

# Backsliding as new transboundary crisis for the European Union

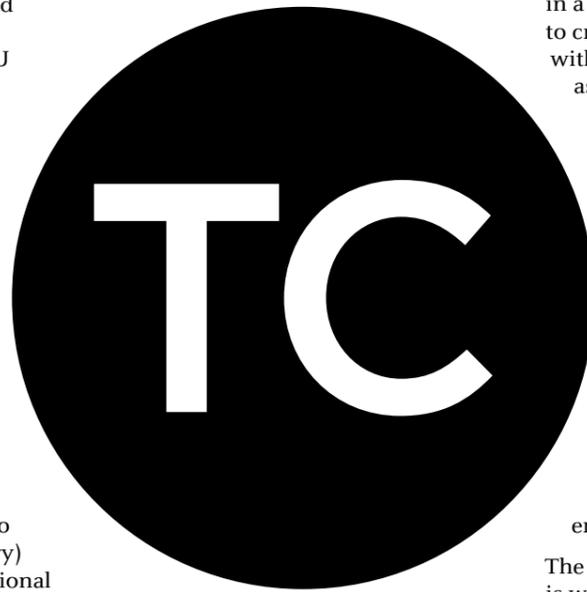
**Martin Lodge** and **Nick Sitter** introduce one of the key themes of the TransCrisis project

Crisis management is usually associated with urgency – immediate actions are called for to respond to fast-moving and escalating problems. However, recent years have given rise to a new type of crisis for the European Union (EU). This new, more chronic, type of crisis that goes to the heart of the EU is that of backsliding.

Backsliding defines the noticeable tendency among EU member states to challenge common institutions and Treaty-based commitments. These attempts at ‘cheating’ on earlier EU commitments are of a different quality to the long diagnosed transposition deficits that are said to have stifled the Single Market. It is also different from the grandstanding in Council meetings or calls for Treaty opt-outs and/or opt-ins. Backsliding represents a direct challenge to the normative commitments of EU membership, especially in areas of human and political rights as well as principles of good governance. Backsliding is about the perception that some member states’ policy measures designed to address (potentially transboundary) crises run counter to the constitutional and legal commitments they signed up to when joining the EU. This matters as membership to the European Union was more than just signing up to a free trade area, it was about committing to principles of liberal democracy.

The last half decade has offered a sufficiently large number of cases of backsliding to suggest that this phe-

nomenon is becoming increasingly prominent. States have attracted serious criticism because their laws, policies or executive actions (usually adopted in the name of coping with an acute crisis) are said to counteract the intentions of earlier EU-related commitments. Particular examples that have attracted prominent media coverage and strong words from the European Commission include:



France’s ‘voluntary return’ of Roma in 2010, Italy’s subsequent proposal to expel EU citizens from other countries if they could not support themselves, and Romania’s Prime Ministers Victor Ponta’s (2012) and Viktor Orbán’s (since 2010, ongoing) backsliding on democratic

institutions. Other recurrent issues include corruption and the credibility of neighbours and applicant states’ commitments to EU rules and values. The refugee crisis has seen member states trade accusations of backsliding on human rights and commitments arising from the Dublin Convention.

Backsliding has two major characteristics, which often, but not always, combine to exacerbate the problem. Firstly, in a number of cases, national responses to crises – and these are often crises with a transboundary dimension, such as migration or economic crises – involve policy tools and initiatives that are in some way incompatible with the EU’s rules and values. Secondly, these measures are explicitly formulated as a deliberate challenge to the EU regime, brought forward by parties and governments that see an assertion of sovereignty and an opportunity to stand up against ‘Brussels’ as a value in and of itself. Consequently, backsliding produces a new form of institutional crisis in that it involves the purposeful erosion of EU institutions.

The first central question for the EU is whether recent years have seen an actual increase in backsliding across member states. It is an open question whether the series of recent EU crises – the global economic crisis, the economic crisis in the EU, the Grexit and Brexit debates, migration and refugee flows – have weakened the overall normative commitment to the EU among the 28 governments and promoted increased

popular and party-based Euroscepticism. To the extent that this is the case, backsliding does not merely constitute a threat to the EU regime; it might also be a symptom of deeper institutional erosion in which the increasing re-nationalisation of politics represents an electorally attractive option to deal with the kind of transboundary problems that are inherent to the EU.

The second central question for the EU is what can and should be done about backsliding. The easy answer – which the German, Dutch, Danish and Finnish foreign ministers called for in a 2013 letter to Commission President José Manuel Barroso – is to consider new measures at the EU level. These measures would allow for more differentiated responses to evidence of member-state backsliding. At present, potential options are limited to the rather ‘light touch’ infringement procedures or the ‘nuclear option’ of suspension of membership. Gradual and escalating sanctioning regimes might offer a more comprehensive toolset for dealing with member state backsliding. However, such a belief in a more extensive toolkit to deal with backsliding needs to acknowledge two much bigger problems.

The first big problem is that of political will as European leaders appear reluctant to engage with backsliding. For example, the reason the Swedish foreign minister Carl Bildt did not join his four liberal counterparts in signing that 2013 letter was that as a conservative he was reluctant to criticise, even implicitly, fellow European People’s Party member Viktor Orbán.

The second big problem is that any sanctioning regime needs to take into account the potential consequences of any action against backsliding. When states like Hungary challenge basic EU principles such as ‘liberal democracy’,

they do so in the hope of exploiting wider geopolitical dynamics. Any rule- or principle-based approach towards containing backsliding might easily come unstuck in the light of broader geopolitical forces that represent even bigger existential threats to the EU’s *raison d’être*. At the same time, tolerating backsliding could lead to further fragmentation among EU member states because of these wider geopolitical dynamics.

Backsliding represents a novel kind of crisis for the European Union. It is transboundary in nature, it goes to the core of the institutional norms characterising the EU, and it plays out in the national politics of member states. It is unlikely that there will be any

magic solution to the problems associated with backsliding. Instead, the answer lies in seeking to manage and contain backsliding. Such EU-wide containment might be feasible in times of economic growth and healthy government finances, but becomes trickier in times of redistributive battles and depleted public finances. Although it has become fashionable again to resort to the old wartime advice of ‘keep calm and carry on’, that advice should not be seen as an invitation for complacency.

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**carr** is the co-ordination partner in this network of eight organizations. Other partners involve: Crisisplan (Arjen Boin), the University of Utrecht (Femke van Esch), Central European University (Nick Sitter), Institut Barcelona d’Estudis Internacionals (IBEI,

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More information can be found under the project website [www.transcrisis.eu](http://www.transcrisis.eu).