

## Chapter Five

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# Potential Lessons for Europe from Key Governance Measures

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### Introduction

This chapter uses two important governance indexes to understand the extent to which the nation-states of the European Union and the Organisation for Economic Co-operation and Development (OECD) are congruent or non-congruent with regard to their development of strong rule of law regimes and their ability to curb corruption. Employing the findings provided by the indexes enables us to make policy recommendations regarding the future of the European Union.

We first discuss the nature of corruption and the state of the rule of law in Europe, examine the Rule of Law Index of the World Justice Project (WJP) and Transparency International's (TI's) Corruption Perceptions Index (CPI), and then analyze the findings that those indexes provide.

### Anti-Corruption Practices in Europe

The WJP and TI are two of the 10 plus entities monitoring rule of law and corruption around the globe through the development of multi-dimensional measures. The properties of their respective measurements, namely the WJP Rule of Law Index and the CPI, have been thoroughly analyzed for statistical coherence and robustness (Saisana and Saltelli 2012a; 2012b). The intrinsic quality of these measures leads us to use them as a metric to gauge the extent to which the European

Union's member states are a homogenous group as far as adherence to the rule of law is concerned. This hypothesis stems from the fact that all EU members have to respect the so-called *acquis communautaire* — the French term for the accumulated legislation, legal acts and court decisions that constitute the body of EU law. We also compare the members of the EU to the nation-states within the OECD, a supranational organization with less stringent membership criteria.

Recently, Votápková and Žák (2013) measured the efficiency of selected EU and OECD countries according to six Worldwide Governance Indicators published by the World Bank. The authors applied principal component analysis and Data Envelopment Analysis to find that the biggest necessary improvements needed in the EU and the OECD are in the area of government effectiveness and control of corruption. The same dimensions are investigated in the present rule of law and CPI-based investigation.

According to the last EU report on corruption, “EU Member States have in place most of the necessary legal instruments and institutions to prevent and fight corruption. However, the results they deliver are not satisfactory across the EU. Anti-corruption rules are not always vigorously enforced, systemic problems are not tackled effectively enough, and the relevant institutions do not always have sufficient capacity to enforce the rules. Declared intentions are still too distant from concrete results, and genuine political will to eradicate corruption often appears to be missing” (European Commission [EC] 2014).

The OECD has promulgated an Anti-Bribery Convention to reduce bribery in international business and the public sector. An OECD (2012) report says that “steps taken by State parties to implement and enforce the convention on combating bribery of foreign public officials in International Business Transactions” is about all of the interventions, especially new laws, boosting the detection of foreign bribery. Since this initiative targets corruption in international trade, non-OECD countries are also considered (such as Argentina, Brazil, Bulgaria, Colombia and others).

With the recent financial crisis, levels of corruption are increasing, especially in the poorest countries. Several nation-states in eastern Europe and Central Asia — such as Georgia, Ukraine, Uzbekistan and Tajikistan — have introduced important anti-corruption reforms in recent years, but corruption remains high in the region (OECD 2013). Although an annual report by the Chinese Communist Party's corruption-fighting agency indicates an increased crackdown on corrupt government officials in China, the country's scores in the CPI and the Rule of Law Index have not radically improved in recent years.<sup>1</sup>

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1 For more information, see <http://m.theepochtimes.com/n3/467295-chinese-see-through-anti-corruption-report/?sidebar=related-below>.

African countries are also seriously afflicted by the same problem. According to the Maplecroft Corruption Risk Index, six of the 10 most corrupt nations in 2014 are African, namely the Democratic Republic of the Congo, Somalia, the Republic of the Sudan, Zimbabwe, Equatorial Guinea and Guinea.<sup>2</sup> Latin American nations such as Mexico and Argentina report 70 percent of their citizens believe corruption runs rampant, including within some sectors of their police forces. TI also points out the institutions citizens should rely on to fight corruption are themselves not trusted, and this is a global trend, even in important developing countries such as Brazil.

In this chapter, we suggest that corruption detracts from development. That is, we reject “positivistic” theories that assert corrupt practices usefully speed up bureaucratic decision making (Dzhumashev 2009; 2014). We believe the mainstream theory (Huntington 1968; Leff 1964) that public policies fail because of corruption, and that corruption is bad for growth (Mauro 1995; Rose-Ackerman 1978; Shleifer and Vishny 1993). Nevertheless, we are aware of contradictory evidence on the topic. In 2004, for example, Barro and Sala-i-Martin (2004) investigated indicators from the International Country Risk Guide (ICRG) on the extent of official corruption and its link to the quality of the bureaucracy, and they found no statistical significance.

At the same time we are sensitive to the argument made by Acemoglu and Robinson (2012) that the increased inequality of the last three decades (OECD 2011) has created more scope for rent-seeking activities by so-called extractive elites. If this is the case, then increased attention should be paid to the quality of institutions and their capacity to resist rent-seeking and corruption following Olson’s (1982) warning that such quality may determine the rise and decline of nations. Innovation, with its capacity to concentrate power and wealth in the hands of ever-smaller elites, may compound such corrupting trends (Brynjolfsson, McAfee and Cummings 2014).

In Italy, Business International has conducted surveys on corruption for 30 years, during which the phenomenon never decreased. In the most recent survey, 83 percent of the surveyed companies in Italy are exposed to corruption, while 48 percent is exposed directly and 35 percent indirectly.<sup>3</sup>

In Europe, corruption concerns many southeastern countries, including those of the European Union. The Regional Anti-corruption Initiative was initially adopted in Sarajevo in 2000 as a Stability Pact Anti-Corruption Initiative to address one of

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2 The Maplecroft Corruption Risk Index is distinct from the CPI in that it assesses reported levels of corruption, as opposed to perceptions of corruption. Maplecroft’s assessment takes into account five key factors relating to corruption: frequency, persistence, severity, geographical-sectorial coverage and the degree of impunity. See [http://usa.marsh.com/Portals/9/Documents/Political\\_Risk\\_Map\\_MARSH\\_MAPLECROFT\\_2014.pdf](http://usa.marsh.com/Portals/9/Documents/Political_Risk_Map_MARSH_MAPLECROFT_2014.pdf).

3 See [www.businessinternational.it/FlipBook/3114/Anticorruzione%2c-Privacy-e-Dlgs-231-01](http://www.businessinternational.it/FlipBook/3114/Anticorruzione%2c-Privacy-e-Dlgs-231-01).

the most serious threats to the recovery and development of southeastern European countries. Currently, the initiative involves nine member countries from the region — Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania and Serbia — and one observer, the United Nations Interim Administration Mission in Kosovo. It provides the participating countries with a general framework for coordination, optimization of efforts and permanent dialogue with the partner community involved in the fight against corruption. Sensitization for the implementation of specific laws is one of the priorities of those institutions. The Integrity Experts Network reunites many organizations concerned with integrity and fight against corruption.<sup>4</sup>

We make the point in this chapter that the EU countries are as heterogeneous (at times more than) as the OECD countries, in terms of rule of law performance issues, and that, as a consequence, one-size-fits-all policies will be as hard to implement in the EU as they would be in the OECD. For example, internal market measures for the EU will need to account for the quality of implementation — i.e., how EU legislation is transposed and applied in national laws, due to the great heterogeneity of EU countries with respect to “Effective Regulatory Enforcement,” one dimension of the Rule of Law Index.

This chapter is structured as follows: the following section presents the 2012 WJP Rule of Law Index and its nine-dimensional framework built from over 400 survey questions. The next section describes the 2012 CPI, built from 13 sources all focusing on perceived corruption. The section after compares OECD versus EU countries, non-OECD and non-EU countries, respectively, along the WJP Rule of Law dimensions. The next section discusses a similar comparison using the CPI. The following section identifies homogeneous groups in the EU using cluster analysis along the eight WJP Rule of Law dimensions. The final section concludes with policy recommendations.

## **The WJP: The Rule of Law Index**

The WJP is a multinational, multidisciplinary US-based organization, which seeks to strengthen the rule of law worldwide. The WJP was launched by the American Bar Association in 2007, eventually becoming an independent, non-profit organization with 21 global sponsoring supporters (from foundations such as The Bill & Melinda Gates Foundation to corporations such as Microsoft and Boeing) in the fields of human rights, labour, public health, business and more. Its work is mainly carried out through the creation of a comprehensive Rule of Law Index,

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4 See [www.integrity-experts.net/](http://www.integrity-experts.net/).

which is an innovative quantitative assessment tool designed by the WJP that offers a detailed and exhaustive picture of the extent to which countries adhere to the rule of law in practice (see chapter 3 of this volume for a discussion of the index).

The WJP uses four universal principles to define the rule of law: governments shall be accountable under the law; fundamental rights shall be protected by fair and comprehensible laws; legal processes shall be fair and efficient; and people shall have access to justice provided by diverse, competent and independent judges and lawyers.

The first WJP Rule of Law Index in 2010 covered 35 countries, accounting for 45 percent of the world's population. In 2011, the index expanded to include 65, and to 97 in 2012. Each index release included an analytic chapter and an independent audit that aimed at testing the statistical features of the index (Saisana and Saltelli 2011; 2012a). The audit was based on best available practices (Saisana, Saltelli and Tarantola 2005; Saisana, d'Hombres and Saltelli 2011; Paruolo, Saisana and Saltelli 2013).

A fair democracy crucially needs the functions measured by the nine dimensions of the Rule of Law Index: limited government powers, absence of corruption, order and security, fundamental rights, open government, regulatory enforcement, access to civil justice, effective criminal justice and effective informal justice (not operational until after 2012).

The index scores are constructed from over 400 variables mapped onto the 48 sub-factors (see Figure 1). These variables are drawn from two data sources designed and collected ad hoc by the WJP in each country: a general population poll (GPP) conducted by leading local polling companies using a representative sample of 1,000 respondents in the three largest cities in each country; and qualified respondents' questionnaires (QRQ) consisting of closed-ended questions completed by in-country practitioners and academics with expertise in civil and commercial law, criminal justice, labour law and public health. The QRQ is administered on a yearly basis in each surveyed country, and the GPP is carried out every three years. In addition, some variables from third-party sources have been incorporated into the 2012 version of the index to account for certain conduct, such as terrorist bombings and battle-related deaths, which may not be captured through GPP or expert opinion surveys. These data are aggregated to create the numerical scores and rankings. Higher scores are better.

The 97 countries included in the 2012 version of the Rule of Law Index together account for more than 90 percent of the world's population. There are 21 (out of 28) EU countries and 28 (out of 34) OECD countries included in the index, and 18 of these countries belong to both the EU and the OECD. Missing EU countries

are Cyprus, Latvia, Lithuania, Malta, Ireland, Luxembourg and Slovakia. Missing OECD countries are Iceland, Israel, Switzerland, Ireland, Luxembourg and Slovakia.

The second dimension of the index, absence of corruption, is one of the 13 sources of information that are aggregated in the CPI, discussed in the next section.

*Figure 1: 2012 World Justice Project Rule of Law Index*

## Factors & Sub-Factors

### Factor 1: Limited Government Powers

- 1.1 Government powers are defined in the fundamental law
- 1.2 Government powers are effectively limited by the legislature
- 1.3 Government powers are effectively limited by the judiciary
- 1.4 Government powers are effectively limited by independent auditing and review
- 1.5 Government officials are sanctioned for misconduct
- 1.6 Government powers are subject to non-government checks
- 1.7 Transition of power is subject to the law

### Factor 2: Absence of Corruption

- 2.1 Government officials in the executive branch do not use public office for private gain
- 2.2 Government officials in the judicial branch do not use public office for private gain
- 2.3 Government officials in the police and the military do not use public office for private gain
- 2.4 Government officials in the legislative branch do not use public office for private gain

### Factor 3: Order and Security

- 3.1 Crime is effectively controlled
- 3.2 Civil conflict is effectively limited
- 3.3 People do not resort to violence to redress personal grievances

### Factor 4: Fundamental Rights

- 4.1 Equal treatment and absence of discrimination
- 4.2 The right to life and security of the person is effectively guaranteed
- 4.3 Due process of law and rights of the accused
- 4.4 Freedom of opinion and expression is effectively guaranteed
- 4.5 Freedom of belief and religion is effectively guaranteed
- 4.6 Freedom from arbitrary interference with privacy is effectively guaranteed
- 4.7 Freedom of assembly and association is effectively guaranteed
- 4.8 Fundamental labor rights are effectively guaranteed

### Factor 5: Open Government

- 5.1 The laws are publicized and accessible
- 5.2 The laws are stable
- 5.3 Right to petition the government and public participation
- 5.4 Official information is available on request

### Factor 6: Regulatory Enforcement

- 6.1 Government regulations are effectively enforced
- 6.2 Government regulations are applied and enforced without improper influence
- 6.3 Administrative proceedings are conducted without unreasonable delay
- 6.4 Due process is respected in administrative proceedings
- 6.5 The Government does not expropriate without adequate compensation

### Factor 7: Civil Justice

- 7.1 People can access and afford civil justice
- 7.2 Civil justice is free of discrimination
- 7.3 Civil justice is free of corruption
- 7.4 Civil justice is free of improper government influence
- 7.5 Civil justice is not subject to unreasonable delays
- 7.6 Civil justice is effectively enforced
- 7.7 ADRs are accessible, impartial and effective

### Factor 8: Criminal Justice

- 8.1 Criminal investigation system is effective
- 8.2 Criminal adjudication system is timely and effective
- 8.3 Correctional system is effective in reducing criminal behavior
- 8.4 Criminal system is impartial
- 8.5 Criminal system is free of corruption
- 8.6 Criminal system is free of improper government influence
- 8.7 Due process of law and rights of the accused

### Factor 9: Informal Justice

- 9.1 Informal justice is timely and effective
- 9.2 Informal justice is impartial and free from improper influence
- 9.3 Informal justice respects and protects fundamental rights

Source: Agrast et al. (2012).

## TI's Corruption Perceptions Index

TI, the global coalition against corruption, was born in 1993. The goal of its founders was to conduct a fight against corruption at national and global levels. A Perceptions Index was first published in 1995, ranking 45 countries on their perceived level of public sector corruption. In the same year, the International Anti-Corruption Conference was held; it gathered activists and experts. In 1999, after the OECD Anti-Bribery Convention was passed, another ranking was introduced: the Bribe Payers Index (BPI) — a measure of how much a country *exported* corruption. Furthermore, in 2003, TI proposed a public opinion survey on corruption, the Global Corruption Barometer, in 48 countries.<sup>5</sup>

The 2012 version of the CPI includes 176 countries.<sup>6</sup> The index measures perceptions of corruption in the public sector in different countries around the world. It does so by aggregating 13 different sources of corruption-related data that are produced by a variety of independent and well-known institutions, such as the World Bank, the WJP, the African Development Bank, the Economist Intelligence Unit and others (see Table 1). The added four-fold value of the CPI has been summarized by Saisana and Saltelli (2012b) as: the CPI covers more countries than any of the individual sources alone; the CPI may be more reliable than each source taken separately; the CPI can efficiently differentiate the level of corruption between countries, unlike some sources where a large number of countries are assessed at the same level of corruption; and the CPI reconciles different viewpoints on the issue of corruption. No country is classified as better off than another country based on all common sources. The most recently released country scores from those 13 sources were used in the development of the CPI in 2012. Countries were included if they were evaluated by at least three sources, and the maximum number of sources on which a country was evaluated was 10; most countries were evaluated using seven to eight sources. The 2012 version of the CPI was submitted to an independent audit that aimed at testing the statistical features of the index (*ibid.*). All 28 EU countries and 34 OECD countries are included in the CPI. All scores are expressed as the higher the better (less perceived corruption).

We remind the reader that the CPI measures exactly the same phenomenon as the second dimension on the Rule of Law Index, namely perceived corruption. The main difference between these two measures is that the CPI is calculated for more countries and averaged over at least three sources.

<sup>5</sup> See chapter 3 of this volume for further discussion of the CPI and BPI.

<sup>6</sup> 2012 is the year of reference of both governance measures we are discussing herein; the 2012 scores on the second dimension of the WJP Rule of Law Index are used in the calculation of the 2012 CPI scores.

*Table 1: 2012 CPI Sources of Information*

Source	Number of Countries
1. African Development Bank Governance Ratings (AFDB)	53
2. Bertelsmann Foundation Sustainable Governance Indicators (BF-SGI)	31
3. Bertelsmann Foundation Transformation Index (BF-BTI)	128
4. Economist Intelligence Unit Country Risk Ratings (EIU)	138
5. Freedom House Nations in Transit (FH)	29
6. Global Insight Country Risk Ratings (GI)	175
7. IMD World Competitiveness Yearbook (IMD)	59
8. Political and Economic Risk Consultancy Asian Intelligence (PERC)	16
9. Political Risk Services International Country Risk Guide (ICRG)	140
10. Transparency International Bribe Payers Survey (TI)	29
11. World Bank - Country Performance and Institutional Assessment (WB)	67
12. World Economic Forum Executive Opinion Survey (WEF)	147
13. World Justice Project Rule of Law Index (WJP)	97

*Source:* Saisana and Saltelli (2012b).

## Results: OECD versus EU Along Rule of Law Dimensions

This section compares the average performance and degree of heterogeneity in the EU and OECD countries versus non-EU and non-OECD countries for the eight dimensions of the WJP Rule of Law Index. When calculating a group's average performance, we use a simple average, not weighted by population, to avoid the reality that populated countries drive the conclusions.<sup>7</sup> The degree of heterogeneity among countries is captured herein by the variance of the country scores.

The comparison of means and variances of these groups is given in Figures 2 and 3, respectively.<sup>8</sup> For completeness, five groups are presented in each graph:

- the EU group (21 of the 28 members; no survey data for Cyprus, Latvia, Lithuania, Malta, Ireland, Luxembourg and Slovakia);

<sup>7</sup> For other types of analysis, a weighted (by population) average may be more suitable.

<sup>8</sup> Note that the WJP Rule of Law dimensions are reported on a 0 to 1 scale, while the CPI dimensions are given on a 0 to 100 scale. For comparison purposes between these measures and for better interpretation of the variances, we multiplied the original rule of law scores by 100.



- the OECD group (28 of the 34 members; no data for Iceland, Israel, Switzerland, Ireland, Luxembourg and Slovakia);
- the non-EU group (76 countries);
- the non-OECD group (69 countries); and
- the OECD and EU group (18 of the 21 countries that belong to both the EU and OECD; no data for Ireland, Luxembourg and Slovakia).

Clearly, when comparing the EU and the OECD, given that 18 countries belong to both groups, there will be 13 countries in total (three EU but not OECD, and 10 OECD but not EU) that will determine how the EU performance (or heterogeneity) compares to the OECD.

In the pyramid-shaped graphs that follow (Figures 4 to 8), one can distinguish the EU countries, indicated in light blue over the entire bar on the right side of the pyramid. The OECD countries are indicated in light blue over the entire bar on the left side of the pyramid. The visual impression conveyed by these pyramidal plots is that the EU appears as heterogeneous as the OECD. We now look at each dimension in turn.

The first dimension of the rule of law, limited government powers, measures the boundaries of a government, namely the extent to which those who govern are bound by law. It comprises the means, both constitutional and institutional, by which the powers of a government's officials and agents are limited and are held accountable under the law. It also includes non-governmental checks on the government's power, such as a free and independent press. As far as limited government powers are concerned, the outliers are Turkey and Mexico in the OECD, and Bulgaria in the EU (see Figures 2 to 4).

The second dimension, absence of corruption, looks at three forms of corruption: bribe-taking, improper influence by public or private interests and misappropriation of public funds or other resources. These forms of corruption are examined with respect to government officers in the executive branch (including the police and the military) and those in the judiciary and the legislature. The greatest heterogeneities among EU and OECD countries are found along this dimension (see Figures 2 to 4). Compared to the OECD group, the EU also has a lower average (negative outcome) and slightly greater heterogeneity. On the positive side, it is with absence of corruption that we find the widest gap between OECD and non-OECD countries and between EU and non-EU countries. Outlier countries are Mexico in the OECD, and Bulgaria and Romania in the EU.

The third dimension, order and security, measures how well a society assures the security of persons and property (see Figures 2, 3 and 5). Security is one of the defining aspects of any rule of law society and a fundamental function of the state. It is also a precondition for the realization of the rights and freedoms that the rule of law seeks to advance. On this dimension, the EU and the OECD countries have similar average performances, yet the EU appears more homogeneous than the OECD. Mexico and Turkey are outliers, while no country in the EU stands apart from the others. In order and security the smallest gap is between OECD and non-OECD countries and between EU and non-EU countries.

The fourth dimension, fundamental rights, (see Figures 2, 3 and 5) focuses on rights that are firmly established under international law and are most closely related to rule of law concerns: equal protection; freedom of thought, religion and expression; freedom of assembly and association; fundamental labour rights (including the right to collective bargaining, the prohibition of forced and child labour, and the elimination of discrimination); the rights to privacy and religion; the right to life and security of the person; and due process of law and the rights of the accused. The EU and the OECD countries show similar outcomes, on average, and the EU is more homogenous than the OECD, with Turkey and Mexico again standing apart from the remaining OECD countries, while no EU country is an outlier.

Open government, the fifth dimension (see Figures 2, 3 and 6), accounts for the extent to which the society has clear, publicized and stable laws; whether administrative proceedings are open to public participation; and whether official information, including drafts of laws and regulations, are available to the public. Here the OECD outperforms the EU, showing more open government and the widest gap in the average performance of the two groups. The degree of heterogeneity is similar for EU and OECD countries and among the highest compared to the other dimensions of the rule of law.

Regulatory enforcement, the sixth dimension of the Rule of Law Index, measures the extent to which regulations are fairly and effectively enforced (see Figures 2, 3 and 6). Regulations are a pervasive feature of modern societies, and it is important that they be enforced in accord with administrative procedures that are fair, consistent and predictable, and that bar improper influence by public officials or private interests. Private property should also not be taken without adequate compensation. Here, the outliers of each club are Croatia and Bulgaria in the EU and Mexico in the OECD. On this dimension, the OECD outperforms the EU on two fronts, having a higher average performance (see Figure 2) and more homogeneity (see variances on Figure 3).

This heterogeneity should be a key concern for EU legislators (Saltelli et al. 2011; Saltelli and d’Hombres 2011). For example, compliance with the internal market rules in the EU is monitored via a scoreboard, the Internal Market Index, which merely counts the number of EC directives not inserted into national laws, without any consideration of how such insertion has worked in practice.<sup>9</sup> This limitation has been criticized in several studies (O’Keeffe et al. 2008; Saltelli 2014). Based on our empirical analysis — and conditional on the broad acceptance of the adopted measures — one would be justified in doubting that EU legislation is transferred and applied in the same way in Denmark and Sweden as it is in Bulgaria, Romania and Greece, let alone Croatia.

Access to civil justice and effective criminal justice (dimensions seven and eight of the Rule of Law Index) show a comparable average performance and level of heterogeneity between the EU and the OECD (see Figures 2, 3 and 7). The former measures whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system. Key issues monitored are accessibility, impartiality and the efficiency of mediation and arbitration systems that enable parties to resolve civil disputes. An effective criminal justice system is a key aspect of the rule of law, as it constitutes the natural mechanism to redress grievances and bring action against individuals for offenses against society.

Note that in all preceding analysis one could drop altogether any reference to the OECD and simply note which non-EU countries happen to perform better than the EU countries in selected dimensions. This result would again show that the EU includes both hell and paradise; that there are EU countries close to, or at the top, of world league tables as well as countries close to world’s laggards.

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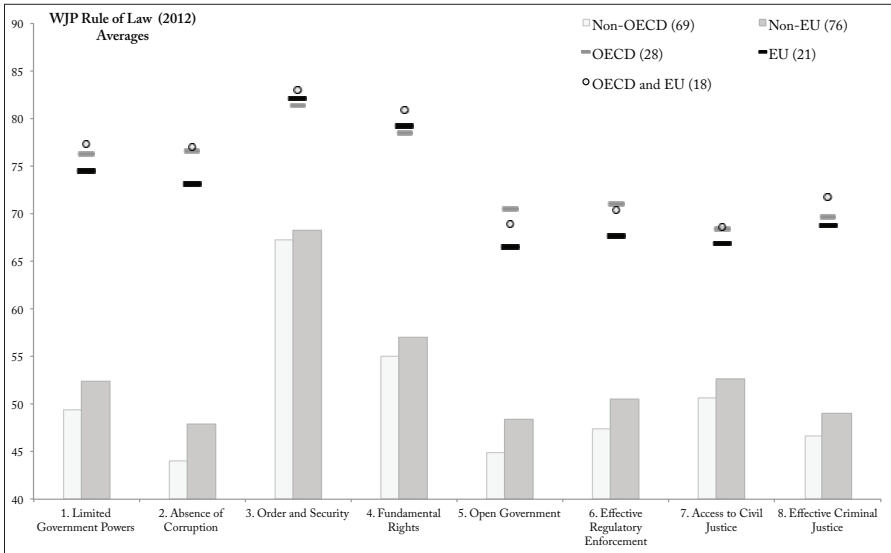
<sup>9</sup> The EC issues directives on certain topics, such as the internal market, and it is the responsibility of the member states to translate the directives into national law, ensuring that the translation is correct and carried out within the time limits laid down by the directives themselves.

## Results: OECD versus EU, According to the CPI

All conclusions drawn above comparing the EU versus OECD on the rule of law dimensions need to be treated with some caution given that seven (out of 28) EU countries and six (out of 34) OECD countries had not been surveyed by the WJP in 2012. In order to give a broader perspective to this comparison, we use the CPI, since it includes all EU and OECD countries and measures the same phenomenon as the second dimension of the Rule of Law Index (see Figures 8 and 9). The CPI includes 176 countries and uses at least three sources of information per country to compensate for eventual errors among sources by taking their average. Although using at least three sources should impose a moderating impact on group averages, it in fact emphasizes heterogeneity due to the inclusion of additional countries. When looking at the CPI, we see the now familiar hell and paradise picture. Greece, Bulgaria and Italy find themselves in the unflattering company of India, Colombia and Zambia, while Finland and Denmark share a first position with New Zealand (see Figure 8).

The mean and the variances again support the remarks made when discussing the Rule of Law Index. The OECD performs marginally better at the level of the mean values (see Figure 9), where the CPI results are plotted side by side with those from the absence of corruption dimension of the Rule of Law Index, which, as discussed above, is part of CPI's construction.

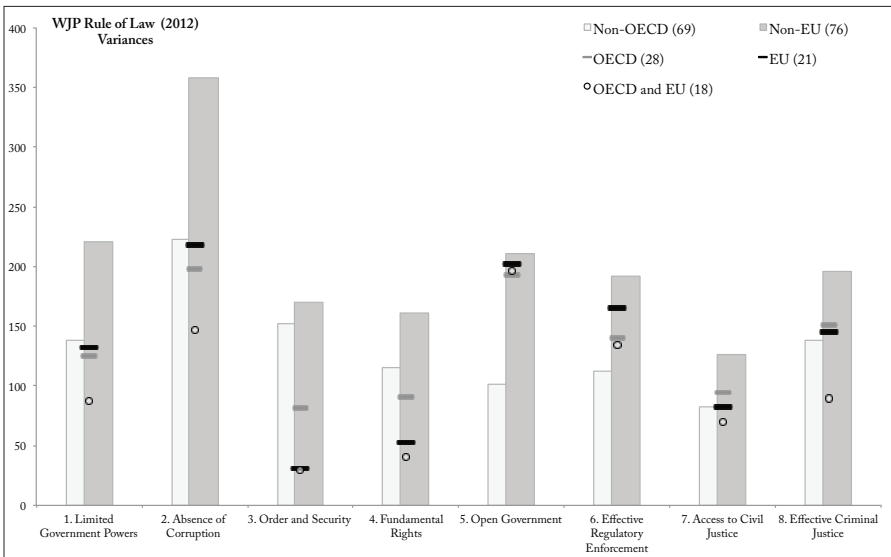
Figure 2: Country Group Averages across the 2012 Rule of Law Dimensions



Source: Authors.

Note: Numbers in parenthesis denote the number of countries considered in each group.

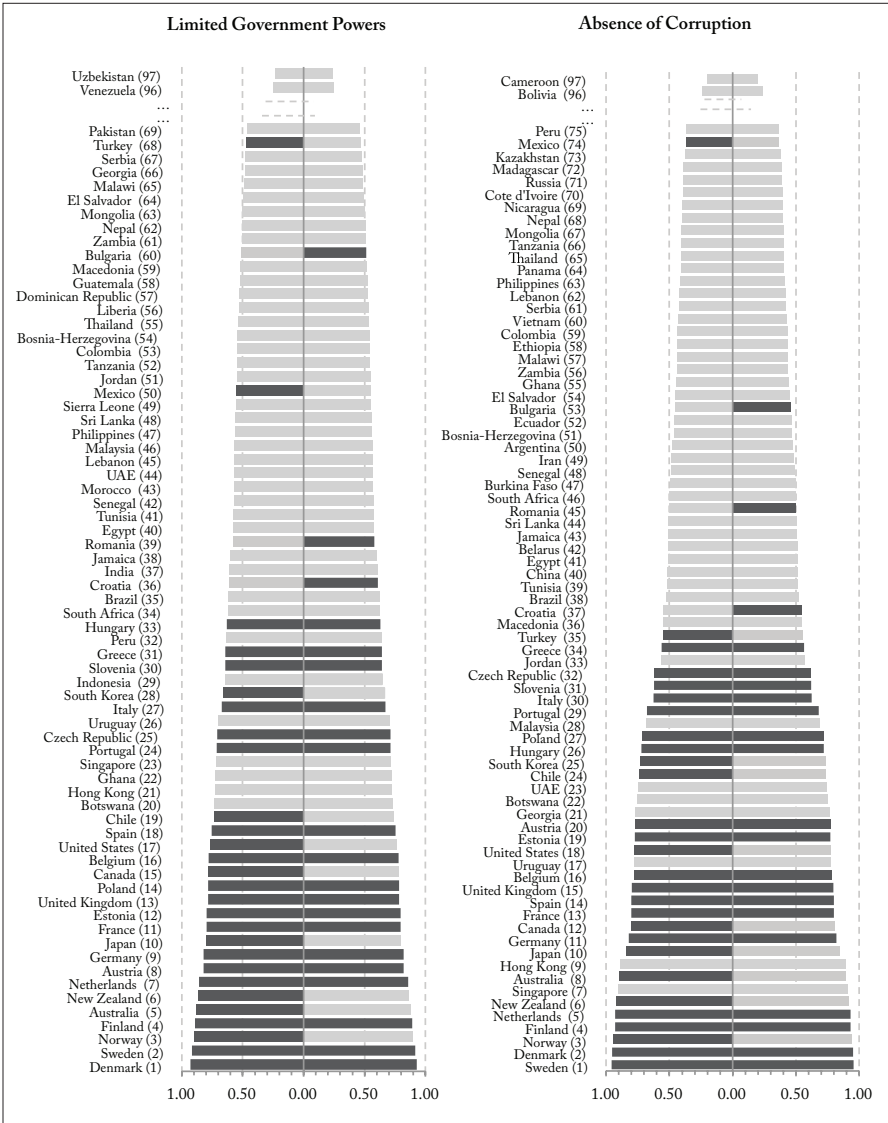
Figure 3: Country Group Variances across the 2012 Rule of Law Dimensions



Source: Authors.

Note: Numbers in parenthesis denote the number of countries considered in each group

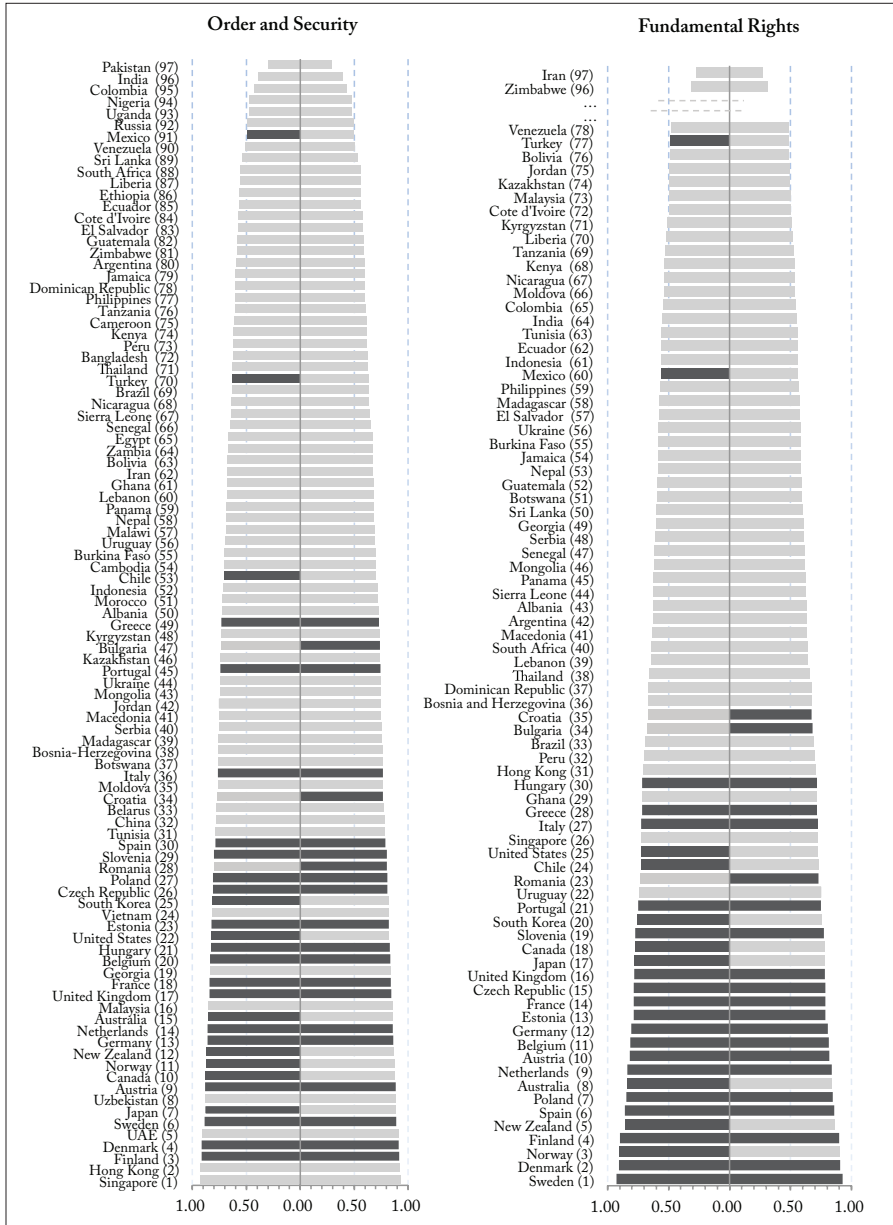
Figure 4: The 2012 WJP Rule of Law Index: Limited Government Powers and Absence of Corruption



Source: Authors.

Note: OECD countries are ranked in dark grey on the left side; EU countries are ranked in dark grey on the right side.

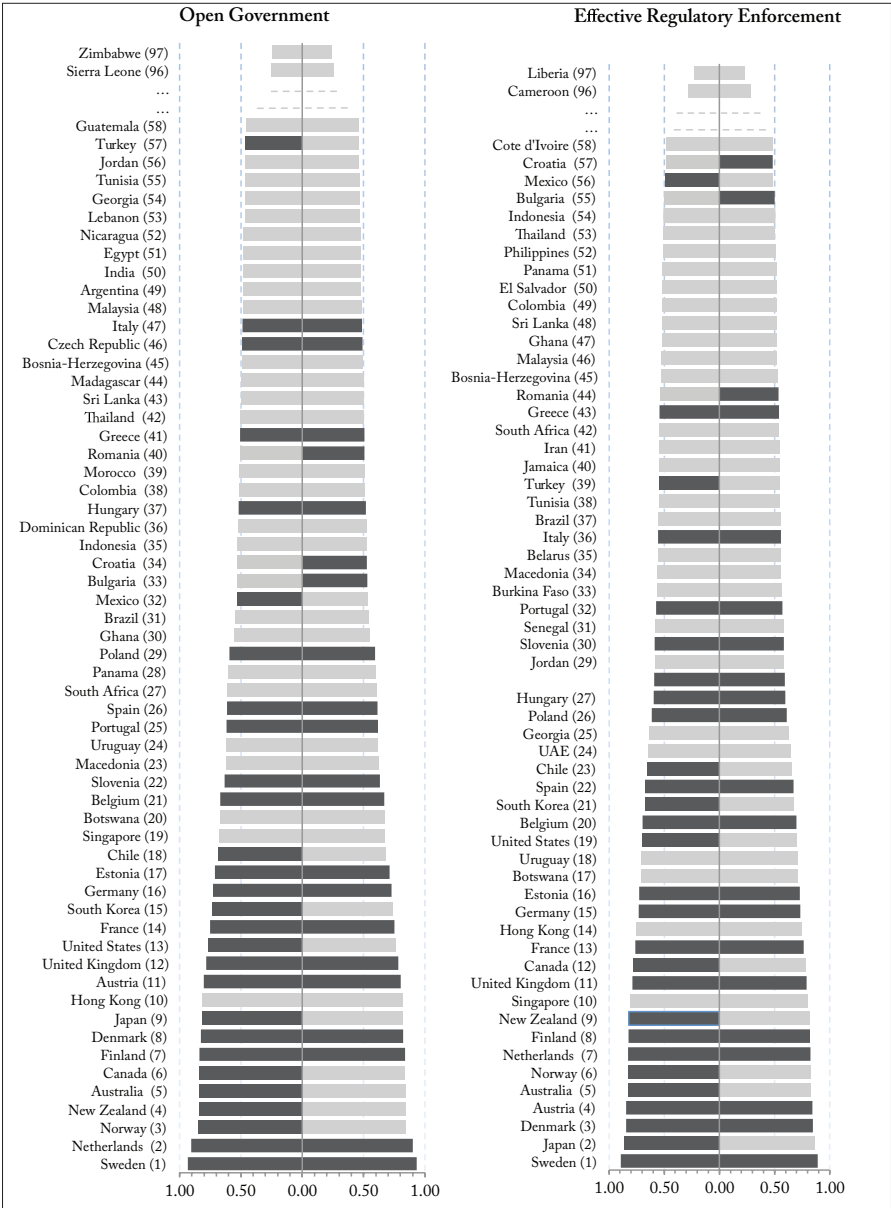
Figure 5: The 2012 WJP Rule of Law Index: Order and Security and Fundamental Rights



Source: Authors.

Note: OECD countries are ranked in dark grey on the left side; EU countries are ranked in dark grey on the right side.

Figure 6: The 2012 WJP Rule of Law Index: Open Government and Effective Regulatory Enforcement



Source: Authors.

Note: OECD countries are ranked in blue on the left side; EU countries are ranked in blue on the right side.



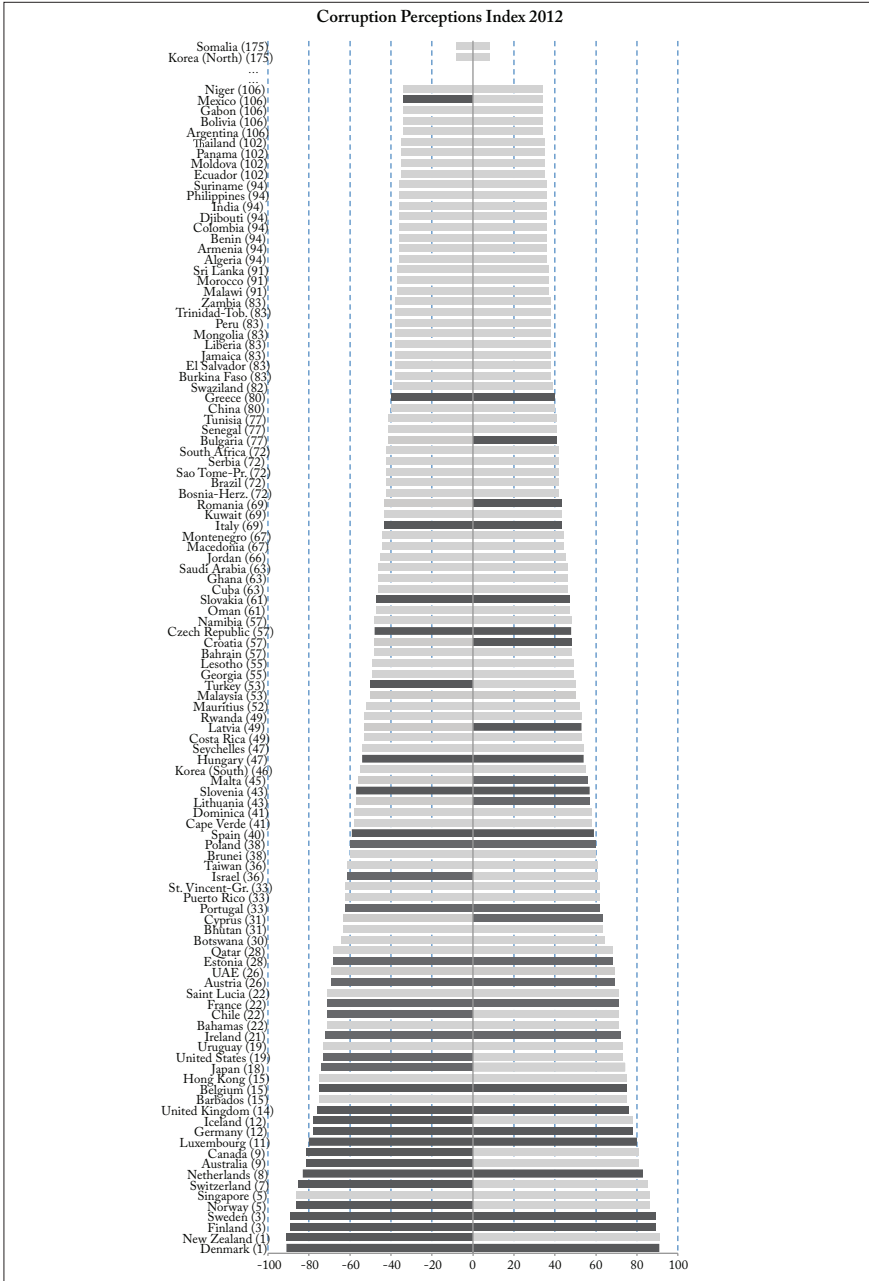
Figure 7: The 2012 WJP Rule of Law Index: Access to Civil Justice and Effective Criminal Justice



Source: Authors.

Note: OECD countries are ranked in blue on the left side; EU countries are ranked in blue on the right side.

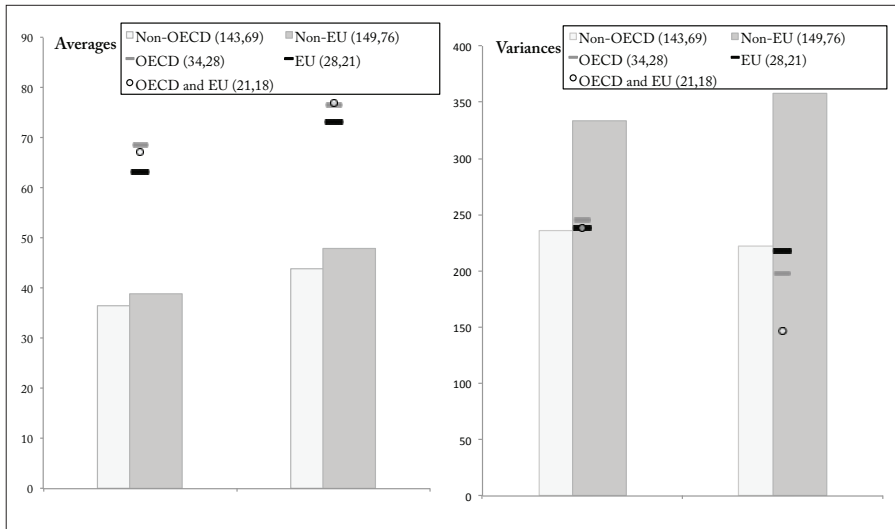
Figure 8: Pyramids for the 2012 CPI



Source: Authors.

Note: OECD countries are ranked in blue on the left side; EU countries are ranked in blue on the right side.

**Figure 9: Country Group Averages and Variances on the Absence of Corruption (2<sup>nd</sup> and 2012 CPI)**



Source: Authors.

Note: Numbers in parenthesis denote the number of countries considered in each group (left side number: countries in the CPI; right side number: countries in the absence of corruption dimension).

## Heterogeneity in the Light of Cluster Analysis

Our main working hypothesis has been that the EU set of accession rules, known as the EU *acquis*, should in principle be more demanding than those required to belong to the OECD club of developed countries. We tested this hypothesis by comparing the level of country heterogeneity (variance) between the EU and the OECD with respect to the Rule of Law Index and the CPI, taken as a litmus test of country performance.

Comparing OECD and EU countries versus non-OECD and non-EU countries, respectively, we draw as a first inference that there is a great heterogeneity in national behaviour, i.e., both EU and OECD countries tend to appear as non-homogeneous under certain aspects of rule of law, namely corruption, open government and effective regulatory enforcement. On the other hand, the EU countries are more homogeneous than the OECD under order and security and fundamental rights.

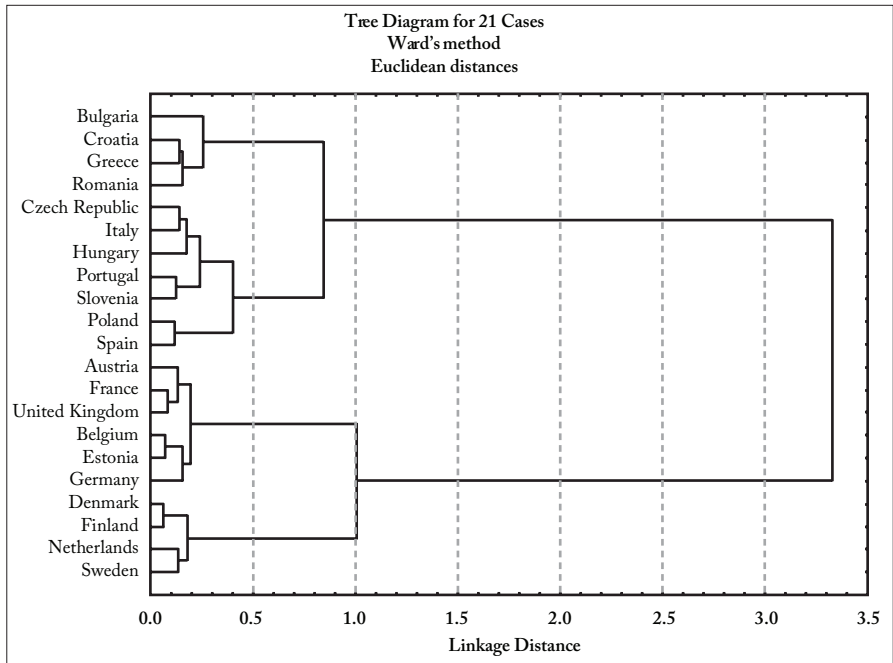
The pyramid graphs also reveal that the same countries often appear to be in both the upper or lower part of the various rankings. Denmark, Finland, the Netherlands and Sweden usually score high on all aspects of rule of law, whereas Greece, Croatia, Romania and Bulgaria are well below the EU average. Thus, the EU seems to be a heterogeneous community in terms of rule of law measures, but with several

homogeneous country groups. In principle, homogeneous countries are more likely to take similar integration steps based on common preferences. The identification of homogeneous country groups may therefore enhance the opportunity for those countries to undertake further integration into the EU.

To identify homogeneous country groups within the EU in 2012, a hierarchical cluster analysis (using Ward's [1963] method) is performed along the eight dimensions of the WJP Rule of Law Index. Cluster analysis allows us to uncover those countries that are most closely linked to each other. Euclidean distances are used to cluster the member states. The tree diagram in Figure 10 reveals the four main country groups. Denmark and Finland are identified as the two countries with the lowest heterogeneity between each other. Together with the Netherlands and Sweden they form a group of countries that show large distances to the other groups. These countries may be regarded as the “core group” in terms of adherence to the rule of law in 2012. Six EU countries — mostly old members of the EU — form the next group and are close to the core group, namely Austria, Germany, United Kingdom, France, Belgium and Estonia (a newer EU member). Seven EU members — both old and new members — form a third group, namely the Czech Republic, Italy, Hungary, Portugal, Slovenia, Poland and Spain. A fourth group, close to the third group, is formed by Bulgaria, Croatia, Greece and Romania.

According to the distance measure shown on the linkage distance axis (abscissa), the two main clusters — group one and two on the one hand, and group three and four on the other hand — are far away from each other. This finding would support the thesis that the quality of institutions is so different in these two groups as to justify the concept of a two-speed European Union along rule of law measures.

**Figure 10: Cluster Analysis Results for the 21 EU Countries along the Eight Rule of Law Dimensions**



Source: Authors.

Note: No data available for Cyprus, Latvia, Lithuania, Malta, Ireland, Luxembourg and Slovakia.

## Policy for Europe

We looked at two international entities, the OECD and the European Union, with respect to rule of law measures, and in particular to the WJP's Rule of Law Index and TI's CPI. Our working hypothesis was that the EU set of accession rules, known as the EU *acquis*, should in principle be more demanding than those required to become a part of the OECD club of developed countries, as far as the quality of a country's institutions is concerned. We tested this hypothesis by comparing the average performance and level of country heterogeneity between the EU and the OECD with respect to these governance measures, taken as a litmus test of country performance.

The WJP Rule of Law Index and TI's CPI show that the EU member states adhere at different levels the rule of law, and that the EU appears on important dimensions even more heterogeneous than the OECD club of developed countries. At the same time, looking at the means of these measures, the OECD outperforms

the EU, which is contrary to the hypothesis that a political union bound by an *acquis communautaire* should display a more uniform institutional quality and practice.

This surprising result holds true for four relevant dimensions of the Rule of Law Index: (1) limited government powers, (2) absence of corruption, (5) open government and (7) access to civil justice. The same applies for the results from the CPI.

This type of exercise also argues that one-size-fits-all policies or policy recommendations will be as hard to implement in the EU as they are in the OECD. As an example, internal market measures for the EU will need to take into account the quality of implementation of EU legislation due to the great heterogeneity of EU countries with respect to effective regulatory enforcement and open government, two dimensions of the Rule of Law Index. Furthermore, the EU seems highly heterogeneous, according to international measures of perceived corruption, another dimension that should be considered in the context of EU governance and regulation.

Cluster analysis further elucidates this finding. Today's adherence to the rule of law in the EU is driven by a core group, including the Netherlands and the Nordic countries (Denmark, Finland and Sweden). Austria, Germany, the United Kingdom, France, Belgium and Estonia form a second group that ranks almost as highly as the core group. Two more groups can be identified — one with the Czech Republic, Italy, Hungary, Portugal, Slovenia, Poland and Spain — and another with Bulgaria, Croatia, Greece and Romania. These latter two groups are clustered together and are far apart from the first two groups; from a cluster analysis perspective, the existence of two distinct groups is more evident than that of four groups.

Conditioned by the degree of belief one may place on these international measures, these large heterogeneities regarding corruption and the rule of law, and the strong bipolar clustering of the EU members, may have far-reaching governance implications. At one extreme, we hypothesize that something is missing in the vast body of the *acquis communautaire* if, after its adoption, countries are still so divergent (Hillion 2013).

These results may even give strong ammunition to the ranks of the integrationists (those in favour of an ever-deeper union) against those advocating its rapid expansion, fostering a debate on the trade-off between “deepening” and “widening,” which is central within the European Union.

Seen from the perspective of social inquiry, whereby a public is made aware of the existence of a social problem (Dewey 1938) through a process of discovery initiated or facilitated by statistical analysis (Boulanger 2013), our results suggest looking more carefully at the quality of institutions in the EU countries, beginning with

a keener attention to regulatory quality and going all the way to investigating the various dimensions of respect for the rule of law.

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