Online appendix

Winzen, Thomas. 2023. “How Backsliding Governments Keep the European Union Hospitable for Autocracy: Evidence from Intergovernmental Negotiations.” *The Review of International Organizations*.

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Appendix 1: List of backsliding-inhibiting legislative proposals

The following lists legislative proposals in which at least one issue was coded as backsliding-inhibiting. Note that legislative proposals often include several controversial issues. The replication materials include a list of the specific issues coded to belong to the areas of backsliding-inhibiting competences.

1) Proposal for a regulation of the European Parliament and of the Council regarding public access to documents of the European Parliament, the Council and the Commission (COD/2000/032)

2) Proposal for a regulation regarding the implementation of measures to promote economic and social development in Turkey (COD/1998/300)

3) Proposal for a regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (CNS/2000/030)

4) Proposal for a directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (CNS/2000/127)

5) Proposal for a regulation regarding the implementation of measures to intensify the EC-Turkey customs union (CNS/1998/299)

6) Proposal for a regulation concerning the establishment of Eurodac for the comparison of the fingerprints of applicants for asylum and certain other third-country nationals to facilitate the implementation of the Dublin Convention (CNS/1999/116)

7) Proposal for a regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (CNS/1999/154)

8) Proposal for a decision creating a European Refugee Fund (CNS/1999/274)

9) Proposal for a directive on criminal measures aimed at ensuring the enforcement of intellectual property rights (COD/2005/127)

10) Proposal for a regulation on the financing of the common agricultural policy (CNS/2004/164)

11) Proposal for a regulation amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (CNS/2007/045)

12) Proposal for a regulation establishing a European Union Agency for Fundamental Rights (CNS/2005/124)

13) Proposal for a directive on common standards and procedures in Member States for returning illegally staying third-country nationals (COD/2005/167)

14) Proposal for a regulation establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism (COD/2006/140)

15) Proposal for a regulation concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas (COD/2004/0287)

16) Proposal for a Directive on fight against fraud to the Union´s financial interests by means of criminal law – (2012/0193/COD)

17) Proposal for a Directive on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA (2017/0226/COD)

18) Proposal for a Regulation amending the Schengen border code as regards temporary reintroduction controls at internal borders (2017/0245/COD)

19) Proposal for a Regulation of the Council and the EP amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders – 2015/0307(COD)

20) Proposal for a Regulation on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement – 2018/0104(COD)

Appendix 2: Additional discussion and tests

Appendix 2 presents additional discussion and tests related to the analysis in the section 'Positions of backsliding governments'. In addition, Table A1 shows the detailed regression results underlying Models 2 and 3 in Figure 1. To begin with, it could be asked whether the results simply capture the Euroscepticism of government parties. Model 2 in Figure 1 includes a measure of government Euroscepticism, based on the seat-weighted average position of the government parties according to Chapel Hill expert surveys (Bakker, de Vries, et al., 2015; Bakker, Edwards, et al., 2015; Bakker et al., 2020). This measure does not have a relationship with government positions or change the other findings.

Furthermore, Models 1 and 2 also include a time trend, which suggests that pro-EU positions become less likely the later the date of introduction of a legislative proposal. This is in line with observations that Council decision-making has become (slightly) more contested (Pircher & Farjam, 2021), but does not change the other results either.

Moreover, it might be the case that backsliding-inhibiting competences simply correlate strongly with sensitive EU competences or so-called core state powers (Genschel & Jachtenfuchs, 2014). Backsliders' and other countries' opposition to these areas might then have little to do with concerns to protect backsliding and more with general reluctance to empower the EU. An approximate way to evaluate this is to include a justice and home affairs dummy variable in the model, as this area has been the focus of debates about the EU's activity in core state powers at the level of legislation (the EU's role in fiscal and macroeconomic governance is defined mostly at the treaty level and in separate procedures such as the European Semester). The inclusion of a dummy variable for all legislation negotiated by the justice and home affairs council (see Model 2 of Figure 1) does not change the results, however.

Additionally, I conducted a placebo test by coding backsliding periods starting in 2010, as in Hungary, for other countries and excluding the actual backsliders (see Figure A1 and Figure A2 for a 2015 onset, as in Poland). Figure A1 shows the results of re-running M1 (panel a of Figure 2), in which the interaction term between backsliding and backsliding-inhibiting competences was negative with the 90-percent credibility interval excluding positive estimates. Irrespective of which group "received" the placebo coding, the interaction proves weaker and uncertain. The results for the other Central and East European countries (CEE) are somewhat similar, albeit also weaker and more uncertain. If is worth noting that several CEE countries, other than the countries coded as backsliding here, have been discussed as backsliders (Bakke & Sitter, 2022; Cianetti & Hanley, 2021; Sedelmeier, 2017), although they do not meet the V-DEM threshold. This may explain the somewhat similar results. Overall, the placebo test warrants further confidence in the results.

Furthermore, I re-ran the analysis excluding observations from the first wave of the DEU project, which included legislation proposed long before backsliding started in any member states (1996-2000). The results, shown in Figure A3, change very little, however, compared to the results in Figure 1.

Finally, given that the lenient operationalization of democratic backsliding based on the V-Dem standard could be contested, I re-ran Model 2 of panel a) in Figure 1 but coded additional or fewer countries as undergoing backsliding in the period since 2010. In particular, the inclusion of Greece in the original operationalization could be contested, whereas the exclusion of Bulgaria and Romania might raise questions. Malta has also featured in the discussion about possible cases. Yet, coding these cases as backsliding or not in various configurations does not affect the results strongly, as Figure A4 shows.

	1)	2)	3)	4)
Constant	0.27 (-0.1/0.65)	0.29 (-0.08/0.66)	-0.35 (-0.84/0.13)	-0.57 (-1.18/0.03)
Backsliding	0.11 (-0.24/0.47)	-0.04 (-0.64/0.56)	0.13 (-0.68/0.92)	0.14 (-0.87/1.17)
Backsliding-inhibiting competence	-1.27 (-1.76/-0.8)	-1.27 (-1.77/-0.79)	0.22 (-0.55/0.98)	0.19 (-0.98/1.3)
Backsliding*Backsliding-inhibiting competence	-0.85 (-1.64/-0.06)	-1.06 (-2.36/0.2)	-0.7 (-2.25/0.84)	-0.9 (-2.82/1.03)
Year	-0.04 (-0.09/0.01)	-0.04 (-0.1/0.01)		
Gov't EU position	0.01 (-0.06/0.07)	0 (-0.07/0.06)		
JHA	1.02 (0.4/1.66)	0.99 (0.37/1.63)		
SD country	0.23 (0.15/0.34)	0.23 (0.14/0.33)		
SD proposal	1.31 (1.13/1.51)	1.31 (1.13/1.51)	1.45 (1.14/1.81)	1.59 (1.04/2.24)
Hungary (baseline)				
Poland			-0.08 (-0.55/0.39)	-0.08 (-0.58/0.41)
Croatia			0.11 (-0.7/0.92)	
Czech Republic			-0.14 (-0.63/0.34)	
Greece			0.27 (-0.18/0.72)	
Slovenia			0.42 (-0.06/0.92)	
N	4827	4827	780	264
Countries	28	28	6	2
Proposals	118	118	114	64
Corresponds to:	Figure 1a, Model 2	Figure 1b, Model 2	Figure 1a, Model 3	Figure 1b, Model 3
Operationalization of backsliding	Broad, Based on V-Dem	Narrow, Only HU & PL	Broad, Based on V-Dem	Narrow, Only HU & PL

Table A1. Results underlying Figure 1, Models 2 and 3.

Note: The table shows mean coefficient estimates and 90% Highest Posterior Density Intervals in parentheses.

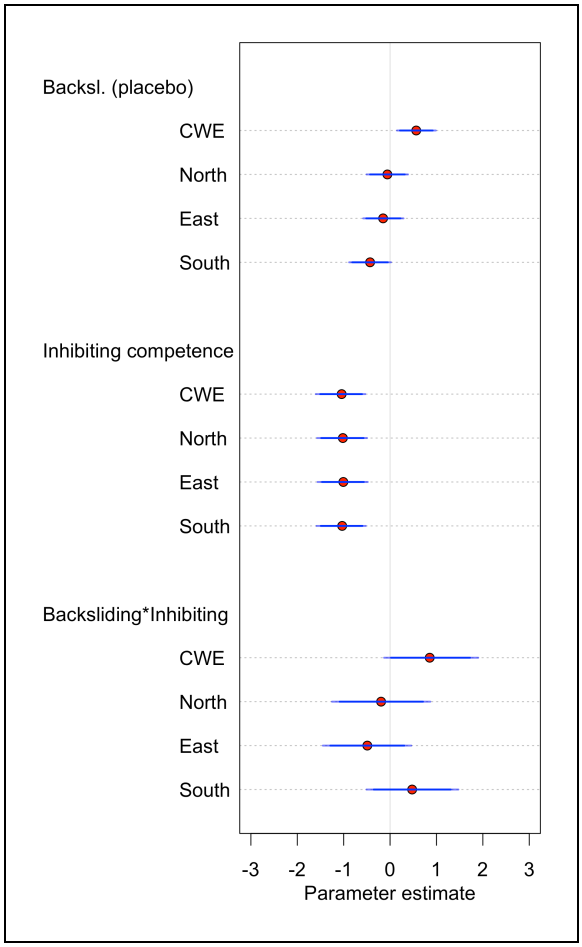

Figure A1. A placebo test treating other countries as backsliders as of 2010.

Note: Observations for all models (cases/countries/proposals): 4747/22/127. The bars are 90% (dark blue) and 95% (light blue) Highest Posterior Density Intervals (HPDI or credible intervals). See Figure A2 for the same models but treating countries as backsliders as of 2015. The same variables as in Model 1, Figure 2, were included but not all are shown.

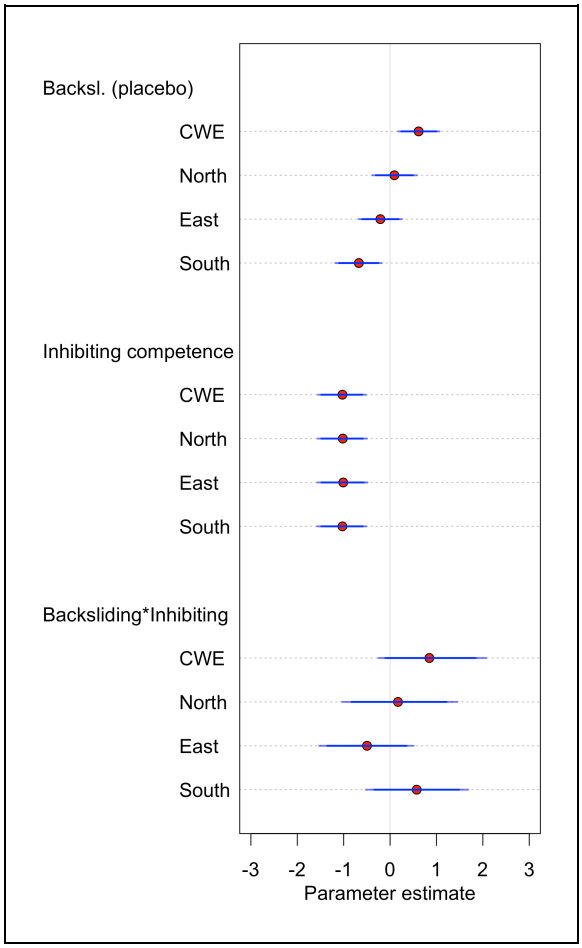

Figure A2. A placebo test treating other countries as backsliders as of 2015.

Note: Observations for all models (cases/countries/proposals): 4747/22/127. The bars are 90% (dark blue) and 95% (light blue) Highest Posterior Density Intervals (HPDI or credible intervals). Only results for selected variables are shown. All variables from the main models were included but not all are shown.

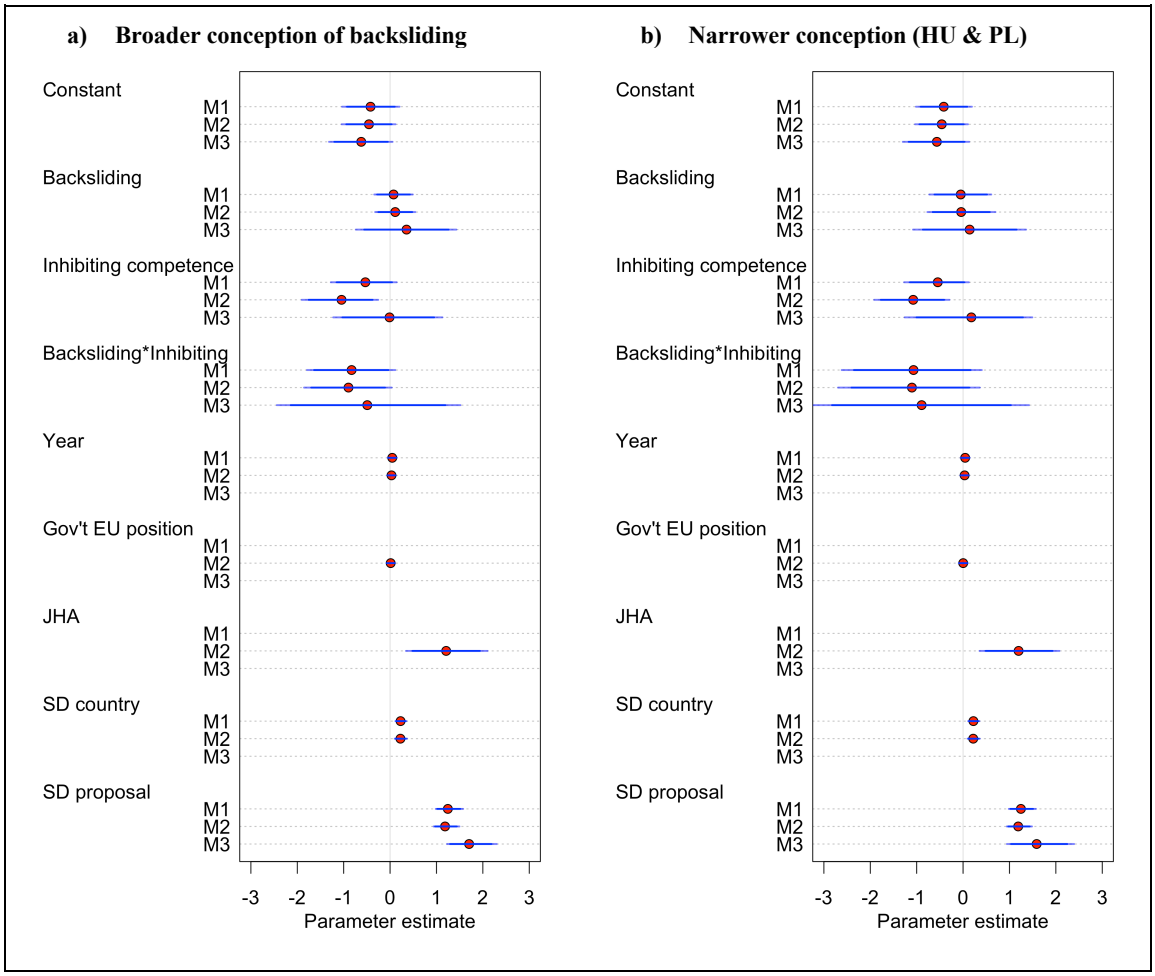

Figure A3. Main results excluding the first wave of DEU data.

Note: These models are identical to the ones in Figure 1, except that they do not include data from the first wave of the DEU project, which included legislation proposed in 1996-2000 and thus from well before the onset of backsliding in any member state.

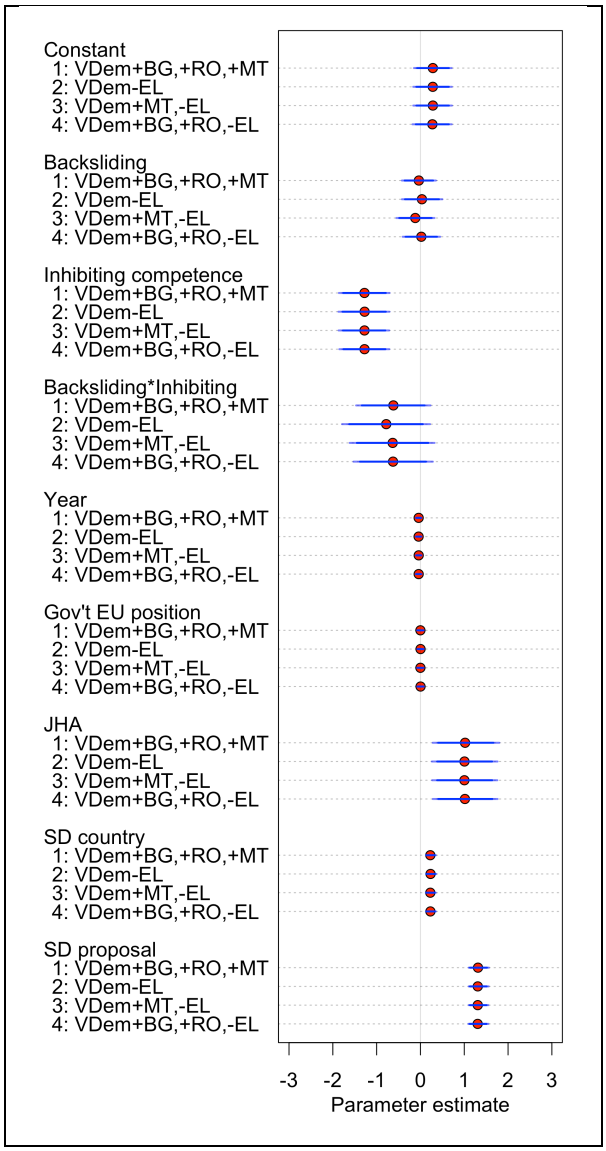

Figure A4. Results with additional or fewer countries coded as backsliding.

Note: These models are identical to Model 2 in panel a) of Figure 1, except that additional or fewer countries are coded as backsliding than the countries that were coded in the original analysis based on the V-Dem standard. In the absence of precise or uncontested assessments, 2010 was set as the onset of backsliding for these countries.

Appendix 3: Case study of case 4 (Energy Union and electricity market design)

This appendix offers an analysis of case 4 (Energy Union and electricity market design) in Table 2. In the context of its climate agenda, the EU adopted reforms of the internal electricity market in 2019 (Regulation 2019/943 and Directive 2019/944).[1] This reform, alongside similar reforms in the environment and energy domains, is a rare case of significant Hungarian and Polish opposition outside of the domain of backsliding-inhibiting competences. Hungary opposed the proposal to end regulated electricity prices. Poland strongly resisted the idea to tie subsidies for power plants that provide backup capacity in periods of peak demand to an emission limit (the 550 rule, referring to the size of the emission limit), which would have ruled out subsidies to coal plants. However, both governments voted in favour of the reform.

Hungary's support is less interesting for the purpose of this analysis. The final reform retained regulated energy prices, despite most countries being against this, and thus met Hungary's demands. Sufficiently many countries shared Hungary's opposition to form a blocking minority, rendering the *de facto* veto easily justifiable and legitimate, as well as formally impossible to outvote. Most importantly, however, the Council's majority position shifted when the French government came under intense domestic pressure from 'yellow vest' protests and deemed the abolition of regulated prices politically infeasible.[2] Overall, Hungary's success here is but a coincidence. The overall case is best seen as the majority making a concession to a (blocking) minority including a major member state in plausible need of domestic political support.

The Polish case offers a plausible illustration of negotiations under the consensus norm, but outside of backsliding-inhibiting competences. On one hand, Poland clearly opposed ending coal subsidies given that coal power generates most of the country's electricity. Moreover, despite being outnumbered, the Polish government proved able to block or, at least, significantly delay agreement in the Council as well as with the European Parliament since the other member states proved unwilling to ignore Polish opposition.[3] Yet, Poland also came under pressure from numerous countries including Germany, Spain, and the United Kingdom to make concessions and unblock the negotiations. Being largely isolated, Poland ultimately lifted its opposition and allowed the reform to pass, displaying behaviour consistent with the consensus norm. In turn, also consistent with the consensus norm, the majority, which could have outvoted Poland, offered to honour government contracts to provide electricity capacity (including based on Coal) signed until the end of 2019.[4]

This case thus illustrates the reluctance of the Council to outvote another government, concessions made by the isolated government to unblock negotiations, and voluntary (if modest) concessions made in turn to this government by the majority to soften the bargaining loss. Most importantly, it is consistent with the claim that, outside of backsliding-inhibiting competences, backsliding governments tend to behave in accordance with the consensus norm and prove willing to make concessions – including economically very significant concessions in light of the strong reliance of the Polish government on coal power. Note that one could suspect that Polish concessions might reflect some unobserved domestic economic or political

[1] https://energy.ec.europa.eu/topics/markets-and-consumers/market-legislation/electricity-market-design_en (accessed 28 July 2023).
[2] https://www.euractiv.com/section/electricity/news/yellow-vests-killed-eu-bid-to-phase-out-regulated-electricity-prices/ (accessed 28 July 2023).
[3] https://www.euractiv.com/section/electricity/news/polish-coal-aid-sinks-eu-power-market-reform-bid/ (accessed 28 July 2023).
[4] https://www.euractiv.com/section/electricity/news/eu-hammers-deal-on-coal-phase-out-with-special-polish-clause/ (accessed 28 July 2023).

change rather than the consensus norm. Yet, demonstrating unchanged government preferences, Poland seized negotiations over the next revision of the electricity market, which started in 2023, to call for an extension of the original phase out of coal power subsidies.[5]

[5] https://www.euractiv.com/section/electricity/news/late-push-for-coal-subsidies-upsets-eu-deal-on-electricity-market-reform/ (accessed 28 July 2023).

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