoted within PO, thus the legalization of homosexual marriages, church separation from state, soft drugs legalization or euthanasia stood outside the party's agenda.

The 2011 parliamentary elections saw a clear victory for the centrist Civic Platform (PO) and continuation of European-friendly policies (predominately in the field of foreign policy). However, the major story of this election was the success of the Palikot Movement (RP), an anti-

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<sup>43</sup> "Shock Therapy" was a method for rapidly transitioning from a communist economy, based on state ownership and central planning, to a capitalist market economy. It was based on the release of price and currency controls, withdrawal of state subsidies, and immediate trade liberalization. It also included large-scale privatization of previously public-owned assets.

<sup>44</sup> Central Intelligence Agency (2011). The World Factbook, available at: <https://www.cia.gov/library/publications/the-world-factbook/>

clerical liberal party formed by the controversial businessman Janusz Palikot. The party proposed a socially liberal program that included reducing the influence of Poland's powerful Catholic

Church in public life, the de-criminalization of so-called 'soft' drugs, abortion on demand, and more rights for sexual and other minorities including the legalization of same-sex civil unions. The Palikot Movement attracted a significant number of younger voters who wanted efficient government but also had socially liberal views on lifestyle issues and felt that Civic Platform and the Democratic Left Alliance were too establishment-oriented and deferential towards the Catholic Church. Nevertheless, the presence of a liberal voice in the parliament has not generated profound changes in political discourse. In fact, during the 2015 vote on civil partnership the majority of MPs voted against it (including 70 MPs from PO) demonstrating that progressive reforms in equality legislation faced deeply entrenched opposition.

Given the hostile environment (especially pronounced in the field of gender equality) the developments in the above mentioned period are startling. The most substantial accomplishments took place in the anti-discrimination framework, which include the creation of Equality Bodies, introduction of electoral gender quota system, ratification of Istanbul Convention and amendments to the Labor and Penal Codes. Less attention has been given to the 'soft indicators' accounting for welfare provisions and integration measures (targeted at minorities and disabled persons). However, even in these areas the cuts were avoided and efforts were made to strengthen reconciliation of family and working life and activation of disabled persons on the labor market. Finally, this period opened up a dialogue with civil society and allow for creation of platform(s) where issues related to gender equality, non-discrimination, and treatment of minorities and disabled persons could be openly discussed.

## **Gender Domain**

In gender domain Poland emerged as one of the most resilient countries in the EU showing no backsliding on any indicators. While the budget-related provisions of the laws of 2009-2010<sup>45</sup> indicated ongoing 'budget slimming' and the search for opportunities to increase State revenue (i.e. introduction of Value-added tax in 2011) neither equality infrastructure nor equality strategies faced cutbacks. Moreover, despite prognosis that the greatest savings were to take place in social welfare spending, no cuts were made to family benefits and child care services. In fact, between 2009 and 2011 Poland extended parental leave<sup>46</sup>, and introduced reforms to support development of early childhood education and care<sup>47</sup>. The public sector also emerged fairly untouched (especially when compared to other EU member states). Following the European trend since 2010, Poland's total pay budget for public administration (which includes the civil service) has been frozen and since 2009 there has been no automatic increase of individual pay. However, since 2010 there have also been no limits on the numbers employed in the civil service and the share of employment in public administration in total employment remained stable. In a third quarter of 2013 public sector employed 3 925 000 people which

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<sup>45</sup> The Law of 19 November 2009 amending certain acts relating to the implementation of the Budget Act (Dz.U.2009 No. 219, item 1706). The Law of 26 November 2010 amending certain acts relating to the implementation of the Budget Act (Dz.U.2010, No. 238, item 1578).

<sup>46</sup> Szelewa, D. (2015) *Dangerous Liaisons: Maternity, Paternity and Politics* [Niebezpieczne Związki. Macierzyństwo, ojcostwo i polityka] Warsaw: University of Warsaw Publishing.

<sup>47</sup> Since 2011, the Ministry of Labour and Social Policy has been implementing the programme 'Toddler' [Maluch] which seeks to help local authorities increase the number of ECEC places for the under-3s.

accounts for 25.3% of total employment in Poland<sup>48</sup>. Given that the public sector in Poland is feminized (in 2009 almost 60% of employees in the public sector were women<sup>49</sup>) absence of mass layoffs might have contributed to a stable unemployment rate among women. Yet it is important to note that the women age group 24- 35 was the biggest group of registered unemployed, growing from 261,000 in 2008 to 366,000 in 2012<sup>50</sup>.

### *Developments in Equality Infrastructure*

The promotion of equal opportunities for women and men in employment and other spheres of public life has not been a priority in any of the governments since EU accession.<sup>51</sup> Nevertheless this domain saw the most profound developments taking place, particularly following the 2007 elections and a clear change in policy approach to gender equality and anti-discrimination. Before 2007 the government promoted largely pro-family policy in traditional, catholic understanding and did not actively combat gender discrimination (it was also openly against gay rights, same sex marriage, abortion, and in-vitro). Government under PO instigated (if reluctantly) pro-equality moves, predominately in the area of employment. The critics maintained that the legal and institutional changes to anti-discrimination field resulted from the obligations linked to the membership in the European Union rather than from a political conviction or will of political leadership<sup>52</sup>.

In spite of its presence in the EU since May 2004, Poland had been delaying full implementation of the EU anti-discrimination regulations, which resulted in the European Commission instigating several criminal proceedings related to non-fulfillment of this obligation. Hence the final adoption of anti-discrimination law should be considered a major breakthrough in Polish governments' approach to the principle of equal treatment. The Act of 3 December 2010 (also called 'anti-discrimination' law) was the first legal Polish act which attempted to thoroughly regulate the issue of counteracting discrimination. It generated amendments to the Labor Code, setting up of equality body (the Government Plenipotentiary for Equal Treatment) and the Human Rights Defender (who has received new competencies to counteract discrimination). However, according to NGOs working on equal status of women and men, the Act proved to be minimalistic as it protected against discrimination based on gender only in the area of employment and access to good and services<sup>53</sup>.

In 2013 the Government Plenipotentiary for Equal Treatment presented to the Council of Ministers a document called the National Program for the Promotion of Equal Treatment 2013-2016,<sup>54</sup> which is coherent with the priorities and directions defined in the European Strategy for

<sup>48</sup> Central Statistical Office of Poland, 2013

<sup>49</sup> Gajderowicz, T., Grotkowska, G., and Wincenciak, L. (2012) The premium wage of higher education according to occupational groups [[Premia płacowa z wykształcenia wyższego według grup zawodów](#)] *Ekonomista* 5:577-603.

<sup>50</sup> Central Statistical Office (2012) Concise Statistical Yearbook of Poland 2012 [Mały Rocznik Statystyczny] Warszawa, 2013, available at: <http://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/maly-rocznik-statystyczny-2012-r,1,13.html>

<sup>51</sup> European Gender Equality Law Review — No 1/2008

<sup>52</sup> CEDAW Coalition of Polish NGOs (2014) Alternative Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women, Poland 2014, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/POL/INT\\_CEDAW\\_NGO\\_POL\\_18378\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/POL/INT_CEDAW_NGO_POL_18378_E.pdf)

<sup>53</sup> CEDAW Coalition of Polish NGOs (2014)

<sup>54</sup> The Government Plenipotentiary for Equal Treatment (2013) The National Programme for the Promotion of Equal Treatment 2013-2016 [Krajowy Program Działań na Rzecz Równego Traktowania na lata 2013-2016], Warsaw, 10 December 2013, available at:

Equality between Women and Men 2010-2015 and the European Pact for Gender Equality 2011-2010. The program has been greeted with enthusiasm because this was the first instance in the history of the Polish legal order of introducing such a solution. However, it should be mentioned that the legislation was worded in a very general manner and gender mainstreaming has not been set as a priority.

Finally, on April 27, 2015 Poland ratified the Council of Europe Convention on Preventing and Combating Violence against Women, and Domestic Violence (Istanbul Convention). In the course of parliamentary debates, arguments were raised that the Istanbul Convention was unconstitutional and posed a threat to Polish tradition and family. Opposition was strongest from the political right and the Catholic Church cumulating in the intimidating “anti-gender” campaign that constituted an intensive attack on the principle of gender equality. The campaign aimed at reinforcing the traditional social roles of women and men and opposed all kinds of gender equality policies, including combating violence against women.

Poland ranked 49 out of 134 in the 2013 “political empowerment” sub-index of the Global Gender Gap Index. Over the last two decades Polish feminist groups faced difficulties mobilizing mainstream support and influencing equality policies. Nevertheless, the equality movement has been steadily on the rise, resulting in initiatives such as creation of *Feminoteka* Foundation (2005) and The Congress of Women (2009). One of the reasons is the 2010 Act which made the cooperation with the civil society in the area of equal treatment a legal obligation<sup>55</sup>. Most of the consultation mechanisms have been put in place and are being used, but there is still no formally established advisory body where they could be represented on a regular basis. The new found dialogue platform allowed for pushing through the quota system on electoral list<sup>56</sup> and restoring the Alimony Fund for single parents, scrapped in 2004.

## Race/Ethnicity Domain

Poland is a nationally and religiously uniform state without a long tradition and experience of combating racial discrimination and running integration programs. National and ethnic minorities constitute about 3.5% of the population and that percentage is one of the lowest in Europe. According to Eurostat, citizens of other countries make only 0.1% of Polish population<sup>57</sup>. Despite these small numbers Poland has seen extreme nationalistic movements and right-wing organizations and parties gain influence inside and outside the parliament over the last decade. Right-wing politicians and media consistently and forcefully deny the existence of problems such as hate crime and xenophobia in Polish society. This approach is frequently reflected in activities (or lack thereof) of the judiciary and other state institutions, including local

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[http://www.spoleczenstwoobywatelskie.gov.pl/sites/default/files/krajowy\\_program\\_dzialan\\_na\\_rzecz\\_rownego\\_traktowania\\_przyjety\\_na\\_rm\\_10.12.13.pdf](http://www.spoleczenstwoobywatelskie.gov.pl/sites/default/files/krajowy_program_dzialan_na_rzecz_rownego_traktowania_przyjety_na_rm_10.12.13.pdf)

<sup>55</sup> ACT of 3rd December, 2010 on the implementation of some regulations of European Union regarding equal treatment.

<sup>56</sup> In accordance with the Act dated January 5, 2011, an electoral list of candidates for any party has to include at least 35% of either gender. If the electoral list does not fulfil this requirement, the electoral commission will not register it. Fuszara, M. (2011) “Case Study Poland: It’s Time for Women: Gender Quotas on Electoral Lists” In Electoral Gender Quota Systems and their Implementation in Europe. European Parliament, Brussels: Directorate General for Internal Policies, Policy Department C: Citizens’ Rights and Constitutional Affairs.

<sup>57</sup> Eurostat: *Population and social conditions*, 31/12: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Category:Population\\_and\\_social\\_conditions\\_-\\_statistical\\_publications](http://ec.europa.eu/eurostat/statistics-explained/index.php/Category:Population_and_social_conditions_-_statistical_publications)



authorities. The voices of the targeted groups remain weak and are almost never heard by politicians. This ‘silence’ is exaggerated by ethnic and religious biases strongly embedded within the majority of the population<sup>58</sup>.

Despite this hostile context (which escalated following the “refugee crisis” in many ways mirroring rising hostilities across EU) Poland has not experienced ‘backsliding’ in the domain of race and ethnicity. Commentators maintain that adherence to EU anti-discrimination legislation and stronger commitment to the development of integration policies, once again stemmed from the obligations linked to the membership in the European Union.

### *Anti-discrimination infrastructure*

The 1997 Polish Constitution contains a general anti-discrimination clause: “all people shall be equal before the law and have the right to equal treatment by public authorities and no one shall be discriminated against in political, social or economic life for any reason whatsoever”.<sup>59</sup> However, until 2011 there was no single act comprising a general ban on discrimination on racial/ethnic grounds. This changed in 2011, with an approval of the Act *Implementation of Certain Provisions of the European Union in the Field of Equal Treatment* that transposed and implemented EU Anti-Discrimination Directives 2000/43 and 2000/78. The transposition occurred in strictly formalistic manner, with only basic amendments to the Labor Code and Penal Code. However, the existence of new legislation opened the door for further amendments. On numerous occasions the Ombudsman for Civil Rights Protection expressed hopes that anti-discrimination measures now legally recognized could strengthen the fight against hate crime. This is important given that research conducted by the Association of Anti-Semitism and Xenophobia has demonstrated that most reported incidents of hate crime and hate speech are not taken seriously by Polish law enforcement agencies: it stated that crimes that fall within the ambit of Articles 256 and 257 are rarely investigated and its perpetrators are rarely prosecuted<sup>60</sup>

### *Social Integration of minorities*

In 2005 Poland passed a new law protecting the rights of national and ethnic minorities<sup>61</sup>. Article 6 of the Act specifically prohibits discrimination based on national or ethnic minority status providing national minorities with the full scope of legal protection and state aid. Article 18 of the Act imposes on public authorities to take appropriate measures to promote activities aimed at the protection, preservation and development of cultural identity of minorities<sup>62</sup>. The commitment to integration was further expressed in 2014 amendment. The amendment introduced the *social integration* of minorities as a duty for public authorities (previously, *civic integration* existed). Social integration has been defined as efforts to improve important aspects

<sup>58</sup> Grell, B., Köhler, T., Pankowski, R., Sineaeva, N. and Stranawski, M. (2009) Hate Crime Monitoring and Victim Assistance in Poland and Germany. Warsaw: Foundation Nigdy Więcej.

<sup>59</sup> Polish Constitution (1997), Act 32, Par. 2. Available at: <http://www.sejm.gov.pl/prawo/konst/polski/2.htm>.

<sup>60</sup> Bodnar, A. and Jagielski, M. (2010) Crimes of Hate in Poland Based on Research of Court Records from the Years 2007-2009. [Przestępstwa z Nienawiści w Polsce na Podstawie Badań akt Sądowych z lat 2007-2009] *Otwarta Rzeczpospolita*, available at: <http://otwarta.org/wp-content/uploads/2012/03/Raport09-Przest%C2%A9pstwa-z-nienawi%C8%B9Cci-lekki.pdf>

<sup>61</sup> Dz. U. [Journal of Laws] No 17, item 141, as amended)

<sup>62</sup> Article 18, Paragraph 2 Section 10 of the Act.

of the lives of people belonging to minorities, in particular living conditions and access to the education system, the labour market, social security and healthcare. The amendment was executed due to strong lobbying efforts of civil society groups; however the law has been restricted to the Polish citizens and therefore does not apply to immigrants – an issue strongly criticized by the Ombudsman.

Despite neoliberal character of Polish social policies, the Polish state showed commitment to the integration of the most excluded Polish minorities, the Roma. Largely due to the availability of European Structural Funds, Poland developed National Roma Inclusion Strategies which generated minor improvements and instigated a dialogue between Roma community leaders and public authorities. A true success arrived with the decision of Ministry of Education to abolish all forms of segregated education (including creation of ‘remedial classes’). As of 2011 no ‘official’ Roma classes were in operation. In 2014 the Ministry of Education funded 53 local initiatives/activities facilitating the integration of Roma children into the education system.

### *Immigrants and foreigners*

The most important event concerning Poland’s migration policy was the adoption of the first comprehensive strategic document ‘The Polish migration policy: current state of play and further actions’<sup>63</sup>. The document was developed by the Working Group operating within the inter-ministry Team for Migration coordinated by the Ministry of Interior and Administration. The strategy is the first comprehensive document on migration policy, which states that Poland should be more open for immigrants with needed skills and not causing integration problems. That is why the document also addresses the issue of immigrants integration (e.g. voluntary integration courses for all categories of immigrants, knowledge of the Polish language requirement for settlement and, optionally, for citizenship). In December 2014, the action plan was developed by the Committee and was approved by the Polish government. It specified ways to implement the recommendations contained in the document, costs, sources of financing, responsible institutions and deadlines for implementation. The majority of actions which address the recommendations concerning integration were due to be completed by the end of 2016. The introduction of the migration policy demonstrated some political willingness to prepare for a likely inflow of immigrants. However the policy remained strictly formalistic and as a consequence was easily dismantled following the coming to power of right-wing Law and Justice Party.

### **Disability**

While policies directed at persons with disabilities have not been high on the government’s agenda, the field escaped serious retrenchment that took place in other member states. One argument is that the provisions were set at a minimum level thus any further cutbacks would mean a total abandonment of policies and financial support in this area.

In the last decade Polish policies have focused on activation of people with disabilities in the labor market. Issues related to rehabilitation, independent living, social assistance, and

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<sup>63</sup> Europejska Sieć Migracyjna (EMN) (2011) Inter-ministerial Committee on Migration Agreed on “The Polish Migration Policy: Current State of Play and Further Actions”, available at: <https://emn.gov.pl/ese/news/8765,dok.html>

communication have not been prioritized although numerous NGOs and associations have been actively promoting such course of action. While direct cuts were avoided, some positive trends, such as deinstitutionalization processes and transition from institutional to community-based form of care have been interrupted due to lack of financial resources<sup>64</sup>. However it is difficult to link abandonment of deinstitutionalization process with financial crisis as there is lack of statistical data and in-depth research. It is more probable that the resistance to provide funds for independent living stemmed from prevalence of the medical model of disability in public policy making.

### *Infrastructure*

In Poland, legal protection of persons with disabilities is above all guaranteed by the Constitution. Art. 69 states that “authorities should provide assistance to disabled people to secure subsistence, adaptation to work, and improve the social communication”. The most important legal act on the rights of disabled people, incurring legal liability of the State Parties, is the international Convention of the United Nations on the Rights of People with Disabilities of 2006, ratified by Poland in 2012. Transposition of the Directive 2000/78/EC which prohibits inter alia discrimination due to the disability at the workplace and in other occupational activities resulted in new provisions inside the Labour Code. Civil society and activist maintain that the new provision offer only limited and highly formal assistance. They also argue that there is a limited possibility to claim discrimination due to disability with the use of general type remedies, like the protection of personal rights, provided in the Civil Code<sup>65</sup>.

The body responsible for disability policy is the Government Plenipotentiary for Disabled People (since 2007). The Plenipotentiary, formally a part of the Ministry of Labor and Social Policy, is primarily responsible for implementing the Act on the Vocational and Social Rehabilitation and Employment of Disabled Persons<sup>66</sup>. While the office receives ‘stable’ financial assistance there has been no substantial increases in staff or budget since the creation of the office.

### *Provisions*

From 2007 to 2011 there have been little legislative developments in the field. First action came in 2013 and concerned the Act of Family Benefits to support parents and careers of the disabled. Generally, changes in the Act on Family Benefits have been aimed at increasing the amount of nursing benefit to the amount corresponding to the minimum remuneration for work (net). However the amendments introduced new regulations which limited the circle of people who were entitled to nursing benefit (mostly to parents) and approximately half of the beneficiaries lost their right to this provision. Amidst protests the amendment was proved to be unconstitutional by the Constitutional Tribunal (K27/13 and K 38/13) and the government was forced to amend the act yet again. In accordance with the Act of 14 April 2014 on determination and payment of carer’s allowance persons who lost their rights the nursing benefit due to the

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<sup>64</sup> European Disability Forum (2014) “Report on the impact of the crisis on the rights of persons with disabilities”, available at: <http://www.edf-feph.org/economic-crisis>

<sup>65</sup> Bodnar, A., Sledzinska-Simon, A., Osik, P. and Zima, M. (2009) “Thematic Legal Study on Mental Health and Fundamental Rights” European Union Agency for Fundamental Rights, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/2158-mental-health-study-2009-PL.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/2158-mental-health-study-2009-PL.pdf)

<sup>66</sup> Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych.

changes introduced in 2013, have been entitled to the carer's allowance. Furthermore, on November 2014 the income threshold level (per person) entitling to receive other family benefits have been increased. In 2011 the state budget for the rehabilitation of persons with disabilities transferred to local authorities was PLN640 million<sup>67</sup>.

While three years ago, spending for this purpose reached billion according to the government the decrease is related to the budgetary shift and higher subsidies for salaries of disabled employees (a move to activate disabled persons in the labor market). According to the 2009 study "The situation of people with disabilities in the Polish labor market"<sup>68</sup> the economic activity rate of people with disabilities is very low and the huge majority of this group of people [76%] is excluded from the labor market. The rate of economic inactivity is higher among people whose disability is assessed as 'significant', rather than 'moderate' or 'Minor'. However data also suggests that there has been a shift towards employment in open market enterprises. According to the State Fund for Rehabilitation of Disabled Persons, the number of employees with disabilities employed on the open market registered in the system of subsidized employment has been steadily growing and in 2014 for the first time reached and exceeded 100,000 while those employed in sheltered enterprises dropped below 150,000. Changes in legislation aimed at equalizing opportunities for employees with disabilities in both the open and sheltered labor markets which Poland has been implementing in recent years might be the reason behind this. This might also be a reason why Poland showed decrease on supported employment indicator. Rather than clear cuts the money was re-directed towards promotion of employment in the open market. This redirection was praised by the Government Plenipotentiary Office for Disabled People, who long been holding a position that the labor market situation for disabled people in Poland depends much more on economic factors and general labor market conditions rather than on changes in the system supporting employment opportunities for persons with disabilities<sup>69</sup>.

## Conclusion

Poland was the only economy in the European Union that avoided recession during the 2008 global financial crisis. Even in 2009, when the whole EU went into recession, Poland continued to grow at 2.6%. This resilience could at least partially explain the absence of backsliding in terms of the states' commitments to equality measures. In fact, during the 2008-2015 period Poland completed the transposition of EU anti-discrimination regulations, and showed unprecedented attention to gender equality, minority issues, and labor activation of persons with disability. While the budget-related provisions of the laws of 2009-2010<sup>70</sup> indicated ongoing 'budget slimming' no cuts were made to social support and care services, and in fact certain areas (i.e. childcare services) saw increase in spending. Finally Poland was one of only few member states that did not curb public employment.

<sup>67</sup> Glapiak, E. (2011) Government saves on the disabled [[Rząd oszczędza na niepełnosprawnych](http://www.rzeczpospolita.pl/artykul/1043178-Rzad-oszczedza-na-niepelnosprawnych)] *Rzeczpospolita* 2011-04-26, available at: <http://archiwum.rp.pl/artykul/1043178-Rzad-oszczedza-na-niepelnosprawnych.html>

<sup>68</sup> Wapiennik, E. (2009) "Employment of Disabled People in European countries: Poland" The Academic Network of European Disability experts (ANED), VT/2007/005.

<sup>69</sup> Conference Social Integration and Activation of People with disability (2008) [Konferencja "Integracja społeczna i aktywizacja zawodowa osób niepełnosprawnych"] <http://www.niepelnosprawni.gov.pl/index.php?c=article&id=63>

<sup>70</sup> The Law of 19 November 2009 amending certain acts relating to the implementation of the Budget Act (Dz.U.2009 No. 219, item 1706). The Law of 26 November 2010 amending certain acts relating to the implementation of the Budget Act (Dz.U.2010, No. 238, item 1578).

While these were all positive development they remained formalistic with insubstantial transformative impact. The legal framework offered minimal protection against discrimination, finding it difficult to overcome deeply embedded conservative values promoted by right-wing political elites and the Catholic Church. The critics of Polish reforms maintained that reforms of the anti-discrimination fields resulted from the obligations linked to the membership in the European Union rather than from political convictions and grassroots demands. Moreover, the social welfare provisions while more sensitive to reconciliation between work and family, continued to promote traditional family values and entrenched medical model, refraining from extending social support to immigrants and asylum seekers.

Given the formalistic nature of the anti-discrimination and equality reforms, it is not surprising that the new right-wing, Euro-skeptic government, elected in 2015, began to swiftly dismantle equality infrastructure particularly in the gender domain. In a matter of weeks Poland saw a return of pro-family policy in traditional, catholic understanding and full abandonment of anti-discrimination measures (felt across all three domains).

### C. Romania Case Study (written by Oana Baluta, edited by Andrea Krizsan)

#### Context

In Romania, European integration stands as an important framework and benchmark for both legislative and institutional changes in the field of equality policy. Austerity measures targeted policy and institutional achievements that were the outcome of European integration, rather young and feeble constructions, unable to stand against severe retrenchment.

The financial crisis hit Romania in late 2008, impacting public finances and increasing debt. After the political recognition of the economic crisis, starting in 2009, the neoliberal Government enacted a series of measures, many of them under the supervision of the Troika, that increased the social vulnerability of citizens and accelerated the risk of poverty. In May 2009 the Government signed an agreement with the IMF mandating austerity measures directed at the public sector. Measures included budget cuts, reduction in public expenditure, freezes of public sector wages and minimum wages affecting public services, such as education, health, social care (including the abolition of a wide range of bonuses and 13th monthly pay), income reduction (salaries, pensions); cuts of social benefits (including parental leave allowance), raises of VAT, restructuring public administration including equality bodies and various institutions supporting social inclusion for Roma, persons with disabilities and other social and economic vulnerable groups. In the name of shock therapy, the Romanian Government implemented some of the harshest austerity measures in EU.

In the period of the crisis Romania is governed by several governments using somewhat different crisis frames. The beginning of the economic crisis was marked by a ‘no crisis’ political framing. Following November 2009 presidential elections and the formation of a new coalition government led by the Democratic Liberal Party the political discourse changed and austerity measures were implemented. The neoliberal government dismantled the entire equality institutional infrastructure *and introduced severe austerity measures*. Measures were mainly adopted without prior public consultation or any impact studies, through governmental emergency ordinances. The neoliberal Government and the President of the country assumed a leading role, while the Parliament was left behind together with the opposition political parties. During this period the power of unions to negotiate deteriorated and “in Romania, cross-sectorial bargaining was essentially abolished by the government’s unilateral introduction of the Social Dialogue Act in 2011” (Natali, Vanhercke, 2013: 197). The Romanian Constitutional Court engaged in the process by issuing a ruling in 2010 “condemning a law establishing a cut in wages and pensions in order to return to a balanced budget. In the view of the court, the government could take restrictive measures since the economic crisis constituted a ‘threat to economic stability’. It therefore found the temporary 25% cut in wages to be in conformity with the Constitution, since it was proportionate to the desired purpose. It also, however, ruled that a reduction in retirement pensions, with no indication of the amount or duration of the measure, was disproportionate and therefore anti-constitutional [...]” (Ghailani 2016: 173)

Outspoken protests were a key feature of the Romanian response to the economic crisis. Opposition occurred in 2010 against cuts of income, then in 2011 in response to cuts in gender based violence policies. The peak was reached in January 2012, when massive protests erupted in some major cities, with Bucharest as the core. The trigger was a new draft law aiming to reform the healthcare system that was perceived by many as a strategy to privatize the system. If initially, the slogans showed support for the former health secretary of state and people chanted

against president Bănescu and other party members, now slogans diversified and the protests was directed not only at reforms in the health care system, but against austerity measures more generally, the lack of respect for rights and dignity and corruption (Norocel 2012).

Feminist resistance<sup>71</sup> was most forcefully displayed and was successful in achieving the inclusion of women's groups into policy discussions. In February 2012, the neoliberal Government enacting the austerity measures resigned and months of political changes and instability started.

After several intermediary governments, elections at the end of 2012 brought a series of Social Democratic Party led governments under Prime Minister Ponta, until December 2015. Ponta governments reinstated some of the previously cut elements of the equality policy regime. However the 2012 protests marked the beginning of a culture of protest in Romania with more and more people mobilizing against political decisions perceived as affecting rights, environment, or fostering corruption.

## Gender

Women were one of the groups hardest hit by the austerity measures introduced in relation to the crisis. Measures had a devastating impact on equality institutions and policies (Baluta 2011).

Prior to the crisis Romania had a series of institutions tackling different aspects of gender inequality. The National Council Combating Discrimination (NCCD) was in charge for the enforcement of the anti-discrimination law combating discrimination on a variety of inequality grounds including gender. Law no. 202/2002 on Equal Opportunities between Women and Men set key priority areas for gender equality policy and established The National Agency on Equal Opportunities for Women and Men (ANES) which also had local offices. ANES was in comparison with its peers in the region a functional structure able to meet its gender equality objectives, even if NGOs criticized it numerous times. It was initially created with the support of 1.8 million Euros contribution from the European Commission in the form of a Phare Project. Another gender equality related institution was the National Agency for Family Protection established in 2003 for the enforcement and coordination of Law 217/2003 on the Prevention and Sanctioning Domestic Violence.

In July 2010 austerity driven restructuring of the public administration dismantled ANES. ANES was re-designed with considerably smaller competences and budget as a Directorate under the Ministry of Labor, and only the central structure was maintained, while the local structures were dissolved<sup>72</sup>. As part of the 2009 austerity package the National Agency for Family Protection was also restructured and one year later dismantled together with ANES. The decision of the Government was strongly criticized by NGOs, academics, national and European MPs and considered a threat to gender equality objectives assumed by Romania<sup>73</sup>.

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<sup>71</sup> The most active and visible group were the members of FILIA NGO. They also displayed antiracists, anti-homophobic messages.

<sup>72</sup> Governmental Decision no 728 from July 21, 2010 to amend and complete Governmental Decision no 11/2009 regarding the organization and functioning of the Ministry of Labor, Family and Social Protection

<sup>73</sup> On July 5 2010, a protest letter was sent by NGOs to the President, Prime Minister and the Ministry of Labor, Family and Social Protection. <http://www.mediafax.ro/social/posturile-restructurate-de-la-anph-anpfdc-si-anes-sunt-de-la-administrativ-financiar-si-relatii-cu-publicul-6672716>

2009 has also brought the Parliamentary Commission on Equal Opportunities for Women and Men in the Chamber of Deputies under attack in the Parliament. The proposal of dismantling faced strong criticism from Romanian NGOs and the initiative was abandoned<sup>74</sup>.

Institutional restructuring severely affected Romanian gender equality policies. According to the 2010- 2011 Activity Reports elaborated by the Directorate the objectives of the 2010-2012 National Strategy could no longer be met. Two gender equality projects also had their contracts cancelled in 2011<sup>75</sup>. In addition expert staff from closed down county offices either lost their job or were redirected in other local agencies. Dismantling of the National Agency for Family Protection led to stalled implementation of the domestic violence policy.

Following forceful protests by women's groups together with diverse other human rights organizations following 2012 under the new social democratic government a series of progressive changes took place.

In 2014 the Directorate became a Department coordinated by a state secretary who had the administrative power to issue specific decisions and orders in the field. In 2015, ANES was reinstated, this time with extended competences including the field of combating and preventing violence against women thus merging into ANES competences of the previous National Agency for Family Protection<sup>76</sup>. Domestic violence law and policies were also amended in 2012 and 2013 (Popa 2015).

The National Council for Combating Discrimination (NCCD) is the equality body established under the EU acquis for the enforcement of anti-discrimination law in Romania. No disruption is noted in relation to the crisis in the activity of NCCD. The 2011 Report of NCCD states that the institution received 9 petitions on gender discrimination in 2009, 18 in 2010 and 15 in 2011, on disability 49 in 2009, 34 in 2010 and 42 in 2011 and on ethnicity 62 in 2009, 55 in 2010 and 62 in 2011<sup>77</sup>.

At the same time strategic planning for gender equality continued. The National strategy on equal opportunities between women and men 2010-2012 was adopted in the midst of the crisis together with an Action Plan for its implementation<sup>78</sup>. Gender based violence and domestic violence policy was one of the gender equality fields that were most hard hit by the crisis in Romania (Baluta 2011). Following the initial dismantling of the institutional infrastructure and the financial support available for victim support, in response to sustained struggles of civil society's actors, the field of combating gender violence has witnessed important progress during the years of the Social Democratic governments. In 2012, the 2003 law was amended to include the order of protection, and improved funding for organizations running shelters. In 2015, new

<sup>74</sup> In September 2009, an MP from the Democratic Union of Hungarians in Romania argued that the Commission should be dismantled. On September 28, a protest letter was sent to the leaders of political parliamentary groups, the Presidents of the Chamber of Deputies, Commission on Equal Opportunities for Women and Men and to the Commission in charge with Procedures within the Chamber of Deputies. Also two NGOs, FILIA- Center for Curricular Development and Gender Studies and Juridical Resources Center asked to participate at the parliamentary debates on the topic.

<sup>75</sup> Oana Baluta personal communication.

<sup>76</sup> The legal provision establishing the Agency was Law no 229/2015 from October 5, 2015 amending Law no 202/2002 on equal treatment and opportunities for women and men

<http://www.mmuncii.ro/j33/index.php/ro/comunicare/comunicate-de-presa/4082-ip-reinfintare-anes-07102015?highlight=WyJhbmVzI0=>

<sup>77</sup> [http://api.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2016/10/Raport\\_de\\_activitate\\_CNCD\\_pe\\_anul\\_2011.pdf](http://api.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2016/10/Raport_de_activitate_CNCD_pe_anul_2011.pdf), p. 16

<sup>78</sup> <http://www.mmuncii.ro/pub/imagemanager/images/file/Domenii/Egalitate%20de%20sanse/PREZENTARE%20STRATEGIA%20NATIONALA%202010-2012.pdf>



legislative provisions adopted by the Parliament obliged judges to use expedite decision processes for cases of violence. In 2016, The Council of Europe *Convention* on preventing and combating violence against women and domestic violence was ratified by the Romanian Parliament (Popa 2015, Krizsan and Roggeband 2017)).

### *Provisions*

According to a 2011 research report that analyzed the impact of the economic crisis on women, in the field of gender equality in Romania, in addition to institutional restructuring austerity measures affected women especially through labor market policies, income, pensions, healthcare, education policies and family policies (Băluță, 2011). Part of this impact was indirect, falling disproportionately on women as a particularly vulnerable group, part of it related to policies designed without taking into consideration gender equality aspects of the problem. Measures included a 25% cut of salaries in the feminized public sector, a cut of pensions of 15% and a 5% increase of VAT. No progressive cuts were considered, irrespective of the horizontal and vertical segregation of the labor market. Also, Law 277/2010 decreased social transfers- for a range of social categories, from single parent families to families whose children have a poor school attendance record. (Iancu, 2011, p. 9-40)

Parental leave and childcare services were particularly hard hit. This field was characterized by a critical gap between the state supply of child care services and the demand from families, prior to the crisis already. Families relied largely on informal care provided by grandparents, other relatives or on baby-sitters, if income permits. Austerity measures resulted in the elimination of the package for newborns including clothes and hygiene products starting with December 2010, and a reshuffling of the parental leave scheme. The 2010-2011 budgetary cuts affected the length of parental leave and the terms of financial compensation during the leave. First the parental leave allowance was cut with 15%, next the allowance was reduced from 85% of the 12-month average earnings before birth to 75% and a lower ceiling introduced. Parental leave allowance was now higher for those who stayed out of the labor market no longer than one year, and lower in case of two year parental leaves. The government argued that these reductions were the outcome of agreements with the Troika. The changes encouraged sooner return of women to the labor market as benefits were correlated with the length of parental leave and financial stimulus were introduced for early returning parents. At the same time poor provision of childcare services showed a contrary tendency (Băluță, 2011, p. 41-76). Legislative predictability worsened during the crisis, as family policies, especially parental leave provisions, underwent numerous changes. Widespread protests indicated the popular discontent with these measures.

The health sector underwent a restructuring process. In 2008 already Romania had the lowest public spending rate for healthcare in the entire EU. Cuts in public expenditure impacted “women as patients, women as informal caretakers and women employees in the health public system” (Iancu, 2011, p. 111). Also, outmigration of workers and nurses following the austerity measures made the lack of health personnel a chronic issue of the Romanian health system.

The crisis provided an opportunity for longer-term retrenchment in the public pension system (Adăscăliței, 2015: 16- 18) following the agreement with the IMF. These reforms had gendered impacts as well as impacts on disabled persons. One of the discussed issues was to increase the retirement age for women to 65 years and the contribution years to 35. The reform stirred debates and opposition. President Băsescu, vetoed the proposed law, arguing that the increase in the retirement age for women to 65 years would ignore the social reality where

women are confronted with a double burden as they work on the labor market and at home. The debate that followed concentrated on the retirement age and no consensus was reached. The law was passed unilaterally by the governing coalition at the end of 2010 and introduced higher retirement ages for men and women (65 and 63 years) (Adăscăliței, 2015:20). Other measures included an increase in contribution rate by 3.8%, gradual shift to price indexation, recalculation of pensions regulated by special laws (military, police, and national security officials) and integration of these schemes into the public pension system (Adăscăliței, 2015:18).

## Disability

In the midst of the economic crisis one major document coordinated policies for persons with disabilities: The National Strategy “Equal opportunities for disabled people – towards a society without any discrimination.” It was adopted in 2005<sup>79</sup> for a seven-year period (2006-2013) to ensure both protection and social inclusion of disabled people. In January 2011, Romania ratified the Convention on the Rights of Persons with Disabilities (CRPD).

The implementation and monitoring of the National Strategy falls under the supervision of The National Authority for the Disabled People (NADP). NADP is the specialized institution within central administration that elaborates and coordinates specific policies and promotes the rights of disabled people<sup>80</sup>. In 2005 the National Institute for Prevention and Combating Social Exclusion of Disabled People was established under the coordination of NADP<sup>81</sup> as an agency charged primarily, though not exclusively, with research. Between June 2003 and July 2010 NADP functioned within the Ministry of Labor, Social Solidarity and the Family. NADP similarly to ANES, the gender equality body, was heavily targeted by the austerity measures. It was disintegrated in 2010 and redesigned as a smaller office within the Ministry of Labor.<sup>82</sup> As the institution was reorganized and downgraded it could only reach its objectives to a limited extent. In January 2015, the NADP was reinstated as the main coordinating body for disabled people (with the word handicap from the previous established institution replaced by disability).

Austerity measures had critical impact on people with disabilities. People with disabilities were the beneficiaries of different social transfers and, specific social services, and persons with severe disabilities could opt for a personal assistant (usually a family member, who worked under a contract signed with local authorities) or for a caregiver allowance<sup>83</sup>. Payments - which were ridiculously small- were provided by local authorities due to previous decentralization. Not only social transfers per se were cut, but also the salaries of the professional caregivers were diminished with 25%. People with disabilities were affected both as beneficiaries of social transfers and of professional care.

<sup>79</sup> Decision of the Government no 1175 from September 29 2005 approving the National Strategy for the protection, integration and social inclusion of disabled people for 2006-2013.

<sup>80</sup> Ordinance no 14/2003 on the set up, organization and functioning of the National Authority for Persons with Handicap.

<sup>81</sup> Oder no 245 from September 2005 issued by the President of the National Authority for Disabled People concerning the approval of the Organizing and Functioning Regulations of the National Authority for Disabled People and the National Institute for Prevention and Combating Social Exclusion of Disabled People

<sup>82</sup> Governmental Decision no 728 from July 21, 2010 to amend and complete Governmental Decision no 11/2009 regarding the organization and functioning of the Ministry of Labor, Family and Social Protection; <http://www.mediafax.ro/social/posturile-restructurate-de-la-anph-anpfdc-si-anes-sunt-de-la-administrativ-financiar-si-relatii-cu-publicul-6672716>

<sup>83</sup> Law no 448/2006 on protection and promotion of disabled people - incorporating additional changes. [http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L448-2006\\_rep.pdf](http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L448-2006_rep.pdf)

Payments were delayed by public authorities. Moreover, irrespective of the low wages “providers were only paying the social security contributions of their staff without paying out the salaries for several consecutive months” (Hauben et. al. 2012:46). Availability and timely provision of social services for people with disabilities were affected by lack of financial backing/resources at lower levels of government. Dedicated NGOs issued warnings concerning the lack of resources that triggered dismissal of personal assistants. Cuts in health care spending also had disproportionate impact on the lives of people with disabilities, including the lack of compensated drugs. At the same time there was little change in the employment status of people with disabilities or in approaches to promoting social inclusion (Hauben et. al. 2012). The research of SAR NGO (2009) concluded that when it comes to labor market, the economic crisis seems to have affected job loss of disabled people almost at the same level (7%) as the overall population (6.1%).

Persons with disabilities face a 2.9% higher poverty risk in Romania than persons without disability (Hauben et. al. 2012:23). The austerity measures deepened poverty for disabled people and for their households. Any progress made in the area was either slowed or faltered. There has also been registered discontinuation of services established previously with ESF funding and “in September 2012, Romanian NGOs, many of which are social service providers, formed a coalition in order to campaign against the huge delays in payments from ESF funding from the government” (Hauben et al, 2012, p. 43). NGOs also asked that disabled people be exempted from the 25% cut of income<sup>84</sup>. A 2014 national research monitoring the implementation of the Convention for People with Disability showed that in 2013, the number of institutionalized persons increased (from 1564 to 1875), and the reasons for this trend include lack of family support, impossibility to provide for oneself and even lack of a place to live (Tudose, Totoliciu, 2014:16-17).

Romania has also introduced the requirement of re-examination of disability status. One third of those re-assessed lost status (Hauben et. al. 2012:105) and as a consequence funding and support.

Austerity and crisis hit disabled persons through general measures that affected disabled people disproportionately, measures targeted specifically at disabled people as well as through the retrenchment of the dedicated disability agency. While during the same period Romania ratified the UN Convention on the Rights of People with Disabilities among the first member states of the EU, it is important to note the 2015 end-of-mission statement of Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights on Romania: “the situation of persons with disabilities is far from the world that the Romanian Government has pledged to realize through the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2010”<sup>85</sup>.

## **Ethnicity/Race domain**

Policies on race and ethnicity in Romania address both the sizable Roma minority as well as several other ethnic minorities living in the country. While both aspects represent important policy issues in Romania, equality policy commitments vis a vis the EU concern mainly Roma inclusion.

<sup>84</sup> <http://mures.citynews.ro/eveniment-29/scrisoare-disperata-handicapatii-ii-cer-ajutor-lui-basescu-92351>

<sup>85</sup> For the complete statement, see:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=E>.

Several institutions play a role in implementing the Strategy of the Government on ethnic minorities. Within the General Secretariat of the Government, there is a Department for Interethnic Relations established in 2004 whose role is to implement policies for ethnic minorities, to elaborate dedicated strategies, and to monitor the implementation of national and international legislation concerning ethnic minorities, etc.<sup>86</sup>. The National Agency for Roma (NAR) was established at the end of 2004, as the central public administration body, with responsibility for coordinating public policies for Roma. Unlike the main gender or disability bodies that were downgraded in 2010, NAR was the site of political battles after the 2012 elections when its “transfer” under the control of the Senate was discussed. Local actors criticized the political game as it weakened policy implementation (Decade Report 2013:9). At the same time, it was planned that the Department for Interethnic Relations would be placed under the Chamber of Deputies of the Parliament (Decade Report 2013:9).

The National Council for Combating Discrimination (NCCD) has the responsibility of enforcing Romania’s anti-discrimination policy by prevention, mediation, investigation and sanctioning, for discrimination on a variety of inequality grounds including ethnicity/race criteria. In contrast with dedicated gender and disability bodies the austerity measures package did not dismantle the NCCD. However a budgetary analysis for the period between 2002 and 2011 shows a fluctuation of public financing for the institution with a peak in allocation in 2008 followed by a gradual decrease in the coming years. In addition the government failed to nominate members to the Board of NCCD starting with autumn 2009. In the circumstances of the political blockage the institution worked without a Board for 8 months.

While there was no institutional retrenchment in the field the sanctions applied for race discrimination as defined by the Race Directive were found to be “immaterial and insufficiently dissuasive” in Romania (Decade Report 2013:21). To address this issue in 2013 the government initiated consultation on a draft emergency ordinance amending the anti-discrimination legislation. The initiative came “in response to the European Commission’s notification to the Romanian government concerning a series of provisions that breach the EU Race Directive. The amendments included an increase in the value of sanctions applied in cases of discrimination against individuals (1,000-30,000 RON) as well as against groups or communities (2,000-100,000 RON)” (Botonogu et. al.2012:50)<sup>87</sup>.

The Shadow Report published by the European Network Against Racism (ENAR) for 2010-2011 concludes that “political and economic developments in 2010 have facilitated a growing trend of racism and discrimination” in Romania (Botonogu et. al.2012:3). Austerity measures were implemented in a context already characterized by poverty and social exclusion. In addition to the disproportionate impact of austerity measures taken by the Government on Roma a retrenchment of integration policies and a backsliding of some policies uniquely designed for Roma can also be noted.

Two main policy documents were applicable to Roma inclusion policy in the immediate context of the crisis. The Government’s Strategy to Improve the Condition of Roma for 2001-2010 was the first programmatic, political commitment assumed by the Romanian Government during the EU integration process. The main aim of the Strategy was to stimulate Roma’s participation in different societal layers (economy, social, education, culture, politics) and also to combat poverty and discrimination (Preoteasa, Cace, Duminică, 2009, p. 33). In line with the EUs Framework Roma Strategy the Romanian government prepared in 2011 The Strategy of the

<sup>86</sup> <http://www.dri.gov.ro/despre-noi/>

<sup>87</sup> Unclear if adopted ultimately (editor)

Government of Romania for the Inclusion of Romanian Citizens Belonging to the Roma Minority for the Period 2012-2020 (NRIS).

The economic crisis affected budgetary allocations made for integration commitments. In 2012 there were no substantial actions taken to implement the NRIS. Budget allocations for the implementation of the strategy were inconsistent. Adoption of NRIS in 2011, prior to the adoption of the 2012 State Budget, led to measures included in the policy without clear allocation of funding. Funding was also problematic from the 2013 State Budget (Decade Report 2013:8). Backsliding was noted in the decrease in number of Roma school mediators and Romani language teachers employed within the education system (Decade Report 2013: 12-13). Cuts for healthcare affected the positions held by health mediators. (Decade Report 2013:124) If in 2008, 688 health mediators were registered; in 2012 only 420 health mediator positions were budgeted (Decade Report 2013:16). As in the domain of disability, the decentralization of services generated backlash as it made health mediators dependent on local authorities' capacity to understand their role and scope of activities (Decade Report 2013:16).

In 2010, the Romanian Government decided to cut public spending on education and at the same time combat school absenteeism by correlating family allowances with school attendance of children.<sup>88</sup> In 2010, UNICEF showed that absenteeism increased with 10% and as the number of people facing poverty will grow during the economic crisis, it will also impact drop out (Iancu, 2011, p. 30).

At the same time progress of educational policies can also be observed. The crisis did not affect the Romanian government's affirmative action measure in education aimed at Roma students, thus the places reserved for Roma students in the public education system were maintained.

Overall however taking into account the nature of the austerity measures and the precarity of the majority of the Roma population at the time when the crisis hit it can be argued that the social exclusion of Roma worsened during the crisis, austerity measures and particularly the retrenchment of the social protection system increased social exclusion. The impact of the crisis is more severe for people already experiencing poverty and social exclusion.

At the same time the crisis led to an increase of anti-Gypsyism, in political discourse and the media.(Botonogu 2012:49) The increase of anti-Gypsyism was also supported by the French government decision to expatriate Romanian and Bulgarian Roma in 2010. Local politicians also failed to assume responsibility for an absence of a working Roma active integration policy in Romania. According to ENAR, "Roma are portrayed as the scape-goat for the economic crisis, for the alleged alteration of the Romanian identity abroad and for the failure of Romania to become member of the Schengen area." (Botonogu 2012:36) In September 2010, one MP submitted a legislative proposal<sup>89</sup> asking to change the terminology in official documents from Roma to Gypsy in order to overcome alleged confusions between Roma and Romanians. The proposal was rejected by the National Roma Agency, the Inter-ethnic Relations Department, the Government's Secretariat General, Ministry of Foreign Affairs and the NCCD and later on by the Romanian Senate. During the economic crisis, there were no special measures taken by the government to combat racism (e.g., public campaigns), though NCCD was an active institution both monitoring and sanctioning public racist interventions of public figures and, politicians.

<sup>88</sup> See Law 277/2010 regulating the family allowance, art 28 (2), [http://www.prestatiisociale.ro/wp-content/uploads/2016/06/legea\\_277\\_2010.pdf](http://www.prestatiisociale.ro/wp-content/uploads/2016/06/legea_277_2010.pdf)

<sup>89</sup> Silviu Prigoană, member of the Liberal Democratic Party at that time [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?idp=11279](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=11279)

Romanian President, Bănescu was for example sanctioned in 2010 by NCCD for saying that “very few Roma want to work” and “traditionally many of them live off stealing.”<sup>90</sup>

During the economic crisis cases of hate speech were registered in the public discourse and they correlated with racist political decisions. In 2013, a local official<sup>91</sup> stated that Roma women should be sterilized if after the birth of the first child, social investigation concludes the woman lacks adequate financial resources; and that the state should not have to provide social benefits.

Scandalous eviction cases were another aspect of public racism during this period. In 2010, 75 Roma families were evicted from their homes in Cluj and taken at the outskirts, near a dump site, to live in inhuman conditions in an area also lacking public transportation. The Court of Justice in Cluj decided the eviction was illegal. In 2011, the mayor<sup>92</sup> of Baia Mare built a high meters wall to separate an area where Roma were living from the rest of the city. NCCD sanctioned the official. One year later in the same city, 38 Roma families were moved into a building filled with toxic wastes. The decision to evict Roma families in Cluj generated a powerful grass roots movement mobilizing local activists and academics against environmental racism in the area.<sup>93</sup> Experts warned that number of ghettos in Romania is expected to grow significantly in the coming years (Botonogu 2012:15).

## Conclusions

Policies addressing economic crisis reflected, reinforced, and reconstituted long-established patterns of inequality in Romania. In the urgency of the crisis, little attention has been given to the fact that budget cuts, retrenchment of gender equality bodies and strategies, reduction in family benefits, reduction in parental allowance and disability allowance, pension’s cuts, reforms of the public sector (wages/personnel), retrenchment of ethnic integration policies could harm these vulnerable groups disproportionately. We notice further a failure to address structural issues of inequality, a lack of impact assessments of policy changes, and an overall backsliding on equality.

Not all the fields were hit the same, especially if we look at infrastructure and policy provision in the gender, disability and race/ethnicity domains.

In terms of *infrastructure*, disability and gender equality bodies were dismantled, thus opening wide doors for the retrenchment of gender equality and disability strategies. Their dismantling conveyed a negative message as these domains were perceived as second class policies. On the other hand we see partial alterations of NCCD in terms of financial allocation, but no attempts to dismantle the antidiscrimination body as was the case with the other two bodies. The ethnicity/race dedicated institutions suffered due to budgetary allocations that impeded the implementation of strategies but also due to political battles. Still, ethnicity/race dedicated institutions were not dismantled by the austerity packages. Prior to the crisis, NCCD and NAR had a different degree of administrative independence. At the same time the antidiscrimination coalition and Roma NGOs were more powerful than disability and gender

<sup>90</sup> <http://stiri.botosani.ro/stiri/actualitate/basescu-amendat-pentru-afirmatii-rasiste-dupa-ce-a-spus-ca-romii-quottraiesc-din-ce-furaquot.html>, his declaration dates from November 3, 2010.

<http://enar-eu.org/Romanian-President-sentenced-Hate>

<sup>91</sup> Rareș Buglea is a member of the local council in Alba and a member of The National Liberal Party.

<sup>92</sup> Cătălin Cherecheș won a second mandate as a mayor in 2012 supported by The Social Liberal Alliance. ,

<sup>93</sup> <http://blog.activewatch.ro/freeex/rasismul-la-romani/>

equality NGOs. Even if the NGOs movement may not have played the most important role, its role should not be neglected either. Women's NGOs proved more active and powerful in altering gender-based violence policies. Nevertheless, they were less influential in regards to preserving the status quo of gender equality or gender-based violence bodies.

Policy provision encountered transformations in all three domains. The austerity measures comprised not only of general policy changes (cuts in salaries, pensions, raise of VAT to 24%), but also more specific ones that targeted the three inequality fields specifically. Changes with regards to educational and health mediators, of parental leave provisions, or public provision of care affected these groups in a targeted manner. *Governance* worsened by the crisis, with decentralization of services affecting particularly Roma and persons with disabilities. Also supranational governance played an important role. The measures enacted in Romania reflected the economic and social preferences of the Troika and particularly the IMF towards austerity and public cuts. The color of the Government also had a role since most cuts were executed under a neoliberal government and the following social democratic Government reinstated the gender and disability bodies a few years later.

Social dialogue was also affected by the political response to the crisis. Lack of social dialogue fed into powerful protest reactions with 2012 considered as a landmark for the beginning of a culture of protests in Romania.

The economic crisis was also a social and moral crisis as the austerity measures eroded even more the social and moral solidarity among groups. Some individuals or groups became future scapegoats for economic and political faltering. Politicians themselves amplified the social cleavages when they tried to legitimate austerity measures as necessary interventions. The political dichotomy deepened the disconnection between groups and frayed the social fabric. It is a moral, social, political dichotomy that has been amplified by the political communication of the crisis and the austerity measures. With each election cycle the 'backward voters' (usually old and poor) oppose progress of the country. This rhetoric has its roots in the context of the crisis.

#### **D. Spain Case Study (by Joanna Kostka)**

According to Eurostat, between 2008 and 2012 Spain's Gini Coefficient increased from 31.9 to 35.0, making it one of the EU member states with the highest level of inequality (measured as equivalent disposable income). At the same time, in 2014 Spain's ranking in the Global Gender Gap Index dropped 14 places: from 12 to 26. These disheartening statistics indicate the negative impact of austerity policies adopted in response to Spanish financial crisis, which began in 2008 and reoccurred in 2012. Despite repeated calls from the United Nations and European human rights bodies, Spain has continued with the implementation of harsh budget cuts and other austerity-driven reforms that are depriving people of their basic human rights. The austerity measures have unleashed dramatic backsliding in equality regime, which have seen positive developments under the socialist government. The mapping exercise demonstrates severe retrenchment in both gender and disability domains. While race/ethnicity domain appeared more resilient, by 2011 the new conservative government began to dismantled integration programs and initiatives.

#### **Political Context**

The development of the Spanish economy from the second half of the 1990s until 2007 resulted in the increasingly higher levels of employment, wealth and welfare state development, which translated into higher standard of living for the vast majority of Spanish citizens. Under the socialist government of Zapatero (2004 - 2010) gender equality, social inclusion and integration policies gained political leverage, leading to a significant expansion of equality infrastructure (in all equality fields) and transposition of European anti-discrimination legislation. By 2008, Spain's equality laws and increased social spending in support of working parents had begun to perform a double fiscal function: the programs supported women's entry into paid work while funding for care workers created new employment opportunities. In this context the number of women in a paid job doubled, increasing from 4.1 to 8.2 million and the employment rate gap between Spanish women and the average in EU countries diminished sharply, falling from 18 percentage points in 2000 to only 4.1 in 2007<sup>94</sup>. This meant that in a relatively short time span Spain has become a model in legislative policies for gender equality at the international level. While the social security system remained means-tested and underdeveloped for the needs of the population<sup>95</sup>, progressive developments took place particularly in child care, disability care (including funding for independent living) and social support for the elderly. Moreover, since at least 2003, the government begun to recognize the reality of cultural diversity and has focused attention on the social integration and inclusion of immigrants and minorities.

However, the country's achievements across different equality fields have been severely endangered by the policies adopted in response to the economic crisis in Europe. In 2008 Spain simultaneously experienced economic, financial and fiscal crises with two peaks that created a very difficult environment for the government and triggered policy changes across different

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<sup>94</sup>Eurostat (2016) Employment statistics, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_statistics)

<sup>95</sup> See, Guillén, A. and León, M. (eds.) (2011) *The Spanish Welfare State in European Context*. Aldershot: Ashgate.



sectors<sup>96</sup>. In 2009, Zapatero's government adopted an economic stimulus plan, worth an estimated 5% of gross domestic product, including 8 billion euro of infrastructure products and a 2,500 euro cash transfer, 'Baby Cheque', for each new-born child. However, these measures proved unsuccessful in curbing escalating unemployment<sup>97</sup> and mounting public deficit - 11.2% of GDP in 2009. In May 2010, after initially denying Spain was in trouble, Zapatero announced a slew of austerity measures worth around 1.5% of GDP, including wage cuts for civil servants, cancellation of the "Baby Cheque" and public pension freeze. Amidst protests and general strikes, the government also introduced a two percentage point rise in Value Added Tax and increased the retirement age to 67 from a previous 65.

“The Spanish Constitutional Court concerned itself with the right to health protection, in relation to policies restricting the level of healthcare costs borne by the State and reducing access to care for nonnationals with no legal right of residence (Roman 2014). It assessed the advantages and disadvantages of the measures taken, referring to the link between protecting the right to health and protecting the right to life<sup>36</sup>. In 2013, the Court of Justice of the European Union (CJEU) ruled against contractual clauses imposed upon a debtor who had been evicted from his house due to insolvency<sup>37</sup>. This decision led the Spanish Supreme Court to annul a number of measures relating to contractual interest rates, and to establish criteria applicable to future disputes (González Pascual 2014; Roman 2014).” Ghailani 2016:174)

On November 20, 2011 Mariano Rajoy's centre-right People's Party won an absolute majority in parliamentary elections as voters punished the outgoing Socialist government for the worst economic crisis in generations and the EU's highest unemployment rate. In his first comments, Rajoy called on all Spaniards to work together to overcome the debt crisis and promised a new economic policy. Shortly after, Rajoy government, under much pressure from EU institutions, begun passing a package of tougher policy measures aimed at regaining the confidence of the markets and the EU. In 2011, under the Budget Stability Organic Law [Ley Organica de Esatilidad Preupustaria] the government approved public spending cuts amounting to some 22 billion euro, and increased VAT to 23%. This has been accompanied by an anti-fraud plan against undeclared work and people receiving unemployment benefits unlawfully. Although the introduced measures detailed beneficiary impact statements, despite long-standing Spanish commitments to gender budget analysis<sup>98</sup> these impact statements did not address gender, and gender-neutral language and concepts were used throughout.

In the same year, a small group of activists launched Spain's anti-austerity Indignados movement that quickly grew in strength, spreading beyond the country and shaking the very core of politics. Indignados movement has managed to block some of the most drastic reforms. It also filtered into city halls in major cities like Madrid and Barcelona, with activists now holding prominent positions after municipal elections. In a historic move, the December 2015 polls put an end to Spain's long-standing two-party system thanks to the rise of Podemos (a far-left, anti-austerity party inspired by the Indignados movement) as well as that of Ciudadanos, another new grouping considered more to the right, leading to a hung parliament. But this sweeping change has yet to make an impact. Spain is still being ruled by a caretaker conservative government blamed for the very austerity that the Indignados movement wants to quash.

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<sup>96</sup> Jordana, J. (2014) Multiple Crises and Policy Dismantling in Spain: Political Strategies and Distributive Implications. *Political Studies Review* 12:224-238.

<sup>97</sup> In the first quarter of 2010, Spain's unemployment rate tops 20% for the first time in nearly 13 years with a record 4.6 million people unemployed.

<sup>98</sup> Walby, S. (2009) *Globalization and Inequalities: Complexity and Contested Modernities*. London: Sage.

## Gender Domain

In gender domain, Spain has backslided on five out of six indicators, demonstrating a dramatic retrenchment of gender equality schemes. A 2015 report prepared by the United Nations Committee on the Elimination of Discrimination against Women, states that the economic and financial crisis and the austerity measures implemented in 2008 have had negative effects on all spheres of women's lives. The analysis of the 2011 and 2012 Council's recommendations to Spain, and the studies of the 2011 national reform programs in the EU-27<sup>99</sup>, show that gender has not been mainstreamed in the design of policy responses to the crisis in Spain.

The high level of unemployment in Spain has brought new scrutiny of women's economic status. Early in the recession Spanish women did not face more unemployment than men, as job losses were concentrated in construction and industry, both of which were heavily affected by severe reversals in Spain's domestic housing market and were dominated by men<sup>100</sup>. However, once the recession began to affect the service sector, (in particular education, health and social work), women's unemployment rose rapidly and by 2010, surpassed men's (19.72% for men; 20.56% for women)<sup>101</sup>. It is important to mention that whereas men have reacted to their massive job losses in part by retiring from the labor market (300,000 men became inactive during the four years), some 800,000 women have in contrast entered the labor market to counteract family income losses<sup>102</sup>. However, these working women (especially those with lower qualifications) faced increasingly precarious working conditions, characterized by fixed-term employment contracts offered for short period<sup>103</sup>, and jobs in the informal economy. In this context feminists have criticized the Labor Reform (RD 3/2012) approved by the Spanish government in 2012 because of its negative impact on women. The Labor Reform increases unilateral opportunities for employers to introduce more flexible employment conditions, without having to respect collective agreements. This makes it easier for employers to fire employees, especially those who take on most of the burden of care, i.e. women<sup>104</sup>. Women employed in the public sector were further affected by the cuts in public employees' wages (by

<sup>99</sup> Bettio, F., Corsi, M., D'Ippoliti, C., Lyberaki, A., Lodovici, M.S. and Verashchagina, A. (2012) The Impact of the Economic

Crisis on the Situation of Women and Men and on Gender Equality Policies. Brussels: European Commission. /

Villa, P. and Smith, M. (2011) National Reform Programmes 2011: a Gender Perspective. External report commissioned by the European Commission DG for Justice, Unit D1 Equality between men and women. Brussels: European Commission.

<sup>100</sup> Lahey, K.A. and Villota, P. (2013) Economic Crisis, Gender Equality, and Policy Responses in Spain and Canada. *Feminist Economics*, 19:82-107

<sup>101</sup> Instituto Nacional de Estadística (INE). 2010. Paying Entities, Recipients, Remunerations and Withholdings, by Sex, Tax Information. Available at: <http://www.ine.es/>

<sup>102</sup> Gonzalez Gago, E. and Segales Kirzner, M. (2014) "Women, Gender Equality and the Economic Crisis in Spain", in Karamessinis, M. and Rubery, J. (eds.) *Women and Austerity: The Economic Crisis and the Future for Gender Equality*, New York: Routledge (pg. 236)

<sup>103</sup> In 2008, 80% of women were employed part-time Lahey, K.A. and Villota, P. (2013) Economic Crisis, Gender Equality, and Policy Responses in Spain and Canada. *Feminist Economics*, 19:82-107.

<sup>104</sup> Lombardo, E. (2016) The Spanish Gender Regime in the EU Context: Changes and Struggles in Times of Austerity. *Gender Work and Organization*, 24(1):22-33.

more than 5% on average) in 2010 and the blocking of public employment recruitment in 2011<sup>105</sup>.

While austerity measures did not explicitly target existing family and childcare benefits, dismantling was introduced as a strategy of reducing policy density by eliminating instruments and programmes considered discretionary. Thus direct transfers, “Baby Check”, were stopped, while the provision of other benefits in kind – namely childcare services – slowed down<sup>106</sup>. At the same time the extension of paternity leave was delayed and eventually abandoned. Dismantling strategy also affected the health sectors, as spending on health was reduced by more than 15% in real terms in only two years, (between 2010 and 2012). The long-term care benefits governed by the 2006 Dependency Law [Ley de Dependencia] were also suspended and the assigned budget cut. This corresponded with decreasing funding of regional retirement homes and social services centers; cancelling of public assistance to dependent people; and eliminating home assistance. The payment to family carers (mainly women) has also been cut by 15% and their social security contributions have been eliminated<sup>107</sup>. In addition, pensioners became subjected to a co-payment of 10% of their costs of medicines, up to a monthly maximum of 8 euro (for those with annual pensions below 18,000 euro). Among these pensioners 59% of women receive less than the minimum wage (641.4 euro/month in 2012); that is far below the income limit, so that the chronically ill elderly will bear a high cost<sup>108</sup>.

Women’s economic situation was also disproportionately affected by the dwindling purchasing power of the minimum wage (not full in line with the costs of living) and the VAT rise (from 16% to 18% in 2010 and to 23% in 2011). This is because women tend to hold lower-paid jobs and are more dependent on non-contributory benefit schemes, which use the minimum wage as a reference for calculating payment<sup>109</sup>. Additionally, in response to the erosion of household incomes and cuts in care services women were forced to pick up the unpaid domestic and informal work (as household responsibilities continue to be not shared equally<sup>110</sup>).

Finally Spain has increased the retirement age, from 65 to 67 years, while also raising the number of years of contribution needed to collect 100% of the amount from 35 to 37 years. Public pensions were frozen in 2011 and the new government raised them in 2012 by only 1%, when average pensions in Spain stand at only 63% of the EU-15 average<sup>111</sup>. In fact, persons solely dependent on non-contributive funds – particularly represented by female widows – only receive 357.7 euro a month, an amount that is far below the poverty line<sup>112</sup>.

### *Development in Equality Infrastructure*

<sup>105</sup> Gonzalez Gago and Segales Kirzner, (2014)

<sup>106</sup> Jordana (2014)

<sup>107</sup> Gonzalez-Gago and Segales-Kirzner (2014)

<sup>108</sup> Gonzale- Gago and Segales-Kirzner (2014)

<sup>109</sup> Eurostat (2016) Income distribution statistics, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Income\\_distribution\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Income_distribution_statistics)

<sup>110</sup> 93% of women dedicate time to household and family activities compared to men’s 70% (INE, 2007)

<sup>111</sup> GESTHA (2012) “The average retirement pension in Spain accounts for 63% of the average benefit of the EU-15” [La pension media de jubilacion en Espana supone el 63% de la prestacion media de la UE-15], available at: <http://gestha.es/index.php?seccion=actualidad&num=171>

<sup>112</sup> Institute Nacional de Estadística (INE) (2013) “Evaluation (2004-2013) of the poverty risk rate by age and sex” [Evaluacion (2004-2013) de la tase de riesgo de pobreza por edad y sexo], available at: <http://www.ine.es/jaxi/tabla.do?path=/t25/p453/provi/l0/&file=01002.px&type=pcaxis&L=0>

In 2010, equality infrastructure also began to be dismantled as part of ‘public saving strategy’. The central government budget dedicated to gender equality policies decreased at all governmental levels. Paleo and Alonso<sup>113</sup> show that between 2002 and 2008 the budget dedicated to gender policies increased by 57.2% at the central level, yet in the 2009–13 period the budget decreased at all governmental levels (except for Andalusia), reaching 34.1% at the central level. It has been argued that these cuts led to dismantling of equality infrastructure and decreased consideration of gender problems in public policies<sup>114</sup>. The Report of the CEDAW Committee<sup>115</sup> lists a number of negative elements of the new Spanish policies of gender equality, which include the elimination of the Ministry of Gender Equality<sup>116</sup>, the replacement of the Women’s Institute by the Institute of Women and Equality Opportunities<sup>117</sup> and the withdrawal of gender institutions in some regional administrations (Galicia, Murcia and Madrid). Subsequently, the gender equality policy has been transferred to the Health and Social Services *and Equality* Ministry, resulting in de-prioritization of gender equality objectives, and removal of short term goals and quotas. The report also notes that as of 2010 there is no consistent strategy on gender equality at the state level and an appropriate coordination between the central government and the Autonomous Communities is missing. At the local level, Law 27/2013 of ‘rationalization and sustainability of local administration’ has eliminated article 28 of Law 7/1985, which granted local government the power to realize activities for the promotion of women<sup>118</sup>.

The right-wing government’s secretary of state for social services and equality justified these retrenchments by referring to the economic crisis and the supposedly poor administration of the former government. Similarly, EGGSI (the European Commission’s network of experts in the fields of employment, social inclusion and gender equality issues) insisted that: ‘the reason put forward for this change was savings in administrative costs within the context of the fiscal austerity demanded by the current economic crisis’<sup>119</sup>. However, critics maintain that downsizing and downgrading have neither generated significant savings nor improved efficiency of service provision. Civil Society Shadow Report 2008–13<sup>120</sup> strongly criticized both the budget cuts in equality policies and the restructuring of the equality machinery at the central and regional levels. Feminist organization also stress that the austerity measures reinforce traditional division

<sup>113</sup>Paleo, N. and Alonso, A. (2014) ¿Es solo una cuestión de austeridad? Crisis económica y políticas de género en España. *Investigaciones Feministas* 5:36-68.

<sup>114</sup>Gonzalez Gago, E., Segales Kirzner, M. and Castellanos, S. (2011) ‘The Impact of the Economic Crisis on the Situation of Women and Men and on Gender Equality Policies. National Report: Spain’ in F. Bettio, M. Corsi, M. Samek, A. Verashchagina (2011) *The Impact of the Economic Crisis on the Situation of Women and Men and on Gender Equality Policies*. EGGE/EGGSI networks.

<sup>115</sup>United Nations Committee on the Elimination of Discrimination against Women, Sixty-First Session (06 Jul 2015 -24 Jul 2015) available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=944&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=944&Lang=en)

<sup>116</sup>Equality Ministry was established only in 2008.

<sup>117</sup>The Women Institute now depends on a Directorate General (DG) for Equal Opportunities (located within the Secretariat for Social Services and Equality); thus, it was downgraded to being dependent on a DG whereas it was formerly dependent on a higher-rank State Secretariat. (Lombardo 2016)

<sup>118</sup>Lombardo (2016)

<sup>119</sup>Bettio, F., Corsi, M., D’Ippoliti, C., Lyberaki, A., Lodovici, M.S. and Verashchagina, A. (2012) “The Impact of the Economic Crisis on the Situation of Women and Men and on Gender Equality Policies” Brussels: European Commission, pg. 114.

<sup>120</sup>United Nations Committee on the Elimination of Discrimination against Women (2014) Sixty-First Session (06 Jul 2015 -24 Jul 2015) Civil Society Shadow Report, Spain 2008-2013, available at:

<http://www.profesionalesetica.org/wp-content/uploads/2014/11/Shadow-report-CEDAW-61-Spain-PpE.pdf>

of gender role: that of ‘female caregiver’ and ‘male breadwinner’<sup>121</sup>. This is evidenced by the dismantling of measures promoting reconciliation of work and family life (i.e. breastfeeding leave can no longer be simultaneously taken by mothers and fathers, and deferment of paternity leave) and the raise of conservative attitudes regarding individual freedoms and abortion rights<sup>122</sup>.

Austerity measures continue to be resisted by various grassroots feminist organizations, and new gender-friendly social movements (i.e. Indignados). There is also limited evidence that the crisis curtailed political participation of women. In fact, women were able to secure significant if not equal representation in formal political structures. Under Spain’s equality laws, neither sex can make up more than 60% of the electoral lists. In 2015 the 605 lists included 2,263 men (52%) and 2,090 women (48%). It is Podemos, the left-wing party that rose out of Spain’s anti-austerity protest movement, which has won the most seats for women – 49.28% of their 69 seats. Podemos also made history when one of its candidates became Spain’s first ever black MP. Rita Bosaho from Alicante is also the first woman to head a party’s electoral list in the region and win a seat in parliament. Following the 2016 parliamentary election 39% of seats were secured by women. While inequality persists, the number of women in parliament continues to grow. However, women represent only 12.3% of board members of the largest publicly listed companies in Spain (IBEX35 index). This proportion is below the EU average (15.8%). The percentage of women board chairs and CEOs in Spain (2.9%) is closer to the EU average in both cases<sup>123</sup>.

## Race and Ethnicity Domain

Traditionally, Spain has been considered a country of territorial cultural diversity, rather than a country with cultural minority diversity. Although there has not been a constitutional affirmation of multiculturalism at the national level, the government has, since at least 2003, begun to recognize the reality of cultural diversity and has focused attention on the social integration and inclusion of immigrants and minorities. This has largely been under the auspices of its National Action Plans on Social Inclusion, which have been released since 2001. The current institutional framework took place with Law 2/2009 (Title IV, reforming Organic Law 4/2000). This legal measure introduced a framework of multilevel governance of migration based on cooperation among central administration institutions, local governments and civil society. The integration model established by Spanish policymakers presents itself as diversified and responsive to the different dimensions related to integration. The main focus is on the areas of reception, education and employment, with employment representing the destination of most financial allocations. The main political tool is represented by the *Strategic Plan for Citizenship and Integration* (PECI), whose action is complemented by other measures addressing specific ethnic minority and immigrant communities. Also in 2009, the government has increased investment in broader activities to combat racism and xenophobia, as well as to address the

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<sup>121</sup> Ciccía, R. and Verloo, M. (2012) “Parental leave regulations and the persistence of the male breadwinner model: using fuzzy-set ideal type analysis to assess gender equality in an enlarged Europe”, *Journal of European Social Policy* 22(5): 507–28.

<sup>122</sup> Lombardo (2016)

<sup>123</sup> European Commission’s Database on Women and Men in Decision-Making, available at: [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm)

situation of Spain's Gitano population<sup>124</sup>. As such, in the beginning of the recession Spain has not shown severe backsliding in race/ethnicity domain. In fact, in 2011 Spain finally adopted legislation to comply with the requirements laid down in EU Directive 2000/43/EC (Racial Equality Directive) and Directive 2000/78/EC (Employment Equality Directive) and established Non-Discrimination Council/Racial and Ethnic Origin. However, the second wave of recession resulted in backsliding on all previous integration commitments, hitting immigrant communities especially hard. While the formal anti-discrimination framework has not been dismantled, budget earmarked for integration of ethnic minorities (i.e. Gitano [Roma]) and immigrants has been substantially reduced in 2012 (by 17%)<sup>125</sup>.

### *Integration policies*

Spanish integration policy is coordinated within the Ministry for Employment and Immigration, although its practice involves a wide range of government departments as well as the Autonomous Communities and municipalities. Following a lengthy consultation process started in 2005, the Ministry published its Strategic Plan on Citizenship and Integration (2007-2010)<sup>126</sup>. Based on this plan, the budget of the General Directorate for the Integration of Immigrants has increased between 2005 and 2009, reaching a peak of 308.5 million euros in 2009. However, the crisis has had a significant impact on this funding stream: for the period 2011-2014 funding was reduced first to 166 million euros, and then, to 141 million euros<sup>127</sup>. At the same time the Ministry for Employment and Immigration with collaboration of the International Organization of Migration began to implement a program of *voluntary return* for unemployed immigrants. This program shows a clear political preference for the short-term option of favoring return instead of thinking about the possibility of adopting 're-skilling measures' or continuing its inclusion policies<sup>128</sup>. As 'home returns' continue to receive funding, the last National Action Plan for Social Inclusion finished in 2010 without a successor, as has been demanded by civil society.

Within the general budget, the Spanish Integration Fund forms the bulk of spending, much of which is disbursed to municipalities and regions. The Spanish government began allocating funding to Autonomous Communities, reaching a plateau of 200 million euros by 2009<sup>129</sup>. Many of the Autonomous Communities (i.e. Catalonia, Andalusia) took the lead on various aspects of integration and co-founded integration policies from their own budgets. However, in February 2009, the Spanish government cut this fund by half, from 200 million

<sup>124</sup> The European Union and Roma – Factsheet Spain, April 4, 2014, available at:

[http://ec.europa.eu/justice/discrimination/files/roma\\_country\\_factsheets\\_2014/spain\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2014/spain_en.pdf)

<sup>125</sup> Benitez, I. (2012) *Spain Slushes Funds for Integration of Immigrants*, Inter Press Service, News Agency, available at: <http://www.ipsnews.net/2012/04/spain-slashes-funds-for-integration-of-immigrants/>

<sup>126</sup> Ministerio de Trabajo y Asuntos Sociales [Ministry of labor and social affairs] (2007) "Strategic Plan for Citizenship and Integration" Catálogo general de publicaciones oficiales, available at: <https://ec.europa.eu/migrant-integration/index.cfm?action=media.download&uuid=29D2344E-0C8D-EFD6-CA3F447B6D14FBDE>

<sup>127</sup> EurWork, European Observatory of Working Life (2010) Spain: Annual Review 2010, available at: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/spain/spain-annual-review-2010>

<sup>128</sup> Parella, S. and Petroff, A. (2014) "Return migration in Spain: immigrant departures and return programs in a crisis context" [Migración de retorno en España: salidas de inmigrantes y programas de retorno en un contexto de crisis]. In J. Arango, D. Moya, and J. Oliver (eds.) *Immigration and emigration: myths and realities* [Inmigración y emigración: mitos y realidades] (pp/ 68-87) Barcelona: CIDOB.

<sup>129</sup> Davis, A. (2008) "Multi-nation building? Immigrant integration policies in the autonomous communities of Catalonia and Madrid", Paper for the Economic and Social Research Council, Sheffield University, UK.

euros to 100 euros. In 2011 the budget dropped to 70 million euros. In 2012 the Ministry of Labour and Social Security eliminated the fund's entire resources in the general budget. This suppression has been seen as one of the hardest cuts delivered to public policies for immigrant integration in recent years.

### *Gitano Population [Roma]*

The cut was a huge blow to Roma inclusion programmes long recognized as 'a model' for integration. The reduction in co-financing of Structural Funds programmes (i.e. ACEDER program one of the most successful employment initiative for Roma community) together with a general reduction in welfare provisions (in particular 2012 cutbacks of 13.2 million dollars in health and education) not only threatens to derail decades of progress towards equal opportunity but also points to a regression in employment, education, health and housing objectives<sup>130</sup>. According to Fundación Secretariado Gitano, the rate of unemployment in the Gitano community is 36.4% and 80% of Gitano students do not finish secondary school; hence any cuts to these policy fields disproportionately affect this community<sup>131</sup>. It is worth mentioning that these cuts also affected Spain's role as a facilitator of pan-European Roma inclusion programmes, and good practice exchange. Unfortunately, comprehensive data on the impact of austerity measures on Roma population is still absent. However, Roma advocates insist that the impacts are severe<sup>132</sup>.

### *Immigrants*

Immigrant population have been particularly hard-hit during the recession, with the unemployment rate soaring to over 37% for foreign-born workers vs. 24% for native workers<sup>133</sup>. Such figures are particularly striking if we take into account that in 2007 the unemployment rate of immigrants was only 12.5%. Perhaps due to the reduced economic demand, the number of new arrivals in Spain has also decreased significantly and shifted from non-EU labor to family reunion of children and spouses of former labor and regularized migrants settling long-term<sup>134</sup>. Immigrants have also been negatively affected by the health sector reforms - particularly Royal Decree Law 16/2012 which excludes almost a million undocumented migrants from accessing healthcare services, save for very exceptional circumstances: in the case of emergencies, pregnant women and children. As of 2012 foreigners without work permits in Spain have to pay the bills for any health care received and pay an insurance quota of 710 euros a year to maintain health care in the public network.

In relation to this, at a time when NGOs play an essential role, the most recent reform of the immigration law, Organic Law 2/2009, of 11 December, introduced what is commonly

<sup>130</sup> Fundación Secretariado Gitano (2013) The Impact of Crisis on the Roma Community [El Impacto De La Crisis en la Comunidad Gitana] available at: <http://www.gitanos.org/publicaciones/informecrisis/>

<sup>131</sup> Fundación Secretariado Gitano, Instituto de la Mujer, Instituto de Formación del Profesorado, Investigación e Innovación Educativa (IFIIE) (2010) Evaluation of the educational normalization of Roma students and pupils in primary education [Evaluación de la situación de normalización educativa de las alumnas y los alumnos gitanos en le etapa de Educación primaria] available at: [http://www.gitanos.org/upload/76/26/normalizacion\\_educativa.pdf](http://www.gitanos.org/upload/76/26/normalizacion_educativa.pdf)

<sup>132</sup> See Centre for Economic and Social Rights (2012) "Taking Spain's Austerity Measures to Task at the United Nations", available at: <http://www.cesr.org/article.php?id=1287>

<sup>133</sup> Chislett, W. (2014) Five Reasons why Spain has a Stubbornly High Unemployment Rate of 26%, OUPblog, Oxford University Press's Academic Insights for the Thinking World, available at: <http://blog.oup.com/2014/05/five-reasons-why-spain-has-stubbornly-high-unemployment-rate-26/>

<sup>134</sup> Migrant Integration Policy Index 2015, available at: <http://www.mipex.eu/spain>

known as the ‘crime of solidarity’. According to this, a simulated employment relationship undertaken for reasons of altruism (technically ‘intention of profit’), in order to help someone obtain regularization and rights under (Article 54(f)), is considered a breach of the law, and incurs a fine of up to 100,000 euros. Furthermore, according to the draft of the penal code reform approved in December 2012, to harbor and protect an undocumented immigrant is a felony, rendering humanitarian aid and acts of solidarity punishable by the law.

## Disability Domain

Over the past 3 decades Spain has made considerable progress in developing measures targeted at disabled population, showing commitment to social model and independent living arrangements. While the employment rates for disabled people in Spain are lower compared with other EU countries (in 2008 62.12% of the active disabled population were unemployed, 43.74% wanted non-qualified jobs and 16.68% lacked a previous employment background<sup>135</sup>) the investment in various services has been increasing steadily, reaching 38.6% in 2008 (with six EU countries investing more than Spain)<sup>136</sup>. The austerity measures have seriously jeopardized these positive developments. Between 2008 and 2010 the poverty risk-rates sharply increased (+11.35%) and people with disabilities now have more than a 25% chance of being at risk of poverty<sup>137</sup>. While the income of people with disabilities has remained at pre-crisis levels the prices are higher and thus purchasing power has been reduced. The worsening living standards of people with disability have generated mass protests across Spain<sup>138</sup>.

### *Infrastructure*

Since the 1980 Spanish government has been involved in promoting the evolution of the treatment of disability towards a social model. This evolution commenced with passing of the Law 13/1982 of 7 April, of Social Integration of Disabled Persons (LISMI), the Law 51/2003, 2 December, of equal opportunities, non-discrimination and universal accessibility of people with disability, the 2007 Equal Opportunity Act, and culminates with the ratification of the International Convention on Human Rights of People with Disabilities. The Ministry of Health and Social Policy assumes responsibility for co-ordinating sectoral policies on disability, which is exercised by the Directorate General for the Coordination of Sectoral Policies on Disability.

<sup>135</sup> Ministerio de Trabajo e Inmigración (2008) Observatory of the Public Service Occupations in State Employment, Labor Market Report [Observatorio de las Ocupaciones del Servicio Público de Empleo Estatal Ocupacional, Informe del Mercado de Trabajo], available at:

[https://www.sepe.es/contenidos/observatorio/mercado\\_trabajo/993-1528.pdf](https://www.sepe.es/contenidos/observatorio/mercado_trabajo/993-1528.pdf)

<sup>136</sup> García-Gómez, P. Hernández-Quevedo, C., Jiménez-Rubio, D. and Oliva, J. (2014) “Inequity in long-term care use and unmet need: two sides of the same coin” Working Paper, *Health, Econometrics and Data Group*, The University of York, available at:

[http://eprints.lse.ac.uk/55429/1/libfile\\_REPOSITORY\\_Content\\_Hern%C3%A1ndez-Quevedo\\_Inequity%20long-term%20care\\_Hernandez-Quevedo\\_Inequity%20long-term%20care\\_2014.pdf](http://eprints.lse.ac.uk/55429/1/libfile_REPOSITORY_Content_Hern%C3%A1ndez-Quevedo_Inequity%20long-term%20care_Hernandez-Quevedo_Inequity%20long-term%20care_2014.pdf)

<sup>137</sup> European Foundation Centre (2012) “Assessing the Impact of European Governments’ Austerity Plans on the Rights of People with Disabilities” Key Findings, available at:

<http://www.eesc.europa.eu/resources/docs/austerity2012.pdf>

<sup>138</sup> AAP (2012) “Disabled protest about Spain’s austerity”, 9Finance, December 2<sup>nd</sup> 2012, available at:

<http://finance.nine.com.au/2016/10/24/12/55/disabled-protest-about-spains-austerity>



Within this structure, the Instituto de Mayores y Servicios Sociales, IMSERSO (Institute on Social Services and Aging) has responsibility for social security issues. While legislative framework is in place, the implementation of policies came to a halt.

### *Provisions*

In 2012 Spain implemented national budget cuts of 13.65% and regional budget cuts of up to 10% to health and social care services (including direct cuts in salary packages to professional staff). As an immediate result of these cuts, Spanish commitment to independent living was put at risk. Faced with slimmer budgets local authorities have postponed (or paused) the construction of residential care facilities while the implementation of the law entitled “Promotion of the Autonomy and Care for Persons in a Dependent Situation” has been delayed. Government funding provided under this law to Autonomous Communities was reduced by between 22% and 29% in 2012 compared to the previous year in most regions<sup>139</sup>. Moreover employment services - including supported employment (provided by Special Employment Centres) saw 25% cut in funding (a decrease that was compensated for by the ESF). The National Observatory of Disability (OED) also noted an increase in temporary contracts for workers with disabilities<sup>140</sup>. Finally, earlier investment plans aimed at improving the accessibility of public buildings, services and transport have been virtually paralyzed, further hindering independent living.

Since 2011 there has also been a trend to tighten entitlements to benefits for mildly dependent people with disabilities (including those affected by mental distress). That access to habilitation and rehabilitation services for people with disabilities has been restricted. Some groups, such as persons with disabilities due to mental illness, face particular challenges in accessing benefits<sup>141</sup> and as a result only 1-4% of these persons are protected by the 2006 Law for the Promotion of Personal Autonomy and Care for Dependent Persons.<sup>142</sup> Recent budget cuts to social benefits have resulted in a moratorium of one year being placed on coverage to new beneficiaries. Social protection schemes also economically penalize persons living with disabilities, as the system requires that they partially self-finance their benefits through unaffordable co-payments, a situation which has been taken to court by CERMI. Moreover there has been a shift away from personalized services for individual clients towards more standardized minimum services, a pattern that directly undermines the fundamental cornerstone of living independently. At the same time the salaries of professionals working with disabled persons have been decreased by 5%.

The local authorities have reported substantial cuts in budgets for independent living and community inclusion in terms of supports, services, facilities and direct payments as well as a

<sup>139</sup> European Foundation Centre (2012) “Assessing the Impact of European Governments’ Austerity Plans on the Rights of People with Disabilities” Key Findings, available at: <http://www.eesc.europa.eu/resources/docs/austerity2012.pdf>

<sup>140</sup> European Foundation Centre (2012)

<sup>141</sup> El Defensor del Pueblo noted that some Autonomous Communities delayed the application of the Dependency law, often with dramatic results. In some cases, such as Madrid people have died before receiving benefits, after having waited for them for 18 months. See: Defensor del Pueblo España (2009) Annual Report and Debates in the Parliament [Informe anual 2009 y debates en las Cortes Generales], available at: <https://www.defensordelpueblo.es/informe-anual/informe-anual-2009/>

<sup>142</sup> Moran, C. (2011) La ley de dependencia apenas llega a un 4% de los enfermos mentales. El País 11 April 2011, available at: [http://elpais.com/diario/2011/04/11/sociedad/1302472803\\_850215.html](http://elpais.com/diario/2011/04/11/sociedad/1302472803_850215.html)

reduction on new investments. Currently the law on the promotion of personal autonomy and care for dependent persons is under review which is likely to result in higher co-payment levels and an increased number of persons who will be included into the list of persons who are subject to co-payment requirements. The changes envisaged will also result in a lower coverage of primary caregivers who may lose their entitlements to financial support.

Non-for-profit sector has been playing a major role in advocating for the rights of the disabled people, providing alternative services, and forming partnerships with local, regional and national agencies. This resulted in a wide network of professional and non-for-profit disability organization, with ONCE emerging as a leader and main partner of statutory services. However the financing of these organisations has decreased by 20% in 2012<sup>143</sup>. The austerity measures have caused significant delays in payments from the public sector to non-profit social service providers. In Spain, the public administration's debt towards these organisations has put them in jeopardy, and as a result social services to people with disabilities are endangered (in fact reports of termination or collapse of providers and services have been reported in Valencia and Andalusia). In addition, banks have decreased financing facilities and in some cases eliminated funding options - as a result many of these entities have difficulty accessing the credit needed to ensure their survival and their provision of social services.

## Conclusions

Overall, the adherence to austerity in Spain has generated backsliding in all equality domains. Measures introduced by central and regional governments are threatening the principles of equity and social cohesion underlying the welfare state. Although cutbacks in services and benefits will have a negative impact on everyone, this impact has been uneven. Budget deficits are being covered mainly from the pockets of those with least access to the tables where economic decisions are made. Women, racial and ethnic minorities, and people living with disability are most affected, and lone mothers are among those who suffer most. Yet to date, Spain has assessed the impacts of the proposed cuts in public spending from an equality perspective, neither of the individual measures nor of their cumulative impact.

It could be argued that the gender and disability domains experienced the most considerable setbacks in the last few years. The gender mainstreaming infrastructures, the sensitivity to gender and disability issues and the role of the welfare state in promoting equality have all been seriously damaged. It is also apparent that even though most setbacks have taken place during the economic crisis, they clearly covariate with the presence of conservative party in office. This fact allows concluding that the crisis has acted as a window of opportunity which has permitted to call into question a policy sector that had experienced a 20-year expansion period.

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<sup>143</sup> These cuts also affected public agencies working directly with disabled persons at the regional and local tier

## E. United Kingdom Case Study (by Joanna Kostka)

The international economic crisis that erupted in 2008 ushered in the longest period of economic downturn in the UK in modern history. Since 2010, austerity – primarily in the form of deep spending cuts with comparatively small increase in tax<sup>144</sup> - has been the UK government's dominant fiscal policy, with far fewer measures to stimulate the economy. The adherence to austerity measures negatively affected country's commitments to equality fields. The mapping exercised showed considerable backsliding in both gender and disability domains. Race domain appeared relatively 'untouched', however an in-depth scrutiny unveiled that while legal anti-discrimination framework has not been undermined, integration programs have faced tremendous challenges due to the withdrawal of state funding. UK also faced unprecedented rise in hate speech and violent acts against racial and ethnic minorities, and rising xenophobic attitudes, a dynamic exploited by advocates of Brexit<sup>145</sup>.

### Political Context

During the years 1997-2007, government under Labor leadership significantly increased public spending, though as a percentage of GDP the rise was less marked<sup>146</sup>. The explosion of the economic crisis in 2007 prompted the Labor government to implement a stimuli package, following a 'weakened' Keynesian model. Worsening economic prognosis, however, largely discredited increase in public spending and in 2009 the term "age of austerity" was popularized by British Conservative leader David Cameron. In his keynote speech to the Conservative Party forum in Cheltenham on 26 April 2009 he committed to end years of what he characterized excessive government spending<sup>147</sup>.

Following parliamentary elections in 2010, the Conservative-Liberal Democrat coalition government announced the biggest cuts to state spending since the Second World War<sup>148</sup>, including significant cuts to social security and the planned loss of 900,000 public sector jobs between 2011 and 2018<sup>149</sup>. The coalition claimed they had no choice because the previous government had left them with a large deficit. In effect those already in poverty have seen their impoverishment worsen, and millions more have become vulnerable. The Institute for Fiscal Studies found that the net direct effect of the coalition government's tax and benefit changes will

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<sup>144</sup> The ratio of spending cuts and tax increases is roughly 85:15 – for every £100 of deficit that is reduced, £85 comes through spending cuts, while £15 is through increased taxes. See Paul Johnson's opening remarks from an Institute of Fiscal Studies event on 27 June 2013 in London, available at:

[http://www.ifs.org.uk/budgets/sr2013/paul\\_johnson.pdf](http://www.ifs.org.uk/budgets/sr2013/paul_johnson.pdf)

<sup>145</sup> Official figures show the increase in racist and religious hate crimes in the UK directly after the Brexit vote, see Simpson, F. (2016) "Official: huge rise in racist hate crime in the UK after Brexit" *Evening Standard*, available at: <http://www.standard.co.uk/news/uk/official-huge-rise-in-racist-hate-crime-in-the-uk-after-brexit-a3368061.html>

<sup>146</sup> See Pettinger, T. (2015) *Government Spending under Labour*, available at:

<http://www.economicshelp.org/blog/5509/economics/government-spending-under-labour/>

<sup>147</sup> Summers, D. (2009) "David Cameron warns of 'new age of austerity'" *The Guardian*, available at:

<https://www.theguardian.com/politics/2009/apr/26/david-cameron-conservative-economic-policy1>

<sup>148</sup> Crawford, R. (2010) "Public services: serious cuts to come", Institute of Fiscal Studies (IFS) Presentation, available at: <http://www.ifs.org.uk/budgets/budgetjune2010/crawford.pdf>

<sup>149</sup> Institute of Fiscal Studies (2013) "The IFS Green Budget", Nuffield Foundation, p.175, available at: <http://www.ifs.org.uk/budgets/gb2013/gb2013.pdf>

increase both absolute and relative poverty<sup>150</sup>. The 2013 polls suggested support for the Conservatives among women was 15 points behind Labour, while it was roughly neck and neck among men – one reason given is that the coalition's austerity measures have cut public sector jobs and services that largely support women.

## Gender Domain

In the mapping exercise UK demonstrated backsliding on all indicators, a dramatic turn of events in a country once considered a solid performer on gender equality<sup>151</sup>. Oxfam<sup>152</sup> reported that of the £8.1bn in net personal tax increases and benefit cuts, an estimated £5.8bn (72%) will impact upon women. Since 2008 female unemployment has risen from 678,000 to 1.08 million in 2013 – a level last seen in 1988<sup>153</sup>. This is expected to further rise to 1.5 million by 2018 as the remainder of public sector cuts will take effect. Women also suffered to a great degree from cuts to public services, due to their comparatively higher representation in the public sector.

Erosion of household incomes as a result of austerity measures (through taxes and benefits reforms) has been well documented<sup>154</sup>. The underlying rationale for all introduced restrictions was to strengthen work incentives and self-reliance. Very limited attention was paid to gender inequalities (wage pay gap, segregated employment, part-time work, care responsibility) hence the proposed measures not only penalized women (leaving them without necessary care benefits) but failed to create jobs for women. It has been demonstrated that of the 800,000 jobs created in the private sector 56% have gone to men and that overall for every 100 new (net) jobs created 63% went to men and 37% to women.

An element of 2010 Spending Review that particularly affected women was the retrenchment in family and childcare provisions. Childcare subsidies (delivered through vouchers and tax credits) were effectively reduced. The proposed changes to the child element of Working Tax Credit (WTC)<sup>155</sup> were announced in 2011. The government reduced the proportion of childcare costs that were being paid (from 80% to 70%) and increased the minimum number of hours a couple with children needed to work to be eligible for WTC. It also abolished the Child Trust Fund stripping parents from access to investment vouchers. Finally it proposed (in 2013) a Universal Credit to replace six benefits and tax credits (including Jobseeker's Allowance, Housing Benefits, Working Tax Credit, Child Tax Credit, Employment and Support Allowance and Income Support).

These changes had adverse effect on women with children in at least two ways:

<sup>150</sup> Brewer, M., Browne, J. and Joyce, R. (2011) "Child and Working-Age Poverty from 2010 to 2020", London: IFS, available at: <http://www.ifs.org.uk/comms/comm121.pdf>. Relative poverty amongst working-age adults is expected to rise from 16.7% (2011/12) to 18.5% (2014/15). By 2020, relative poverty is expected to rise between three to four percentage points to 24.4% among children and 20% among working-age adults.

<sup>151</sup> The only other country to backslide on all indicators was Latvia, a country with a poor record of gender equality measures.

<sup>152</sup> Oxfam (2013) "The True Cost of Austerity and Inequality", UK Case Study, available at: <https://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-uk-120913-en.pdf>

<sup>153</sup> Office of National Statistics (2013) "Labour Market Statistics", available at: [http://www.ons.gov.uk/ons/dcp171778\\_315111.pdf](http://www.ons.gov.uk/ons/dcp171778_315111.pdf),

<sup>154</sup> Annesley, C. and Himmelweit, S. (2010) "The Impact on Women of the Coalition Spending Review 2010", London: UK Women's Budget Group, available at: <http://oro.open.ac.uk/26423/>

<sup>155</sup> Working Tax Credit: a means-tested subsidy restricted to lone parents and couples in which both parents are in employment for at least 16 hours a week each.

- In families where the man works and the woman stays home, this reform reinforces traditional gender roles and further reduces the incentive for women to take paid employment, since the reduction in support for childcare costs will decrease the gains from employment;
- In families where both partners work, the increased hours eligibility may require more hours of paid childcare and, combined with a reduction in the proportion of childcare costs which WTC will pay, may end up with parents working more hours for no extra net pay<sup>156</sup>.

The government also abolished the Health in Pregnancy Grant, and restricted the Sure Start Maternity Grant for low-income parents to first babies or multiple births. At the same time the Statutory Maternity Pay and Maternity Allowance increased by 1% only, far lower than living costs. A 2012 report evidencing the impacts of the UK Government's austerity measures upon women in the North East of England highlights the devastating impacts of the above mentioned measures and welfare reforms upon already unacceptable levels of gender inequality<sup>157</sup>.

### Developments in Equality Infrastructure

According to the CEDAW<sup>158</sup> Committee<sup>159</sup> the UK may be seen as providing an example of achievement in terms of the laws and regulations supporting women's human rights and equality in general. However, the reality for women living in the UK is that there is incomplete realization of these rights and serious attitudinal and behavioral barriers to substantive equality for all women. The 2013 report, produced by an umbrella organization representing 42 women's and human rights groups, including Women's Aid and the Fawcett Society<sup>160</sup>, demonstrates that gender stereotypes abound in all areas of British society and intersectional discrimination against women who have diverse and intersecting identities under a number of 'protected characteristics'<sup>161</sup> is also commonplace. There still is a frustrating lack of continuous monitoring and periodical evaluation of the implementation of laws and measures, and in the collection and evaluation of disaggregated data to ensure that these are meeting women's diverse needs.

Since 2010 the national machinery to promote women's equality has been subject to persistent attack. The main UK level government body dealing with women's equality, the Government Equalities Office, previously a dedicated government Department, has been

<sup>156</sup> Women's Budget Group (2016) "A Cumulative Gender Impact Assessment of Ten Years of Austerity Policies", available at: <http://wbg.org.uk/analysis/briefing-papers/a-cumulative-gender-impact-assessment-of-ten-years-of-austerity-policies-women-to-lose-more-under-conservatives-than-coalition-government/>

<sup>157</sup> North East Women's Network (2012) "Findings and recommendations from interim case study: The impact of austerity measures upon women in the North East of England, October 2012 and updated April 2013", available at: <http://www.newwomens.net/index.php/research-leftmenu-56>

<sup>158</sup> The United Nations Convention on the Elimination of All Forms of Discrimination Against Women

<sup>159</sup> CEDAW 55th session (2013) List of issues and questions with regard to the consideration of periodic reports: United Kingdom of Great Britain and Northern Ireland. Addendum: Replies of United Kingdom of Great Britain and Northern Ireland to the list of issues to be taken up in connection with the consideration of its seventh periodic report, 5th February 2013 <http://www2.ohchr.org/English/bodies/cedaw/docs/CEDAW.C.GBR.Q.7.Add.1.pdf>

<sup>160</sup> UK CEDAW Working Group (2013) 'Women's Equality in the UK – A Health Check' Shadow Report from the UK CEDAW Working Group assessing the United Kingdom Government's progress in implementing the United Nations Convention on the Elimination of All Forms of Discrimination against Women, available at: <http://thewomensresourcecentre.org.uk/wpcontent/uploads/Women%E2%80%99s-Equality-in-the-UK-A-health-check.pdf>

<sup>161</sup> Under The Equality Act 2010, available at <http://www.legislation.gov.uk/ukpga/2010/15/contents>

downgraded to become a unit of the Home Office and more recently moved to the Department of Culture, Media and Sport. The UK Women's National Commission (WNC), the only UK-wide machinery dedicated to women's equality, which was responsible for coordinating the UK's independent shadow report to CEDAW, was abolished in 2010. The Welsh Women's National Commission, which fulfilled a similar advisory function in Wales, lost its funding from the Wales Assembly and also closed down in 2010. This means that since 2010 there is no independent national body open to all women and their organizations.

Women's organizations are also hamstrung by the loss of funding and infrastructure. The women's NGO sector has been a leader in bringing about positive changes to women's (and men's) lives and improving gender equality in the UK, yet it has faced the worst funding crisis in recent history and its sustainability has been seriously undermined while demand for services has increased. Since 2011 there is a trend across central government whereby specialist services are being overlooked for funding and investment in favor of large, generic providers who are being awarded contracts for the delivery of specialist women's services. Research in 2012 has found that about one in three Rape Crisis Centers in England and Wales have been challenged by funders about the fact that they provided women-only services.<sup>162</sup> Moreover, in 2012 the process of consultation with the Government has been undermined as the statutory 12 week minimum consultation period, which forms part of the Compact<sup>163</sup> agreement between government and the voluntary sector has been removed. It was even stated that consultations are not needed in many circumstances. This removed the ability for women to be involved in the decisions that affect their lives and to ensure that these decisions do not go against CEDAW principles and reduce equal engagement.

Women continue to be missing from politically powerful positions. 22.5% of all MPs are women, which is an increase from 19.7% at the General Election in 2005.<sup>164</sup> However, the number of female members of the Cabinet was reduced by 20% in the 2012 reshuffle, with women now only comprising 17.4% of all Cabinet members.<sup>165</sup> The level of women MPs has increased by only 3.9% since the year 2000, whilst the percentage of women in the Cabinet has decreased by 4.3%. All the political parties have improved to some degree but none will achieve 50:50 male/female representations in the near future. The Government has extended the ability for political parties to use women-only shortlists until 2030 alongside other voluntary action and encouragement. However, this binding temporary special measure will not lead to substantive change as it does not address the institutional discrimination and barriers to women's participation and progression. Moreover, UK Government has been vocal about its objection to introducing binding temporary measures to promote women's equality.

It is important to note that as the Government's report notes, BAME women represent 5.8% of the UK population, but remain heavily under-represented in political and public life

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<sup>162</sup> Coates, S., Eggleston, L., and Regan, L. (2012) "Impact Of Rape Support Fund On Existing Rape Crisis Centres". Rape Crisis: England and Wales.

<sup>163</sup> Compact Voice (2012) The Coalition Government and Civil Society Organizations Working Effectively in Partnership for the Benefit of Communities and Citizens in England, available at: <http://www.compactvoice.org.uk/about-compact>

<sup>164</sup> Inter-Parliamentary Union (2005) Women in National Parliaments, available at: <http://www.ipu.org/wmn-e/arc/classif311005.htm>

<sup>165</sup> Martinson, J. (2012) "Cabinet reshuffle: a good day for Maria Miller but a bad day for women", *The Guardian*, 4th September 2012, available at: [www.guardian.co.uk/politics/the-womens-blog-with-jane-martinson/2012/sep/04/cabinet-reshuffle-maria-miller-women](http://www.guardian.co.uk/politics/the-womens-blog-with-jane-martinson/2012/sep/04/cabinet-reshuffle-maria-miller-women)

comprising less than 1% of councilors.<sup>166</sup> Muslim women in particular face barriers in accessing political and public life.

### **Race/Ethnicity Domain**

UK has a long tradition and experience of running integration programmes. However with the economic crisis the main political parties, starting with the coalition government, have begun to feel the impact of the rise in the opinion polls of UKIP, a political party of clear anti-European and anti-immigrant stance. The cuts in integration programs while not ‘excessive’ do reflect broader fiscal tightening, a decline in community support and a change in political philosophy and prioritizing with respect to the integration of migrants. While anti-discrimination legislation remained intact, integration funding has been chipped away in numerous ways, notably:

- The department of Communities and Local Government (CLG) was ordered to trim £1.116 billion in 2010<sup>167</sup> and lost over half its resource budget by 2014-2015 (which included a transfer of funding to local government). This has resulted in the termination of several community cohesion programs, such as Connecting Communities, which included core integration funding.
- Within CLG, the £50 million Migration Impacts Fund, raised through a levy on immigrant visa fees, has been scrapped (the money was used to fund non-governmental and local government projects aimed at easing the impact of new immigrants in communities)
- In 2011 English for Speakers of Other Languages (ESOL) program faced both budget cuts and limitations on eligibility, including the loss of a £4.5 million Learner Support Fund, to help low-income migrants with course fees. Similarly, the Ethnic Minority Achievement Grant (EMAG), which was frequently used to support the integration of new arrivals, has been mainstreamed into general education allocations, which has led to local staffing cuts for schools’ language support.<sup>168</sup>
- Like in gender domain, NGOs working with BAME communities were hard hit by cuts in funding, some affecting core support, others directed at service provision. Refugee integration support services faced particularly severe pressure, with the Refugee Council’s state funding reduced by 62% in 2011. In addition, the Refugee Integration and Employment Service ceased to exist after September 2011.

It is important to mention that migrant women, refugee women and asylum seeking women are amongst the most vulnerable groups in the UK. They are subjected to multiple-discrimination on the grounds of their gender, race and migration status. Black minority ethnic (BME) mothers are highly likely to experience poverty in the UK, both as a direct result of racial and gender discrimination, and through the very fact of being a mother. Many BME mothers have unequal access to the household purse, have limited access to money and experience material

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<sup>166</sup> Government Equalities Office (2011) CEDAW (Convention on the Elimination of all forms of Discrimination against Women) Report, United Kingdom’s Seventh Periodic Report. London: GEO, available at:

<http://www.homeoffice.gov.uk/publications/equalities/international-equality/7thcedaw-report?view=Binary>

<sup>167</sup> UK department of Communities and Local Government “Government sets out further detail on local government savings” (press notice, June 10, 2010).

<sup>168</sup> National Ethnic Minority Achievement Grant (NALDIC), Summary of Findings, London: NALDIC, February 2011.

deprivation.<sup>169</sup> Many BME women have extremely limited access to money thus their husbands are in control of all aspects of their lives.<sup>170</sup> Inequality within households has allowed the active abuse and control of BME women's access to money by their partners.<sup>171</sup> This situation will be exacerbated by the single payment of Universal Credit going to the highest earner, most likely to be a man, and will make many BME women even more vulnerable to financial and other forms of violence and abuse. Furthermore the new child tax credit criteria mean that BME families will see a cut to their income if they've decided to have more than two kids. 24% of BME families have three or more children, compared to 8% of white families<sup>172</sup>.

In their text titled "Layers of inequality"<sup>173</sup> Kalwinder Sandhu and Mary-Ann Stephenson draw attention to the specificity of minority ethnic women's experience in relation to the austerity cuts in spending. From the time that the coalition government announced public spending cuts in 2010, their predicted severe impact on women was a source of significant social and political comment. However, there was little discussion of the likely effects of the cuts on Black, Asian and Minority Ethnic (BAME) women. This research is one of the first that foregrounds the ways in which BAME women have fared under the weight of policies of austerity. One of the key features of the women's experience is that they often face several cuts all at once, and the effects are made worse by the simultaneous operations of the social divisions of gender, race, ethnicity, class, disability and so on. For, instance, BAME women are more likely to be living in poverty, working in the public sector, and to receive a higher proportion of their income from working age benefits or tax credits, and they are more likely to confront radicalized forms of discrimination and disadvantage in the labor market. The research found that cuts are already and will continue to disproportionately affect BAME women. It is the combination of cuts that is particularly damaging.

## Disability

Disabled people are twice as likely to live in relative poverty as non-disabled people and when the additional costs disabled people face as a result of their impairment are factored in, figures suggest that well over half of disabled people in the UK could be living in poverty.<sup>174</sup> While disabled people have entered the recession on a profoundly unequal footing to non-disabled people their interests have been largely absent from national debate arising from the downturn. Yet the government's benefit cuts are hitting disabled people hardest of all. The welfare reforms have reduced the numbers of people eligible for incapacity benefits, have cut spending on care support services and independent living programs, and have launched an aggressive work activation programs (which raised concerns about those who face significant barriers to work and could potentially miss out on extra support from the benefits system).

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<sup>169</sup> Warburton Brown, C. (2011) "Exploring BME Maternal Poverty: The Financial Lives of Ethnic Minority Mothers in Tyne and Wear", Oxford: Oxfam GB.

<sup>170</sup> Warburton Brown, C. (2011) "Exploring BME Maternal Poverty: The Financial Lives of Ethnic Minority Mothers in Tyne and Wear", Oxford: Oxfam GB.

<sup>171</sup> The Fawcett Society (2009) "Poverty Pathways: Ethnic minority women's livelihoods", London: Fawcett and Oxfam.

<sup>172</sup> <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/poverty-ethnic-groups-recession-full.pdf>

<sup>173</sup> [http://www.perc.org.uk/project\\_posts/the-intersectional-consequences-of-austerity/](http://www.perc.org.uk/project_posts/the-intersectional-consequences-of-austerity/)

<sup>174</sup> Parckar, G. (2008) "Disability poverty in the UK" London: Leonard Cheshire Disability.



According to the 2012 report “The Tipping Point”<sup>175</sup>, drawn up by a coalition of over 90 disabled people's organisations and charities, disabled people have experienced a massive drop in income of £500 million since the Emergency Budget of 2010 (cuts range from £200 to £2,065 for typical disabled households per year). Half of the total cuts have been taken from the welfare budget. For example £2bn has been taken out of care budgets by local authorities even though demand for care services continues to grow<sup>176</sup>. This was coupled with vast hikes in charges for essential services, including a £77million rise in charges for care<sup>177</sup>, a 13% increase in meals on wheels charges, and a 33% increase in transport fees<sup>178</sup>. Moreover, ADASS reports that 85% of councils now restrict care to people with ‘substantial’ and ‘critical needs’. This negatively impacts mental health funding. In 2011, the implemented 2% cut resulted in closure of 2100 beds in mental health units, over 10% of the total<sup>179</sup>. In the same year the number of nurses working in mental health services has fallen by 3640 and the number of doctors has dropped by 213<sup>180</sup>. This has led Simon Wessely, President of the Royal College of Psychiatry, to describe services as ‘running dangerously close to collapse’<sup>181</sup>

The 2010 Emergency Budget has set in motion an aggressive campaign to curtail eligibility criteria and force labor activation. The introduction of the Universal Credit removed financial benefits for disabled people who do not reach the required level of functional impairment in the work capability assessment (WCA). Those who were deemed fit-for-work were to benefit from work related activity or the support group. There are widely reported problems in the WCA that result in thousands of disabled people not having needs identified in the assessment and being prevented from accessing appropriate support as a result. For example, the design of the WCA means that a wheelchair user who can self-propel (a non-motorized) wheelchair 50 meters could be found fully fit for work under the assessment and will not receive any more financial support than a non-disabled person – despite all the higher costs and other (physical and attitudinal) barriers to participation. It has been estimated that 450,000 disabled people could stand to lose out under Universal Credit<sup>182</sup>. In the 2012 survey<sup>183</sup> more than three quarters (78 per cent) of disabled people said their health had got worse as a result of the stress caused by their Work Capability Assessment (WCA) for Employment and Support Allowance

<sup>175</sup> [Hardest Hit Coalition \(2012\) “The Tipping Point: The Human and Economic Costs of Cutting Disabled People’s Support”, available at: https://thehardesthit.files.wordpress.com/2012/10/tipping-point-executive-summary.pdf](https://thehardesthit.files.wordpress.com/2012/10/tipping-point-executive-summary.pdf)

<sup>176</sup> Association of Directors of Adult Social Services (ADASS) Budget Survey (April/May 2012). All 152 social services authorities were polled. 95% returned completed questionnaires.

<sup>177</sup> Association of Directors of Adult Social Services (ADASS) Budget Survey (April/May 2012), available at: <https://www.adass.org.uk/a-new-system-for-care-funding>

<sup>178</sup> A survey of care provided by local councils, published by the Labour Party (30/12/11) included in the report by Hardest Hit Coalition (2012)

<sup>179</sup> Buchanan, M. (2014) Mental health services ‘a car crash’ *BBC*, 24<sup>th</sup> June, available at: <http://www.bbc.co.uk/news/health-27980677>

<sup>180</sup> Cooper, C. (2014) Cuts leave NHS mental health services ‘dangerously close to collapse’. *The Independent*, 14 August, 2014, available at: <http://www.independent.co.uk/life-style/health-and-families/health-news/cuts-leave-nhs-mental-health-services-dangerously-close-to-collapse-9667370.html>

<sup>181</sup> Cooper, C. (2014) Cuts leave NHS mental health services ‘dangerously close to collapse’. *The Independent*, 14 August, 2014, available at: <http://www.independent.co.uk/life-style/health-and-families/health-news/cuts-leave-nhs-mental-health-services-dangerously-close-to-collapse-9667370.html>

<sup>182</sup> Baroness Tanni Grey-Thompson (2012) “Holes in the safety net: The impact of Universal Credit on disabled people and their families” Disability and Universal Credit Inquiry Report published on October 17<sup>th</sup> 2012, available at: [https://www.citizensadvice.org.uk/Global/Migrated\\_Documents/corporate/holes-in-the-safety-net-final-copy.pdf](https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/holes-in-the-safety-net-final-copy.pdf)

<sup>183</sup> [Hardest Hit Coalition \(2012\) “The Tipping Point: The Human and Economic Costs of Cutting Disabled People’s Support”, available at: https://thehardesthit.files.wordpress.com/2012/10/tipping-point-executive-summary.pdf](https://thehardesthit.files.wordpress.com/2012/10/tipping-point-executive-summary.pdf)

(ESA). Furthermore, the shift of resources to better target disabled people with the greatest need, meant cuts to families with disabled child (around £1,500 per year). Ironically, the abolition of the severe disability premium meant that even those with the most serious health conditions or the greatest level of impairment now receive £28 less a week if they live on their own<sup>184</sup>. Finally, in 2013 the government replaced Disability Living Allowance (DLA) with Personal Independence Payment (PIP). The reform of the benefit designed specifically to support disabled people with higher living costs, including disabled people in work, has lowered numbers of disabled people eligible for support. The IPI now targets only those ‘with the greatest needs’ resulted in more than 500,000 disabled people losing eligibility for support. The reform saved the Government over £2bn<sup>185</sup>.

Other reforms to welfare support which risk intensifying disability poverty include;

- Introduction of the Bedroom Tax<sup>186</sup>
- Closure of the Independent Living Fund (which directly leads to re-institutionalization)
- The removal of automatic entitlement to Housing Benefit for young people
- Reductions in Disabled Student Allowance

A growing number of organizations and advocacy groups insist that the government's benefit cuts are hitting disabled people hardest of all. There is a common understanding that unless government takes firm and urgent action to remedy the situation, the reforms are set to adversely affect disabled people for many years.

## Conclusions

Overall, the endorsement of austerity policies in the UK has negatively impacted all three domains. In the last 6 years government support to equality and diversity issues, not just around gender but more broadly, has been cut back at a time where tougher labor market conditions have possibly raised the salience of such issues. The Emergency Budgets has not only generated extensive cuts to safety nets, and welfare provisions but also spawned specific attacks on public sector employment and integration programs (targeted at both ethnic/racial minorities and persons with disabilities). It has been widely documented that these measures disproportionately affected women, racial minorities, and persons with disability, thus showing how intersections among various social dimensions need to be considered for understanding the impact of the economic crisis. Furthermore the use of a voluntary rather than compulsory legislative approach to equality policies (including flexible working, some aspects of the parental leave provision and equality and diversity policy) has allowed for dismantling of progressive equality and diversity policies (most acutely felt in the gender domain). Not surprisingly since the 2008 financial crisis began, those already in poverty have seen their impoverishment worsen, and millions more have become more vulnerable. As expressed by Simon Duffy, the director of the Centre for Welfare Reform "The past six years of austerity have seen the UK Government intentionally diminish the rights of its own citizens.

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<sup>184</sup> Baroness Tanni Grey-Thompson (2012) “Holes in the safety net: The impact of Universal Credit on disabled people and their families” Disability and Universal Credit Inquiry Report published on October 17<sup>th</sup> 2012.

<sup>185</sup> Department for Work and Pensions (2012) “Disability Living Allowance Reform” Impact Assessment, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220176/dla-reform-wr2011-ia.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220176/dla-reform-wr2011-ia.pdf)

<sup>186</sup> Disability Rights UK (2016) The Bedroom Tax, Fact Sheet, available at: <http://www.disabilityrightsuk.org/bedroom-tax>