**EU Leverage and Democratic Backsliding in Central and Eastern Europe: the Case of Romania**

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**ABSTRACT**

This article examines the effectiveness of European Union (EU) post-accession leverage to contain democratic backsliding in the Member States by employing as a case study the EU’s intervention concerning the impeachment of the Romanian President Băsescu in July 2012. It is argued that a set of domestic factors, such as political miscalculations, tensions within the ruling coalition and opportunistic actions, facilitated the success of EU material leverage to halt democratic deterioration in Romania. The comparison drawn with the anti-democratic turn in Hungary demonstrates that facilitating domestic conditions, available in the Romanian case but lacking in the Hungarian one, can affect the exercise of EU post-accession leverage to contain democratic regression in the Member States.

**Word count: 8,491 (excluding abstract)**

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**Introduction[[1]](#footnote-1)**

European Union (EU) accession conditionality involved the promotion of a series of democratic reforms aimed at supporting the Central and East European countries (CEECs) to align their political systems with those in Western Europe (Schimmelfennig and Sedelmeier, 2005; Vachudova, 2005). The EU has encouraged political changes that isolated nationalist and antidemocratic forces (Pop-Elches, 2007; Schimmelfennig, 2007). Nevertheless, the recent illiberal turn in the CEECs (Rupnik, 2007, 2012; Scheppele, 2013) has raised serious doubts about the democratic consolidation of the new Member States (Varga and Freyberg-Inan, 2012) and has brought to the fore the availability of EU leverage to address democratic backsliding in the Member States. Furthermore, the democratic deterioration in these countries raised pertinent questions not only about the availability of post-accession leverage to safeguard democratic values in the Union, but also about the key domestic conditions that can render this EU leverage effective in the first place. The recent examination of the EU’s employment of material leverage and social pressure to counter anti-democratic trends in the CEECs (Sedelmeier, 2014) captures only half of the story. Yet, unearthing the key *domestic conditions* that can facilitate the effectiveness of EU intervention to redress democratic slippages provides the full story of *whether* and *how* EU-level action can shape anti-democratic processes in the Member States.

This article scrutinizes themain *domestic factors* that can influence the effectiveness of EU intervention to contain democratic backsliding in the Member States by employing as a case study the EU’s actions regarding the impeachment of the Romanian President Băsescu in July 2012. What constellation of domestic factors impeded or facilitated the success of EU leverage to redress democratic violations in Romania? Romania’s imperfect and semi-consolidated democracy (Spendzharova and Vachudova, 2012) is old news; as a consequence, the EU had already established a ‘Cooperation and Verification Mechanism’ (CVM) to monitor aspects related to the fight against corruption and the functioning of the judiciary when Romania joined the Union in 2007. It has been shown that EU intervention in the Romanian case has halted democratic slippages due to the social pressure, i.e. public criticism and shaming, exerted by the EU in the shadow of material sanctions or leverage (Sedelmeier, 2014). This explanatory model, however, is excessively parsimonious as it fails to capture *which EU mechanism* is more successful in reversing democratic backsliding and under *what domestic circumstances*. As Sedelmeier (2014, p.119) rightly puts it, more empirical evidence is required to ascertain whether only material leverage or social pressure applied in a specific domestic context can be relevant for EU intervention to bear fruit. By explicitly filling this empirical gap[[2]](#footnote-2), this article shows that the availability of a set of *domestic factors*, such as political miscalculations of the Romanian government, the tensions within the governing coalition and their opportunistic actions, facilitated the successful deployment of the EU’s *material leverage* – namely issue-linkage with Schengen area membership and CVM evaluation – to influence the outcome of the political crisis in July-August 2012. By complementing Sedelmeier’s (2014) findings, the empirical evidence presented here suggests that, given a propitious domestic context, the EU’s material leverage can have an impact on democratic breaches at domestic level.

Analytically, this article contributes to the literatures on post-accession leverage (Epstein and Sedelmeier, 2008; Sedelmeier, 2012, 2014) and democratic backsliding in the CEECs (Mungiu-Pippidi, 2007; Rupnik, 2007; Varga and Freyberg-Inan, 2012) by providing empirical evidence regarding those *domestic conditions* which can assist the impact of EU-level action concerning democratic violations. The comparison with the Hungarian case highlights that specific factors present in Romania, but lacking in Hungary, enabled the Romanian government’s acquiescence to EU demands concerning democratic breaches. This article proceeds as follows: section one provides an overview of Băsescu’s impeachment, while section two examines the EU’s reaction in relation to it. Section three assesses the key factors accounting for the EU’s influence to counteract democratic deterioration in Romania. Parallels drawn with the Hungarian case illustrate that, indeed, the constellation of domestic factors available in the Romanian case, along with the EU’s post-accession conditionality, influenced the outcome of the Romanian political crisis.

**1. Political crisis in Romania**

The political crisis in Romania emerged as a consequence of the government’s austerity measures adopted due to the economic recession and following loans from the International Monetary Fund (IMF) in 2009 and 2011[[3]](#footnote-3). These measures generated frustrations over public sector wage cuts, reduced pensions and unemployment benefits, as well as higher taxes. The austerity frustrations reached a tipping point when President Băsescu (from the Liberal Democratic Party (PDL)) clashed with the very popular health secretary of state, Raed Arafat, over the healthcare bill, prompting the latter to resign in January 2012. This generated protests in Bucharest and demands for the resignation of the President and the PDL government. The opposition, led by the Social Liberal Union (USL)[[4]](#footnote-4) seized the window of opportunity provided by the anti-PDL and anti-austerity protests to trigger the Parliament’s dismissal of the PDL government, which led to a new USL government, ruled by Prime Minister (PM) Victor Ponta, taking office in May 2012.

On 6 July 2012 the Romanian Parliament impeached President Băsescu, a decision which required confirmation via a referendum. In order to topple the President, however, the USL government had to seize control of those key institutions that could obstruct their actions: thus, between 3 and 6 July 2012, a set of ‘blitzkrieg’ measures, violating key constitutional provisions and democratic procedures, were hastily implemented to pave the way for the President’s suspension. For instance, in blatant disregard of Constitution articles and democratic procedures, and via the use of emergency ordinances[[5]](#footnote-5), the USL government dismissed the Ombudsman (which is the only institution that can challenge the government’s emergency ordinances before the Constitutional Court), stripped the Constitutional Court of its right to check the constitutionality of Parliament decisions, and modified the referendum law by ditching the ‘participation quorum’[[6]](#footnote-6) required for the validity of referenda and therefore lowering the turnout threshold to a majority of votes cast, i.e. an ‘approval quorum’[[7]](#footnote-7). Once these new changes had been in place, President Băsescu was hastily suspended by the Parliament being accused of ‘serious’ breaches of the Constitution, and Crin Antonescu, the leader of PNL and Ponta’s main political ally, became acting President. Therefore, within a very short time frame, key constitutional provisions and democratic principles were radically trampled upon, illustrating a trend of backsliding on democratic values, which had initially been embraced as part of EU membership requirements.

The impeachment of President Băsescu was an attempt by the USL coalition to control the judiciary[[8]](#footnote-8), and therefore, rescue party members facing allegations of corruption (Nicolae, 2012). There is a close connection between the independence of the judiciary and progress in the fight against corruption, both of which constitute areas still monitored by the CVM. Indeed, the Commission often criticised in its CVM Reports the influence exerted over the judiciary by influential politicians, particularly as evinced by a lack of ‘concrete cases of indictments, trials and convictions regarding high-level corruption’ (European Commission, 2009, p.3). Therefore, the impeachment of President Băsescu was instrumental in securing the USL’s control of the judiciary and other key independent institutions (Freedom House, 2012).

The actions conductive to Băsescu’s removal also constituted the outcome of the broader phenomenon of state capture, which had afflicted Romanian politics since 1989. State capture indicates how economic agents influence the state and, therefore, how vested interests converge with state officials’ and capture key state institutions to extract personal advantages (Pesic, 2007). Distinctions have been drawn between the types of institutions subject to capture, i.e. the executive, the legislature or the judiciary, and the type of actors involved in the state capture, namely economic actors or politicians. In the Romanian case, the government is particularly vulnerable to state capture (Hellman *et al*., 2000) as clientelistic elite networks and economic actors are infiltrated in key political institutions. Therefore, the apparent ease at bending the main constitutional rules and democratic procedures by the USL to topple the President reflects the weakness of democratic institutions in Romania after EU accession, and particularly, the inverse relationship between state capture and quality of democracy (Hellman *et al.*, 2000). Yet, positive signals regarding the functioning of the judiciary emerged after the conviction of corruption charges and sentencing of the former PM, Adrian Năstase, in January 2012. This high-profile conviction acted as a warning to other high-rank politicians charged of corruption, by signalling that the judiciary can, indeed, function independently. Many USL parliamentarians, who were facing corruption charges, wholeheartedly supported Băsescu’s impeachment by the Parliament. Hence, the removal of President Băsescu was an expedient action intended to secure the control of the judiciary (Bran, 2012) in order to rescue USL politicians from the prospect of facing jail sentences. In brief, a set of political, economic and post-communist transition factors led to President’s impeachment by the USL via anti-democratic means.

**2. EU intervention and impeachment referendum**

Both the Western media and the EU displayed sheer disbelief of Romania’s rapid backwards sliding from liberal democracy. Yet it was the EU’s Justice Commissioner Viviane Reding who reacted swiftly by condemning the actions taken by the Ponta government, and specifically connecting the violation of democratic principles, such as the rule of law and the independence of the Constitutional Court, to Romania’s prospects of joining the Schengen area[[9]](#footnote-9). The most authoritative intervention, however, was by the Commission President Barroso who demanded that the Ponta government follow an 11-point ‘to do list’, dubbed by the press as ‘Barroso’s eleven commandments’[[10]](#footnote-10). Barroso’s requests highlighted in particular the government’s need to restore the powers of the Constitutional Court and apply the participation quorum in the impeachment referendum (Euractiv.com, 2012). The European Parliament also reacted boldly to the developments in Romania: for instance, the President of the Parliament, Martin Schulz, despite being a social-democrat himself like PM Ponta, warned about the dangers of overturning fundamental laws by the use of emergency ordinances rather than employing democratic procedures (*Spiegel Online*, 2012a). The leader of European People’s Party (EPP), Joseph Daul, given his centre-right affiliation similar to Băsescu’s, was more virulent in his critique by describing the suspension of the President as implementing ‘the galloping authoritarianism of PM Victor Ponta and his USL coalition’ (*EPP Press Release*, 2012). Therefore, the EU institutions reacted swiftly by condemning the democratic breaches in Romania and by calling for a quick reversal of these changes.

The timing of the publication of the July 2012 CVM Report was most fortunate as it further reinforced the Commission’s concerns regarding the events in Romania. Apart from highlighting the limited progress achieved regarding the benchmarks on high-level corruption and reform of the judiciary (European Commission, 2012c), the CVM Report also reiterated the Commission’s disapproval of the July ‘exceptional events’ that constituted a ‘major source of concern’ (European Commission, 2012c, p.20), although the CVM benchmarks do not cover aspects related specifically to the rule of law and functioning of independent institutions, such as the Constitutional Court. Furthermore, the CVM Report echoed Barroso’s 11 points by urging Romanian authorities to urgently reinstate, in particular, the powers of the Constitutional Court and the participation quorum for the impeachment referendum (European Commission, 2012c).

Due to mounting EU pressure[[11]](#footnote-11), the Ponta government annulled the emergency decrees regarding the referendum threshold and the mandate of the Constitutional Court. Consequently, Băsescu urged his supporters not to vote in the referendum held on 29 July 2012, which ensured that the participation quorum threshold is not reached[[12]](#footnote-12). Failing to reach the necessary threshold, the impeachment referendum was ruled as invalid by the Constitutional Court on 21 August 2012, which thwarted USL’s efforts to oust President Băsescu. The Commission welcomed the Court’s decision on the invalidity of the referendum and, subsequently, it urged the Romanian authorities to abide by the rule of law and the Court’s verdict (European Commission, 2012b).Yet, the EU’s intervention in the political crisis in Romania was perceived to have benefited mainly President Băsescu and his supporters. While Băsescu described his relationship with Commission President Barroso and European Council President Van Rompuy as ‘excellent’ and the outcome of the crisis as a victory for democratic institutions in Romania, which withstood ‘the huge pressure […] they were subjected to by the parliamentary majority’ (Nine O’Clock.ro, 2012), PM Ponta and the USL described their relationship with EU institutions in more adversarial terms (*Evenimentul zilei*, 2012). In brief, the EU’s actions to halt democratic slippages in Romania influenced the outcome of the impeachment crisis and, subsequently, circumvented USL’s attempts to seize control of the judiciary.

**3. Democratic backsliding and EU post-accession leverage**

The July-August 2012 political crisis in Romania shed light on the democratic backsliding in the CEECs post-accession. Furthermore, the Romanian case lifted the lid on fundamental questions about the availability and effectiveness of EU instruments to reverse democratic violations in the Member States, on the one hand, and on the domestic context that can assist the EU’s role in halting democratic regression, on the other.

**3.1. EU material leverage**

The sheer speed of the events unfolding in Romania meant that EU institutions had to respond swiftly and effectively. Article 7 TEU seemed to be the obvious legal tool provided by the Treaties to sanction a Member State’s breach of EU values (‘principles’ according to the Treaty of Amsterdam (1997) wording) mentioned in Article 2 TEU[[13]](#footnote-13) (ex- Article 6 (1) TEU). Article 7 TEU[[14]](#footnote-14) allows the Union to suspend certain rights enshrined in the Treaties, including the voting rights in the Council, from the Member State in question for ‘the existence of a serious and persistent breach by a Member State’ of EU values. Indeed, some members of the European Parliament (MEPs) from the centre-right EPP considered the application of Article 7 TEU to suspend Romania’s voting rights in the Council on grounds of breaching EU values, such as respect for the rule of law (Pop, 2012). However, neither the Commission nor individual Member States made explicit references to Article 7 TEU to persuade PM Ponta to reverse the anti-democratic changes. The Romanian government’s willingness to comply with EU demands - concerning the anti-democratic developments - meant that EU institutions did not need to activate Article 7 TEU mechanism (Sedelmeier 2014, p. 108). Similarly, there was no obvious realisation within the Romanian government that the EU would deploy Article 7 TEU to discipline the USL government[[15]](#footnote-15). By opting not to activate Article 7 TEU, the EU resorted, instead, to deploying mechanisms which were swifter and which directly impinged on Romanian politics.

The EU institutions initially exerted *social pressure,* i.e. naming andshaming of the Ponta government’s actions, by explicitly requesting the reversal of democratic breaches. The EU’s public admonitions of Romanian government’s actions served two purposes: they highlighted EU institutions’ strong rejection of developments in Romania and also called for an urgent repeal of the anti-democratic provisions. For instance, Commissioner Reding’s harsh criticism of Ponta government’s tactics, along with Barroso’s 11 points, despite lacking any legally binding effects, underscored the extent and depth of the democratic violations orchestrated by the USL government. The condemnation of EU institutions was accompanied by criticisms from the main Member States, such as Germany (*Spiegel Online*, 2012a) and the Netherlands (Wesselingh, 2012). Yet, as shown below, social pressure yielded results only when coupled with the EU’s threat of withholding rewards by harsh sanctions, coined as *material leverage* (Sedelmeier, 2014).

The main EU ‘sticks’ - deployed as *material leverage* - were the CVM Report and the withholding of Schengen membership. None of these instruments, however, covers explicitly the nature of the democratic violations which occurred in July 2012, although the CVM could be linked indirectly to the ‘rule of law’ due to its benchmarks focusing on corruption and the functioning of the judiciary. The timing of the publication of the July 2012 CVM Report was particularly propitious for the EU as it could be deployed as a disciplining tool to castigate the Romanian government responsible for the crisis. As an instrument evaluating the functioning of the judiciary, the CVM Report reiterated the EU’s concerns regarding the rule of law and the mandate of the Constitutional Court (European Commission 2012c). The deployment of the CVM as a punishing tool was hailed as a success by the Commission[[16]](#footnote-16). As a consequence of the July 2012 events, the scope of the CVM monitoring has extended, as it now includes the evaluation of the Romanian constitutional order as well as the powers and independence of the Constitutional Court (European Commission, 2013, 2014), both jeopardised by the political crisis.

Moreover, Commissioner Reding, in particular, strategically linked the EU’s demands concerning respect for the rule of law and the referendum participation quorum to Romania’s Schengen membership[[17]](#footnote-17) (Mahony, 2012), although the latter is decided by the Council of Ministers. The Schengen admission criteria focus on technical matters concerning border security. Yet, Member States such as Germany[[18]](#footnote-18), Finland and the Netherlands (*Global Times*, 2012) warned about Romania’s prospects of joining the Schengen area due to the impeachment crisis. The association of EU demands with Romania’s Schengen membership was unexpected, particularly as the Commission President often stated that Romania met the technical criteria for Schengen accession (ActMedia, 2012). Nevertheless, some Member States, such as Germany and the Netherlands, linked the negative CVM evaluation to Romania’s Schengen prospects (Mahony, 2012; *Global Times*, 2012). As Barroso put it, apart from the technical conditions, Romania had yet to meet the Schengen political criteria, given the Member States’ decision to condition Schengen accession by respect for the rule of law (Cusnir, 2013), aspects of which are covered by the CVM. Furthermore, it was Commissioner Reding who often drew a clear connection between Schengen membership and Romania’s anti-democratic changes (Romania-Insider.com, 2012). However, PM Ponta retorted to Reding’s Schengen link by accusing the Commissioner of deliberate political attacks – given her centre-right affiliations like Băsescu’s – and of overstepping the Commission’s legal mandate (Antena3.ro, 2012).

The Schengen membership issue-linkage stroke a chord with the Romanian electorate, which is extremely supportive of Romania’s Schengen accession[[19]](#footnote-19). No wonder, therefore, that PM Ponta went at great lengths to persuade EU officials[[20]](#footnote-20) not to link the decision on Schengen accession to the July 2012 events. In essence, the Schengen membership linkage became closely connected to the Commission’s CVM evaluation due to some Member States’ decision to associate the respect for the rule of law and an independent judiciary with Schengen accession pre-requisites. In other words, the Commission influenced Romania’s Schengen prospects indirectly, namely via its CVM evaluation, which was given due weight by the Member States. In brief, the EU’s deployment of material leverage had a bearing on the outcome of the impeachment crisis in Romania; however, as shown below, the availability of certain domestic factors rendered this possible in the first place.

**3.2. Domestic factors**

The EU’s material leverage - exerted by the threat of withholding the coveted Schengen area membership coupled with the damning July 2012 CVM Report - paid dividends as PM Ponta reversed the anti-democratic measures. Notwithstanding this, it is shown that a set of *domestic factors* assisted Ponta’s swift compliance with EU requests in the first place. The available empirical evidence demonstrates that the domestic context was propitious primarily for the exercise of the EU’s material leverage, particularly via the Schengen accession issue-linkage. More specifically, a set of political miscalculations and coalition disagreements – before the impeachment referendum – along with the USL’s opportunistic actions post-referendum led to USL government’s acquiescence to EU requests.

1. Political miscalculations

The biggest miscalculation of the USL government was the strong belief that the referendum participation threshold would be easily reached. The vast majority of surveys conducted in the aftermath of the impeachment found that the turnout threshold for the referendum would be exceeded by far[[21]](#footnote-21), whilst other surveys revealed the plummeting popularity[[22]](#footnote-22) of Băsescu (EuropeanVoice.com, 2012). Furthermore, the empirical evidence suggests that Ponta’s main concessions to the EU – namely restoring the powers of the Constitutional Court and employing a participation quorum for the referendum – were underscored by PM’s strongly held view that, indeed, the referendum turnout would be extremely high[[23]](#footnote-23). This was particularly reinforced by Ponta’s public commitment to comply with EU demands following a meeting in Brussels with EU officials, when Ponta unequivocally affirmed his unyielding conviction regarding the high turnout[[24]](#footnote-24) in the impeachment referendum. Thus, one of the key strategic miscalculations was the USL’s contention that the participation quorum threshold would, indeed, be reached and hence Băsescu’s boycott would fail, as PM Ponta himself admitted it (ziare.com, 2012a). Therefore, conceding to EU pleas to redress democratic violations – given survey predictions – meant that PM Ponta pursued a win-win situation: his concessions to the EU would have pleased the EU and the pro-Schengen Romanian electorate, and, at the same time, would have ensured Băsescu’s defeat via democratic procedures. Indeed, Ponta’s public statements regarding his concessions to the EU demonstrate his commitment to abide by them, primarily due to the USL’s deeply held conviction, in line with public opinion polls, that the participation threshold would indeed be reached: in short, the referendum could not have gone wrong for the USL.

1. Coalition tensions

PM Ponta’s acceptance of EU requests was further enabled by the existing tensions within the USL coalition with respect to the EU. Following the plagiarism allegations in the international media (*Nature* 2012), PM Ponta seemed more willing to re-build his discredited reputation by embracing a more conciliatory attitude towards the EU. Unlike Ponta, the PNL leader Antonescu had a long history of endorsing an anti-EU position (*România Liberă,* 2012), which had been exacerbated by the EU’s actions in the aftermath of the impeachment. Indeed, the EU’s critical reaction to developments in Romania illustrated that there was little consensus among USL leaders on how to respond to EU pressure. While PM Ponta endeavoured to seem more appeasing towards EU officials, his main political ally, Crin Antonescu, displayed sheer defiance towards EU institutional representatives and their demands. Therefore, lacking a shared coalition stance on how to address EU behests, allowed PM Ponta to seize the opportunity of caving in to the EU in an attempt to re-build his and Romania’s image[[25]](#footnote-25) abroad, despite running the risk of clashing with his coalition partners. No wonder, therefore, that having conceded to the EU, Ponta was regularly criticised by PNL for accepting the EU ‘diktat’ (PNL Press conference, 2012).

The coalition disagreements over EU intervention had repercussions for national elections. Whilst the USL won the parliamentary elections by a landslide victory in December 2012, it was the PNL that fared better than PSD. For instance, in 2012 PNL won 25% of the seats in the Parliament, compared to 18% seats won in 2008 (*Adevărul*, 2012). It is difficult to draw a causal link between PNL’s critical position vis-à-vis EU intervention in the impeachment crisis and its success in the parliamentary elections. However, there is empirical evidence indicating the support of the Romanian electorate for Crin Antonescu’s statement according to which Romania should not behave like a colony in its relations with the EU[[26]](#footnote-26). Put tersely, PNL’s critique of EU actions during the impeachment crisis mirrored the disapproval[[27]](#footnote-27) of Romanian citizens of EU interference in Romanian domestic affairs, despite their strong pro-Schengen support.

1. Opportunistic actions

While the two domestic factors described above explain PM Ponta’s concessions to the EU before the referendum took place, the instrumental actions taken by the USL government shed light on the post-referendum context when the government continued to abide by EU requirements. Indeed, following the referendum, some of the commitments made to the EU, such as the powers of the Constitutional Court, had yet to become effective, for instance by enforcing the Court’s ruling on the validity of the referendum outcome. Therefore, the USL still paid lip service to EU conditions, however, a set of opportunistic actions ensued which were intended to deploy the referendum outcome to USL government’s advantage.

Faced with the imminent invalidation of the impeachment referendum by the Court, the USL government pursued an opportunistic strategy by employing the referendum results, and hence the USL’s concessions to EU demands, to boost their political fortunes. The political crisis had negatively affected the Romanian economy, which saw the Romanian currency reaching a record low. Hoping not to generate further protests and hence jeopardise USL’s fortunes in the parliamentary elections scheduled for December 2012, the Ponta government accepted the impeachment defeat. Indeed, the USL leaders often stated that winning the parliamentary elections was their main objective (ziare.com, 2012c), whilst assuring to employ the EU’s intervention and the impeachment referendum results to their advantage. By casting the blame for the referendum outcome on the EU’s interference in Romania’s domestic affairs, the Ponta government was striking a chord with the recent drop in popular support for the EU[[28]](#footnote-28) during the political crisis. Given these factors, the USL government justified the outcome of the impeachment crisis as the upshot of the interference of an unpopular EU, which discarded the manifestation of the democratic will of 7,4 million voters - who supported Băsescu’s impeachment - and imposed an illegitimate President (Hotnews.ro, 2012). In short, while still acting according to EU requirements, the Ponta government endeavoured to utilize the referendum outcome to its benefit by blaming the EU for the referendum’s invalidity and ensuring that it would win the parliamentary elections.

**3.3. The Hungarian case**

The upshot of EU intervention to halt democratic backlash in Romania is best assessed in relation to the Hungarian case, where domestic factors impeded the impact of EU pressure. The constitutional crisis in Hungary occurred when the ruling coalition of the national conservative Fidesz (Federation of Young Democrats) and KNDP (Christian Democratic People's Party) came to power in 2010 by holding together two-thirds majority in Parliament. Within a short timespan, the Hungarian ‘constitutional revolution’ (Jenne and Mudde, 2012), steered by Fidesz’s leader and the current PM Viktor Orban, entailed the adoption of a new Constitution as well as 350 bills which have radically overhauled the democratic architecture of the Hungarian state.

Hungary’s new Constitution, which entered into force in January 2012, along with the cardinal laws implementing it, has been widely criticised for eliminating constitutional guarantees and checks, and for solidifying Fidesz's grip on power and its control of key institutions[[29]](#footnote-29). Controversial laws included the new retirement age of judges (reduced from 70 to 62), the functioning of the country’s new Data Protection Authority, and the law regulating the functioning of the Central Bank, which facilitated governmental interference in the activities of the Bank (European Commission, 2012a). Moreover, the Constitutional Court, which is generally the primary check on legislative majorities in unicameral parliaments, like the Hungarian one, has seen its powers substantially curbed. Between July and December 2010 the Fidesz government also adopted a set of controversial laws on the regulation of the media. The new media legislation includes a politicized appointment process for the Media Council, as evidenced by the direct appointment of its president by the PM and the nine-year tenure of its members, which can only be ended by a supermajority of Parliament. After negotiations between the European Commission and the Orban government, several amendments were passed in March 2011[[30]](#footnote-30); however, the controversial appointment procedure of Media Council members was retained. The Hungarian government amended media law in May 2012, by further curtailing freedom of expression as now the Media Council can approve broadcasting agreements, excluding courts from an oversight role in such agreements, to note just a few. No wonder, therefore, that the EU’s lenient response to Hungarian media law raised concerns about its lack of political will to act robustly on this matter (Human Rights Watch*,* 2012). Thus, within a short period of time Fidesz succeeded in placing its protégés in the key institutions of the state, which ensured that ‘there will be multiple chokepoints at which Fidesz can stop anything that deviates from its preferences’ (Bankuti *et al.* 2012, p.145).

PM Orban championed the fourth round of amendments of the Constitution, which were approved by the Parliament in March 2013. The new amendments wrote into the Constitution certain laws that had previously been overturned by the Constitutional Court, and, above all, they could be changed only by a two-thirds majority, which limited, therefore, the scope of future governments to review them. Among the most controversial amendments were the severe limitations on the power of the Constitutional Court, which would now be allowed to review constitutional amendments only on procedural grounds, and not on their actual content (*The Economist*, 2013). These provisions opened the door for the government to employ the Constitution to pass new laws without any obstruction from the Constitutional Court. The new amendments also allowed political advertisements only in the publicly run media during election campaigns, included a rule that university students could only get state grants if they pledged to work in Hungary after graduation and fines or prison terms for homeless people who slept on the streets (BBC, 2013). Therefore, in the light of these changes, Fidesz constitutes the party of ‘selective democracy’ par excellence as it successfully deepened ‘its hold on power by passing measures that benefit them and block any initiatives for increased transparency and accountability’ (Varga and Freyberg-Inan, 2012, p.353, p.358). Yet, how effectively has the EU addressed the anti-democratic turn in Hungary?

After the new Constitution entered into force, the Commission employed its *material leverage* (Sedelmeier, 2014) by launching infringement proceedingsin January 2012 in relation to three pieces of legislation: those that affected the independence of the judiciary, the Central Bank and the Data Protection Authority. The infringement procedure concerning the independence of the Central Bank has since been dropped in April 2012 on the agreement that the government would change the law in line with the expectations of the European Central Bank, and therefore clearing the way for an international financial aid plan for Budapest. Utilizing the expedient procedure, the European Court of Justice ruled in November 2012 that the law regarding the retirement age for judges was incompatible with EU law as forced retirement ‘constitutes unjustified age discrimination’ (European Commission, 2012d).

The effectiveness of EU material leverage, however, has been limited. While the Orban government seemed to accept EU demands to revise legislation regarding judges’ retirement age and Data Protection Authority, EU legal action against the Fidesz government failed to deter Orban from adopting new amendments of the Constitution in March 2013, which further entrenched in law a new set of democratic violations. The outcome of EU intervention in the domestic affairs of the two CEECs is a function not only of the availability of EU instruments, but also of the domestic conditions that can mediate the EU impact in the first place. In the Hungarian case the EU’s authority was limited where it only used social pressure, while compliance with EU demands was more effective where the EU could rely on issue linkage to IMF aid[[31]](#footnote-31) in addition to its infringement procedure (Sedelmeier, 2014). At the same time, the EU’s capacity to deploy effectively any EU ‘stick’ at its disposal - to contain anti-democratic developments - was influenced by the existing domestic context and factors. Whilst in the Romanian case a set of domestic circumstances facilitated, in particular, the exercise of EU material leverage to halt democratic violations, similar conditions lacked in the Hungarian case.

Both the nature and extent of democratic violations, along with the domestic political circumstances, were different in Hungary to the ones in Romania. Indeed, PM Orban had both the domestic conditions and the configuration of the European Parliament working to his advantage. For instance, PM Orban had the support of the largest political group in the European Parliament, namely the EPP (Politics.Hu, 2013), of which Fidesz is a member. At the national level, Orban and his party enjoyed significant levels of popularity amongst Hungarian voters. For instance, both after adopting the fourth round of amendments to the Constitution in March 2013[[32]](#footnote-32) and in the autumn of 2013 Fidesz still had a strong lead in opinion polls in Hungary (Reuters, 2013), unlike the opposition parties, such as the Hungarian Socialist Party, who failed in garnering substantial support amongst Hungarian voters.

Unlike the Romanian domestic factors, the Orban government made no political miscalculations regarding their power grab and control of the main institutions. Having been at the helm of the government twice and for a longer period than Ponta, rendered Orban as a more experienced and mature politician than the PSD leader and, therefore, his strategy of re-writing Hungary’s constitutional left no room for mistakes or tactical miscalculations. The incremental grab of power pursued by the Hungarian PM indicated that no political and legal details of the constitutional changes were left to chance, whilst in the Romanian case, the ‘blitzkrieg’ measures adopted by the Ponta government showed that there were many intervening factors which the USL failed to consider thoroughly. Additionally, the coalition government headed by PM Orban faced no bickering moments: on the contrary, the supermajority enjoyed by PM Orban allowed for his embrace of ‘strong political leadership’ (BBC, 2012) to overhaul Hungarian politics and society.

Last but not least, the EU still enjoys high levels of popularity amongst Romanian voters, which is not the case with the Hungarian electorate. As shown above, the strong pro-Schengen support among the Romanian electorate played a role in influencing Ponta government’s compliance with EU demands. Unlike the Romanian case, the EU’s popularity among Hungarians fell sharply as two-thirds of Hungarians support their country’s review of its EU membership (*Business New Europe*, 2013). Indeed, the rise in Euroscepticism in Hungary (Duff, 2013) along with the high popularity of Fidesz in the opinion polls (Reuters 2014), illustrate that EU intervention in the Hungarian case did not benefit from a favourable domestic context to allow the reversal of illiberal processes, except for limited cases[[33]](#footnote-33). This also explains why the Romanian domestic context enabled a more effective exercise of the EU’s material leverage. In short, the extent of democratic violations in Hungary and Romania varied, yet the EU exerted more clout in the Romanian case due to a set of domestic circumstances, which meant that EU-level actions had an impact on the onslaught against democracy.

**Conclusion**

The recent anti-democratic trends in the CEECs have raised awareness of the fragile democratic consolidation of the former communist states and of the availability of EU instruments to ensure that these countries still comply with the Copenhagen political criteria. This article scrutinised the role of EU post-accession clout to reverse the democratic backsliding initiated by the USL government in order to topple President Băsescu in July 2012. The Romanian case provided insights into the weak democratic consolidation of the CEECs and the potential for democratic regression triggered by bitter political battles to control key democratic institutions. It was shown that the EU‘s material leverage - i.e. the CVM monitoring and the withholding of the Schengen area membership – impinged on the result of the impeachment referendum. Moreover, this article also provided crucial empirical evidence which demonstrated that the EU’s material leverage, in particular, could shape the reversal of anti-democratic processes in Romanian specifically due to a set of domestic factors that facilitated compliance with EU demands in the first place. Similar favourable domestic conditions and post-accession conditionality, such as the CVM and Schengen area membership, lacked in the Hungarian case.

The findings of this article illustrate that both the availability of EU instruments to halt democratic breaches and of domestic circumstances to render these instruments effective can be contingent. Indeed, the availability of a constellation of domestic factors that facilitated the successful application of EU conditions concerning the impeachment crisis was incidental. At the same time, the post-accession instruments deployed in relation to the Romanian case do not match specifically the type of democratic breaches initiated by the USL government, therefore, they acted more like a one-off blackmail, raising doubts about Romania’s democratic performance once it joins the Schengen area and after the CVM monitoring ceases. The events in Romania, therefore, brought into the spotlight the pervasive consequences of what Commissioner Reding coined as the ‘Copenhagen dilemma’ (Euronews, 2012): namely the strictness of Copenhagen criteria regarding the observance of rule of law in the accession process and the lack of effective EU instruments to ensure that rule of law is still respected after candidates join the Union. The democratic violations in Hungary and Romania indicate that now the EU needs to take more seriously its role in upholding democratic principles in the Member States by ensuring that, indeed, ‘democracy is the only game in town’ (Przeworski, 1991) both before and after countries accede to the Union.

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1. Many thanks to participants in the Centre for Citizenship, Globalization and Governance (C2G2) - University of Southampton, Department of Politics and International Relations - seminar for their feedback and two anonymous reviewers for their very helpful comments and suggestions. [↑](#footnote-ref-1)
2. Methodologically, the findings of this article draw on extensive documentary analysis, as well as analysis of secondary data, public statements and news reports, the vast majority of which are in available in Romanian. [↑](#footnote-ref-2)
3. Romania received from the IMF a loan of €12.9 billion in 2009 and a loan of €3.6 billion in 2011 (<http://www.imf.org/external/pubs/ft/survey/so/2011/int032511a.htm>). [↑](#footnote-ref-3)
4. The political alliance of the Social Democratic Party (PSD) and the National Liberal Party (PNL). [↑](#footnote-ref-4)
5. An emergency ordinance is a governmental decision with the status of law that does not require parliamentary approval before implementation as the Parliament grants its approval ex post. Emergency ordinances are common in Romanian politics and have been employed regularly by all post-1989 governments. [↑](#footnote-ref-5)
6. A quorum of participation (minimum turnout) means that the vote is valid only if 50% plus one of all registered voters take part in the vote (Venice Commission, 2005, p.19). [↑](#footnote-ref-6)
7. A quorum of approval makes the validity of the results dependent on the approval (or perhaps rejection) of a certain percentage of the electorate (Venice Commission, 2005, p.19). [↑](#footnote-ref-7)
8. According to the Romanian Constitution, the President appoints two key posts in the judiciary, namely the General Prosecutor and the Chief Prosecutor of the National Anti-Corruption Directorate, following proposals from the Ministry of Justice and having the approval of the Superior Council of Magistracy. In other words, the President plays a crucial role in approving or rejecting the candidates for the above posts. [↑](#footnote-ref-8)
9. According to the European Commissioner ‘Romania's current constitutional turmoil may ultimately result in its longed-for entry into the EU's passport-free zone being delayed still further’ (cited in Mahony, 2012). [↑](#footnote-ref-9)
10. These 11 points aimed to reverse the institutional and legal changes adopted in early July 2012 by ensuring that democratic principles and procedures are respected. [↑](#footnote-ref-10)
11. Also other Western states, such as the US, condemned the actions taken by the Ponta government to oust President Băsescu. [↑](#footnote-ref-11)
12. The results of the referendum showed that more than 85% voted for impeachment, but that only 46% of registered electorate voted in the referendum (*The Telegraph*, 2012); therefore the participation quorum had not been reached. [↑](#footnote-ref-12)
13. ‘The Union is founded on the values of respect of human dignity, freedom, democracy, equality, the rule of law and respect of human rights, including the rights of persons belonging to minorities’(Article 2 TEU). [↑](#footnote-ref-13)
14. Article 7 TEU includes provisions regarding the ‘clear risk of a serious breach’, namely the ‘prevention mechanism’, or for ‘the existence of a serious and persistent breach by a Member State’- the ‘penalty mechanism’ - of the EU values listed in Article 2 TEU. [↑](#footnote-ref-14)
15. There is no mention of Article 7 TEU and the EU’s readiness to use it in the public statements by government officials and PM Ponta. [↑](#footnote-ref-15)
16. According to Commissioner Reding, ‘the most serious deviations could be limited thanks to the CVM that we created’ (quote in Marinas, 2012). [↑](#footnote-ref-16)
17. For instance, Commissioner Reding stated that the EU might postpone Romania’s accession to the Schengen area indefinitely and moreover, that the Schengen accession decision might separate Bulgaria from Romania, given that Bulgaria already fulfilled the necessary criteria to accede to the passport-free area, as Commission President Barroso put it (*PressEurop,* 2012). [↑](#footnote-ref-17)
18. According to Germany’s foreign minister ‘serious violations of the letter and spirit of EU values may raise questions about the last steps to Romania's full integration in the EU’ (quote in Mahony, 2012). [↑](#footnote-ref-18)
19. For instance, 60% of Romanians supported Schengen membership in 2011(CCSB, 2011), while a survey in 2013 found 86% pro-Schengen support (Agerpres, 2013). [↑](#footnote-ref-19)
20. For instance, PM Ponta held talks with the European Council President and he specifically requested that Schengen accession should be disconnected from the impeachment crisis (Victor Ponta blog, <http://www.victorponta.ro/content/victor-ponta-am-%C3%AEn%C5%A3eles-%C3%AEngrijor%C4%83rile-cecare-sunt-legitime> ) [↑](#footnote-ref-20)
21. For instance, according to a TVH2.0 survey, 73% respondents said they would vote in the referendum (ziare.com 2012d), while the Centre for Urban Sociology survey found that 61% of the electorate intended to vote (ziare.com, 2012e) and the Institute for Public Policy (IPP) found 82% turnout (ziare.com, 2012f). [↑](#footnote-ref-21)
22. According to the IPP survey the popularity of both Băsescu and PDL dropped significantly following the impeachment (ziare.com, 2012f). [↑](#footnote-ref-22)
23. For instance, PM Ponta publicly claimed to possess evidence showing that the turnout would be at least 66% (Victor Ponta blog, <http://www.victorponta.ro/content/victor-ponta-%C3%AEn-29-%C3%AEl-putem-bate-%C3%AEn-sf%C3%A2r%C5%9Fit-pe-traian-b%C4%83sescu-prin-knockout> ). [↑](#footnote-ref-23)
24. According to statements made in Brussels, after PM Ponta conceded to EU demands (Victor Ponta blog, <http://www.victorponta.ro/content/declaratii-ale-primului-ministru-victor-ponta-la-palatul-parlamentului>). [↑](#footnote-ref-24)
25. According to Ponta’s public statements following meetings with EU officials, he was concerned about Romania and USL government’s image abroad (Victor Ponta blog, <http://www.victorponta.ro/content/victor-ponta-la-bruxelles-imi-pasa-foarte-mult-de-imaginea-romaniei> ) [↑](#footnote-ref-25)
26. According to an IRES survey, 60% support Antonescu’s statement that ‘Romania should not behave like a colony, or like a servant’ (*Gândul*, 2012). [↑](#footnote-ref-26)
27. According to a survey’s findings, 52% disapproved and 41% approved of EU pressure on the Romanian government to reverse the anti-democratic changes (ziare.com, 2012g). [↑](#footnote-ref-27)
28. For instance, according to a CCSB opinion poll, the support of Romanian citizens for the EU dropped from 57% (July 2012) to 46% (September 2012) (<http://www.dcnews.ro/2012/11/cate-procente-de-incredere-in-ue-au-tocat-barroso-si-reding-la-referendum/> ) [↑](#footnote-ref-28)
29. For instance, Fidesz placed its loyalists in the key public and democratic institutions of the state - from the Constitutional Court, Budget Council, and National Judicial Office to the State Audit Office, Public Prosecutor’s Office, and National Bank (Bankuti *et al.*, 2012, p.145). [↑](#footnote-ref-29)
30. The Council of Europe made recommendations about the new media law (Council of Europe, 2012) in 2012, yet the Orban government addressed them only partially, whilst leaving unchanged the appointment procedure of media regulators, which therefore links them to the government. [↑](#footnote-ref-30)
31. The Commission linked negotiations on an IMF loan for Hungary to its restoring the independence of the Central Bank (Sedelmeier, 2014). [↑](#footnote-ref-31)
32. For instance, Medián found that Fidesz had 27% support, while MSZP had 15%, Jobbik 11% in April 2013 (*Hungarian Spectrum*, 2013). [↑](#footnote-ref-32)
33. Following a European Parliament Report, along with an Expert Opinion Report by the Venice Commission in in the summer of 2013, the Hungarian government adopted further amendments to the Constitution in September 2013, although these changes have been described as merely ‘cosmetic’ and not radical enough to fix the human rights and rule of problems in the Constitution (Human Rights Watch, 2013). [↑](#footnote-ref-33)