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In Europe We Trust?

Jo Ritzen
Jasmina Haas

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Jo Ritzen

IZA and Maastricht University

Jasmina Haas

UNU/MERIT, Maastricht University

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IZA

P.O. Box 7240

53072 Bonn

Germany

Phone: +49-228-3894-0

Fax: +49-228-3894-180

E-mail: iza@iza.org

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ABSTRACT

In Europe We Trust?*

The decrease in the rule of law and in control of corruption in several EU countries is a threat to the cohesion in the EU. Brexit has reinforced the centrifugal forces in the EU. To counter this threat the EU needs to engage in unpopular measures as they infringe on the Member States' sovereignty. We propose to introduce new measures in treaty revisions like the possibility of individuals to appeal to European courts to counter negative developments in governance in EU Member States.

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Corresponding author:

Jo Ritzen
IZA
P.O. Box 7240
53072 Bonn
Germany
E-mail: Ritzen@iza.org

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Summary

The promise of “Europe” shaped in the form of the EU was: welfare and happiness will increase as a result of “being part” of the EU. Increased economic cooperation facilitated by improved “governance” (for example, a better “rule of law”, more control of corruption) would deliver on this promise.

The EU track record on the economy is by and large excellent albeit it different for the different Member States and sometimes perceived by parts of the population as negative. In some countries this perception is so negative that the voters might chose to leave the EU, if they were asked to stay or remain, as happened with Brexit.

The development of the quality of governance (rule of law, control of corruption, voice and accountability) might widen the cracks in the walls of the EU building. The EU provided carrots to ensure progress in terms of the rule of law and other means of improving governance. This progress would translate into the investment climate as well as in happiness in the EU countries. Sticks were also supposed to be included. However the quality of governance has not developed as desired.

The progress in the years 2000-2010 has been uneven. Some of the old EU countries slid down on the rule of law scale (Italy and Greece). Some of the newly accessed Central and Eastern European countries also have seriously regressed in the quality of governance (Hungary and Poland) while progress in other countries is halting. We argue that this development may put into question the willingness of the richer countries to support the financial transfers to the poorer countries (the carrots).

The present institutional structure of the EU has failed to bring about an upward spiral in governance throughout the EU member states. We propose changes in this structure which might contribute to bending potential downward developments and explore the possibilities of new instruments to engender faster convergence in governance within the EU, like a strengthening the European Court of Human Rights, tracking funds on the level of the member states, the creation of the union-level prosecutor’s office and the possibility of class actions when a case is lost at the European court.

Essential to this approach is that some sovereignty be relinquished both in the richer as well as in the poorer countries to achieve this. We realize that the present political climate is not friendly towards more EU power. However: you cannot have you cake and eat it; improved governance cannot be achieved without extended EU powers (beyond the “nuclear” art 7 procedure, using the “stick”). Without improved governance, the EU is bound to have less chance for economic convergence.

1. Governance as win-win in the EU

1.1. Good Governance for Values, Growth and Happiness.

“Governance of countries” is a term used broadly to cover many different things. A narrow definition of governance covers “human rights” issues: the protection of civil rights. Governance indicators, as developed by the World Bank, apply to a broader field. These indicators refer to “voice and accountability”, political stability and absence of violence, government effectiveness, and regulatory quality, rule of law and control of corruption. These measures have been developed for over 200 countries (www.worldbank.org). Some of these measure are closer, others are more removed from “human rights”. Countries want to adhere to the “human rights” values, as they have jointly put this into the Universal Declaration of Human Rights of the United Nations in 1948. The professed adherence of countries to “good practice” in governance according to all the World Bank indicators is more complex, world-wide.

For the EU all of these indicators are highly relevant: implicitly or explicitly countries have underwritten these governance indicators. Some have supported from the human rights perspective, others from the economic perspective. The economic dimension was introduced early in the 1990’s by OECD and the World Bank: “good governance” as an essential element for development (economic growth) as well as to social cohesion as was later established (Easterly et al., 2006).

In the late 1990’s the World Bank made “good” governance an essential element in its lending and knowledge support strategy (World Bank, 1997, Kaufman and Shang-Jie, 1999). Good governance is basic to both national and foreign direct investment (Acemoglu et al., 2005), not just for low income, but also for middle income and high income countries. Foreign direct investment flows to the countries with the highest certainty about the property rights, while expectations on the return to investment are higher if fewer people dip into these returns. National investment will leave the country if Governments are on the take, reducing the return to investment. In the same vein Graeff and Svendsen (2012) see corruption as a (negative) manifestation of social capital. This enforces substantial contract costs, taking away wealth from more productive uses.

More recently the link between control of corruption and happiness was observed. Helliwell and Wang (2013, p. 19) find that perceptions of corruption substantially lower life satisfaction across the world. Also Nikoleva (2015) finds that improvements in the rule of law explain the differences in overall life satisfaction between the advanced and transition societies, together with macroeconomic factors. “The rule of law had an additional role of reducing the happiness gap in the 1990s and may have even reversed it in the post-crisis years”. “Good governance” in EU Member States countries should in this vein be a concern because of both the values the EU stands for as well as for the down-to-earth economic benefits to be derived from cooperation between the member states. If the EU wants to be a vehicle for economic growth and happiness, it should promote good governance in the member states.

People care about control of corruption according to EU surveys. 95% of respondents in Greece consider corruption a serious problem in their country (compared to 22% of respondents in Denmark). Corruption is observed as a problem for all levels of government, and across a range of professions including the police and customs services, even though only nine percent of Europeans have personally experienced corruption in the past 12 months. “If they were to experience corruption personally, Europeans are most likely to trust the police, the courts or their national ombudsman to help them” (EU, 2009).

A repeat in 2014 of the 2009 survey showed that still three quarters (76%, but down 2% points from 2009) of Europeans think that corruption is widespread. Yet more than half (56%) think that the level of corruption in their country has **increased** over the past three years. One out of twelve Europeans (8%) says they have experienced or witnessed a case of corruption in the past year (European Commission, 2014). Apparently the EU as a structure has not been very effective in promoting good governance in the period 2009-2014.

One of the World Bank measures of governance is Government effectiveness. Boerzel et al. (2010) find that EU Member states with more effective Governments are also better able to comply with EU law. This is an additional reason for the EU to be concerned about Government effectiveness.

1.2 The EU and Governance

The early start of the predecessors of the EU was marked by “nie wieder Krieg”. By working together economically the potential animosity between nations in Europe which had fought too many wars with another could be suppressed and might disappear. That approach has been highly successful. Not only did it bring peace, it also brought a tremendous benefit in terms of improvement of living conditions.

The Southern European countries like Portugal, Spain and Greece had –after much distress- shed dictatorships in favor of democracy and embraced to become part of the EU 15 already in the 1980s. The change towards democracy included a dedication to “good governance”. Yet, in the accession process there was no role foreseen for the EU in furthering the quality of governance. There was no carrot for improvement, nor a stick for a fallback in governance in the accession of these countries (as for the older members) to the EU.

The early EU predecessors were besides a vehicle for economic growth also a defense against the new post World War II bogey: the communist dictatorship of the Soviet Union threatening the peace of Europe. Then the wall fell in 1989 and Central and Eastern European countries ditched the oppression of the Communist one Party system. They were welcomed to the EU provided they would adopt all the then current rules of the EU. They should embrace “governance” as developed in the old EU in terms of the rule of law, freedom of expression and media. The conditions for accession were molded into the “Copenhagen criteria” of 1993. In return the EU would support the convergence between the old and the new members by means of financial transfers.

The EU proved to be a boon in terms of expectations of future economic growth as well as short term financial transfers for the accession countries. EU transfers were the carrot for these countries which made it possible to adopt the reforms required by the Copenhagen criteria (Noutcheva and Bechev, 2008). Interestingly enough the reforms had to be enacted by the same powerful (and “rent-seeking”) elites which might lose power by introducing accountability and transparency. The popular appeal of ‘returning to Europe’ together with the financial transfers provided apparently sufficient countervailing power against the short run interests of the political elites, so that they could opt for the reforms.

The years 2000-2010 have shown an uneven development of the EU. The first years –up to 2008- were golden years in terms of high economic growth, decreasing unemployment and increasing convergence in the EU in terms of welfare (Gill and Raiser, 2012). Then the economic crisis struck. The painful adjustment processes have brought about great uncertainty. They also gave room for more populism and more suspicion of politics (Krastev, 2014) which might in turn have supported the emergence of less good governance in several countries.

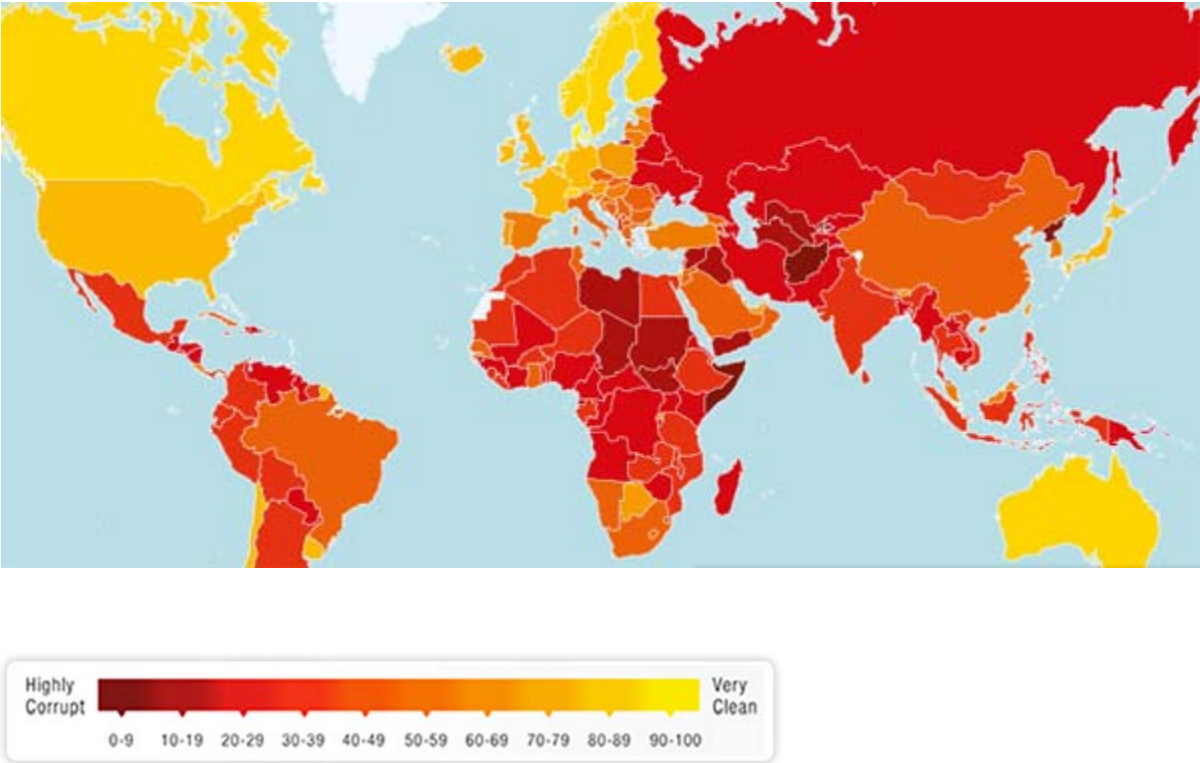
It is clear that the EU will be more competitive world-wide as a trading block if it has a substantial comparative advantage in governance. However, this is not easily achieved as we show in section 2. We observe a slippage in governance in parts of central and eastern and in southern Europe. These changes go along with a decline in relative labor productivity, thus threatening economic growth and social cohesion.

In the subsequent section 3 we present explanations for the declines in the quality of governance, from the point of view of elites seeking to acquire benefits for themselves by lobbying the political system to bend to the rules to their advantage (and succeeding). In section 4 we relate governance to trust. How could we expect to trust government if government is not viewed as benevolent, but rather as profiting on the backs of the population at large? In the last section we consider the role of the EU. This role has been strong in the period of accession of the Central and Eastern European countries. However in the 21st century the guarantees of a “stick” against declines in quality of government (laid down in Art. 7 of the Lisbon treaty) turned out to be without teeth. We propose treaty changes arming civilians in countries threatened by declines in the quality of governance, with a recourse to European courts. We realize that such treaty changes are not easily acquired. But then: Europe was never promised to be a rose garden....

2. Slipping governance in the EU

Can we really say that the EU’s comparative advantage is in “good governance” (Scheffer, 2014)? Figure 1 on the “cleanness” of countries does not seem to match this statement.

Figure 1



Source: Transparency International, 2013 (perceptions of corruption)

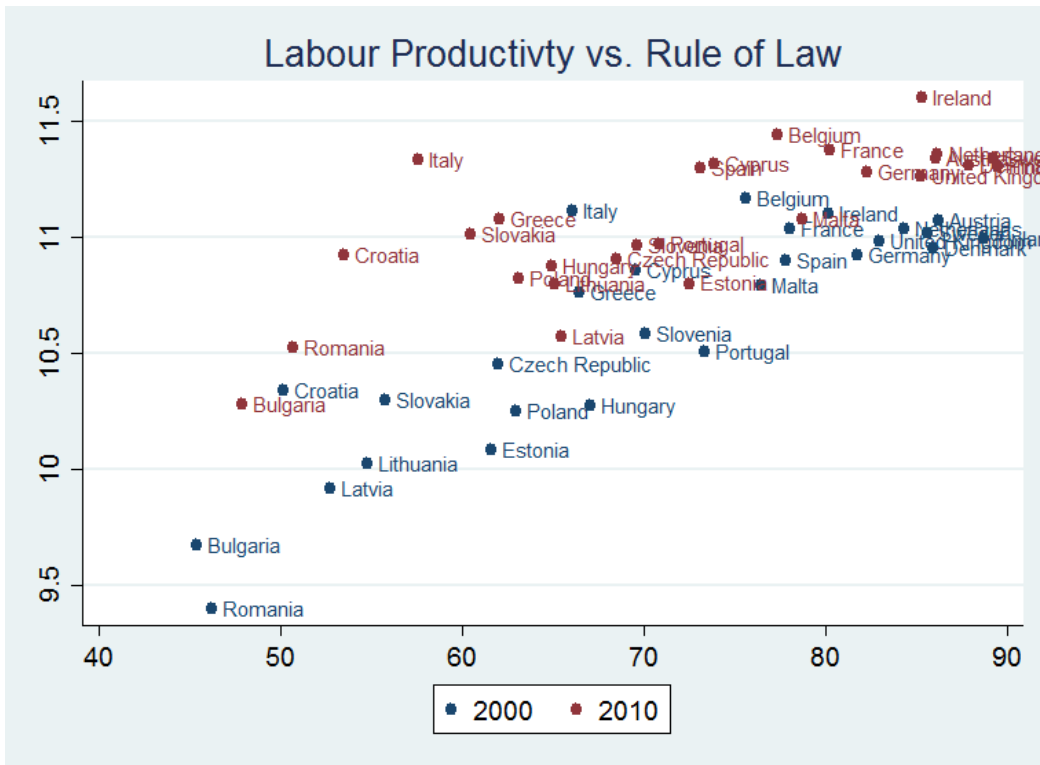
All governance indicators as brought together by the World Bank (mentioned in section 1) are highly correlated (Casanova, 2007). So it is no surprise that a chart on “freedom of press” of 2013 (World Freedom of Press Index) gives a similar impression as Figure 1.

In governance, the Nordic countries, Switzerland and the Netherlands shine, worldwide together with Chili, Canada, New Zealand and Australia as countries with little corruption. However, the EU peripheral countries around this core are colored dark yellow, tending to red. They get darker the farther they are removed from Denmark, with actually few EU countries being in the light or dark-red zone (less than 50% clean): Spain, Italy, Czech Republic, Slovakia and the larger part of South Eastern Europe. Notice that China is on par with these countries in terms of corruption.

Papajoannou (2016) notes that “in the countries of the European core (e.g., Germany, Netherlands, Austria), legal institutions are well-functioning, adequately protecting investors from managerial fraud; property rights are well-defined; public bureaucracies are professional and public goods-provision is decent; red tape and corruption, while not absent, are not huge issues. While there is always room for improvement, the European countries of the core enjoy strong state capacity, being able to enforce their government’s legislated policies, collect taxes, and apply the rule of law. In contrast, in the European periphery (Greece, Italy, Portugal, and Spain), legal protection of shareholders and creditors is weak, both because laws are conflicting, ill-designed and not-well-thought-out, and because courts are slow, inefficient, and often produce conflicting rulings. Public administration and national bureaucracies are largely inefficient, characterized by political interference, graft, and lack of professionalism. And states’ fiscal capacity is not particularly strong, as tax evasion is sizable and it is challenging for the government to enforce its decisions “.

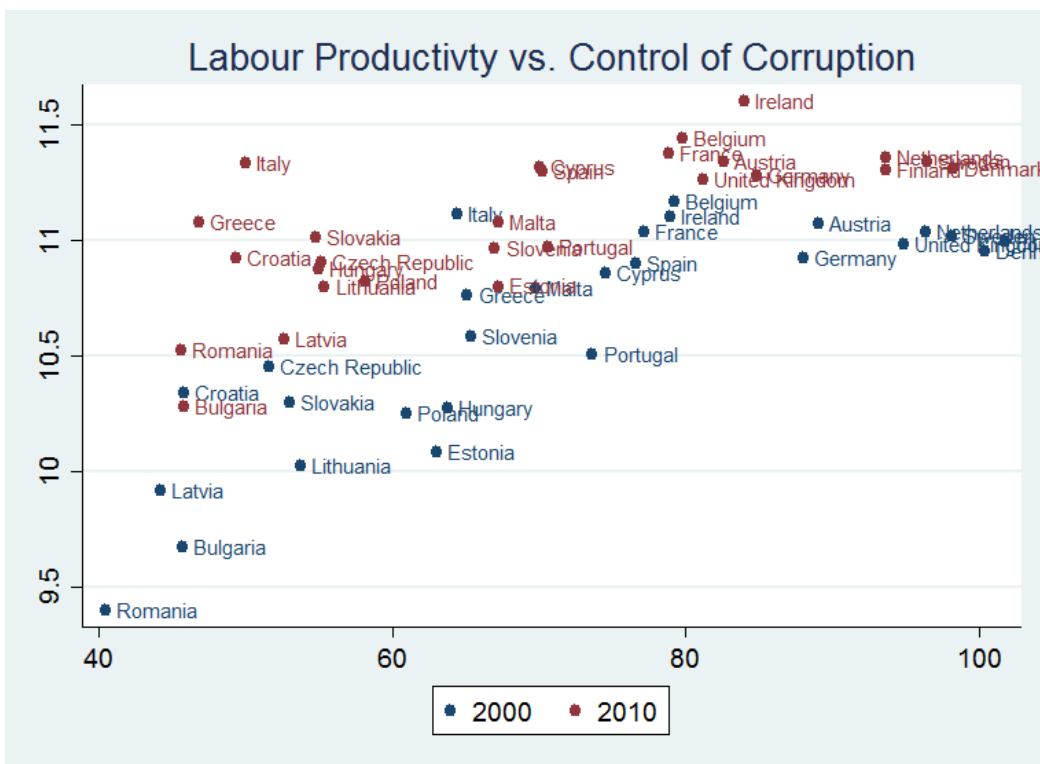
Figures 2 and 3 depict for all EU countries the changes in the rule of law and corruption over the period 2000-2010. These developments are related to labor productivity in the pictures. The relation with between the quality of governance and the change in labor productivity illustrates the economic rationale for “good” governance: the better you as a country are able to move up on the governance ladder, the more chance you have to move also up in labor productivity. Labor productivity is a good proxy for GDP per capita: the available income per person, even though this is not always the case: for example in the Figures labor productivity in Southern Europe (Greece, Italy, Portugal and Spain) went up between 2000 and 2010. However due the economic crisis, per capita GDP in these countries went down. How causal the relation is between on the one hand GDP per capita and on the other, the quality of governance is, remains subject for debate: in some instances one can clearly see the a lower GDP per capita is associated with a decrease the quality of governance (like in Southern Europe). At the same time the reverse: an upward spiral in the quality of governance with GDP per capita rising cannot be observed either.

Figure 2



Source: EU statistics

Figure 3



Source: EU statistics

These figures show progress and regress. We put the period 2000-2010 in the timeframe of the start of the publication of governance indicators (1994) and the post 2010 developments (using 2014 as the last year) when discussing the figures.

Two South European countries appear to have slipped substantially in the control of corruption: Italy and Greece. They were both sliding in the period 2000-2010 from a level in the 70's to a level in the 50's of this score. The 2014 data show a further decrease. Towards 2014 Spain also showed to be sliding backwards to a level of 70.

In Eastern Europe, Hungary particularly towards 2014 has a governance problem with a level of 61 in 2014. In contrast Romania has remained pretty constant albeit on a low level. Bulgaria has made great strides since 1996, but ending with Romania on close to the same level of China (47 in 2014). Recently Poland has chosen to renege on independence of the judiciary and to establish controls over the press (as Hungary had done some years before).

An evaluation of the progress in the rule of law shows similar changes: Greece and Italy sliding from both a level of 82 in 1996 towards (both) 67 in 2014. The good news is perhaps that over the period 2010-2014 the Italian score has slightly improved, while the Greek score has stabilized. Bulgaria and Romania managed to improve their governance according to the rule of law towards resp. 56 and 64 in 2014 (from levels of resp. 35 and 50 in 1996). Hungary, Portugal and Spain see almost monotonous decreases in their score.

The Baltic States and Slovakia show serious improvements in governance over the period 1996 (the first measurements of governance) until 2015.

The developments in the South and in the Centre and East had very different backgrounds stemming in part from the different times countries entered into the EU. Italy is one of the founding members of the EC of Coal and Steel. It was one of the five countries that cooperated to found the earliest precursor of the EU in 1957 with the Treaty of Rome.

Comparable data on governance are available only from 1996 onwards. It is as a consequence not possible to ascertain divergence or convergence in governance between Italy and the other founders before 1996. It remains difficult to understand why Italy could not catch up in terms of governance with its companion founders of the ECSC and the EEC in the period before 1996 and since 1996. Apparently there were not enough incentives in the structures of the predecessors of the EU to create upward spirals in governance in all Member States.

The other Southern countries with a decrease in governance became members of the EU after they had abolished dictatorship: Greece in 1981 and Portugal and Spain in 1986. It is likely that governance initially improved since accession. The declines in governance as observed after 1996 mentioned above are not easily explained. The introduction of the Euro in 2000 is likely to have played a role. It coincides with the decrease in governance in Italy and Greece. The Euro-introduction allowed Southern European countries to borrow on lower interest rates than they did before. Some countries used the increased lending in part to shore up Government transfers and expand Government staff as a way to buy friends or political appeal for the political party in power (despite the restrictions on Government debt and Government deficits in the "Stability Pact". Mitchel (2014) demonstrates this under the term "Eurozone dystopia" (the opposite of utopia). However, in Portugal and Spain, this decline starts later coinciding (without suggestion causality) with the crisis. To our knowledge no detailed studies are available to explain the slippage of governance in the South of Europe in the early part of the 21st century.

Mungiu-Pippidi (2016) presents a similar analysis as above, explaining the lack of progress in governance or the decline of governance by “insufficient context” in guiding anti-corruption efforts.

Governance developments in Central and Eastern Europe have been more extensively studied. The accession of Central and Eastern European countries in 2004 and of Bulgaria and Romania in 2007 apparently has been helpful to establish better governance. At the same time the EU membership could not prevent Hungary from sliding down the governance scale. Nor could it prevent Poland from renegeing in 2016 on the principle of the independence of the judiciary system.

It was suggested at the time of accession of Central and Eastern European countries that much of the reform was for appearances only. It was to carefully conceal the continuation of past power structures and practices (van Stolk, 2005) with the purpose of returning to the pre-accession power distribution. . However, until approximately the year 2007 “backsliding” (the return to old practices of corruption and partial rule of law) could not be observed in Central and Eastern Europe (Pop-Eleches and Tucker, 2011, 2016), even though these countries were no longer subject to the powerful incentives of the EU membership promise (Levitz and Pop-Eleches, 2010). There was at most a slowdown in reforms rather than a genuine backlash. The authors attribute this finding to the fact that the loss of leverage after the countries joined the EU was balanced by a combination of alternative leverage- and linkage mechanisms, including greater dependence on EU aid and trade and greater exposure to the West for both elites and ordinary citizens. They show that the new EU members significantly outperformed their ex-communist (non EU) neighbors with respect to political and civil rights, the electoral process, government effectiveness and corruption control, so that indeed it was EU membership (and the corresponding carrots and sticks) which led to improvements in governance in Central and East European countries.

The early part of this century is then a turning point where the magic of being part of the EU (including linking mechanisms) has stopped to work for reform towards better governance. First Hungary turned -starting around 2010- its back on the satisfaction of the Copenhagen-criteria (Magyar, 2014) and in 2016 Poland also diverged. There is considerable concern these days on the retreat in governance of the new (2016) Polish Government in one of the important (and perhaps decisive) governance indicators: the “rule of law”. Poland and Hungary may be exceptions in the degree of decline of governance in Central and Eastern Europe. Yet one can observe in several other Central and Eastern European countries tendencies in party political platforms to opt for similar developments. Hillion (2013) observes: “Hitches in fundamental rights protection have increased, in old and newer Member States alike, as demonstrated by the persistent controversial treatment of Roma the encroachment upon media freedom or episodic calls for discriminatory treatment in relation to new Member States’ migrant citizens. Yet, in most cases, it appears that the fundamental rights *acquis*, vigorously promoted and monitored in the context of accession, has not proved as effective a remedy as more conventional elements of EU law.”

The slippage in “good governance” in several EU Member States is a threat to the competitiveness of the EU as a trading block as a whole. It is also a threat to the internal cohesion, as the citizens of “richer” member states reject financial transfers to EU member states which cannot stand for the proper use of these funds (like in Hungary). It is likely to contribute to the “veto-cratie” which is emerging in many EU countries when the EU-membership is put to a vote, like in the UK.

3. Understanding the rise and fall of governance

Governance is the outcome of a constant battle between interest groups in society. Individuals, firms and industries across the world regularly lobby political and government players in order to obtain financial benefits through a variety of elaborate strategic tools (Patnaik, 2015). In economics this is referred to as rent-seeking. Business euphemistically calls this “non-market strategy” or “corporate political strategy”. This battle extends to Government policy, but might also involve Government institutions, like the rule of law or freedom of the press. Often “rent-seeking” leads to a gain for the rent seekers with a greater loss to society as a whole (Mueller, 2003). “Recently, we have seen how rent-seeking behavior by interest groups can impede important structural reforms in countries that need to modernize their economies and make them more competitive. In several Euro countries, for instance, governments have struggled to implement reforms against the opposition of groups that are receiving rents through the status quo (e.g., through preferential tax treatment, regulations that eliminate competition, etc.). Another case of rent-seeking that becomes salient regularly during negotiations for free trade agreements is when countries are reluctant to eliminate protective measures for their agricultural sectors, partially as a result of successful rent-seeking by those sectors”(Patnaik, 2015). Outright bribery is a criminal offence in all EU countries. However, the legal proceedings against such corruption can be hampered by a tainted prosecution and a tainted legal system.

EU citizens see in particular bribery (EU, 2009 and 2014) as corruption. More than half of all respondents hold the opinion that there is widespread corruption amongst national politicians and amongst officials responsible for awarding public tenders and building permits (European Commission, 2009). The close links between business and politics is the most common cause Europeans give for corruption, followed by insufficient action by governments to prevent corruption. In fact, most Europeans agree that tougher penalties and more successful prosecutions are needed to combat corruption. This reverts back to the courts and the quality and independence of the justice system. There is a strong incentive on the part of ruling elites to maintain power through a control of the justice system so that they continue to benefit.

Why is it that voters turn out to retain political parties which promote the interests of an elite rather than that of the voting public at large? Why do voters not throw parties out which are corrupt and promote insufficiently the rule of law. Traditional voting models (Downs, 1957) provide little answer. Mayar (2016) details how Hungary transitioned from a well-governed country to what he calls a mafia state through the network of the political party Fidesz. This party was a new political elite in 2001, but managed to secure 2/3rds of the votes in the 2010 elections through careful campaigning on populist items. Subsequently it usurped the economy through “managing” the media, the courts and the economy. European Union Funding is a serious source of enrichment for this corrupt elite. Voters at large are no longer informed on the way the Fidesz party has usurped power and has as a result a good chance to stay in office. Krastev (2014) proposes that such political evolutions are part of a more general picture of popular uprisings which express a pervasive distrust of democratic institutions and open suspicion of both the market and the state, rejecting established political parties, questioning the motives of the mainstream media, refusing to recognize the legitimacy of any specific leadership, and rejecting all formal organizations. The select populist leaders who –once in office- maintain power through anti-democratic means (like controlling the media, controlling the legal system), very much in the way de Tocqueville predicted (see: Coutant, 2008).

Figure 4



Cartoon showing Hungarian President Orbán horse-riding East with his bags full of Euros

The potential threat to governance in the countries of central and Eastern Europe is widely viewed as a remnant of communist times. “While pre-communist Eastern Europe was hardly a bastion of tolerance, communism arguably reinforced these problems in at least two ways. First, its imperial undertones exacerbated the frustrations of small nationhood and created scores to be settled after the fall of communism. Second, while the communist maxim that “whoever is not with us, is against us” ostensibly applied to class conflict, its broader logic nevertheless lent itself to a much wider rejection of any kind of “other” (Pop Eleches and Tucker, 2011). This is called the “tolerance deficit” and is shown to extend even to generally pro-democracy respondents in a survey.

This tolerance deficit easily induces “partisan” politics, even pertaining to appointments in the courts (or university presidents for that matter). Those appointed to the court by a previous administration of a different signature are considered to be the “enemy” and must be removed as a consequence of this tolerance deficit.

Mungiu-Pippidi (2016) shows that two of the most advertised anticorruption policies of the last two decades, i.e. establishing an Anti-Corruption Agency (ACA) and restricting political finance, have not helped curb corruption in the EU28. She also offers an overview of what does work and identifies six determinants of corruption/control of corruption: administrative burden, trade barriers, transparency, auditing standards, judicial independence and civic engagement.

The quality of governance in individual EU Member States could benefit from the structure of the EU if the threats to good governance are well analyzed and well discussed on the EU level and in individual countries, leading to changes in the treaties of the EU, such that the EU is the “ultimum remedium” in case of slippage in governance in member countries. Then citizens of member countries can say: “in Europe we trust”. This further explored in section 5.

4. Governance and trust in institutions

One cannot expect the citizen to have a high trust in national institutions if these institutions themselves appear to be easily bought with a bribe or by other means. You do not trust the police if you can buy the policeman. You do not trust the justice system if the verdict can be bought by the wealthiest and most powerful. In general trust in the national institution (Government and parliament) of the EU member states on the one hand and on the other “corruption” as measured in the raw scores of the corruption index are highly correlated.

Trust in institutions in a country is closely related to “trust in each other”. The latter is viewed as “social capital” (Graeff and Svendsen, 2012) contributing to a spiral upward if this trust in the (anonymous) other is rewarded (Arrow, 1974).

The variation over time in the trust in national institutions (Government and parliament) in the EU is well explained by economic development in combination with governance. Trust in national institutions reached a peak in the spring of 2007 for the recorded period 2006-2011 (with 43% and 41% trusting the Government and the national parliament respectively). Observe that even at this peak trust is shockingly low. This was the moment of the lowest unemployment in the EU and at what turned out to be the end of a period of fast economic convergence. After spring 2007 trust in national institutions falls. This fall is accelerated after the second dip in EU economic development in spring 2010 (with 33% and 32% “trustees”).

Trust in the EU closely follows trust in national governments. Individual citizens trust the EU more than they trust their own Governments. In autumn 2004 50% trusted the EU, while 38% and 34% trusted the national government and the parliament respectively. However trust in the EU fell farther back than that in national government (to 34% in autumn 2011, a fall back by 1/3rd between 2004 and 2011, compared to a 1/5th fall back in trust in national Governments). The UK was always somewhat exceptional with the highest degree of Euroscepticism¹ and the lowest trust in the EU.

¹ Measured by the Eurobarometer answers to the question: Do you feel your country is better off in the EU? Negative answers are interpreted as “Eurosceptic”.

Brexit should as a result not have come as a big surprise. The worrying sequel is that according to the same measures other countries are following the UK development in Euroscepticism and trust in the EU.

Trust in different EU institutions also follows the same development line: after a high point in 2007 it drops subsequently. Trust in the EP is in autumn 2011 with 41% still considerably higher than that in national parliaments (27%). At first sight it may be surprising that in many countries the trust in Europe is greater than that in the own country. But in reflection it shows that many citizens of countries with lower levels of governance aspire to the better governance they observe in other EU countries. In Europe we trust?

5. What can the EU do?

Control of corruption and the rule of law are in the EU the subject of subsidiarity: the sovereignty of the countries. The EU surveys and gives analysis (EU, 2009, 2014). In Appendix A we present a general summary from an EU report detailing how corruption takes place and what can be done about it, without any focus on particular countries where this might be more of a problem. This is admirable but has little to do with the backgrounds and causes of “bad” governance: rent seeking, distrust of democracy and in the central and eastern countries the legacy of communism.

There is little the collective of the EU can do against weak governance in any particular member state, even though one third of the European citizens believed in 2009 that the EU helps to reduce corruption in the EU (European Commission, 2009). Muller (2015) argues convincingly that the EU lacks appropriate legal instruments and plausible political strategies to support in upward spiral in governance in the member countries.

The so-called “nuclear option” of Article 7 of the Lisbon Treaty could perhaps be an exception. The article 7.1 states that the EU Council can establish that there is the “clear danger” of a violation of *fundamental rights* or even (article 7.2) “a grave and persistent violation” while sanctions and the suspension of voting rights are discussed in article (7.3). The imposition of Article 7.3 sanctions requires a two-thirds majority of the European Parliament.

The adjective “nuclear” is not formal, but has been generally accepted as it is felt that article 7 is quite extreme. For many, the term also includes that the Article is not likely to be used.

The European Commission decided in 2014 to construct a pre-Article 7 three-step procedure for addressing “systematic threats” to the rule of law in member countries. This procedure started in 2016 against Poland with an audit on the rule of law. Earlier there were discussions on Austria (2000) and Hungary (2015). The EU brought sanctions (decided on a multilateral basis) to the far-right Government of Austria for violating human rights. These were however quickly lifted when a backlash of anti-EU sentiment arose in Austria. Also Hungary and Poland have shown that the ruling parties use the threat of EU sanctions to reinforce their positions: “we, the proud ... (fill out: citizenship)... are not going to have our destiny determined by outsiders.

Hungary escaped from the pre-Article 7 procedure because the European Parliament did not want to bring it to a vote. The fear for applying the Article 7 was that it might lead to a disintegration of the EU (with a close to nuclear effect).

Yet, not applying Article 7 as the only means to counter a decrease in Governance also may lead to disintegration. Disintegration is likely in the support of citizens of well-Governed and richer countries for solidarity and convergence. It may put oil on the fire of nationalism leading to possible new threats of dexits (Danish exit a non-Euro country), swexits (Sweden, non-Euro) or even nexits (Netherlands, Euro and founding member of the ECCS).

The EU is then between a rock and a hard place. Muller (2015) argues in favor of a “new democracy” watchdog, analogous to but more powerful than the Venice Commission². Magyar (2016, pp 198-200) presents some out of the box thinking of this dilemma by suggesting recall of citizens against infringements of EU member states against governance at European courts. These might counteract the causes of “bad governance”: rent seeking, distrust of democracy and in the central and eastern countries the “tolerance deficit” legacy of communism.

Mayar (2016) proposes:

- **“Setting up the public prosecutor’s office for the European Union and passing European laws on the persecution under penal law of the mismanagement and misuse of European Union funding.** Although a European Public Prosecutor’s Office can be established pursuant to Article 86 of the Treaty on the Functioning of the European Union, the European Council must support the pertaining European Commission proposal. Although the current model grants oversight powers to European institutions (such as OLAF), it passes on the power to hold perpetrators accountable to member state authorities. But this does not work when member state authorities fail to take action. This issue could be effectively remedied if this task were allocated to a European institution vested with the necessary powers. The judicial process would remain in the hands of member state courts, respecting member state sovereignty, based on the principle of the independence of courts. Under the current rules, member state courts may pass a preliminary ruling if they have any questions linked to European Union in the context of proceedings, and member state proceedings remain under the supervision of the Strasbourg-based European Court of Human Rights. Though the founding treaties of the EU allow for the **creation of a Union-level prosecutor’s office**, the Commission’s proposals for establishing one have been rejected by certain governments of the European council so far. A way to compel the dissenting states would be for the net contributing states to stop the flow of EU funds—on grounds of their responsibility to their tax payers—to those states, which reject the competency of the Union-level prosecutor’s office in overseeing the way these funds are spent.
- Establishing the **institution of actio popularis** on a European level i.e. reinforcing the European Court of Human Rights for taking action against mass and systemic violations of human rights and incorporating their outcomes into the European Union’s rule of law procedures.
- If EU funds are misused by member states, that is used corruptly, on a mass and systemic scale, **international juries should be applied in the member states’ tender procedures.**” (Mayar, p. 2016, p. 201).

² The Venice Commission is an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law. It was created in 1990 after the fall of the Berlin wall, at a time of urgent need for constitutional assistance in Central and Eastern Europe. The Commission's official name is the European Commission for Democracy through Law, but due to its meeting place in Venice, Italy, where sessions take part four times a year, it is usually referred to as the Venice Commission.

- Also Papajoannou (2016) argues for institutional reform at the EU level and institutional convergence towards best-practices, if Europe is to meet the growing challenges faced by globalization (competition from industrial and emerging markets, migration), avoid destruction, and fulfil the needs and aspirations of its citizens”. He proposes establishing a European-level Institute that will monitor institutional performance and state capacity across the EU and the Eurozone.

These suggestions appear to be extremely useful not just for the Central and Eastern European States, for the Southern European States, but also for all the other Member States of the EU. A new treaty (post- Brexit) might want to incorporate this approach. Of course, such an approach will be heavily debated. There is likely to be the doubt of the old-EU states that such EU wide recall against national politics will further) infringe on sovereignty –as indeed is the case. There might be also fear for abuse. But there is no way to have your cake and eat it. The EU will survive as a strong unit in the international completion with a strong governance, or it is bound to fall prey to the national and personal interests of elites.

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Appendix A. How to control corruption.

(from: EU, European Commission first Anti Corruption Report, 2009)

1. Control mechanisms

- *Use of preventive policies (e.g. ethical rules, awareness-raising measures, easy access to public interest information).* There are large differences between Member States concerning prevention of corruption. For some, effective prevention has contributed to a strong reputation of little corruption, others have implemented preventive policies in an uneven way and with limited results.
- *External and internal control mechanisms.* In many Member States, internal controls on procedures within public authorities (particularly at local level) are weak and uncoordinated.
- *Conflicts of interest.* Rules on conflicts of interest vary across the EU, and the mechanisms for checking declarations of conflicts of interest are often insufficient. Sanctions for violations of rules are rarely applied and often weak.

2. Prosecution and punishment

- *Criminal law* rules making corruption a crime are largely in place, in line with the standards of the Council of Europe, UN and EU legislation. Still, EU Framework Decision 2003/568/JHA on combating corruption in the private sector has been transposed by Member States into national law in uneven way.
- *The efficiency of law enforcement and prosecution* in investigating corruption varies widely across the EU. Outstanding results can be seen in some Member States. In some others successful prosecutions are rare or investigations lengthy.
- *Comprehensive corruption crime statistics* are missing in most Member States, complicating comparison and assessment. Procedural rules, including rules on lifting immunities of politicians, obstruct corruption cases in certain Member States.

3. Political dimension

- *Political accountability.* Integrity in politics remains an issue for many EU States. For instance, codes of conduct within political parties or elected assemblies at central or local level are often missing or lack teeth.
- *Financing of political parties.* Although many Member States have adopted stronger rules on party financing, considerable shortcomings remain. Dissuasive sanctions against illegal party funding are rarely imposed in the EU.

4. Risk areas

- Within Member States, corruption risks are generally higher at regional and local levels, where checks and balances and internal controls tend to be weaker, than at central level.
- Urban development and construction, as well as health care, are sectors vulnerable to corruption in a number of Member States.
- Some shortcomings exist regarding the supervision of state-owned companies, increasing their vulnerability to corruption.
- Petty corruption remains a widespread problem only in a few Member States.

Public procurement: an area vulnerable to corruption

The Report includes a special chapter on public procurement. This is a very important area for the EU economy, as approximately one fifth of the EU's GDP is spent every year by public entities buying goods, works and services. It is also an area vulnerable to corruption.

The Report calls for stronger integrity standards in the area of public procurement and suggests improvements in control mechanisms in a number of Member States. Detailed information and specific points suggested for further attention can be found in the country chapters.