

Department of Political Sciences

Chair of Comparative Politics

**DEMOCRATIC BACKSLIDING IN
THE EUROPEAN UNION
AN ANALYSIS OF VOTING BEHAVIOUR OF MEPS
IN THE 8TH EUROPEAN PARLIAMENT**

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HR	Croatia
IT	Italy
CY	Cyprus
LV	Latvia
LT	Lithuania
LU	Luxemburg
HU	Hungary
MT	Malta
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Introduction

The project of integration of Europe has started in Rome in 1957, with six European countries signing the Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC). This represented a fundamental step in the long process of integration among that states of the old continent and it was only the starting point of a huge project of European Integration which would have lasted for decades and which is ultimately still in progress. Great strides have been made in this project, with the creation of an Union under the Treaty of Maastricht and of Lisbon, and with its enlargement processes which made possible to let this community grow from the initial six founding members to the current 27, in various stages, which have led the Union to its present structure.

The history of European integration has not been without difficulties but after more than 60 years from the Treaty of Rome, it has continued to unite the continent, triggering a highly valuable process of unification under the sign of peace, prosperity and cooperation.

In the long process of European integration, the enlargement of the Union has been a fundamental step toward the accomplishment of the project of an united democratic Europe. It is in this context that the literature on the Enlargement and on democratisation develops, especially with the fifth wave of accession which occurred between 2004 and 2007, with Croatia recently joining the Union in 2013. The adhesion of another thirteen members represented the biggest wave of enlargement and constituted an enormous development for the Union which was forced to renew itself from the point of view of both the institutional and political framework. In fact, the fifth enlargement of the European Union (EU) started in 2004 with the entry of eight Central and Eastern European countries (Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Slovenia and Hungary) together with Cyprus and Malta and, successively, in 2007, Bulgaria and Romania.¹ With this enlargement, the European Union renewed its structure and reaffirmed the cultural, political and social meaning of its integration project. This came with obstacles and hard times.

In this study, we will not recall the entire process of Enlargement but we will concentrate only on the fifth wave of enlargement, that is enlargement toward the Central and Eastern European Countries, from now on CEECs, by considering this phenomenon mainly from a political point of view.

¹ [europa.eu](https://europa.eu/european-union/about-eu/countries_en#tab-0-1) webpage: https://europa.eu/european-union/about-eu/countries_en#tab-0-1

Our analysis will be mostly linked to the concept of democratic conditionality, as the aim of this study is to give an overview on democratic backsliding in the EU and how the EU institutions have reacted to this phenomenon. More specifically, we will empirically analyse the behaviour of the MEPs in the last legislature of the European Parliament on the matters concerning the democratic and rule of law backsliding in the EU Member States (MS).

The idea of this study is firstly that of analysing in a comprehensive manner and from the political perspective, the deficits of the EU's pre-accession strategy towards consolidating democracy and rule of law in the CEECs through membership conditionality. Secondly, to analyse the EU instruments for protecting democracy and rule of law in the MSs after accession and we will briefly recall how they have been applied in the recent cases. Thirdly, when focusing on the European Parliament, we will examine the EP's behaviour on dossiers regarding democratic backsliding, studying the behaviour of vote of the MEPs in the most relevant statements of the EP in the 9th EP (2014-2019). This last analysis was possible thanks to an extensive empirical work aimed at the creation of a dataset to aggregate the data and carry out a research on the trends of MEPs' voting behaviour according to two hypotheses.

The study is structured into three chapters concerning these three conceptual blocks.

In the first section, we argue that as the process of EU Enlargement is complex and, to analyse it properly, there are two elements to consider: the candidate Country and the Union itself. After introducing the topic with some theory on the *enlargement fatigue*, we then concentrate on the Country's dimension, which in the case of the CEECs enlargement requires some attention. Indeed, the accession of these countries has been complicated and it has brought to renew the way the accession policy was handled. The EU has indeed modified its policy when dealing with the accession of these countries by creating political and economic conditionality, the Copenhagen Criteria, to help them transform into liberal democracies with functioning market economies. The study recalls the theories on democratisation and Europeanisation to assert that the approach used by the EU to help the CEECs' transition based on the membership conditionality has shown not to be very sustainable in the long-term in so far as instances of democratic backsliding in some of the "new" Member States have been acknowledged over the last decade.

As well acknowledged by the literature (Pridham:2002; Kelley, 2004; Schimmelfennig, Sedelmeier: 2004; Amichai, Morlino:2009, Sedelmeier:2012; Tuori:2016; Ágh, 2017) the EU linked the accession of the CEECs to the Union to their compliance to the said targets.

However, by looking at nowadays situation in some CEECs, we argue that this strategy has not provided the desired result in the long-term and we therefore criticise its long-perspective functioning. In particular, the issue identified as “Copenhagen dilemma” is raised: in short, it means that the EU monitors the domestic democratic situation of the state in the pre-accession phase thoroughly, but it does not do so after becoming Member. This opens the debate on the EU (rather limited) instruments to monitor and to react to the breach of democratic values in the Member states which is discussed in the second chapter.

The first chapter continues with the introduction of the concept of “democratic backsliding” explaining that, after fifteen years from the fifth enlargement wave, events of the erosion of democracy at domestic level in some Central and Eastern European Countries indicate that a phenomenon of general rule of law weakening and shortcomings is occurring (Kelemen: 2017). The study interprets this as linked to the pre-accession strategy of EU membership conditionality, which we argue, is partially due to the very nature of the Copenhagen Criteria, as in the pre-accession phase governments were motivated to renovate and establish the democratic institutions required, but without developing a real Europeanisation of the citizens, thus leading the CEECs to become “*façade democracy*” (Ágh, 2017).

The second chapter opens with a short conceptualisation of the terms democracy and democratic backsliding and continues examining the democratic shortcomings in some of the CEECs, a phenomenon which is currently challenging the European Union. We continue with the analysis of the possibilities the institutions have to respond to this threat by using, more or less efficiently, the tools available in the EU legal and political framework. The EU legal order provides the institutions with different legal and political mechanisms that can be used in case of breach of the rule of law by a Member State, which will be described in para 2.3, together with an overview of the recent cases of breach of democratic values and rule of law identified in the EU framework in the three most relevant cases of democratic backsliding: Hungary, Poland and Romania.

The third and final part of the study aims at analysing the role of the 8th European Parliament in the protection of democracy and the rule of law in the Member States, by analysing how the Members of the European Parliament (MEP) have reacted by expressing their roll-call vote when asked to give their preference in resolutions on the democratic situations in different Member States (Hungary, Poland and Romania) and in legislative proposals on the protection and strengthening of democracy in the Member States. The first hypothesis, based on the theoretical framework and the literature of the first chapter, aims at assessing whether there is

a division into regional blocs alongside an East-West line in the vote of the MEPs in the nine cases selected for this study, to see if the CEECs show compact support or opposition to the matter on a national bases. This relation has not shown to have positive result as it is not meaningful from a statistical point of view, but it is still interesting to be examined as we can see a general trend that somehow confirms that the CEECs are generally supported less the cause of protection of democracy in the nine cases. We have thus reverted to a second hypothesis to understand if a possible correlation between voting behaviour and political belonging of the MEPs could be found. While the first hypothesis concentrates on the nationality of the MEPs, the second regards the MEPs' ideological affiliation to European Party Groups (EPGs). Indeed, the second hypothesis bases on the literature on the voting behaviour of MEPs, party policy positioning and coherence among EPGs. The analysis has been carried out analysing the three dimensions of left/right, green-alternative-libertarian/ traditional-authoritarian-nationalist (GAL-TAN) and pro- or against- European integration. If there has been positive results in the first two dimensions, proving that it is identifiable a division of the votes into a left/right and GAL-TAN dimensions, we have found instead that the pro- or against- EU integration has not a relatable result in particular for what concerns two EPGs: the left GUE/NGL and the centrist EPP. The third chapter ends with a case study analysis on the behaviour of the EPP and the results prove that the Party has had a different voting attitude depending on whether the country addressed by the resolution was Poland or Hungary. By considering partisan interests and loyalties, we thus conclude that the role of party politics plays an important role in the vote of the MEPs and eventually creates an obstacle in the project of a united democratic Europe.

1. Central and Eastern Enlargement process: transition to democracy

The Eastern enlargement drew the attention of political scientists for its peculiar effects both at political and institutional level. From the beginning of the process until today, the impact of the Eastern Enlargement has largely been studied and the Enlargement policy largely debated.

The accession of the CEECs has been controversial, and somehow still is, as we will discuss further in the second chapter. If one country entering the Union potentially creates a shock in the overall balance of the Union, when it comes to a number of former Soviet countries entering simultaneously the Union, this can legitimately create some doubts and potentially threats. As a matter of fact, the 2004 enlargement round was unique in terms of the number of acceding states, their size, their comparatively low level of economic development, and their impact that would have had at financial level (Faber:2009). What made this phenomenon ever more significant is certainly the political impact it had due to the CEECs' Soviet legacy and their former communist nature. In that very moment following the end of the Cold War, the role of the European Union has been fundamental in the stabilisation of the Central and Eastern European region and the transformation of the countries into full liberal democracies.

The challenge was big for the European Union, whose objective was to get closer to this zone with the aim of stabilising that territory and peoples which constituted the Eastern Bloc in the Cold War. However, the biggest challenge was from the countries' side, since the distance from the EU was considerable and, with such characteristics, the CEECs would have taken a lot of effort to get closer to the EU. The EU ultimately managed to accomplish the mission and made its project real.

In the present study, we explain how this was possible, namely through the EU strategy of governing by posing democratic conditionality on future membership, which was in the end successful - even though perfectible and with some strong criticism on its long-perspective functioning, as it will be explained as follows.

1.1 European Union's absorption capacity

As this enlargement round was unique because of its peculiarity, some claimed that the Union would have become more unstable and ineffective if it would have not renewed its architecture along with the new member states acceding - asserting that, without such a structural change in the institutional framework, which was originally designed for six members, the EU could

have not worked for 25. Criticism was focused on the ability of the EU to modify its nature and become more diverse in order to resist this change. (Wallace, 2007).

Indeed, the fifth enlargement gave rise to a number of new questions and issues regarding the political sustainability of an increasingly widespread Europe. From one side, the countries willing to join the union had to meet some requirements to be eligible candidates, on the other side, the EU also needed some readiness to take on board the new states. There are two levels of analysis in the process of enlargement, as the integration of new states in the Union happens simultaneously both at the national and Union level. The analysis has thus to focus both on the domestic context of the state, that means considering the domestic readiness of the country itself, and on the European Union level, concentrating on the Union as a system and its capability to sustain a broader Union. What has to be stressed is that in such a huge project of integration there are many external and internal driving forces and mechanisms interfering in the process of enlargement and the analysis is certainly multidimensional. For this reason, in the study we are introducing the European perspective first, but we will concentrate on the domestic dimension of the CEECs.

From the European side, the question is whether the European Union can bear the burden of new states joining the Union. It is not only a political issue but it also concerns the structure of the European integration project. Indeed, it regards the EU's effective capacity to keep the promise of a peaceful development and prosperity of the region and of its Members. The *European Union's absorption capacity* indicates the sustainability of Enlargement process from the point of view of the EU. Alongside with the Copenhagen Criteria, there is this fourth - non official - criterion which has recently emerged and strengthened. It is more of a vague concept rather than an established indicator and it was not part of the Copenhagen Criteria (see para 1.2.1). Nonetheless, the notion of "absorption capacity" appeared for the first time in the Copenhagen Summit conclusions in 1993, where it was pointed out the importance of the general interest of both the Union and the candidate country². The Conclusions recalled the importance of considering the «Union's capacity to absorb new members, while maintaining the momentum of European integration».³ This expression was codified only later on when

² An European country is defined as "candidate country" when it has applied European Union membership and the status candidate country has being granted by the European Council on the basis of a recommendation by the European Commission.

Detailed explanation available at: https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/candidate-countries_en

³ European Council Meeting in Copenhagen, 21-22 June 1993, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf

the European Council Summit⁴ in June 2006 asked the Commission to produce a report on the issue calling upon the idea that the Union needs effectiveness and needs to ensure its full functioning both politically, financially and institutionally in the process of widening its membership. In the end, the EU's "absorption capacity" was defined in the Commission's 2005 Enlargement Strategy Paper⁵ as the <<capacity to act and decide according to a fair balance within its institutions; respect budgetary limits; and implement common policies that function well and achieve their objectives>>.

The appearance of this concept is relevant in this context as it indicates that the European Union's position changed overtime and, as we will argue in the next paragraph, in particular in view of the Central and Eastern Enlargement. In the next pages, we will show how the 2004 - 2007 Enlargement process has challenged the Union and has reshaped the way in which the Enlargement policy toward new Member States is being conceived.

The debate over the *enlargement fatigue* was split and controversial at the time and it still is. After fifteen years from the fifth Enlargement wave, what can be stated is that the Union has welcomed the CEECs and has successfully managed to renew its structure and architecture, accomplishing its project of integration and bringing the Union to its current structure at 27, even though, as we argue in the paragraph 1.3.2 the CEECs are more of a *façade democracy*, and, as acknowledged further on in the chapter, they are backsliding from their democratic status. However, the controversial debate over integration has not stopped, it has moved toward to the new targets of future EU enlargement: The region of Western Balkan.

The EU is now focusing on the integration and stabilisation of that region even though this goal and the whole role of the EU in this field is being challenged by the position of the Council which has proven to be hostile to progress in the accession negotiations especially with the recent cases of its resistance to open the accession negotiation with Albania and North Macedonia (Carrara, 2019). The Council's rather adverse stance has recently been particularly clear with the decision to wait again to open the negotiations with the two candidate countries in the European Council of 17 and 18 October 2019.⁶ The Council could not find the agreement on starting the membership talks, especially France, Denmark and Netherlands harshly opposed

⁴ European Council, Presidency Conclusions, 15-16 June 2006, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/90111.pdf

⁵ European Commission, 2005 Enlargement Strategy Paper, 9 November 2005. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0561:FIN:EN:PDF>

⁶ European Council conclusions, 17-18 October 2019: <https://www.consilium.europa.eu/media/41123/17-18-euco-final-conclusions-en.pdf>

to it, and this stance has been labelled as an “historic error” by Italian Prime Minister Giuseppe Conte and many other leaders in favour of enlargement, included the EU Council President Donald Tusk who declared to have felt embarrassed for the choice the Council did.⁷

To sum up, following the fifth Enlargement wave we can state that, on the one side the EU is showing its reticence conceptualised in the informal “absorption capacity” criterion to motivate the unreadiness of the EU to open to new members and, on the other side, it is only a restricted faction within the Council that is showing its opposition. New strategies are being proposed to overcome this impasse, as for instance the French “non-paper” issued in November 2019, just after the October 2019 European Council, called “Reforming the European Union accession process”.⁸ The position of the Council is fundamental because of the absolute majority required and because it can set new ways and modalities for the accomplishment of the European project, which, as we will see in the following paragraph, can revolutionise the way the countries join the Union, as it has already happened with the CEECs Enlargement. As it will be explained in this chapter, opening to new European Countries is not just a matter of broadening the Community and gaining new members, but there is an underlying bigger project: the project of spreading the European peace in the name of mutual cooperation and respect in the continent.

1.2 EU's scope of regional stabilisation and the goal of protecting democracy

The European Union, with its project of European integration, has managed to absorb, for over three decades, a very diverse set of countries. The EU has always been committed in many situations of political crisis and uncertainty. As far as the CEECs are concerned, the EU has pushed for the fall of dictatorships and communism, in the name of an enhanced cooperation, globalisation and exchange among countries of the area (COM (2005) 561 final)⁹ and the EU Enlargement policy has proven to be a working instrument in the process of European integration, which has ultimately helped the stabilisation of the area. The EU took advantage of the collapse of the former communist regimes, and pushed for the transformation of the political and economic system of these neighbouring states toward liberal democracies (Lane:

⁷ “EU blocks Albania and North Macedonia membership bids”, BBC, 18 Oct 2019, article available at: <https://www.bbc.com/news/world-europe-50100201>

⁸ Non-paper “Reforming the European Union accession process”, November 2019: <https://www.politico.eu/wp-content/uploads/2019/11/Enlargement-nonpaper.pdf>

⁹ Communication from the Commission - 2005 enlargement strategy paper. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0561>

2007). This dramatic change in the political scenario made it possible for the EU to create fruitful ties in a renovated international dimension and, finally, to get closer to the former Soviet states and stabilise the area.

The EU's goal was to help the transition of these CEECs into democracies and, through its guidance, the EU managed to succeed in the project. Indeed, the EU has helped the transition of the Central and Eastern European States from communist regimes to modern liberal democracies with market economies. This became one of the objectives of the Union in order to build an area of peace and unity, in a territory that, for generations, was the scenario of divisions and conflicts among the people (COM (2005) 561 final)¹⁰. As we can read in the Conclusion of the Presidency of 21-22 June 1993, «the Community and its Member States pledge [the CEECs'] support to this reform process. Peace and security in Europe depend on the success of those efforts» (SN 180/1/93 REV 1)¹¹. To do so, the EU considered it fundamental to ensure a cautious management of the enlargement process which could assure the extension of peace and stability in the form of liberal democracy in these territories, by respecting human rights and guaranteeing the rule of law. This chapter will handle these two last elements and their fundamental role in the CEECs Enlargement process. Indeed, the EU during the process of enlargement toward this region has strengthened the link between the membership and the states' respect of human rights and rule of law, two aspects which were not highly considered before and which became fundamental during the process with the CEECs.

Indeed, the beginning of the new century has seen the question of enlargement appear in radically new and more complex terms. The demographic, economic and social impact of these particular enlargement process made explicit for EU the need to reform its policy in order to be capable of ensuring a governmental effectiveness of the European institutions.

The fact that the enlargement was toward the East, toward territories only recently freed up from the Soviet Union, made this need even more urgent. In such a context, the focus was certainly on the process of integration of the European Union and on the cultural and social meaning of such a majestic project, but also on the capability of these states to reach the high democratic standards of the Member States already in the Union. The EU focused on the

¹⁰ Communication from the Commission - 2005 enlargement strategy paper. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0561>

¹¹ Conclusions of the Presidency - European Council in Copenhagen 21-22 June 1993. Available at: <https://www.consilium.europa.eu/media/21225/72921.pdf>

CEECs' ability to adapt their socio-economic - as well as political and institutional - framework to those required by the EU in order to be eligible to join the Union. That is why, among the international organisations that in the 1990s opened toward that region, the European Union, by pushing for a general growth of conditionality, was certainly a pioneer in setting political and economic conditionality encouraging the improvement of certain elements of substantive democracy (Kelley: 2004). This was mainly done by developing an extensive set of conditionality requirements elaborated in the European Council on 21-22 June 1993. The emerging of this set of criteria was the result of the EU's effort to strengthen the promotion of democracy in the European Union, especially in that very moment after the end of the Cold War. This was the answer to the EU's concerns on various issues linked to the unconsolidated new democracies in the Central and Eastern Europe and to the legacy of the region (Pridham:2002). For this reason, for the fifth enlargement, the process of monitoring candidate countries for EU membership became stricter than before, both in terms of scope and specificity of conditionality requirements, particularly for political conditions (Pridham: 2002).

Until 1990, EU's commitment to human rights and democracy was not as emphasised as it was in the early 2000s and that still is (Kelley: 2004). The war in Yugoslavia and the related threats and fears contributed to the renewal of the importance of the democratic principles, among which the rule of law. This led in 1993 to redefine the political criteria for the countries in Eastern and Central Europe desiring to accede to the Union. The Council agreed that the accession would have taken place as soon as the associated countries would have been able to assume the obligations of membership by satisfying the economic political and the administrative conditions required.¹² The redefinition of the political criteria occurred in the Copenhagen European Council with the establishment of more specific framework of requirements focused on the insurance of stable and reliable institutions in the states involved which could guarantee the respect for human rights and the protection of minorities and the rule of law on the whole territory.

1.2.1 The Copenhagen Criteria

The Copenhagen Criteria, formally established by the Copenhagen European Council in 1993, set general requirements and conditions about the political and economic dimensions of the states at stake to be addressed in order to be recognised as candidate countries and open the

¹² Definition of accession criteria or Copenhagen criteria available at: https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en

accession negotiation. These criteria emphasise, in particular, the stability of democratic institutions, the respect of the rule of law, of human rights and protection of minorities, as well as the existence of a functioning and competitive market economy. Moreover, the state has to be able to assume the obligations of participation and endorse the project of the Union politically, economically and financially.¹³

Beyond showing their requirements on formal democracy, the countries were asked to show their efforts in the realm of substantive democracy, bringing evidence of their commitment in the fields of politics - by strengthening the role of political parties and of the opposition, in the field of press and freedom of thought, through the monitoring of independence of media and active civil society, in the independence of the judiciary and in the commitment on human rights, as well as minority rights protection (Pridham, Geoffrey:2002).

Countries, in order to join the Union, had to undergo dramatic domestic renovations to align to the EU standards. The biggest effort was to be done in the field of democracy and rule of law, and the EU started a monitoring phase to assess the improvements made domestically.

The monitoring of the development made in the Enlargement processes and EU mechanism available at EU level to this scope, grew substantially (Kelley: 2004). The EU made use of the primary tools for addressing democracy-related issues, among which annual reports, official declarations – such as presidency’s declarations – and EU parliamentary resolutions. The annual reports and official “accession partnership” rendered the review on the democratic issues public and formal. The Commission was committed in monitoring the domestic situation in the CEECs overtime, by focusing particularly on their status of adhesion to other International Organisations’ initiatives aimed at promoting the respect of Human Rights, as for instance the European Convention on Human Rights and the primary UN instruments on Human Rights and minority rights (Kelley:2004). Thanks to the Commission’s action on monitoring of the domestic situation in the CEECs, in both political and economic spheres, it was possible to assess overtime their level of improvement in the different fields and their preparedness to join the Union.

The <<stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities>>¹⁴, the new elements included in the accession criteria

¹³ Conclusions of the Presidency - European Council in Copenhagen 21-22 June 1993.
http://www.europarl.europa.eu/enlargement_new/europeancouncil/pdf/cop_en.pdf

¹⁴ Copenhagen European Council (21-22 June 1993), Presidency Conclusions.
https://www.europarl.europa.eu/enlargement_new/europeancouncil/pdf/cop_en.pdf

by the European Council, were incorporated in the Treaty and they can be now found in the Preamble to the Treaty on European Union (TEU). Moreover, they are expressly mentioned in Article 2 TUE among the values on which the Union is found, as we will explain afterwards. Since these provisions are in the Treaty, while signing them, the countries commit to respect these values. This holds true first and foremost for the countries willing to join the Union. In turn, Article 49 TEU foresees that «any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union», becoming thus a prerequisite for accession». Indeed, the Copenhagen Criteria go in that very direction. Indeed, a country which fulfils the Copenhagen Criteria, is in line with the values of Article 2 and it can thus qualify to be a candidate member of the Union. Only when all the Copenhagen criteria are fulfilled, the country can be granted the candidate status and then, the accession negotiations can officially begin. The next step is the beginning of the negotiation after Council's approval with unanimous vote, which implies the complex process of adoption and implementation of the EU legal framework and EU body of law, the so-called *acquis communautaire*¹⁵.

1.3 The EU membership conditionality

The States willing to get closer to the EU and, one day join the Union, had to show improvement and domestic renovation, as recalled in the former paragraph. The EU took advantage of the bargaining strategy based on the "reinforcement by reward" and imposed conditionality based on the newly introduced Copenhagen Criteria through which it was possible to implement a EU rule transfer in the CEECs. This way, the EU provided the CEECs' governments with external incentives aimed at pushing them reach the compliance with conditions set by the EU and aimed at their transition to liberal democracies through the adoption of the EU standards and rules. By doing so, the goal of the EU was to realise a shift from communist illiberal democracies to liberal democracies and ultimately stabilise the whole region.

In the early 1990s, the membership was a positive incentive for post-communist states, as they were willing to show to the international community their return to modern and liberal regimes as a sign of their reversal to Europe as democratised countries (Kelley:2004). In this light,

¹⁵ Definition of *acquis* available at: https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accesion-negotiations_en

membership clearly had a utilitarian benefit for them in order not only to gain credibility after the communist past, but also to gain prosperity by joining the Union (Kelley:2004).

However, for a real transformation, a long process of institutionalisation of these states at domestic level was necessary. This process was made possible thanks to the EU's strategy of conditionality.

In the International Relations, there are two institutional strategies for influencing the behaviour of a government: “normative pressure” and “conditionality”. The normative pressure is the use of norms to persuade government to change their policies through a set of socialisation processes which may include social influence or persuasion (Kelley:2004). This occurs when the institutions provide governments with guidelines on the policies to implement and rules to follow. This strategy provides, as only incentive, the approbation of the government by the institution.

The conditionality approach, instead, involves explicit linkages between the change advocated and the incentive promised by the institution. This mechanism, which will be explained in the context of the enlargement in CEECs at the EU level, is the membership conditionality, whereby the EU links the accession to the Union directly to the behaviour and the improvement shown by the CEECs governments, by making use of conditionality requirements and incentives. This approach can be inscribed in the "rationality theory" which identifies the actor, in this case the CEECs, as cost-benefit calculators and utility-maximising subjects (Kelley:2004).

The literature largely acknowledges that the EU applied a membership conditionality strategy in the fifth enlargement that could motivated the countries in their reform towards EU-oriented policy dimensions and domestic renovation. EU policy towards the CEECs is generally described as predominantly a "policy of conditionality" (Sedelmeier, Schimmelfennig: 2004). Membership conditionality worked as a strategy because the willingness and desire of those countries to join the Union was high, the concept defined “determinacy” in the External Incentive Model by Schimmelfennig and Sedelmeier (2004, 2019) and it worked because the rewards/incentives offered by the EU (the membership) were credible. The “credibility” indeed played a fundamental role in the accomplishment of the strategy, something which is nowadays not happening for the future enlargement wave on Western Balkans (Schimmelfennig, Sedelmeier: 2019)

Together with the “determinacy” and “credibility” factors, this strategy was particularly effective mainly due to the long multiple-step process of joining the EU which implied a multi-level influence over the time based on a system of gradual rewards for the fulfilment of said steps (Kelley:2004). The EU did take advantage of its position to exercise political influence and it managed to overcome the oppositions at national level to the proposed policy changes needed to comply with the standards.

The process was based on the observation of conditionality from the States referring to the two broad issue-area of *democratic conditionality* and *acquis conditionality*.

For what concerns *democratic conditionality*, the EU requirements were - and still are - based on the fundamental political principles of the EU, the norms on Human Rights and liberal democracy. This conditionality was very relevant in the process of transformation in the view of future accession to the Union because of the very nature of the CEECs and their Soviet legacy. This conditionality, as said above, focused on the reforms that had to be carried out domestically in order to let the post-communist transformation happen. In this context, the main incentive provided by the EU was the promise to establish institutional ties and to open the accession negotiations (Sedelmeier, Schimmelfennig: 2004).

While the democratic conditionality constituted the pre-preparatory phase, the *acquis conditionality* refers to the preparation phase which envisages the adoption by the candidate countries of existing EU legislation, which brings the candidate country to have their full membership finalised. This step implies the concrete preparation for EU membership, which is the most influential incentive for rule transfer that the EU can provide (Sedelmeier, Schimmelfennig: 2004).

In general, this whole process bases on the restructuring of the domestic institutions according to the EU standards and the change of domestic political practices always according to EU standards and, ultimately, the transposition of EU legislation into the domestic legal framework.

1.3.1 External incentive model: a successful model?

The use of conditionality cannot explain the conditions under which EU rules were transferred to the CEECs. Moreover, the use of "conditionality" as a political strategy and its causal impact on domestic politics in different countries is different.

The dominant logic behind EU conditionality is a bargaining strategy of "reinforcement by reward" thanks to which the EU provides external incentives to a government if it complies with some requirements or conditions, which must be determinate (clear and formally codified by rules) and they have to be credible (Sedelmeier, Schimmelfennig: 2004). The external incentives model is a *rationalist bargaining model* in which actors tend to follow a utility-maximisers logic to grow their power and welfare (Sedelmeier, Schimmelfennig: 2004). The more powerful they are in the bargaining process, the more they will gain from it. According to this model, the EU follows a strategy of conditionality in which the Union sets the rules as conditions that the states have to fulfil in order to receive the EU rewards, that is either the assistance and help in various fields, or the conclusion of cooperation agreements and so on, all steps necessary to achieve, in the end, the full membership (Sedelmeier, Schimmelfennig: 2004).

According to Sedelmeier and Schimmelfennig (2004), the rule transfer from the EU to the CEECs are best explained following the External Incentives Model (EIM) that bases its functioning on the credibility of EU conditionality and the domestic costs of rule adoption. The relations between these states and the European Union were basically linked to their domestic renovation, as explained above, and the EU wished and pushed them to transform their status, their regime and internal policies, basically, from being communist to a being a liberal countries.

However, the EU strategy of "governing by conditionality" has worked in differentiated levels showing different outcomes depending on the initial context and status of the State. Indeed, it did not worked for all the same. For what concerns the first step, that of democratic conditionality, the success of the external governance of the EU was determined in the CEECs cases by the initial status of the candidate country. Namely, the democratic conditionality has worked for the more unstable and fragile democracies, but it was not necessary for the more democratic states as Czech Republic, Hungary and Poland, and it was useless for undemocratic countries. Indeed, the result of the process show that authoritarian governments rejected the offer of membership rather than accepting the political costs of adopting liberal democratic rules (Sedelmeier, Schimmelfennig: 2004).

In the case of CEECs states, the democratisation and democratic consolidation of the countries was not fully enhanced by the EU governance: the effect of the EU governance was only small (Sedelmeier, Schimmelfennig: 2004). These states were already on the track to democratic consolidation and, even without the action of European Union, they would have somehow

stabilised and shifted toward a more democratic domestic political and legal framework. Certainly, the EU guidance has improved the democratic consolidation by means of the full development of EU's policy of democratic conditionality (Sedelmeier, Schimmelfennig: 2004), in particular, for what concerns minority rights and their protection, which were tangibly improved in CEECs as effect of EU democratic conditionality (Kelley: 2004).

The failure in rule transfer in certain European successor states of the Soviet Union (exception made for the Baltic countries), shows that democratic conditionality imposed by the Union was not enough for transforming successfully all the states of the region into full liberal democracies at the same pace. The reason behind this is that, what was needed, was a prior political change at domestic level, with democratic governments willingly pushing for reforms and innovation. The EU has supported the reformist governments by giving them a membership perspective and these governments have introduced many changes and moved towards the EU, because willing to start a new path. Following a cost-benefit logic, some states took advantage of the EU's guidance and democratic conditionality approach, while for those states whose change was too costly, the EU's approach failed. To sum up, the democratic conditionality was successful for those states already on the way to renovation and democratisation, while it was unsuccessful for those who did not start the process of transition to democracy yet for which the renovation was too difficult to be realised.

As explained, the EU shown to have relatively well-working instruments to influence reforms toward improvement or toward the stabilisation of the rule of law in the associated countries. As a matter of fact, the EU has been the only European actor able to push the CEECs to deep reformation, but, this has not worked for the entire region. As explained in the model of Sedelmeier and Schimmelfennig, some countries as Ukraine, Bosnia and Herzegovina have not benefitted from the EU's influence and conditionality was vane. As a matter of fact, without the guidance and the support of the Union, they are still lagging behind in the transition to democracy (Tuori:2016).

1.3.2 CEECs: façade democracy?

The role of the EU and its impact on the region is visible and should be recognised. However, some criticism on the conditionality strategy and its long-term functioning and perspective have risen.

Over the last decades, the Union has focused mainly on the legal transformation in the CEECs. Critics argue that the EU seems to have missed to address the real functioning of the institutions that the government had *ad hoc* created for fulfilling the EU's formal requirements, somehow avoiding addressing the democratic transition of the population.

This process of Europeanisation of CEECs' socio-political systems, thus created a duality: From the one hand, the Copenhagen criteria pushed for the establishment of formal institutions typical of the liberal democratic states which could guarantee the proper functioning of the rule of law and the development of democracy, while on the other hand the democratisation did not reach the citizens and the development of proper *informal* civil society institutions was still lacking, which brought, in the end, the real world's dynamics to remain unchanged in the CEECs (Attila Ágh: 2017). In the end, the transition desired by the EU occurred only at the surface with the establishment a formal network of institutions, while relevant political participation was still lacking. In order to gain the membership, in line with the logic of "gaining the reward by accomplishing their task", the CEECs established all EU formal institutions without implementing any development of informal civil society organisations, which led to the development of unstable democracies, which only appeared to be democratic on the surface, which Ágh (2017) defines "*façade democracy*". This opposition between (accomplished) external and (not accomplished) internal Europeanisation led to deep tensions and, as a result, in the Central and Eastern European region democracies turned out to be not as stable as foreseen.

In this study, we infer that the lacking Europeanisation and democratisation of the citizens of the CEECs occurred because of the very nature of the Copenhagen Criteria which did not envisage any tool or mechanism to support the transition to a more democratic way of thinking of the citizens which can ultimately bring them closer to the European Union way of thinking. Indeed, during the catch-up process, the EU did not provide any positive program of integration of the population (Ágh: 2017).

The weaknesses of the Copenhagen Criteria emerged in the early 2010s, when it was clear that the EU lacked in having a consistent approach to the assessment of these parameters and criticism over the vagueness of the concepts such as democracy and rule of law, which are however no better defined in the Treaties, appeared. We can thus conclude that EU accession process has not alone, in the end, produced the transformation in the legal, political, economic and socio-cultural realms, as desired and foreseen by the European Union.

What is more is that the EU pushed for the domestic renovation of different states, without considering the very different nature of each case, and asking them for compliance to uniform standards, policies and institutions, while starting their renovation from different economies and societies (Ágh: 2017). This uniform approach, the Europeanisation and democratisation only at formal level and the impossibility of the EU to continue the monitoring after the Membership was obtained, as will be explained in the next section, did not help the transition and the stabilisation of the CEECs and brought to today's situation of democratic uncertainty in some of these countries.

1.4 From the Copenhagen dilemma to the democratic backsliding

In the literature, doubts concerning the effectiveness of the political accession criteria have thus risen, claiming in particular that democratic conditionality through the Copenhagen criteria and the system of governing by conditionality are not sustainable in a long-term perspective.

The political and economic targets were strictly monitored by the Commission during the pre-accession period but they seem to disappear as soon as the country becomes a Member State. Indeed, after the accession to the Union, the incentive structure changes and this is generally negative for a long-term conditionality-induced Europeanisation (Sedelmeier: 2012). It is true that a democratic deficit can be identified in the change of status from being candidate to being a Member State. This bug is called the “Copenhagen dilemma” and describes the situation in which the EU monitors the domestic democratic situation in the pre-accession phase thoroughly, but it does not so after accession since it has no proper means to continue this monitoring process after the formal accession is accomplished (Tuori:2016).

This holds true for all CEECs, exception made for Bulgaria and Romania for which a Cooperation and Verification Mechanism (CVM)¹⁶ was established in 2007 to help the two countries, which - at the moment of accession - still had to make progress in the fields of judicial reform, corruption and (for Bulgaria) organised crime. The Commission considered important to monitor their progress and created an *ad hoc* mechanism as a transitional measure. This already gives a clear signal of the malfunctioning system of accession by conditionality. The two states who entered the Union in 2007, entered with the conditionality of being monitored by the CVM, for a report on the progresses done by the two states in the field of rule

¹⁶ European Commission webpage: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en

of law, democracy accountability and judiciary is reported twice a year. The mechanism is functioning for more than ten years and this long time of existence not only shows the difficulty of the countries to catch up with the standards required and respected already by the other Member States, but it also shows the difficulty of the EU to tackle the issue of democratic shortcomings. This mechanism is useful, but it is only temporary and targeted at two Member States.

Coming back to the "Copenhagen Dilemma", this deficit arises from the fact that the EU seems not to have well-working instruments to tackle the risks of democratic rule of law when the countries are Members of the Union.

Commissioner for Legal Affairs, Viviane Reding, identified it as the "Copenhagen dilemma"¹⁷ noting that the EU had had leverage to push for formal democratic reformation in compliance with the new requirements set by the Council before accession but it had no means to continue this process in the aftermath. This happens because incentives change after the accession, since undemocratic practices are less likely to be penalised when the country is a member of the Union (Sedelmeier:2012). Instead, for the candidate countries, the threat of seeing their membership withheld is heavier than being sanctioned by the EU while being already in the Union because the tools available in the hands of the Institutions to sanction the Member States are lighter and they are also more difficult to use rather than those that the EU has in the pre-accession phase for the candidate countries. This change in incentive structure from the pre-accession period to the post-accession, and the relative change in the penalty-sanction system, evoke the dangers of backsliding. Scholars have acknowledged that in the shift from the first to the second stage, the CEECs have experienced a backsliding, in the guarantee of democracy and rule of law and in good governance reforms (Sedelmeier : 2013, Cianetti, Dawson, Hanley:2018). In some Member States, the EU is facing threats of democratic deficits at national level because of the sliding of some governments toward authoritarianism (Kelemen: 2017). The rate at which the deconstruction of the rule of law occurs in Poland and Hungary today is worrying (Kochenov, Bárd:2018). The "Democratic Deficit" is what we are unfortunately experienced in some CEECs in the last decade and this trend is sadly increasing (Pech, Kochenov:2019). The concerns do not cover only the two most known and addressed

¹⁷ On occasion of the Plenary Session of the European Parliament on the Situation of fundamental rights: standards and practices in Hungary /Strasbourg on 2 July 2013, the Commissioner for Legal Affairs in her speech emphasised the importance of the debate on how to defend the rule of law in the EU as an issue of general interest for the European Union. She urged the other institutions, the EP and Council, to engage in a dialogue on the possibility to strengthen the mechanisms already in place. Speech available at: https://europa.eu/rapid/press-release_SPEECH-13-603_en.htm

cases of Poland and Hungary, but also Romania is showing democratic erosion as appears in the latest CVM report¹⁸ (22.10.2019) which highlighted a backtracking in the rule of law reforms. The Commission concluded that the country, during 2017, had lost the “reform momentum” and that concerns on backtracking from the previous progress made were to be risen.¹⁹

A further proof of this “Copenhagen Dilemma” is the Article 7 TUE (which will be examined in details in the next chapter). The rule of law, together with the other fundamental values mentioned in Art 2 TEU as the respect for human dignity, freedom, democracy, equality, minorities' rights, are the priority of the political criteria that the countries willing to join the union must respect. We pointed out that once the candidate countries become Member States, by signing the Treaties, they commit themselves to uphold that set of core values and to respect them domestically and in the EU framework. To secure that this can happen properly there is a mechanism to protect the Member States in case these fundamental values are threatened domestically. This mechanism is enshrined in Art 7 TEU and aims at protecting those Members that breach these values in a serious and persistent way. While signing the Treaties to gain the full membership in the Union, the country also commit themselves to the respect of this procedure - also known as “nuclear option” – which was designed and introduced via the Amsterdam Treaty and further amended by Nice treaty, thinking of the Eastern Enlargement, in order to empower the EU to monitor the Member States (Tuori, 2016; Pech, Scheppele, 2017). The introduction of this mechanism suggests that there was little trust in the new pre-accession conditionality and existing Member States considered it necessary to add Art 7 as deterrent for democratic and rule of law backsliding once acceded. (Pech, Scheppele: 2017).

The External Incentive Model by Schimmelfennig and Sedelmeier (2019) confirm that, compared to the pre-accession period, the EU’s incentives for compliance are weaker in the post-accession time both for *acquis* and for liberal democracy. The most influential factor in the change of strategy effectiveness is the “credibility”, as the threat of sanctions are lower and domestic compliance costs explain why democratic compliance is not a priority in illiberal democracies as Poland and Hungary any longer (Schimmelfennig, Sedelmeier:2019).

¹⁸ Report of the Commission on Progress in Romania under the Cooperation and Verification Mechanism - COM(2019) 499 final

Available at https://ec.europa.eu/info/sites/info/files/progress-report-romania-2019-com-2019-499_en.pdf

¹⁹ Report of the Commission on Progress in Romania under the Cooperation and Verification Mechanism - COM(2019) 499 final

Available at https://ec.europa.eu/info/sites/info/files/progress-report-romania-2019-com-2019-499_en.pdf

In the next chapter we will go through the reactions that the European institutions have had – even though slowly and not taking full advantage of the measures at hand – to uphold the respect of the rule of law in these Member States and have started the procedures to use the instruments available and counter this phenomenon. The cases that will be taken into consideration in the following two chapters and on which the research of the third chapter is based on are indeed the Hungarian, Polish and Romanian case.

2. Democratic Backsliding in the EU: the institutional counteraction

In this chapter we will deal with the complex phenomenon of the backsliding of a democracy, and we will try to define it and understand its declination in the European Union dimension.

The many dimensions taken into consideration in the political criteria of the Copenhagen requirements enclose the concept of being a "democratic country". However, defining "democracy" or "democratic" at the European Union level is rather complicate since there is no explicit definition of it in the Treaties (Kelemen: 2017). Democracy is mentioned in the Preamble of the Treaty Establishing the European Union (TEU) where it features among the "universal values" driven from the *cultural, religious and humanist inheritance of Europe* and in Article 2 TEU, when democracy is mentioned as one of the values on which the Union is founded and that each State must respect to be a Member, namely «the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, [and for] minorities». Art 2 TEU then continues stating that in the society of the Member State «pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail».

In this chapter, the debate will neither focus on the terming of this concept nor on the implications of the literature on the EU discourse on backsliding democracy. The analysis will be narrowed on the description of the phenomenon and the concerns expressed by the EU institutions on the democratic and rule of law backsliding, as well as the measures taken so far to counter this phenomenon. In the cases here examined, instances of deterioration of democracy and rule of law have been acknowledged by the institutions, be it the Commission, the Parliament or the Council, which have recognised threats to the core values of the Union in so far as they reacted institutionally by making use of the means available in the EU legal and political framework and by proposing new measures, as shown further in this chapter.

2.1 How to study democracy and its backsliding

The study of democracy has changed overtime due to changes in the international context and to phenomena occurring at the domestic and international political level. While in the 1970s and 1980s scholars focused on the democratic transition by analysing the conditions that determine regime change and used to conceptualise the models of democratisation in clearly defined regime types (Morlino, 2011: ch1), with the end of the Cold War and the change of

political and institutional dynamics, the attention of scholars shifted to the question of democratic consolidation (Morlino, Sadurski, 2009).

Democracy is now considered by the public opinion to be the most suitable political system for their societies. Given the importance of the topic and also given the presence of undemocratic symptoms in some systems and the emergence of antidemocratic institutional attitudes that have relevant implications on the political system, the issue of evaluating democracy has attracted the interest of the academia by showing the importance of the debate around the quality of democracy (Morlino, 2011).

To study the backsliding of the democracies, we have first to take a closer look at what is meant by “good democracy” and how to study democracies changes.

According to Morlino (2011:ch. 2) a “good democracy” is a «stable institutional structure that realises the liberty and equality of citizens through the legitimate and correct functioning of its institutions and rules». In other words, a “good democracy” is a broadly legitimate regime which completely satisfies its citizens, where institutions support the civil society that can thus chase democratic values and where the institutions do not have to continuously consolidate and keep their legitimacy. Moreover, a good democracy has to guarantee the possibility for the citizens and associations to enjoy their freedoms and rights and to control the application and the balance of the checks and balances.

Basing on the concept above, Leonardo Morlino has tried to identify some aspects of the institutional, political and social systems that could be used as indicators of the quality of democracy (2011). This way, the focus shifts from the definition of democracy to the study of democratisation processes, which do not necessarily imply a dichotomy between a country being democratic or authoritarian. In doing so, the study of democracy becomes the examination of situations by different degrees of progress in the path of democratization or vice versa of weakening democracy. Eight dimensions or qualities of the democracy are identified to empirically assess the “health” of the democracy and are: Rule of law; Participation, Competition, Electoral accountability, Inter-institutional accountability, Responsiveness to the needs, interests and expectations of citizens, Freedom (civil, political and socio-economic rights), Equality/solidarity (Diamond and Morlino 2005). According to the two scholars Diamond and Morlino, rule of law is the foundation upon which the other dimensions rest.

Even through the notion of the Rule of Law is understood differently in each Member State, some common key elements of this concept can be traced and are important, also in the light of our analysis, to be identified. The basic dimensions of Rule of Law are: Individual security and civil order; Independent judiciary and a modern justice system; the Institutional and administrative capacity to formulate, implement, and enforce the law; Effective fight against corruption, illegality, and abuse of power by state agencies and the Security forces that are respectful of citizen rights and are under civilian control (Morlino:1998).

The literature has studied the topic by referring to the different approaches and indicators to measure changes in the **quality of a democracy**. To this end, there are **two research strategies** that are based respectively on subjective evaluations of citizens on the performance of democracies detected through opinion polls and on standard democratic measures.

The first approach is based on data regarding surveys that monitor citizens' views on democracy. This approach is based on citizens' subjective assessment of democracy, on their perceptions on different issues, as Eurobarometer. In fact, democracies are more or less good not only by virtue of the procedures and rules that have been given but also by the quality perceived by their citizens.

The second approach has successfully developed thanks to the creation of databases that provide indices of specific aspects related to democratic performance. In this study, the data we have used to support our reasonings and our research are those of the following two agencies: Freedom House's Freedom in the World and Nations in Transit and the Economist Intelligence Unit's Democracy Index.

2.2 Democratic backsliding and the CEECs

After having briefly introduced the concept and the procedural meaning of monitoring democracy, we now turn to the definition of the “democratic backsliding”, a difficult concept to term with a broad meaning. In the comparative politics literature, there is a huge debate on the interpretation of democratic backsliding which can be divided in three approaches (Sitter, Bakke:2019):

1. democratic backsliding as the process that *stops or reverses democratisation*, implying that in the country there is a decline in the application of the rule of law and in the democratic practices, as well as the illiberal concentration by the government of the political, social and economic power;

2. democratic backsliding as an *conceptual alternative to liberal democracy*, implying that the country has a problem in balancing between the majority rule and the minority rights. This happens when the independence of media, the engagement of civil society and the separation of powers are threatened;
3. democratic backsliding as synonym of *bad governance*, implying that a decline of good governance occurs a steady decrease in democratic governance, generally including transparent and participatory processes, fair economic and social policies, human rights protection or migration policies.

Taking inspiration from these three definitions, Bakke and Sitter (2019) define the democratic backsliding as «a process of deliberate, intended actions on the part of a democratically elected government, designed to gradually undermine the fundamental rules of the game in an existing democracy». From this definition, we learn that backsliding is a process that reverses the democratic conditions of the country for the worse: the transformation happens starting from a democratic system toward a less democratic regime and the fundamental role here is played by the multiple political actors (Bermeo, 2016).

Backsliding is a deliberate policy choice (Sitter, Bakke:2019), with the aim of limiting preservation of pluralism and democracy by implementing policies that affect the pillars on which the democratic state is built. Democracy is considered attacked when the government's activity is deliberately aiming at weakening the existing democratic institutions, especially with the purpose of destabilising the separation of political power, attacking the role and scope of independent institutions, in most of the cases the target is the judiciary, and limiting the freedom of the press and expression, including the freedom of organization and assembly, and, last but not least, hindering free and fair elections (Sitter, Bakke:2019).

If some years ago observers and scholars had different views on what was happening in the EU - some claiming that the EU was facing a slowdown in democratic reforms rather than a backsliding and some arguing that clear instances of backsliding were evident across the countries of the Union (Kelemen: 2017) - the picture now is clearer and observers²⁰ are assessing that a backsliding in democracy and rule of law is happening in some of the CEECs. As pointed out in the paragraph 2.1, backsliding has to be examined as a gradual process, and it is thus important to consider how democracy indexes treat the democratization process and

²⁰ Strengthening the Rule of Law Within the European Union: Diagnoses, Recommendations, and What to Avoid - Policy Brief - June 2019. available at <https://reconnect-europe.eu/wp-content/uploads/2019/06/RECONNECT-policy-brief-Pech-Kochenov-2019June-publish.pdf>

its reversal in the CEECs. As outlined in the 2018 Democracy Index²¹ issued by the EIU, Slovakia, Hungary, Croatia and Romania in 2018 recorded a general worsening of the democratic conditions.

The EIU Democracy Index bases its scores on a variety of indicators on democracy which are divided into five categories: electoral process and pluralism, civil liberties, the functioning of government and political culture. According to the scores of each category, the countries are classified into four types of regime: “full democracy”, “flawed democracy”, “hybrid regime” and “authoritarian regime”.

As from the latest report of 2018, in the Eastern European region, all EU countries are assessed as being “flawed democracies”, but not all countries are deteriorating. Indeed, from the report, we read that the region is characterised by a two-fold trend: some EU Member States (EE, CZ, LT, LV) are showing gradual improvement, while others have recorded worsening scores (SK, HU, RO, HR). This mixed picture represents the two speeds at which the countries are proceeding in the region (See Table 2, para 3.3).

Also by looking at the Freedom House’s Nations in Transit and Freedom in the World index²², a research project which issues periodic annual surveys of democratic reforming in the twenty-nine former communist countries from Central Europe to Central Asia including the CEECs, we note that Hungary became in 2019 the first EU Member State to lose its “Free” status. Freedom House has indeed downgraded Hungary to “Partially Free” because of “sustained attacks on the country’s democratic institutions by Prime Minister Viktor Orbán’s Fidesz party” (Sitter, Bakke:2019).

In Figure 1, we can observe the trend of Democratic backsliding in East Central Europe from 2004 to 2018 and Hungary, according to the data by Freedom House, is the worst performer, followed by Poland, which from 2015 has started its decline. However, an overall negative trend of the CEECs can be grasped, which shows that the tendency toward democratic backsliding is rather regional. However, the cases isolated in the graph (Hungary, Poland and Romania) certainly play a bigger role in the analysis of the phenomenon.

²¹“Democracy Index 2018: Me too? Political participation, protest and democracy”, The Economist Intelligence Unit Limited 2019. Available at: https://www.prensa.com/politica/democracy-index_LPRFIL20190112_0001.pdf

²²Nations in Transit - Freedom House webpage: <https://freedomhouse.org/report-types/nations-transit>

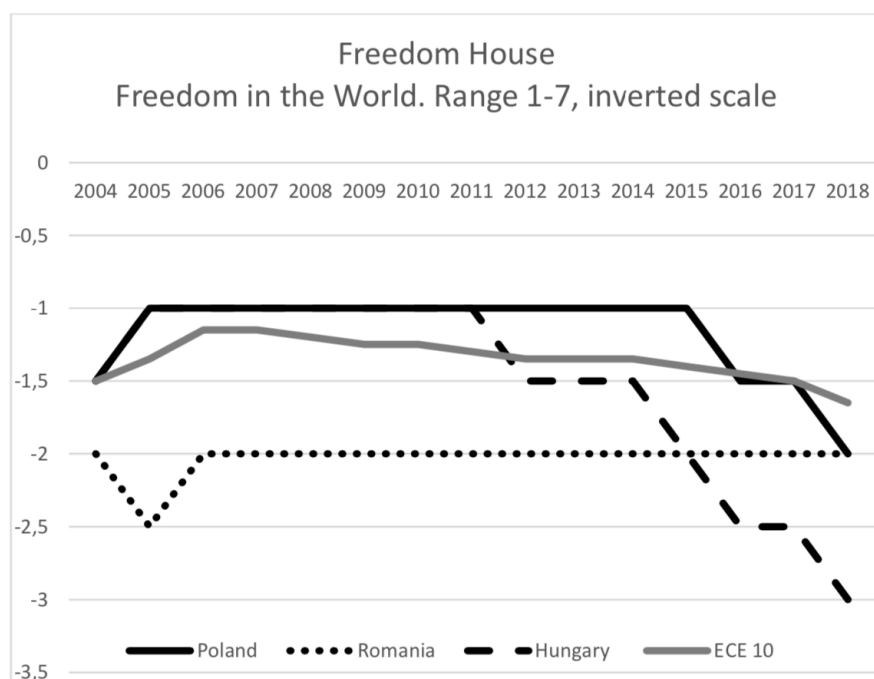


Figure 1 Democratic backsliding in East Central Europe, 2004-2018.

Source: Sitter, Bakke (2019): p.6

Indeed, in the last decade episodes of “democratic backsliding” were registered by the EU institutions in Hungary, Poland, Romania and the literature has largely recognised it. The most important cases are the Polish and Hungarian ones, representing the most extreme positions, and which have been addressed by the EU institutions more harshly. These two cases have unfortunately contradicted the earlier positive signals and improvements on democratisation of the region shortly after their accession (Cianetti, Dawson, Hanley:2018).

2.3 Protection of democracy and rule of law in the EU framework

In the EU framework, democracy is protected by the primary EU law, by the national laws, and by the conventions that the EU has signed. More specifically, the EU democratic values, the fundamental rights and the rule of law are guaranteed by the set of constitutional principles and rules of the Member States, by the European Convention on Human Rights (and by the decisions of the ECtHR), by the founding Treaties of the EU, the European Charter of Fundamental Rights, by the Council of Europe, particularly with the Venice Commission²³, and the jurisprudence of the Court of Justice of the EU.

²³ One of the most reliable sources of analysis on rule of law are indeed the reports issued by the Venice Commission and which are highly considered in the EU system. According to the Venice Commission, the “Rule of law” indicates a set of notions which range from <<the supremacy of law, [...] respect for fundamental rights

The European Union itself, as well as all its Member States, are governed by a common legal framework composed of laws, namely legal codes and procedures, to which the States have to comply with. This unequivocal set of rules are shared and adopted by every Member State of the Union and this makes it possible for every state to guarantee having established procedures and unequivocal rules which apply for every subject.²⁴

The Court of Justice of the EU and the European Court of Human Rights have consolidated the concept, in particular, by identifying as essential components of the principle related to independence and the impartiality of the courts and the separation of powers. Respect for the principle also presupposes pluralism and control functions that are normally exercised by an active civil society and independent media. The maintenance of the rule of law is also considered an essential precondition for the functioning of the European legal system as a whole with reference to the exercise of the rights and freedoms guaranteed by the European Charter of Fundamental Rights, particularly with reference to the implementation of the EU area of freedom, security and justice²⁵ and to the functioning of the internal market.

2.3.1 The EU instruments

The EU legal order provide the institutions with different mechanisms that can be used in case of breach of the rule of law by a Member State, and these can be divided into legal and political mechanisms.

The legal tools are the Article 7 TUE procedure and the infraction procedures, while the political tools – which have no legally binding effects – are the initiatives by the institutions

and notions specific to European Union law, such as fair application of the law, effective enjoyment of Union law rights, protection of the legitimate expectation, and even anti-corruption (in external relations)>>. The Venice Commission identifies four criteria to assess the quality of Rule of Law in a country are: legal certainty (accessibility of the law), prevention of abuse/misuse of powers (legal system safeguards against arbitrariness), equality before the law and non-discrimination and, lastly, access to justice (implying the existence of independent and impartial judiciary).

For a detailed debate on the definition of rule of law in the International Organization framework, we suggest the Report on the rule of law - Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011) available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e) “Report on the rule of law” - Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011). Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e)

Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016). Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

²⁴ EUR-Lex/ Glossary/Rule of Law: https://eur-lex.europa.eu/summary/glossary/rule_of_law.html?locale=en

²⁵ European Parliament, “AN AREA OF FREEDOM, SECURITY AND JUSTICE: GENERAL ASPECTS”, Fact Sheets on the European Union – 2020 <https://www.europarl.europa.eu/factsheets/en/sheet/150/an-area-of-freedom-security-and-justice-general-aspects>

which aim at enhancing and upholding the monitoring and the prevention of the democratic and rule of law shortcomings: Commission's Rule of Law Framework (2014), The Council's Annual Rule of law Dialogue (2014) and the Commission Communication on Further strengthening the Rule of Law within the Union (2019).

ART 7 TEU

The objective of Article 7 of the TEU is to ensure that all EU countries respect the common values of the Union, including the rule of law. This mechanism is composed of two arms.

The preventive mechanism is enshrined in Art 7 (1) of the TEU and can only be activated in the event of "evident risk of serious infringement" while the sanctioning system provided for in Article 7 (2) of the TEU applies only in the presence of a "serious and persistent breach by a Member State of the values referred to in Article 2. The preventive mechanism allows the Council to provide a warning to the EU country involved before the "serious infringement" materialises. Indeed, it is called the "public warning".

Pursuant to Article 7, on the proposal of a third of the countries of the European Union or of the Commission or of the European Parliament, the Council, acting by a majority of four fifths of its members, after approval by the European Parliament, may ascertain that there is a clear risk of a serious breach of fundamental principles (referred to in art 2) by a European country. In order to determine it, the Council hears the Member State addressed and provides recommendations on how to change behaviour to improve the situation and compliance with the EU value(s) in question, verifying the behaviour of the country overtime.

The existence of a serious and persistent breach is determined when the European Council, after having invited the country to submit its observation and after the proposal is made by one third of the Member States or by the Commission and after having gained the consent of the European Parliament, with a unanimous vote agree on the existence of thus a serious and persistent breach. (Art 7.2)

In case of the determination of the breach, the Council may decide with a qualified majority vote to suspend certain rights, including the voting rights of the representative of the government in the Council. In this case, the Council continues the monitoring and can decide with a qualified majority vote to change or withdraw the measure in case the situation changes (Art 7.4).

The procedure of Article 7(1) TEU has been triggered in two cases Poland and Hungary. The Commission activated the preventive mechanism for the first time in December 2017, providing a reasoned proposal for a Council decision on the determination of a clear risk of a serious breach of the rule of law by Poland after the European Parliament had already expressed its concerns over the situation in Poland, with the resolutions of April and September 2016, and November 2017. The EP adopted another resolution supporting the proposal of the Commission in March 2018 and in September a delegation was sent to Poland.²⁶

The second time the article Article 7(1) TEU procedure was launched was in September 2018 when the EP voted a resolution calling the Council to determine the existence of a clear risk of a serious breach of EU values in Hungary. Before this resolution, the EP already adopted other resolutions between March 2011 and May 2017 addressing the concerns about the correct functioning of the judicial sector, the respect of the freedom of expression, corruption, rights of minorities, and the situation of migrants and refugees in Hungary.

The activation of these preventive and sanctioning mechanisms require a high decision-making threshold in the Council and in the European Parliament. Moreover, these mechanism highly depend on the Member States' willingness to take action²⁷. With the intention to promote a stronger action against the shortcomings of the democracy and to improve the system for an enhanced respect for the rule of law within Member States with more flexible but also more effective mechanisms, different new measures have been proposed and created the following tools.

This is a substantially unused tool due to the complexity of the procedure, and above all the difficulties of obtaining, in the EU Council of Ministers and the European Council, the majorities required for the adoption of sanctions (Pech, Kochenov:2019).

Infringement procedures

The second legal tool available is the launch of infringement procedures by the European Commission for violation of EU law by a Member State. This is the procedure provided for in Articles 258-260 of the TFEU, pursuant to which, the European Commission, if it considers

²⁶ Legislative Train 12.2019 - 7 Area of justice and fundamental rights / Establishing a EU mechanism on democracy, the rule of law and fundamental rights:
<https://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-eu-mechanism-on-democracy-the-rule-of-law-and-fundamental-rights>

²⁷ For a detailed analysis of the limits of Art 7 TUE mechanism see the Policy Brief "Strengthening the Rule of Law Within the European Union: Diagnoses, Recommendations, and What to Avoid" (Pech, Kochenov:2019)

that a Member State has failed to fulfil one of its obligations under the Treaties, can issue an opinion motivated in this regard after having placed the State in a position to present its observations; in the event that the State does not comply with the opinion within the deadline set by the European Commission, the latter can appeal to the Court of Justice of the European Union. The process envisages a series of further steps after which the Court can impose a sanction in the form of the payment of a sum or a penalty.

Commission's Rule of Law Framework (2014)

The Rule of Law Framework (2014) is one of the first EU political initiatives created with the aim of improving and strengthen the respect for the rule of law and fundamental rights within the Member States. It is a structured dialogue between the Commission and Member States disrespecting the rule of law which addresses *systemic threats* to the rule of law by the Member States, while Art 7 it kept for exceptional threats and is considered as last resort measure, the so-called “nuclear option” (Sedelmeier:2017).

In March 2014 the European Commission adopted the communication "A new EU framework to strengthen the rule of law"²⁸ containing the proposal to establish a new procedure for cases where a Member State assumes measures or tolerates situations capable of systematically compromising the integrity, stability, proper functioning of the institutions or of the safeguard mechanisms established at national level to guarantee the rule of law.

The procedure addresses the systemic violations by a Member State, which translate into threats to the political, institutional and legal order of a Member State, of its constitutional structure, of the separation of powers, of the independence or impartiality of the judiciary or its judicial control system including, where applicable, constitutional justice.

The Rule of Law Framework is a multi-stage dialogue between the Commission and the EU Member State and works on three different steps:

- *Commission assessment* (Rule of Law Opinion): the Commission collects and examines all relevant information, assessing whether there are clear indications of a systemic threat to the rule of law; if such a threat is actually detected, the Commission starts the dialogue with the Member State by transmitting an "rule of law opinion", in which the

²⁸ European Commission Communication "A new EU framework to strengthen the rule of law" (11.3.2014) COM(2014) 158 final
<https://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-158-EN-F1-1.Pdf>

related concerns are set out and justified; the Member State concerned has the opportunity to respond to the comments made;

- Commission Recommendation: if the situation persists and it is not solved, the Commission issues a "rule of law recommendation" to the Member State concerned, inviting it to remedy the problems identified within a specified period and to communicate to it what measures have been taken;
- Monitoring of the follow-up to the Commission's recommendation. The Commission monitors the follow-up that the Member State has given to the recommendation. In the absence of satisfactory follow-up within the set deadline, the Commission may apply one of the mechanisms provided for in Article 7 of the TEU.

The new mechanism was activated for the first time in January 2016 against Poland following the serious institutional clash which occurred in that Member State concerning the legitimacy of the appointments of the judges of the Polish Constitutional Court, the rules that oversee the functioning of this body, the Polish government's failure to publish and execute the sentences of the Constitutional Court, the Polish government's policies in the field of public service, especially the "small media law" of 31 December 2015, with which the issue of the appointment of the boards of directors and the control bodies of public media - radio and television- was settled). The European Commission's findings were formalised first in an Opinion on the Rule of Law in Poland of June 2016, and subsequently in a Recommendation of July 2017. On this occasion, the Commission has observed that the Polish government risked undermining the functioning of constitutional justice in that Member State, ultimately prejudicing one of the aspects of the rule of law principle.

The Council's Annual Rule of law Dialogue (2014)

The Annual Rule of law Dialogue is a political measure proposed by the EU Council with the aim of promoting the spread of a culture of respect for the rule of law among Member States, through dialogue, collaboration and the sharing of good practices, in an essentially preventive (and non-sanctioning) perspective. In particular, the governments of the Member States, meeting in the General Affairs Council of 16 December 2014 under the Italian Presidency, adopted the conclusions²⁹ on ensuring respect for the rule of law. With these conclusions, a exercise of a dialogue among all Member States within the Council aimed at promoting and

²⁹ Conclusions of the Council of the European Union and the member states meeting within the Council on ensuring respect for the rule of law - General Affairs Council (16 December 2014)
<https://www.consilium.europa.eu/media/24875/146323.pdf>

safeguarding the rule of law in the framework of the Treaties was established. This dialogue is taking place each year at a General Affairs Council and evaluated every two years (Sedelmeier:2017). As Pech and Kochenov (2019) argue, the Annual Dialogues on the Rule of Law (2014) has so far been unhelpful because it only offers a façade of action without a real critical engagement. However, the General Affairs Council of 19 November 2019 has recently evaluated this measure with no great changes. The Finnish Presidency had proposed a Council Conclusions on which the Member States did not agree, especially on the proposal of the Commission' intervention and the use of the Commission's Annual Rule of Law Report. Instead of the Council Conclusion, the Presidency has adopted Presidency Conclusions³⁰ because no consensus was reached on the text among the Member State.³¹

Commission Communication on Further strengthening the Rule of Law within the Union (2019)

After Parliament's calls, the Junker commission started a process of rethinking the EU toolbox and opened the debate on the possible ways to strengthen the rule of law in the Member States. In particular the Commission published its communication "Further strengthening the Rule of Law within the Union - State of play and possible next steps"³² of 3 April 2019, followed by the communication "Strengthening the rule of law within the Union - A blueprint for action"³³ 17 July 2019.

In this latest communication, the Commission indicated its intention to carry out a more detailed monitoring of the developments regarding the rule of law of the Member States. In cooperation with the Member States and other institutions of the European Union, this monitoring should take the form of a cycle of examination of the rule of law, the so-called "Rule of Law Review Cycle", a cycle of examination based on the use of existing sources of information, both institutional and from civil society, that would cover all the various aspects of the rule of law and would cover all Member States, even if more intensively for those where

³⁰ Presidency conclusions - Evaluation of the annual rule of law dialogue (19 November 2019)
<https://www.consilium.europa.eu/media/41394/st14173-en19.pdf>

³¹ Presidency conclusions - Evaluation of the annual rule of law dialogue (19 November 2019)
<https://www.consilium.europa.eu/en/press/press-releases/2019/11/19/evaluation-of-the-annual-rule-of-law-dialogue-presidency-conclusions/>

³² European Commission Communication "Further strengthening the Rule of Law within the Union State of play and possible next steps" (03.04.2019) COM(2019) 163 final
https://ec.europa.eu/info/sites/info/files/rule_of_law_communication_en.pdf

³³ European Commission Communication "Strengthening the rule of law within the Union A blueprint for action" (17.7.2019 COM(2019) 343 final
https://ec.europa.eu/info/sites/info/files/7_en_act_part1.pdf

risks of regression or particular weakness have been identified. The Commission also suggest the establishment of an “Annual Rule of Law Report” through which the Commission would publish a report on the rule of law annually on the basis of the various sources of information which would provide a summary of significant developments both at the Member States and at European Union level, including the jurisprudence of the court of justice of the European Union and other relevant information.

2.3.2 Recent cases of CEECs' backsliding

While the early literature regarding the democratic backsliding focused particularly on the definition of hybrid regimes outside Europe, in Latin America, Asia, Africa and former Soviet bloc, the topic has recently reshaped in the European light after the fifth enlargement wave and scholars were attracted by this challenging topic. This subject has become a topic of interest especially when the Art 7 was first launched on 20 December 2017 by the Commission against Poland . Indeed, the studies carried out in the field of democracy and rule of law in the EU and its Member States have a specific connotation because of the very nature of the EU and of the system of protection and sanctioning available within the Treaties. In the EU, the democratic values, human rights and the respect of the rule of law are protected by the Treaties and the institutions have suggested and also provided overtime new instruments, papers and studies on measures to counter these shortcomings, which since the last decade are threatening the Union. This new European challenge is growing the academic debate over democratic and rule of law backsliding in the European Union.

To be more precise, the phenomenon of democratic shortcomings happening in the EU is better identified as "rule of law backsliding" as it is mainly the rule of law which is threatened in some Member States. The term "rule of law backsliding" appears in the EU framework and it defines the phenomenon of the erosion of the Rule of Law standards in the EU legal and political system in a Member State or in a candidate state, if we consider the pre-accession phase.

In the EU, with the expression "Rule of Law Backsliding" it is meant the process through which elected public authorities implement projects aimed at weakening systematically checks on power in order to dismantle the liberal democratic state with the view of strengthening the role of the dominant party with a long-term perspective (Pech, Kochenov:2019).

As recalled in paragraph 2.2., the characteristics of this process of erosion of checks and balances reflect a deliberate and intended strategy of a ruling party with the <<goal to establish

electoral autocracies (with elections possibly “free” but no longer “fair”) and the progressive solidification of factually one-party states, where the peaceful rotation of power is made de facto virtually impossible through numerous manipulations which autocratic governments disguise as well-intentioned ”reforms”>> (Pech, Kochenov:2019).

The phenomenon of democratic backsliding has been acknowledged in the EU framework mainly in three biggest cases, all in the Central and Eastern Europe. Due to these events the EU and its institutions have started a process of monitoring and sanctioning of these cases according to their resources. In this section we give an overview of the three most relevant cases on which measures have been taken at EU level.

Poland

A series of events in Poland led the European Commission to start a dialogue with the Polish Government in January 2016 - under the New Rule of Law Framework - aimed at acquiring information, initially, with particular reference to the situation relating to the Constitutional Court and amendments to the law on public service broadcasters. The European Commission subsequently focused its attention on a series of reforms launched by Poland which are considered likely to structurally compromise the independence of the judicial system in Poland. In the absence of progress in the aforementioned dialogue, in December 2017, the European Commission forwarded to the Council of the EU the proposal - pursuant to Article 7(1) - to initiate the procedure to establish the existence of a clear risk of serious infringement of the rule of law in Poland. According to the European Commission, legislative changes have the characteristic of systematically allowing the executive or legislative powers to exercise considerable interference in the composition, powers, administration and functioning of these authorities and bodies. The EU Council (General Affairs Council) has initiated the procedure by holding hearings of the State concerned.

In addition to the aforementioned procedure, the European Commission has also launched a series of infringement procedures concerning reforms in the justice sector (including constitutional) considered incompatible with EU law with reference to the principle of independence of the judiciary and which are aimed at reforming the pension system of the magistrates belonging to the ordinary courts, the retirement regime for the judges of the Supreme Court, as well as the disciplinary regime for the Polish judges. The European Court of Justice has issued the final judgment on 24 June 2019, in which it stated that lowering the

retirement age of the judges of the Supreme Court is contrary to EU law and violates the principle of immovability of judges and consequently that of the independence of the judiciary.

Hungary

On 12 September 2018, the Plenary Assembly of the European Parliament approved a resolution inviting the Council of the EU to establish whether there is a clear risk of serious violation by Hungary of the values referred to in Article 2 of the TEU and to make appropriate recommendations to Hungary in this regard. The European Parliament's remarks concern: the functioning of the constitutional system and the electoral system; independence of the judiciary and other institutions and the rights of judges; corruption and conflicts of interest; privacy and data protection; freedom of expression; academic freedom; freedom of religion; freedom of association; right to equal treatment; rights of persons belonging to minorities, including Roma and Jews, and protection from hate speech against such minorities; fundamental rights of migrants, asylum seekers and refugees; economic and social rights.

The Article 7 TEU procedure in the General Affairs Council is still ongoing and is proceeding with the hearings. It should also be noted that a series of litigation procedures are underway against Hungary concerning, respectively, the violation of various fundamental rights contained in the aforementioned European Charter. The European Commission, after initiating the related infringement procedures, has filed a series of appeals with the Court of Justice for ascertaining Hungary's failure to comply with: the 2011 CCIV law on national tertiary education which would limit disproportionately the universities of the Union and of third countries, thereby violating the fundamental rights to academic freedom, education and business freedom established by the Charter of Fundamental Rights; the LXXVI law of 2017, on the transparency of organizations receiving economic support from abroad which would violate the provisions contained in the Charter relating to the rights to freedom of association, the protection of privacy and personal data; Law VI of 2018, which, in addition to qualifying activities to support asylum and residence requests as a crime, would further limit the right to seek international protection by violating the Charter with reference to Article 18 relating to the right to asylum. Hungary was also brought to court by the European Commission for violation of the Council's decision on the relocation obligations for asylum seekers. Finally, it is recalled that an infringement procedure started in May 2016 is still pending, with which the European Commission contested the Hungarian authorities with legislation and administrative practices that would cause a significant degree of segregation of education in ordinary schools

and would hinder social inclusion with respect to Roma children, in violation of Directive 2000/43 / EC on equal treatment between people regardless of race and ethnic origin.

Romania

As part of the cooperation and verification mechanism, the European Commission is monitoring the progress made by Bulgaria and Romania (or in the case of Romania, rather the regression) in the field of rule of law. The two countries are monitored by the Commission which regularly publishes reports on the situation. This mechanism has been in place since 2007, when the two countries joined the Union and will remain active until the Commission and Council have ascertained that the two countries have met all the requirements in an irreversible way.

As in the CVM report³⁴ presented by the Commission on 22 October 2019, the Commission acknowledged in 2017 that Romania lost the reform *momentum* and warned the country of the risk of reopening the chapters that had already been closed with the 2017 report. Indeed, with the November 2018 report the Commission concluded that recent developments had reversed or questioned the irreversibility of the process and, consequently, as the twelve recommendations contained in the January 2017 report were no longer sufficient to close the MCV process, eight additional recommendations had to be made. In the period between November 2018 to October 2019, the Commission expressed its concerns in relation to the rule of law in Romania on several occasions, in particular by sending a letter to the Romanian authorities in May 2019 in which the Commission claimed that recent developments had further aggravated existing problems of respect for the state.

³⁴ European Commission, Report on Progress in Romania under the Cooperation and Verification Mechanism (22.10.2019) COM(2019) 499 final
https://ec.europa.eu/info/sites/info/files/progress-report-romania-2019-com-2019-499_en.pdf

3. Voting Behaviour of MEPs in the 8th European Parliament

We have seen in the previous chapter that the Commission and the Council in the recent years have proposed some measures and instruments to increase the respect of democratic values in the Member States and have suggested preventive measures to counter the phenomenon of democratic backsliding.

The debate on strengthening rule of law in the European Union did not develop only among the Council and the Commission, but the European Parliament has also made a major contribution in this debate and the Parliament has played a vital role in this context. Together with the Council, the European Parliament adopts laws to improve the protection of the fundamental values on which the Union is founded which are enshrined in Article 2 of the Treaty on European Union, among which the rule of law and respect for fundamental rights.

The European Parliament is committed to respect for these values and rights throughout the Union, especially through the work done in and by the Committee on Civil Liberties, Justice and Home Affairs (LIBE) which deals with these matters. MEPs review and approve resolutions during the institution's plenaries on the situation in the EU and on specific issues concerning the respect of the fundamental values of the EU in the Member States.³⁵

Moreover, in 2016 the European Parliament passed a resolution calling for an EU mechanism on the situation of democracy, the rule of law and fundamental rights in the EU Member States and institutions (EP 2015/2254 INL)³⁶, which however has never been considered by the Commission. The European Parliament called again on 14 November 2018 for the presentation of a formal proposal to start the cycle on democracy, the rule of law and fundamental rights, most recently, with the resolution of (2018/2886(RSP))³⁷.

Moreover, according to Article 7(1), Parliament is one of the institutions that can take the initiative to ask the Council to determine if there is a risk of violation of European Union values, and it has done so for the first time in the case of Hungary. The EP is so far the most active

³⁵ European Parliament, "Protecting fundamental rights within the Union": <https://www.europarl.europa.eu/about-parliament/en/democracy-and-human-rights/fundamental-rights-in-the-eu>

³⁶ European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)) https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.html

³⁷ European Parliament resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights (2018/2886(RSP)) https://www.europarl.europa.eu/doceo/document/TA-8-2018-0456_EN.html

defender of democracy among the institutions as it has brought the topic of democratic and rule of law shortcomings in some Member State on the table by initiating a series of parliamentary debates investigating on the situation in Hungary, Poland and Romania, and calling on the Council to trigger Art 7 for Poland and Hungary (Ágh:2017).

On several occasions, the European Parliament has requested that EU countries could be regularly assessed on their compliance with the fundamental values of the EU as well as the requirements of democracy and the rule of law.³⁸

As the Parliament plays a role in the strengthening the respect of the rule of law and democracy in the Member States and it can make use of the instruments at hand in the EU institutions to counter the shortcomings and since it is at the heart of EU-level of political contestation and it is also a fundamental source for institutional pressure on democratic backsliding (Sedelmeier: 2017), it is interesting to see how MEPs have reacted by expressing their vote when called to give their preference on protection of democracy in motions for resolutions and in legislative proposals.

After having gone through the literature, we will now turn to the empirical part of the study which focuses on the examination of the behaviour of vote of the Members of the European Parliament (MEP) during the 8th European Parliament on these dossiers.

It is thus interesting to analyse how the MEPs have reacted when asked to express their preference on dossiers regarding these issues. As it will be explained in this chapter, the literature is almost unitedly agreeing that the MEPs vote according to their ideology and political affiliation. In this sense, our interest was to check whether this is the case even when the matter at stake is quite clearly addressing a group of state which, as expressed in the first chapter, for the same or similar history and background, their joining the EU at the same time and with similar, if not identical, problems at the governmental, economic and social level. These common features may, in our view, lead to a different trend as what is usually happening in the European Parliament. From this, the interest on the analysis of the dynamics within the EP on these dossiers. Since the dataset to analyse this was not evident and easy to find on any platform, the dataset has been built with the data available from the EP webpage, collecting the

³⁸ European Parliament, „Rule of law concerns in member states: how the EU can act”
<https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180222STO98434/rule-of-law-concerns-how-the-eu-can-act-infographic>

public roll-call votes from the plenary sections where the dossiers on democratic and rule of law backsliding were dealt.

3.1 Case selection

In order to examine voting behaviour of MEPs on the protection of democracy in the EU Member States, we have created a dataset (available in the Annex) with the record of MEPs and their votes necessary to the analysis.

Firstly, the legal acts have been selected according to the content and the timespan. For what concerns the time, the cases are legal acts voted by the European Parliament in the plenary only, not in the committees, during the 8th European Parliament from 2014 to 2019, to limit the timespan to the 8th legislature.

As indicated in the Treaty, MEPs are 751 divided, in the 8th EP, into eight European Party Groups (EPGs). By April 2019, the EPGs were, in order of size, the Group of the European People's Party (Christian Democrats) (EPP) with 28.9% of seats, Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (S&D) with 24,9%of seats, European Conservatives and Reformists Group (ECR) with 10,1% of seats, Group of the Alliance of Liberals and Democrats for Europe (ALDE) with 9,1% of seats, Group of the Greens/European Free Alliance (Greens/EFA) with 6,9% of seats, Confederal Group of the European United Left – Nordic Green Left (GUE/NGL) with 6,9% of seats, Europe of Freedom and Direct Democracy Group (EFDD) with 5,5% of seats, Europe of Nations and Freedom (ENF) with 4,9% of seats, and Non-attached Members (*Non-inscrits* – NI) with 2,8% of seats.³⁹

The dataset has been self-created as there is no official and institutional platform that collects the votes of the EP according to the topic or dossiers and aggregate data for an overtime or cross-dossiers analysis. The webpage of the European Parliament provides with the official records of the votes of the legal acts of the plenary sections and of the committees and the record of individual vote in case the vote has been carried out with the roll-call procedure.

The legal acts selected in the research are those acts concerning the rule of law and addressing the issue of erosion of democracy in the Member States. The nine cases selected all are roll-call votes. This is a prerequisite. Normally the EP votes with electronic vote, which is secret. Only if required, the vote can be recorded. The roll-call votes are thus public and can be analysed. That is why only legal acts with roll-call votes could be taken into consideration in

³⁹ EP Briefing -European Parliament: Facts and Figures -European Parliamentary Research Service (April 2019) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635515/EPRS_BRI\(2019\)635515_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635515/EPRS_BRI(2019)635515_EN.pdf)

the research because, for the creation of the dataset to analyse, the explicit vote recorded for each MEP was needed.

The nine cases regard the rule of law situation in three Member States (Hungary, Poland and Romania), one EP resolution for the establishment of a mechanism for strengthening democracy and the rule of law and the latest Commission proposal for the protection of the budget in case of breaches of rule of law.

The studies carried out so far have been concentrating on the comparison of specific cases (be it Hungary and Poland or Hungary and Romania). The aim of this study is however to examine the general attitude of MEPs in the whole 8th EP and assess their stance on the general matter. Indeed, two are the EP resolutions that express serious concern about the situations in Hungary, four in Poland and one in Romania, through which the EP has called on the Commission to take some action. In the pool of legislative acts selected, we also find two legislative proposals - the first already approved, while for the second we only have the first reading since it has not been approved yet. The cases selected do not concentrate on one specific case or on the comparison of two cases, but being heterogeneous, they seek to assess the general attitude of the MEPs toward the matter.

The cases will be briefly introduced here in chronological order.

The first legal act selected is a ***Resolution on the situation in Poland*** (2015/3031 RSP)⁴⁰ adopted by the EP on 13 April 2016. Through this Resolution, the Parliament called on the Commission to activate the second stage of the Rule of Law procedure if the Polish Government would have failed to comply with Venice Commission recommendations of 11 March 2016⁴¹ for what concerns the paralysis of the Constitutional Tribunal in Poland which was endangering democracy, human rights and the rule of law in the country.

The second legal act is a ***Resolution on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union*** (2016/2774 RSP)⁴² adopted by the EP on 14 September 2016. With this resolution the EP reiterated its position adopted on the 13 April 2016 on the paralysis of the Constitutional Tribunal in Poland and urged the Commission to assess the compatibility of some legislations

⁴⁰ https://www.europarl.europa.eu/doceo/document/TA-8-2016-0123_EN.html

⁴¹ Opinion on amendments to the act of 25 June 2015 on the constitutional tribunal of Poland. Adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016)
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)001-e)

⁴² https://www.europarl.europa.eu/doceo/document/TA-8-2016-0344_EN.html

(i.e. Act on Public Media, the Act amending the Police Act, Act amending the Code of Criminal Procedure and the Prosecution Act and others) that may constitute breaches of EU law, of ECtHR case law and of fundamental human rights.

The third legal act is the ***EP resolution with recommendations to the Commission on the establishment of the EU mechanism on democracy, the rule of law and fundamental rights*** (EP 2015/2254 INL)⁴³. It is a EP request for legislative proposal to the Commission, approved on 25 October 2016 and aimed at establishing a mechanism to control Member States' compliance with democratic and Rule of Law and Human Rights standards within the framework of EU inter-institutional dialogue.

The fourth legal act is a ***Resolution on the situation in Hungary*** (2017/2656 RSP)⁴⁴ approved on 17 May 2017. The EP calls on the Hungarian Government to engage in a dialogue with the Commission on the human rights of migrants, asylum seekers and refugees, freedom of association, freedom of education and academic research, segregation of Roma in education, and protection of pregnant women in work while asking the Commission to be stricter in the monitoring of the said elements.

The fifth legal act is a ***Resolution on the situation of the rule of law and democracy in Poland*** (2017/2931 RSP)⁴⁵ approved on 15 November 2017. The EP expresses the concerns on the situation in Poland representing a clear risk of a serious breach of values in Art 2 TEU with a view to holding a plenary vote on a reasoned proposal calling on the Council to act pursuant to Article 7(1) of the TEU to prevent a serious violation of the rule of law.

The sixth legal act is a ***EP resolution on Commission's decision to activate Art 7(1) of the TEU as regards the situation in Poland*** (2018/2541RSP)⁴⁶ approved on 1 March 2018 through which the EP welcomes the Commission's decision to activate the Article 7(1) TEU procedure and calling the Council to take action accordingly.

The seventh legal act is a ***Resolution on a proposal calling on the council to determine, pursuant to Art 7(1) of TEU, the existence of clear risk of a serious breach by Hungary of the values on which the Union is founded*** (2017/2131 INL)⁴⁷ approved on 12 September 2018, though which the EP calls on the Council to determine whether there is a clear risk of a

⁴³ https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.html

⁴⁴ https://www.europarl.europa.eu/doceo/document/TA-8-2017-0216_EN.html

⁴⁵ https://www.europarl.europa.eu/doceo/document/TA-8-2017-0442_EN.html

⁴⁶ https://www.europarl.europa.eu/doceo/document/TA-8-2018-0055_EN.html

⁴⁷ https://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.html

serious breach by Hungary of the values of Article 2 TEU and to address appropriate recommendations accordingly.

The eight legal act is a ***Resolution on the rule of law in Romania*** (2018/2844 RSP)⁴⁸ approved on 13 November 2018, through which the EP expresses concerns on antidemocratic developments in Romania in relation to guaranteeing fundamental rights and upholding common European values and calls on the Commission to continue monitoring the situation in the country.

The ninth, and last, legal act is the ***Commission's proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*** (2018/0136/COD)⁴⁹ voted in the first reading on the 17 January 2019. It is a proposal from the Commission of a Regulation establishing necessary rules for the protection of the Union's budget when it comes to democratic shortcomings in the Member States.

3.2 Methodology

The dataset was created on purpose to examine these nine legislative acts. In order to properly collect the votes, the collection of data has been focused on the identification of the MEP, with the name and surname, Member State belonging, regional belonging between West and East (see Figure 3), and European party group and, ultimately, the set of votes in the cases selected.

The MEPs could choose among three voting behaviour: positive vote (identified for the analysis as "+1"), negative vote (identified for the analysis as "-1") and abstention (identified for the analysis as "0"), turning the categorical variables into a discrete variable. The negative and the abstention votes have been merged into one category which expresses the opposition to the said legislative act in order to have a binary approach to the matter and simplify the analysis into "supporter" or "opposer" to the legal act in question. Moreover, absence of the MEPs during the vote (resulting in empty cells) was not taken in consideration for the scope of the research in order not to falsify the analysis by the possible non-continuity of the MP during the analysis period. Indeed, some of the 751 MEPs have changed overtime and they have been replaced. This reflects in the dataset: 820 is the total number of MEPs recorded in the dataset

⁴⁸ https://www.europarl.europa.eu/doceo/document/TA-8-2018-0446_EN.html

⁴⁹ https://www.europarl.europa.eu/doceo/document/A-8-2018-0469_EN.html

since this is the number of individuals taking part in the EP during the five years of term. The dataset counts 820 MEP, who however did not vote throughout all the period, because who left the charge was replaced to get until the end of the legislature. By counting the absence as a negative vote or, in any case, by considering it as a variable, would bias the result, because substituted MEPs still feature in the dataset. We are however conscious that the absence is in any case a signal that should be taken into consideration in such an analysis.

After having collected all the votes needed, we have aggregated the data for national belonging and for European Party Group affiliation. We then transformed the absolute values in relative percentage values. Since MEPs' quota depend on the share of population of the country, there is a high differentiation in the share of MEPs in the EP depending on their nationality and their weight in the final result is thus different. Germany is the most populous state and has the highest rate of MEPs, 96 in total, and Malta has the lowest, 6.⁵⁰ Analysing the data by means of percentage, helps normalising the result. Indeed, the use of the percentage makes it possible to avoid the problem of having different shares of MEPs for different countries and a bias outcome of the research. By rendering the data in percentage points, the problem of the influence of the different quantity of MEP for nationality is solved.

Due to the special nature of the EP, analysing the dynamics of the parliament is not as easy as for national parliaments. In the 8th EP, party politics consisted of competition between eight transnational party groups, each consisting of multiple national member parties (more than 220 in total) from the 28 Member States. For this reason, the MEPs substantially differ from national MPs because they have a two-fold nature: they answer to both national and EPG principal, thus creating a dual agent problem (McElroy and Benoit: 2012)⁵¹.

Initially the aim of the study was to analyse whether there was a causal relation between the outcome of the vote in 9 cases (independent variable) with MEPs' nationality and European party group affiliation (two dependent variables) through correlation. This turned out to be inconclusive, as also concluded by J. Meijers and Harmen Van der Veer (2019) when inquiring the same topic. They admitted that in their model they could not detect if it was the party group membership of the national party ideology to be more decisive in the MEP behaviour. For this

⁵⁰ EP Briefing - European Parliamentary Research Service (April 2019)[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635515/EPRS_BRI\(2019\)635515_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635515/EPRS_BRI(2019)635515_EN.pdf)

⁵¹ HIX:(2009): The principal-agent framework applied to the European Parliament: national parties are more important than the European parties in influencing whether MEPs will get back to the EP in the next election. National parties control the selection of candidates in European elections. The EPGs groups is thus less relevant than the general popularity of national parties in determining which MEPs are re-elected.

reason, we turned to a more binary approach. In this sense, we concentrated on the national identity and the European Party Group affiliation and we have analysed them separately. In the end, we have split the hypothesis and thus have applied a twofold approach to the matter.

The aggregation of data has thus followed the two-hypothesis framed in this context. This has meant a two parallel and separate handling of the data. Firstly, we have aggregated the MEPs vote divided into Member States to assess the share of them into nations for the West-East dividing line, and secondly, we have aggregated the MEPs vote into European Party Groups to assess how is the share into ideological categories. The dataset is one and serves as the basis of analysis for both the hypothesis and all the tables and figures that appear in this third chapter.

3.3 Relation between the nationality of MEPs and the voting behaviour (1H)

Our first hypothesis is that the EP, when asked to express its position on such matters as the rule of law and strengthening of democratic measures in the Member States, would have reflected a regional/territorial belonging rather than the ideological affiliation. More specifically, the EP, which normally follows the national political dynamics and the traditional left/right policy positioning as acknowledged by most scholars, would have reacted differently, showing a *sui generis* approach to the matter, namely a division into two territorial blocs. According to our hypothesis, MEPs would have positioned alongside an East-West dividing line, where the West would have represented the most stable and democratic countries, while the East the least.

This division into blocs stems from the assumption that – as explained in the second chapter – there is a qualitative difference within the democracies in Western Europe and the Eastern democracies based on the theory explained in the first chapter.

Western Europe 2018

	Overall score	Global Rank	Regional rank	I Electoral process and pluralism	II Functioning of government	III Political participation	IV Political culture	V Civil liberties	Regime type
Norway	9.87	1	1	10.00	9.64	10.00	10.00	9.71	Full democracy
Iceland	9.58	2	2	10.00	9.29	8.89	10.00	9.71	Full democracy
Sweden	9.39	3	3	9.58	9.64	8.33	10.00	9.41	Full democracy
Denmark	9.22	5	4	10.00	9.29	8.33	9.38	9.12	Full democracy
Ireland	9.15	6=	5	9.58	7.86	8.33	10.00	10.00	Full democracy
Finland	9.14	8	6	10.00	8.93	8.33	8.75	9.71	Full democracy
Switzerland	9.03	10	7	9.58	9.29	7.78	9.38	9.12	Full democracy
Netherlands	8.89	11	8	9.58	9.29	8.33	8.13	9.12	Full democracy
Luxembourg	8.81	12	9	10.00	8.93	6.67	8.75	9.71	Full democracy
Germany	8.68	13	10	9.58	8.57	8.33	7.50	9.41	Full democracy
United Kingdom	8.53	14	11	9.58	7.50	8.33	8.13	9.12	Full democracy
Austria	8.29	16	12	9.58	7.86	8.33	6.88	8.82	Full democracy
Malta	8.21	18	13	9.17	8.21	6.11	8.75	8.82	Full democracy
Spain	8.08	19	14	9.17	7.14	7.78	7.50	8.82	Full democracy
Portugal	7.84	27	15	9.58	7.50	6.11	6.88	9.12	Flawed democracy
France	7.80	29	16	9.58	7.50	7.78	5.63	8.53	Flawed democracy
Belgium	7.78	31	17	9.58	8.93	5.00	6.88	8.53	Flawed democracy
Italy	7.71	33	18	9.58	6.07	7.78	6.88	8.24	Flawed democracy
Cyprus	7.59	35	19	9.17	6.43	6.67	6.88	8.82	Flawed democracy
Greece	7.29	39	20	9.58	5.36	6.11	6.88	8.53	Flawed democracy
Turkey	4.37	110	21	4.50	5.00	5.00	5.00	2.35	Hybrid regime

Source: The Economist Intelligence Unit.

Table 1 - 2018 EIU Democracy Index: Western Europe

As shown in the EIU Democracy Index in Tables 1 in the Western European Union there are eleven full democracies (SE, DK, IE, FI, NL, LU, DE, UK, AT, MT, ES) and six flawed democracies (PT, FR, BE, IT, CY, EL) while in Eastern European Union, all eleven countries are classified as flawed democracies (EE, CZ, SI, LT, LV, SK, BG, PL, HU, HR, RO) (2018 Democratic Index, Table 2).

Eastern Europe 2018

	Overall score	Global Rank	Regional rank	I Electoral process and pluralism	II Functioning of government	III Political participation	IV Political culture	V Civil liberties	Regime type
Estonia	7.97	23=	1	9.58	8.21	6.67	6.88	8.53	Flawed democracy
Czech Republic	7.69	34	2	9.58	6.79	6.67	6.88	8.53	Flawed democracy
Slovenia	7.50	36=	3=	9.58	6.79	6.67	6.25	8.24	Flawed democracy
Lithuania	7.50	36=	3=	9.58	6.43	6.11	6.25	9.12	Flawed democracy
Latvia	7.38	38	5	9.58	6.07	5.56	6.88	8.82	Flawed democracy
Slovakia	7.10	44	6	9.58	6.79	5.56	5.63	7.94	Flawed democracy
Bulgaria	7.03	46	7	9.17	6.43	7.22	4.38	7.94	Flawed democracy
Poland	6.67	54=	8	9.17	6.07	6.11	4.38	7.65	Flawed democracy
Hungary	6.63	57=	9	8.75	6.07	5.00	6.25	7.06	Flawed democracy
Croatia	6.57	60	10	9.17	6.07	5.56	5.00	7.06	Flawed democracy
Serbia	6.41	63=	11	8.25	5.36	6.11	5.00	7.35	Flawed democracy
Romania	6.38	66=	12	9.17	5.71	5.00	4.38	7.65	Flawed democracy
Albania	5.98	76	13	7.00	4.71	5.56	5.00	7.65	Hybrid regime
Macedonia	5.87	78	14	6.50	5.36	6.67	3.75	7.06	Hybrid regime
Moldova	5.85	79=	15	7.08	4.64	6.11	4.38	7.06	Hybrid regime
Montenegro	5.74	81=	16	6.08	5.36	6.11	4.38	6.76	Hybrid regime
Ukraine	5.69	84	17	6.17	3.21	6.67	6.25	6.18	Hybrid regime
Georgia	5.50	89	18	7.83	3.57	6.11	4.38	5.59	Hybrid regime
Kyrgyz Republic	5.11	98=	19	6.58	2.93	6.67	4.38	5.00	Hybrid regime
Bosnia and Herzegovina	4.98	101	20	6.50	2.93	5.56	3.75	6.18	Hybrid regime
Armenia	4.79	103	21	5.67	4.64	5.56	2.50	5.59	Hybrid regime
Belarus	3.13	137	22	0.92	2.86	3.89	5.63	2.35	Authoritarian
Kazakhstan	2.94	144=	23=	0.50	2.14	4.44	4.38	3.24	Authoritarian
Russia	2.94	144=	23=	2.17	1.79	5.00	2.50	3.24	Authoritarian
Azerbaijan	2.65	149	25	0.50	2.14	3.33	3.75	3.53	Authoritarian
Uzbekistan	2.01	156	26	0.08	1.86	2.22	5.00	0.88	Authoritarian
Tajikistan	1.93	159=	27	0.08	0.79	1.67	6.25	0.88	Authoritarian
Turkmenistan	1.72	162	28	0.00	0.79	2.22	5.00	0.59	Authoritarian

Source: The Economist Intelligence Unit.

Table 2 - 2018 EIU Democracy Index: Eastern Europe

The map in Figure 2 shows that in the Eastern European region no full democratic states exist, while in the Western the majority of them are fully democratic. Moreover, in the Eastern region we can also see that Poland, Hungary, Romania and Croatia are the least performing of the whole European Union, with an overall score of 6 to 8.



Figure 2 - Map showing the rates of democracy by the EIU Democracy Index of 2018

Source of the map: own creation

Source of data: EIU Democracy Index of 2018

The assumption to this hypothesis is that the West would be prompter and more favourable to further strengthening or protecting the rule of law and thus should vote more positively for the initiatives by the EP or Commission rather than Eastern states. We expected indeed, that the East would have been more contrary because of the lower performance according to the democratic standards as acknowledged by the Democratic index and because of their past common nature and their legacy. Indeed, it is not a case that episodes of democratic backsliding in the Union have occurred in CEECs, namely in Hungary, Poland and Romania as shown before. Furthermore, because of their common nature of political issues at the national level and because of common domestic context, we suppose that they could have shown a sort of solidarity in voting in a compact way and they could thus have created a sort of alliance among them on the matter, resulting in a united voting bloc.

The division of "new" and "old" Member States reflects a historical division, and a division of enlargement progress, and we take this line as the basis for our first hypothesis regarding the relation between the nationality of MEPs and their vote in the 8th EP.

The division of the blocs has followed the partition of the European territory made by the Economist Intelligence Unit's in the Democracy Index (Tables 1 and 2). Europe is here divided into Western Europe, composed of seventeen EU Member States (SE, DK, IE, FI, NL, LU, DE, UK, AT, MT, ES, PT, FR, BE, IT, CY, EL) plus Norway, Island, Switzerland and Turkey, while Eastern Europe is composed of eleven EU Member States (EE, CZ, SI, LT, LV, SK, BG, PL, HU, HR, RO), Western Balkans states (RS, BA, AL, MK, ME), Moldavia, Ukraine and Georgia, and the Commonwealth of Independent States.

Since the study is focused on the EU only, the selection of the EU Member States is made among the two categories of the East and the West. Once selected only the Member States of the European Union, the picture is reshaped as follows: Western European Union Member States' bloc (SE, DK, IE, FI, NL, LU, DE, UK, AT, MT, ES, PT, FR, BE, IT, CY, EL) and



Figure 3 - Map showing territorial division of Europe by the EIU Democracy Index of 2018 (selection of the EU states only)

Source of the map: own creation

Source of data: EIU Democracy Index of 2018

Eastern European Union Member States' bloc (EE, CZ, SI, LT, LV, SK, BG, PL, HU, HR, RO).

3.3.1 MEPs voting behaviour in the EP

The literature shows that the EP behaves like an ordinary parliament with the traditional left/right division (Hix, Noury, Roland: 2006) and the CHES data indicate that no relevant differences exist in the parties of Eastern and Western Europe for what concern the MEPs voting behaviour, and that <<the relationship between general left–right ideology and support for European integration are increasingly similar in both parts of Europe>>. Indeed, it is widely recognised that there is no significant difference between MEPs from "new" MSs (the CEECs) and the MEPs from "old" MSs (Scully, Hix, Farrell: 2012).

By analysing the preference in MEPs voting behaviour it was assessed that, generally, MEPs are more likely to vote as their EP party group rather than the compatriots. However, there is evidence that, in some cases, MEPs of the same country can vote together (Hix: 2001). Indeed, it was also found that in some cases, nationality is more powerful predictors of the MEP's attitude. This goes contrary to the widest of literature on EP research (Scully, Hix, Farrell: 2012). Studies carried out on specific legislations, have shown some result in identifying different driving forces in the allocation of preferences by the MEP. It is the case of Callaghan and Höpner (2005) on Takeover Directive and Cenig and Sabani (2017) on Six-Pack and Two-Pack. These two studies have confirmed that national interests have had an impact on the MEP's legislative behaviour and that nationality can thus overrule the party group positioning on a left-right, pro- and against- EU basis. A study by Costello and Thomson (2016) indeed has acknowledged that deviations on the classic party's group policy positioning is possible when salient national interests are at stake or when national actors succeed in lobbying the MEPs. Following this wave, through this study, we want to show that a territorial division driven by nationality's affiliation of MEP is possible and is recorded in the cases selected.

3.3.2 Analysis of the results

Starting from this assumption of territorial division as above, we expected that the voting behaviour of the MEP in the cases analysed would have outlined a division in the PE into the East-West territorial bloc as above, rather than the ordinary left/right divide, showing thus a *sui generis* approach to the matter.

Contrary to what the literature shows, our hypothesis was that the MEPs would have voted more according to their nationality belonging, showing an East-West divide, rather than according to their European party group ideology and affiliation.

The table shows the results of the aggregation of data according to nationality of the MEPs in percentage points in the nine cases from the most supportive (Luxembourg, whose MEP have been 100% of the times voting positively in the nine cases) to the least (Hungary, whose MEPs have voted only 29.9% of the times positively).

Country	positive vote	neg. and abst. vote
LUXEMBURG	100%	0%
ESTONIA	91,7%	8,3%
MALTA	89,4%	10,6%
SWEDEN	89,2%	10,8%
IRELAND	88,0%	12,0%
SPAIN	87,6%	12,4%
GERMANY	84,1%	15,9%
BELGIUM	82,3%	17,7%
PORTUGAL	82,2%	17,8%
FINLAND	79,4%	20,6%
AUSTRIA	78,8%	21,2%
DENMARK	76,7%	23,3%
NETHERLANDS	76,6%	23,4%
CYPRUS	75,0%	25,0%
ITALY	69,1%	30,9%
BULGARIA	65,9%	34,1%
SLOVENIA	65,7%	34,3%
GREECE	64,7%	35,3%
ROMANIA	64,5%	35,5%
LITHUANIA	60,2%	39,8%
CROATIA	60,0%	40,0%
FRANCE	59,0%	41,0%
CZECHIA	56,8%	43,2%
LATVIA	49,2%	50,8%
UNITED KINGDOM	43,4%	56,6%
SLOVAKIA	40,8%	59,2%
POLAND	39,8%	60,2%
HUNGARY	29,9%	70,1%

Table 3 - Result of the research on the first hypothesis: List of Countries from the most supportive to the least.

At a first glance, we can note that the table seems to be divided into two blocks: the Western countries (graphically identified with the light-blue cells) appear relatively more in the first

half of the table, thus meaning that the MEPs from the Western bloc have been relatively supportive to instances of democratic strengthening in the nine cases by voting more positively than their homologues from the Eastern Bloc (identified with pink cells) that appear on the second half of the table.

The second table shows the result aggregated according to the territorial blocs. If taken all together, Western countries on the whole have voted 73% of the time positively, while the Central and Eastern countries only 52%.

	positive vote	negative and abstention vote
Western Country	73%	27%
CEE Country	52%	48%

Table 4 – Result of the research on the first hypothesis: Percentage of votes divided into Western and Eastern Blocs
Source: own creation

However, even if the result seem to explain the trend, from a statistical point of view, this hypothesis does not shown the outcome expected, because according to the Chi-Squared Test of independence, there is no statistical significance in the correlation between the MEPs' votes, the nations and the territorial block. The Chi-Squared Test of Independence is a nonparametric statistical analysing method that tests the independence of variables (Zibran:2007). We used this method to discover if there was dependence first between the MEPs vote and their belonging to the country and secondly MEPs vote and their belonging into one of the two territorial blocs. The result has proven negative for both hypothesis.

This test made it possible to identify statistical independence between two sets of data.

The green table shows the votes observed, while the theoretical votes are calculated in the right table. Each cell is calculated for the total of the positive, negative or neutral votes times the total of the nation's votes divided by the total of the votes.

The greater correlation there is between the observed votes (left table) and theoretical votes (right table), the more the Chi-squared result will be close to 1. The result is the percentage of similarity between the observed and theoretical data. The result for the first hypothesis is $9 * 10^{-15}$, so we can reject the hypothesis and confirm that there is no statistical correlation between the MEPs vote and their nationality.

Account of Nations	Column label					
Row Labels	negative vote	abstention	positive vote	(blank1)	(blank2)	Grand total
Austria	2		12	4	2	20
Belgium	1	4	16	1	1	23
Bulgaria	3		14	1	1	19
Croatia	2		7	3	1	13
Cyprus		1	4	1		6
Czechia	4		17	1		22
Denmark	3		8	2		13
Estonia			6	3		9
Finland	2		10	3		15
France	24	2	41	15		82
Germany	10	1	80	16		107
Greece	4	2	14	1		21
Hungary	12		4	6		22
Ireland			10	1		11
Italy	15		56	7		78
Latvia	1	1	6	2	1	11
Lithuania	1	2	7	2		12
Luxembourg			6	2		8
Malta			6		1	7
Netherlands	5		20	3		28
Poland	22		22	9		53
Portugal		3	18		1	22
Romania	1	4	26	3		34
Slovakia	2	1	7	4		14
Slovenia			8			8
Spain		6	46	6		58
Sweden	2		17	4		23
United Kingdom	37	2	29	11	2	81
Grand total	153	29	517	111	10	820

Nations	negative vote	abstention	positive vote	empty cells	MEP Total
Austria	3,487804878	0,731707317	12,48780488	3,29268293	20
Belgium	4,01097561	0,841463415	14,36097561	3,78658537	23
Bulgaria	3,13414634	0,695121951	11,86341463	3,12804878	19
Croatia	2,267073171	0,475609756	8,117073171	2,1402439	13
Cyprus	1,046341463	0,219512195	3,746341463	0,98780488	6
Czechia	3,836585366	0,804878049	13,73658537	3,62195122	22
Denmark	2,267073171	0,475609756	8,117073171	2,1402439	13
Estonia	1,569512195	0,329268293	5,619512195	1,48170732	9
Finland	2,615853659	0,548780488	9,365853659	2,4695122	15
France	14,3	3	51,2	13,5	82
Germany	18,6597561	3,914634146	66,8097561	17,6158537	107
Greece	3,662195122	0,768292683	13,11219512	3,45731707	21
Hungary	3,836585366	0,804878049	13,73658537	3,62195122	22
Ireland	1,918292683	0,402439024	6,868292683	1,81097561	11
Italy	13,60243902	2,853658537	48,70243902	12,8414634	78
Latvia	1,918292683	0,402439024	6,868292683	1,81097561	11
Lithuania	2,092682927	0,43902439	7,492682927	1,97560976	12
Luxembourg	1,395121951	0,292682927	4,995121951	1,31707317	8
Malta	1,220731707	0,256097561	4,370731707	1,15243902	7
Netherlands	4,882926829	1,024390244	17,48292683	4,6097561	28
Poland	9,242682927	1,93902439	33,09268293	8,72560976	53
Portugal	3,836585366	0,804878049	13,73658537	3,62195122	22
Romania	5,929268293	1,243902439	21,22926829	5,59756098	34
Slovakia	2,441463415	0,512195122	8,741463415	2,30487805	14
Slovenia	1,395121951	0,292682927	4,995121951	1,31707317	8
Spain	10,11463415	2,12195122	36,21463415	9,54878049	58
Sweden	4,01097561	0,841463415	14,36097561	3,78658537	23
United Kingdom	14,12560976	2,963414634	50,57560976	13,3353659	81
Total	143	30	512	135	820

Chi-squared test result:
9,15456E-15

Table 5 - Chi-Squared Test of Independence to assess the independence between MEPs' vote and nationality
Source: own creation

The calculation of the Table 5 and this result concerns only the second legislative act, not on the whole set of votes, but it is indicative of the general trend.

The same calculation was made taking into account this time, not the country of origin but the belonging in the two blocks East and West. This time the case selected is the first legislative act, once again the result did not confirm the hypothesis with a result of $9 * 10^{-26}$.

Account of Nations	Column Labels					
Row Labels		-1	0	1	(blank)	Grand Total
East		51	15	116	35	217
West		92	15	396	100	603
Grand Total		143	30	512	135	820

	negative vote	abstention	positive vote	empty cells	MEP Total
East	37,843	7,939	135,493	35,726	217
West	105,157	22,061	376,507	99,274	603
Total	143	30	512	135	820

Chi-squared test result:
9,26036E-05

Table 6 - Chi-Squared Test of Independence to assess the independence between MEPs' vote and their belonging into West and East blocks
Source: own creation

These statistical results do not endorse the hypothesis of the East-West division, however it is worth taking a closer look to the tables and the interesting outcomes we have found. By reading the table 1, we can state that the West has been generally more supportive than the East.

Indeed, if we look at the table 3, we see that the first fifteen places are occupied by Western European Union countries (LU, MT, SE, IE, SP, DE, BE, PT, FI, AT, DK, NL, CY, IT in order) with an exception. The second position is indeed held by Estonia, a country of the CEE region. Estonian MEPs, voted almost 92% of the time positively. This position was not expected but it can however be justified.

By looking at the 2018 Democratic Index (Table 2), we note that Estonia stands out for being the best performer in the whole Eastern region with an overall score of 7.97 out of 10. This tells us that Estonia is doing relatively better than all other countries of the region and the second position in the table of our research can be read under this light.

From the third to the fifteen position, we find Western countries, as expected, with Italy being the last in the row of Western supporters with Italian MEPs voting 69.1% of the times positively in the cases analysed. After it, the Eastern bloc is represented started with Bulgarian MEPs voting 65,9% of the time positively. The gap is however not substantial, the difference in percentage between Italy and Bulgaria is only 3.2. However, from Bulgaria on, the East bloc appears compact in the second half of the table (SI, RO, LT, HR, CZ, LV, SK, PL, HU). Interestingly, Greece, France and United Kingdom hold positions within this bloc, respectively at the 18th, 22nd and 25th place. The most outstanding result is surely UK whose MEPs have voted only 43,4% of the time positively. This result, as also for the French (59% of positive votes) is striking. These long-standing democracies align among the least supportive countries, even though being assessed positively in the Democratic Index, especially UK which, according to the Index, is a "full-democracy". This tells us that the correlation between the democratic quality of the country of MEPs is not necessary reflected in the support that the MEPs give to the democratic instances in the EP. The map in figure 4, if compared with the Table 1, helps this reasoning and the reading of the data.

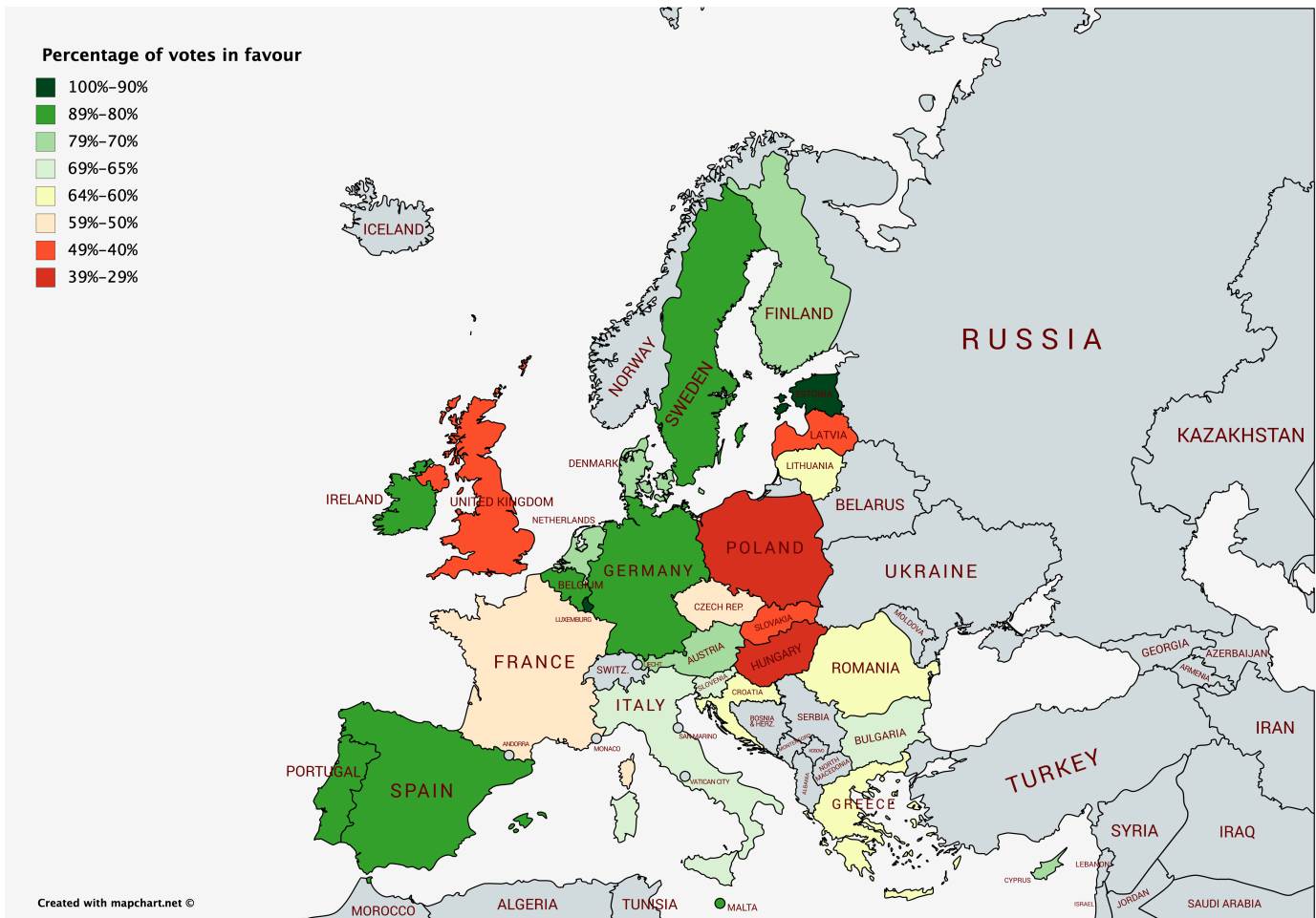


Figure 4- Map representing the percentage of votes in favour according to the nationality of the 28 MEPs
Source: own creation

As confirmed by the Chi-Squared Test of Independence and as you can see from the map in Figure 4, the East-West dividing line is not perfectly visible, with the positions of UK, French and Greek bias the expected division as framed in the hypothesis. However, what is visible is that the Eastern group has voted - without the exception of Estonian MEPs -relatively more negatively rather than the big Western groups of MEPs' supporters.

This way, we cannot consider our hypothesis valid. The outcome has not proved to reflect the territorial blocs division based on MEPs nationality. We turn now to examine if there has been ideological cohesion among the MEPs on EPGs.

3.4 Relation between the EPGs affiliation of MEPs and the voting behaviour (H2)

As explained above, the result on the hypothesis on territorial division into two blocs - the West and the East - has not shown the results expected and the hypothesis that the MEPs would have voted according to their nationality has not been proved to hold true.

We now turn to the second hypothesis concerning the political sphere of the MEPs according to which we expect that the MEPs would vote cohesively according to their affiliation to European Party Groups. To this end, in the paragraph “Assumption: Party Families” we recall the literature on party cohesion in the EP within the European party group-system to understand what is the relation between MEPs and EPGs.

3.4.1 MEPs voting behaviour in the EP: the assumptions

Scholars have studied the dynamics underlying the behaviour of MEPs in the complex EP network to evaluate, identify, define or classify their position in policy spaces and ideological positions. Hix (2001) affirms that the EP is structured more along European party group rather than national affiliation, and this is in line with the result of the first hypothesis. We turn now to the analysis according to three dimensions we have identified thank to the Chapel Hill expert surveys (CHES) (Bakker *et al.*: 2012) which will help us with the interpretation of the data: the left/right, the GAL-TAN and European integration dimensions.

1. Left/Right dimension

This literature on party positioning within the EP has acknowledged almost unanimously that the EP generally follows the traditional dynamics of left/right divide and the literature on MEP behaviour recognises that MEPs position along left-right dimension. Indeed, the strongest predictors of how MEPs behave in EP is their ideological affiliation and the EPGs affiliation rather than their Member State affiliations (Hix *et al.*, 2007). In other words, a left-wing MEP from a certain Member State is more likely to vote with left-wing MEPs from another Member State rather than with right-wing MEPs from their own Member State (Scully, Hix, Farrell: 2012). This has been acknowledged also by Hix, Noury, Roland (2007) by analysing, as we are doing in this study, the roll-call voting in the EP.

Furthermore, according to Chapel Hill expert surveys (CHES) (Bakker *et al.*: 2012), beside the general left–right dimension, other three dimensions are relevant in the identification of ideological party positioning in the EP, and thus: economic left–right dimension, GAL–TAN dimension, and general party positioning on European integration. In this section we

concentrate on the these three dimensions which build the framework on which we analyse the data.

2. GAL/TAN Dimension

Particularly interesting is the GAL/TAN dimension, indicating the endpoints of the “scale” standing for Green-Alternative-Libertarian and Traditional-Authoritarian-Nationalist. According to this interpretation, the ‘new politics’ or green/alternative/libertarian (GAL) opposes to the traditional/authoritarian/nationalist (TAN) dimension. In the Chapel Hill expert surveys (2012), the GAL-TAN dimension is defined as indicating the opposition between "libertarian" parties favourable to expand personal freedoms (abortion/same-sex marriage/greater democratic participation) and "traditional" parties which are more conservative: Their values are anchored in the traditional dimension of the state, and attach great value to stability and culture and recognise a moral authority of the government in conserving cultural or social issues (Bakker *et al.*: 2012). In short, this dimension defines the party position on a scale ranging from libertarian to more nationalist with centrist parties in the middle of it.

3. EU Integration dimension: Inverted U curve

For what concerns the European integration dimension, the CHES reports assess that the "inverted U curve" - indicating the opposition of transnational party groups to European Integration – identifies the opposition of the parties to European integration with a higher concentration of opposition in the radical left and populist right parties. (Bakker *et al.*: 2012). We can also identify this dimension as examining the degree of Euroscepticism of the parties. This further reaffirms that the EP is structured along a left/right ideological divide.

3.4.2 Assumption: Party Families

Hix *et al.* (2007) asserts that party families (Social democrats, Centre-right, Liberals, Radical-left, Greens and regionalists, Anti-Europeans and extreme right) are represented in the EP and they reflect in the European Party Group system. McElroy and Benoit (2010, 2012) have examined the competition between European party groups analysing their policy space. EPGs' ideological positioning has been assessed on multiple dimensions of policy, underlying that EP Party Groups occupy the entire range of left-right spectrum and the national parties composing them are broadly cohesive. Indeed European Party Groups (EPGs) occupy the whole span of left-right scale, from the far-left to the far-right, according to which in the EP, MEPs and the European party groups represent their ideology just like any other national parliament. In our analysis we are assuming that the EPGs represent these party families, from the left: left

(GUE/NGL), social democrats (S&D), greens (Verts ALE), liberals (ALDE), Christian democrats (EPP), conservatives (ECR), extreme right (EFDD, ENF) and NI.

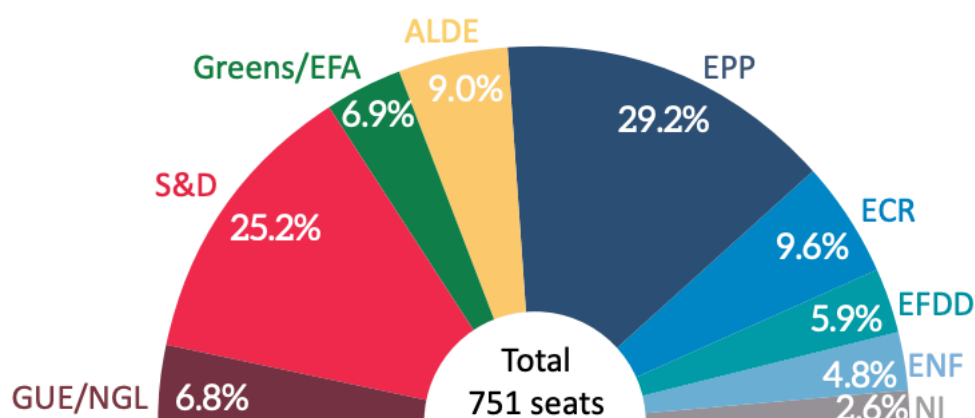


Figure 5 - Proportion of Members in each political group in the 8th European Parliament (2014-2019) as 1 April 2018
Source: Sabbati (2018)

3.4.2 Analysis of the results

Table 7 shows the result of the aggregation of the votes according to the European Party Groups in the nine cases selected. At a first glance, we can already identify that the result can be divided into three groups which identify the EPG position into: very supportive / supportive / and very opposing. Coherence is particularly relevant in first and last group, showing that the greens (Verts ALE), social democrats (S&D) and liberals (ALDE) have jointly voted positively in the nine cases selected. The same is valid for the third group of opposers: conservatives (ECR), extreme right (EFDD, ENF) and non-attached Members (NI). Less cohesive is the left (GUE/NGL) and Christian Democrats (EPP).

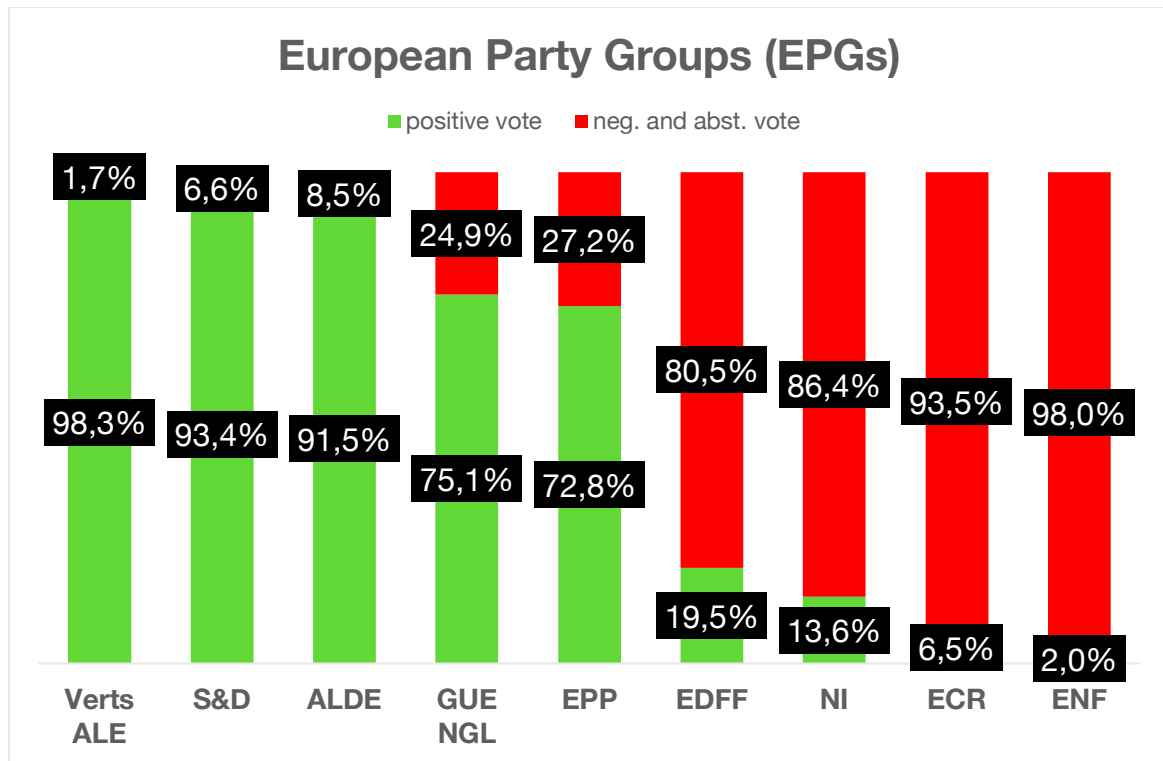


Table 7 - Result of the research on the second hypothesis: Table displaying the EPGs from the most supportive to the least.

The MEPs belonging to the Verts ALE EPG stand out to be the most supportive, having voted 98,3% of the time positively, followed by S&D with 93,4% of the time positively, and ALDE with 91,5%. These MEPs constitute the first bloc, identified as "very supportive" MEPs. The second group comprises the GUE/NGL MEPs and EPP MEPs, having voted positively respectively 75,1% and 72,8% of times. These are considered "supportive" MEPs. The third group is made of the "very opposing" MEPs from EDFF (19,5%), *Non-inscrits* (13,6%), and the very least supporter, namely the MEPs from ECR (6,5%), and MEPs from ENF (2,0%).

Basing on the literature introduced in this section, we now analyse the dataset by focusing on the three dimensions of MEPs behaviour outlined by CHES.

1. Left/Right dimension

We infer the positioning of EPGs in the left/right scale starting from the position scale of McElory and Benoit in 2010⁵² as follows. From the furthest left we have:

GUE/NGL	S&D	Verts ALE	ALDE	EPP	ECR	EDFF	ENF
---------	-----	--------------	------	-----	-----	------	-----

Table 8 Left/Right positioning scale
Source: inspired by McElory and Benoit (2010)

We note that we have added ENF as the most extreme right EPG (the party did not exist in 2010) and we also recall that the position of the greens has changed in so far as the greens have become increasingly liberal in the last decade (Bakker *et al*: 2012).

This is the framework in which, we infer, the EPGs position alongside the left/right scale. From this we draw our conclusions for the left/right model. What can be immediately noticed is that there is a clear picture of who generally stands for (Verts ALE, S&D, ALDE, GUE/NGL, EPP) and who stands against (EDFF, NI, ECR, ENF).

GUE/NGL	S&D	Verts ALE	ALDE	EPP	ECR	EDFF	ENF
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Table 9 - Left/Right positioning scale: in red the isolation of right and far-right parties
Source: Own creation basing on results of Table 6

This division isolates the far-right MEPs to the rest of the EP. Here the left/right dimension is certainly relevant to the analysis. Central and Left MEPs have responded significantly more positively than the MEPs from the right and far- right. The left-right dimension can thus be verified.

2. GAL/TAN Dimension

We will use now the GAL-TAN MEPs' orientation to see if the EPGs' ideological stance on democratic freedoms and rights is respected. We expect the GAL-TAN dimension to play a role in the definition of the orientation of the MEPs divided into EPGs according to the alignment within the GAL and TAN dimensions. Just to recall the literature, GAL dimension identifies "green-alternative-libertarian" stances which are thus in favour to expand personal freedom, while TAN is the dimension with "traditional-authoritarian-nationalist" stance (Bekker *et al.*: 2012).

⁵² The original version was: GUE/NGL; Gr/EFA; S&D; ALDE; EPP; ECR; EFD (McElroy, Benoit: 2010)

Given these premises, we suggest the positioning alongside the GAL-TAN dimensions is: GAL dimension (ALDE, S&D, Verts ALE) opposing to the TAN dimension (EFDD, ENF, NI, ECR), with the EPP and GUE/NGL in the middle.

GAL dimension	Middle	TAN dimension
S&D	EPP	ECR
Verts ALE	GUE/NGL	EDFF
ALDE		ENF
		NI

Table 10 - Grouping of the EPGs according to the GAL-TAN dimension
Source: inspired by CHES data (Chapel Hill expert surveys)- Bekker et al.: 2012

By looking at results, we can infer that there is a sort of correlation with the GAL-TAN dimensions as theorised above. Indeed, this recalls the initial classification we suggested at the very beginning of paragraph 3.4.2 categories: "very supportive"(Green colour) / "supportive" (Yellow colour) / "very opposing" (Red colour).

Europ party group	positive vote	neg. and abst. vote
Verts ALE	98,3%	1,7%
S&D	93,4%	6,6%
ALDE	91,5%	8,5%
GUE/NGL	75,1%	24,9%
EPP	72,8%	27,2%
EDFF	19,5%	80,5%
NI	13,6%	86,4%
ECR	6,5%	93,5%
ENF	2,0%	98,0%

Table 11 - Result of the research on the second hypothesis: Table displaying the EPGs grouped into "very supportive"(Green colour) / "supportive" (Yellow colour) / "very opposing" (Red colour)
Source: Own creation basing on results of Table 6

Sure is that the TAN dimension can be easily be assessed as standing out from the table. We can thus infer that the GAL/TAN dimension of the MEPs is respected

3. EU Integration dimension

The Inverted U Curve indicates the opposition of EPGs to European Integration. This model shows that extreme-left and extreme-right parties share the same euro-scepticism, while parties in the middle are generally supportive to the European integration (Hooghe *et al.*:2002). Indeed, the party's support for European integration declines with its distance from the centre. According to this model, we expect to see the MEPs distribution of votes reflecting their stance toward European Integration. We expect the most supportive MEPs will be the liberals (ALDE) and Christian democrats (EPP), followed by social democrats (S&D) and greens (Verts ALE) in being very supportive, because they are in the middle of political spectrum and because of their pro-European integration stances, while the most opposing would be the euro-sceptic MEPs: conservatives MEPs (ECR), extreme right MEPs (EFDD, ENF) and MEPs from the left (GUE/NGL).

ALDE	EPP	S&D	Verts ALE	ECR	EFDD	ENF	GUE/NGL
------	-----	-----	--------------	-----	------	-----	---------

Table 12- European Integration positioning scale from the most supportive to the least
Source: inspired by inspired by CHES data (Chapel Hill expert surveys)- Bekker *et al.*: 2012

By looking at the result, we see that ALDE MEPs have voted 91,5 % of the time positively, which is certainly in line with the expectations, but when it comes to EPP, we see that the result is not as clear as for the liberals, showing that the support did not come cohesively even though the EPP is a pro-European integration Party. The hypothesis of European integration dimension is thus not valid for EPP.

Verts ALE	S&D	ALDE	GUE/NGL	EPP	EFDD	ECR	ENF
--------------	-----	------	---------	-----	------	-----	-----

Table 13 - Result of the research on second hypothesis: the position of the EPGs from the most supportive to the least
Source: Own creation basing on results of Table 6

Instead, the MEPs of GUE/NGL, that is not a pro-European integration Party, have shown their support even more than the EPP (75,1%, while EPP 72,8%) while we expected to see greater support by EPP and lesser support from the GUE/NGL. Also here for GUE/NGL, the EU Integration dimension does not prove to be valid.

The EU Integration model, which is based on the concept of euro-scepticism, shows a negative result as opposed to the results obtained with the Left/Right and to the GAL-TAN dimensions.

In sum, we can conclude that the research on European Party Group has shown that the MEPs have generally voted in accordance and coherently with the MEPs, showing a considerable

degree of cohesion among the majority of the Groups. As we can see from the last dimension analysed, that of European Integration, the EPP and GUE/NGL are deviating from the standard model and we will analyse in the following paragraph the behaviour of the EPP as to explain this deviance.

3.4.3 The behaviour of the EPP

The results of the European Integration dimension, highlight that the EPP and GUE/NGL have had a peculiar behaviour, showing that the GUE/NGL Group has sustained – even more than what the EPP did – this cause, while the EPP has shown not to be united as a Group on this dossiers. This sounds weird, as the EPP presents itself as the Party whose priority go all in the direction of a more democratic, united and stronger Europe.⁵³

In this paragraph, we will analyse the behaviour of the EPP as to discover more about the dynamics and reasons behind this outcome.

We have shown in paragraph 3.3, with our first hypothesis, that nationality does not really play a role in the voting behaviour of the MEP, even though we have found that CEECs have generally supported less the legislative acts we have analysed. The EPP has voted positively 72,8% of the time in all the nine cases. What we are going to do in this paragraph is to group the cases according to the content of the legal acts. We will take the legal acts concerning Hungary and Poland to see if the EPP has had the same behaviour with both countries.

The first group concerns the legal acts on **Hungary** composed of two resolutions:

- “Resolution on the situation in Hungary” (2017/2656 RSP) approved 17 May 2017;
- “Resolution on a proposal calling on the council to determine, pursuant to Art 7(1) of TEU, the existence of clear risk of a serious breach by Hungary of the values on which the Union is founded” (2017/2131 INL) adopted on 12 September 2018.

⁵³ For more details, consult the Manifesto of the EPP at their webpage: <https://www.epp.eu/our-commitments/commitments/>

2017/2656 RSP

group	positive vote	neg and abst vote
ALDE	96,9%	3,0%
ECR	3,1%	96,9%
EFDD	0,0%	100,0%
ENF	0,0%	100,0%
EPP	33,7%	66,3%
GUE NGL	89,6%	10,4%
NI	11,1%	88,9%
S&D	100,0%	0,0%
Verts ALE	97,9%	2,1%

2017/2131 INL

group	positive vote	neg and abst vote
ALDE	90,8%	9,3%
ECR	4,2%	95,8%
EFDD	34,3%	65,8%
ENF	0,0%	100,0%
EPP	58,3%	41,7%
GUE NGL	87,5%	12,5%
NI	16,7%	83,4%
S&D	95,9%	4,1%
Verts ALE	100,0%	0,0%

Table 14 - Result of the research on the EPP behavior in the Hungarian dossiers: Table displaying the EPGs' voting behavior in the two cases (2017/2656 RSP) and (2017/2131 INL)

Source: own creation

Table 13 shows the result of the aggregation of the data for the two cases related to Hungary. For the first resolution (first table on the left), only almost 34% of MEPs of the EPP have voted positively, while for the second resolution (table on the right) 58% of the MEPs have voted positively. While the first outcome is striking, the second is less surprising, but it still under the average of the 72,8% relative to all nine cases of the dataset.

The second group concerns the legal acts on **Poland** composed of four resolutions:

- “Resolution on the situation in Poland” (2015/3031 RSP) adopted on 13 April 2016;
- “Resolution on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union” (2016/2774 RSP) adopted on 14 September 2016;
- “Resolution on the situation of the rule of law and democracy in Poland” (2017/2931 RSP) adopted on 15 November 2017;
- “Resolution on Commission's decision to activate Art 7(1) of the TEU as regards the situation in Poland” (2018/2541RSP) adopted on 1 March 2018.

Tables 16 and 17 show the impressive results for the four cases related to Poland. The percentage of positive votes by MEPs of the EPP is definitively and substantially higher than for the Hungarian cases.

2015/3031 RSP

group	positive vote	neg + abst vote
ALDE	92,3%	7,7%
ECR	1,5%	98,6%
EFDD	37,5%	62,6%
ENF	0,0%	100,0%
EPP	88,3%	11,7%
GUE NGL	89,8%	10,2%
NI	17,6%	82,4%
S&D	97,2%	2,8%
Verts ALE	97,9%	2,1%

2016/2774 RSP

group	positive vote	neg + abst vote
ALDE	95,4%	4,6%
ECR	1,4%	98,5%
EFDD	23,7%	76,3%
ENF	3,1%	96,9%
EPP	91,5%	8,5%
GUE NGL	73,1%	26,9%
NI	10,5%	89,5%
S&D	99,4%	0,6%
Verts ALE	97,9%	2,1%

Table 15 - Result of the research on the EPP behavior in the Polish dossiers: Table displaying the EPGs voting behavior in the first two cases (2015/3031 RSP, 2016/2774 RSP)

Source: own creation

2017/2931 RSP

group	positive vote	neg + abst vote
ALDE	90,2%	9,8%
ECR	10,6%	89,4%
EFDD	0,0%	100,0%
ENF	0,0%	100,0%
EPP	70,7%	29,3%
GUE NGL	81,3%	18,8%
NI	10,5%	89,5%
S&D	93,9%	6,1%
Verts ALE	95,6%	4,4%

2018/2541RSP

group	positive vote	neg + abst vote
ALDE	91,1%	8,9%
ECR	10,0%	90,0%
EFDD	0,0%	100,0%
ENF	0,0%	100,0%
EPP	79,9%	20,1%
GUE NGL	75,6%	24,4%
NI	17,6%	82,3%
S&D	89,4%	10,7%
Verts ALE	95,7%	4,3%

Table 16 - Result of the research on the EPP behavior in the Polish dossiers: Table displaying the EPGs voting behavior in the second two cases (2017/2931 RSP, 2018/2541RSP)

Source: Own creation

From this compared study we can deduce that the EPP has acted differently depending on whether it was Hungary to be addressed or Poland. The result we have reached is significant and proves that the EPP has had a peculiar evolutionist behaviour.

Hungary			Poland		
EPP	positive vote	neg and abst vote	EPP	Positive vote	neg + abst vote
v4	33,7%	66,3%	V1	88,3%	11,7%
v7	58,3%	41,7%	V2	91,5%	8,5%
			V5	70,7%	29,3%
			V6	79,9%	20,1%

Table 17- Comparison of the two tables examining the EPP voting behavior regarding Hungary (first table) and regarding Poland (second table)

Source; own resources, based on Table 11, 12, 13

Some scholars (Kelemen:2015; Blauburger, Kelemen:2016; Sedelmeier 2017; Kelemen:2017) have argued that most members of the European Party Groups to which the governing parties

belong, defend the governments because of party interests and loyalties. If so, the EPP would protect the Hungarian party Fidesz⁵⁴ which is the government on power for partisan loyalty.

If we look at the configuration of the EPP in the last legislature, we see that Hungary is relatively well represented (Sabbati:2018). During the 8th European Parliament, the EPP was the first political group for size with 219 MEPs out of 751⁵⁵, holding the 29.2% of the total seats (Sabbati: 2018). With 34 MEPs, Germany was the most represented country in the Group, followed by Poland (22 MEPs), France (20 MEPs), Spain (17 MEPs), Romania (13 MEPs) and Hungary (12 MEPs).

Being Fidesz on power in Hungary, and being the Hungarian MEPs relatively numerous in the EPP (the sixth for size in the group) the behaviour of the EPP becomes now easier to be interpreted.

⁵⁴ EPP webpage /Parties & Partners : <https://www.epp.eu/parties-and-partners/>

⁵⁵ Data available at: <https://www.europarl.europa.eu/EPRS/EPRS-Briefing-542150-European-Parliament-Facts-and-Figures-FINAL.pdf>

Conclusions

Our research addressed the phenomenon of democratic backsliding in the EU. This was handled from both a theoretical and an empirical point of view. The theoretical part, the first half of the study, addresses the concept of democracy in the European Union framework in two phases: the first is the pre-accession phase, with the analysis of the deficits of the EU's pre-accession strategy toward the consolidation of democracy in the CEECs through membership conditionality, and secondly, in the post-accession phase with the analysis of the (limited) EU instruments for protecting democracy and rule of law in the Member States once they join the Union.

What emerges is that the treatment of the monitoring of democratic values and of the sanctioning of breaches of democratic values in the pre-accession phase and in the post-accession phase are unbalanced. Indeed as Schimmelfennig and Sedelmeier (2019) point out, the most influential factor considering this difference is the certainty of the sanction as it is much lower for Member States rather than for candidate countries. Indeed, if the sanction for candidate countries is represented by the stopping of the accession negotiations, for the Member States the sanctioning system is uncertain and it has not proven to work until so far. The low credibility of the threat to use sanctions for Member States, together with the low determinacy of the state that does not need to prove its compliance with the EU standards again to be part of the Union, create an unbalanced situation potentially destructive for the Union.

Indeed, while analysing the evolution of the CEECs, we see that during the pre-accession phase they have complied with all the criteria and requirements (created on purpose for their accession) which made their membership conditional on the democratic targets imposed by the EU - focused particularly on the establishment of institutions that could guarantee the rule of law and the development of the democracy. The recent cases of democratic backsliding in the CEECs acknowledge that this strategy based on incentives and rewards has not shown the results desired in the long-term. We argue that the EU rule transfer, Europeanisation and democratisation processes in the candidate states have happened without a real impact on the citizens, with the establishment of *formal* institutions according to the EU requirements, which brought to the consolidation of semi-autocracies in the democratic Union, becoming what Ágh (2017) defines "façade democracy".

The second part on the post-accession phase argues that, as pointed out above the lack of monitoring tools by the EU institutions on the Member States has influenced the development of the phenomenon of backsliding in the CEECs. The tools available to the EU Institutions to

sanction authoritarian drifts in Member States are fewer compared to the pre-accession phase and more difficult to trigger. This creates a short-circuit in the EU system of protection and sanctioning of democracy and rule of law shortcomings. This topic is developed in the second chapter where on the one side we examine the democratic backsliding phenomenon in theory as well as in the reality of the CEECs and on the other side, we focus on the analysis of the mechanisms and measures that the Union can use to protect democracy in its Member States and to counter the democratic shortcomings. Even though these measures do exist, the attempts to counter this phenomenon have not been many and not in an efficient way. However, some scholars (Kelemen Blauburger:2017, Kelemen:2017) argue that it is not only the nature of these measures to obstacle the action of the EU institutions but it is the institutions themselves that don't take advantage of them. If we consider for instance the Council, the attempts to properly use the "Nuclear option" are not shown positive results and the Council's initiative of the Dialogue on the Rule of Law has never produced any substantial improvement (Bakke, Sitte:2019).

The Parliament, instead, has shown in several occasions to be committed in the debate on the democratic protection and has played a vital role in this field. For this reason, it is interesting to see how MEPs have reacted by expressing their vote when called to give their preference on legal acts regarding the protection of democracy in motions for resolutions and in legislative proposals (Pech, Scheppele: 2017).

The third chapter entirely focuses on the research and on the analysis on the voting behaviour of MEPs. The first hypothesis relates to the division into regional blocs alongside an East-West line (basing on the theory of the chapter) to assess if the vote of the MEPs in the nine cases selected had shown compact support or opposition to the matter on a national basis. From a statistical point of view, this relation does not hold true and as largely acknowledged in the literature (Hix), this shows that nationality is thus not the key influential factor in the voting behaviour of MEPs.

This outcome is however interesting because by aggregating the data according to the territorial blocs, taken together Western countries on the whole have voted 73% of the time positively, while the Central and Eastern countries only 52% (Table 4). Thus, even though we have proven that the nationality does not really play a role in the voting behaviour of the MEPs, this last outcome gives an indication of the general regional trend.

Given this negative outcome, the research continues with a second hypothesis to understand if a possible correlation between voting behaviour and political belonging of the MEPs can be found. While the first hypothesis concentrates on the nationality of the MEPs, the second regards the MEPs' ideological affiliation to European Party Groups (EPGs). The analysis is being carried out by analysing the three dimensions of left/right, green-alternative-libertarian/traditional-authoritarian-nationalist (GAL-TAN) and pro- or against- European integration. If there has been positive results in the first two dimensions, proving that it is identifiable a division of the votes into a left/right (with the isolation of left and right groups) and GAL-TAN dimensions (respecting the expected division in three defined categories GAL/middle/TAN), we have found instead that the pro- or against- EU integration has not a relatable result in particular for what concerns the voting behaviour of the left GUE/NGL and the centrist EPP. Indeed, the MEPs of GUE/NGL, that is not a pro-European integration Party, have shown their support even more than the EPP (75,1%, while EPP 72,8%) while we expected to see greater support by EPP and lesser support from the GUE/NGL.

In the light of this last outcome, the last paragraph is a case study on the EPP voting behaviour aimed at assessing whether the Party has acted differently depending to the cases. A comparative analysis between the legal acts addressing Poland and Hungary has proven that the EPP has had a peculiar attitude: the result is really significative. For the four cases related to Poland, the EPP has voted on average 82,6% of the time positively, while for the cases related to Hungary only 46% (see Table 14). It is clear that the Party has had a different voting attitude depending on the cases addressed.

To interpret this interesting datum, we turn to the theory to study our outcome in a more structured way. There is, in the literature, a debate on how to explain the existence of subnational authoritarianism within nationally democratic regime. Many scholars demonstrate that authoritarian enclaves can persist at state level within democratic federal regimes. Gibson (2005) describing that in the world there is unevenness of the territorial distribution of the practices and institutions of democracy within the nation-state system, interestingly defines the “regime juxtaposition” as the <<situation where two levels of government with jurisdiction over the same territory operate under different regimes, understood as the set of norms, rules, and practices that govern the selection and behaviour of state leaders>>. Moreover, the variation of the quality of democracy of different subunits, as it can happen for the states of a federation for instance, is common especially in large heterogeneous federations (Kelemen: 2017). In this section, we refer to the comparative politics literature on subnational authoritarianism to

examine the behaviour of the EPP to give a final theoretical interpretation on why and how it can happen that, in a democratic Union, cases of democratic backsliding are tolerated.

The “regime juxtaposition” literature help us in this sense because, even though it is a literature which focuses on the American cases, it can still be interpreted in a European light and it can be useful to address the issue of the simultaneous existence of opposing regimes at national and subnational level (Gibson:2005). To do so, we will consider the EU system as if it was a federation of states, which is obviously EU not. This interpretation is quite a stretch but it allows us to explain, as we are doing with an European perspective, the persistence of authoritarian enclaves in democratic polities.

As Gervasoni (2018: ch1) points out, these regimes are likely to be not particularly repressive because they are embedded within a federal or supranational democracy. The reason why it is harder for the states to develop very radical and extreme attitudes is because of the supranational democratic architecture above them. Indeed, these countries deviating from the being democratic cannot be considered “autocracies”: In those countries elections run freely, the opposition parties are real and minority’s protection features in the legislation and acceptable levels of press and speech freedom is attained (Gervasoni: 2018). In the federal system, this happens because the country cannot freely ban political parties, put into prison dissidents or apply consistent media censorship since the countries are embedded into a “national democracy”. Thus, subnational leaders cannot act freely.

This, translated into the EU system language, would mean that the “subnational units”, the Member States, are embedded into the “national democracy”, the supranational EU framework. In the Member States, elections run democratically, with the participation of opposition parties and civil society and there is no censorship in the press and the speech freedom is formally granted. However, concerns in the real functioning of these activities in Romania and Hungary, for instance, have risen after events of the erosion of the independence of the judiciary and of independent bodies, media coverage and freedom of press and fight against corruption (Sedelmeier: 2013).

Gervasoni (2018) concludes that «the less-democratic provincial regimes, then, combine democratic institutions that are not just a *façade* with practices that are clearly, if subtly, authoritarian». In the European logic, the less-democratic provincial regimes, can be translated into the countries which we have demonstrated being less prompt to democratic

compliance, which combine with the democratic institutions, that are the EU institutions and the EU practices.

These authoritarian regimes are indeed rather defined as hybrid regimes or “illiberal democracies”, “competitive authoritarianism or “electoral authoritarianism”⁵⁶, where democratic standards are formally existing but practically not fully respected, for example bias coverage of ruling party in media, bad treatment of dissidents, and so on. What makes these semi-authoritarian regimes perdure overtime is a political interest. According to Gervasoni (2018), democratic leaders at the federal’s level *may ignore concerns about illiberal and antidemocratic instances, provided that the local authoritarian governments deliver needed votes to their coalition* in the federal legislature.

This is a crucial passage and, if we adapt this theory to the EU and to the case of the breach of the rule of law and the democratic backsliding in Hungary and Poland, we see exactly this.

An authoritarian leader in an EU Member State who delivers votes to an EU-level political coalition (the European party group in our case) may not be targeted and exposed publicly (as in this case by voting for the adoption of resolutions on the situation of democracy in the State or - even more - for triggering the Art 7 procedure) by its EU-level co-partisans who will be instead encouraged to tolerate the Member State's democratic backsliding and protect it from being exposed. The European Party Groups containing MEPs from parties which are in power in illiberal governments (ECR for Poland and EPP for Hungary) protect them against the EU initiatives of condemning illiberal instances to protect the local autocrats (Sedelmeier:2017). Indeed, autocrats deliver needed votes and seats to the coalitions at the European Parliament. We have seen this in Table 17 when comparing the percentage of positive votes by EPP MEPs in the two cases Hungary and Poland. It is clear that the EPP’s aim was to protect Fidesz, as for the first legal act, the Resolution on the situation in Hungary (17 May 2017) only 33,7% of the MEPs gave their preference to the positive vote of the Resolution. In other words, only one EPP MEP in three has supported the resolution, while 2 in 3 have opposed. For what concerns the second resolution, concerning the proposal on calling on the Council to launch Art 7(1) (12 September 2018) only one in two has voted positively.

Gervasoni (2005) suggests that it is only when the position of the authoritarian regime becomes so taught to put the whole federation or, in our case the whole Union, in trouble, that the

⁵⁶ The literature offers a wide debate over the classification of these hybrid regimes, we refer to Diamond, Linz and Lipset.

intervention is unavoidable. This is interesting for us as it seems to describe what happened with EPP and the decision to freeze the membership of the Fidesz MEPs⁵⁷. The standstill situation was creating some doubt and political instability within the Party that a change of direction was necessary. Gervasoni (2005) suggests that the intervention is made when the political liability of the autocrat's allies at federal level is threatened. We can read in this light the decision taken by the EPP Political Assembly with 190 votes in favour and 3 against on the 20 March 2019 to suspend the membership of the party Fidesz with immediate effect. From that moment on the party has not taken part in EPP meeting, has not had voting rights, nor the right to propose candidates for any position. The EPP has also established an *ad hoc* commission⁵⁸ to determine the developments and eventual progress made by Fidesz, which by now are not sufficient and this “indefinite suspension” is due to be prolonged.⁵⁹

To conclude, we have seen from the one side the uncertainty of the sanctioning system in the Member States and its unbalance with the pre-accession, and on the other side the EU instruments that the EU can use to protect democracy in the Member States. Once the EU takes measures to address the authoritarian drifts, the problem of the political will, or rather of the reluctance to censure a backsliding government became real. Indeed, as Sedelmeier (2017) concludes, the EU success in pressing for changes in undemocratic practices was limited to some countries under specific conditions (mainly limited to the Polish case) and party politics played a decisive role as the ECR has shown less resistance to publicly opposing the PiS, while this is not happening for Hungary, as we have discovered in case study of paragraph 3.4.3. Also Kelemen (2017) assesses that the EP has not addressed all the authoritarian drifts of the Member States equally suggesting that treatment of the Member States has been different and this is backed by the result we have shown (Sedelmeier: 2013,2017; Kelemen: 2017).

We can thus conclude that making EU politics more partisan may turn out to be less efficient when it comes to sanctioning for democratic backsliding.

⁵⁷ Decision of the EPP Political Assembly (20 March 2019) available at: <https://www.epp.eu/papers/proposal-of-the-epp-presidency-to-the-political-assembly-regarding-the-epp-membership-of-fidesz/>

⁵⁸ “FIDESZ membership suspended after EPP Political Assembly” in the EPP webpage, available at: <https://www.epp.eu/press-releases/fidesz-membership-suspended-after-epp-political-assembly/>

⁵⁹ Politico, “EPP considers extending Fidesz suspension”, Authors : Lili Bayer, Maia de la Baume) (23/01/20) https://www.politico.eu/article/epp-fidesz-suspension-viktor-orban/?utm_source=POLITICO.EU&utm_campaign=eef0184b2c-EMAIL_CAMPAIGN_2020_01_30_05_56&utm_medium=email&utm_term=0_10959edeb5-eef0184b2c-190417117

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Summary

In the history of the European integration, the enlargement toward the Central and Eastern Europe has been a fundamental step for the accomplishment of the project of an united Europe and with the accession of thirteen members it represents the biggest wave of enlargement. The accession of the CEECs has been controversial because unique in terms of the number of acceding states, their size, their comparatively low level of economic development, and the impact that would have had at financial level (Faber:2009). What made this phenomenon ever more significant is certainly the political impact it had due to the CEECs' Soviet legacy and their former communist nature. In that very moment following the end of the Cold War, the role of the European Union has been fundamental in the stabilisation of the Central and Eastern European region and the transformation of the countries into full liberal democracies.

There are two levels of analysis in the process of enlargement, as the integration of new states in the Union happens simultaneously both at the national and Union level. From one side, the countries willing to join the union had to meet some requirements to be eligible candidates, on the other side, the EU also needed some readiness to take on board the new states.

From the European side, the question is whether the EU can bear the burden of new states joining the Union while keeping the promise of a peaceful development and prosperity of the region and of its Members. The European Union's absorption capacity concept appeared for the first time in the Copenhagen Summit conclusions in 1993 when dealing with the future accession of the CEECs and alongside with the Copenhagen Criteria, it is a fourth - non official – accession criterion. The appearance of this concept is relevant as it indicates that the European Union's position on integration changed overtime in particular in view of their accession. Indeed the 2004 - 2007 Enlargement process has challenged the Union and has reshaped the way in which the Enlargement policy toward new Member States is being conceived (and the same is happening with the new targets of future EU enlargement: The region of Western Balkan).

The European Union with has managed to renewed its structure and reaffirm its cultural, political and social role taking advantage of the collapse of the former communist regimes, and pushing for the transformation of the political and economic system of these neighbouring states toward liberal democracies (Lane: 2007). The EU's goal was to help the transition of these countries into liberal democracies under its guidance in order to build an area of peace and unity in the whole European territory.

What we focus on is the process of enlargement and the strengthening of the link between the membership and the states' respect of human rights and rule of law, two aspects which were not highly considered before and which became fundamental during the enlargement process of the CEECs.

The EU focused on the CEECs' ability to adapt their socio-economic - as well as political and institutional - framework to those required by the EU in order to be eligible to join the Union: the European Union by pushing for a general growth of conditionality, was a pioneer in setting political and economic conditionality encouraging the improvement of certain elements of substantive democracy (Kelley: 2004). This was mainly done by developing an extensive set of conditionality requirements elaborated in the European Council (21-22 June 1993) with the establishment of a more specific framework of requirements focused on the insurance of stable and reliable institutions in the states involved which could guarantee the respect for human rights and the protection of minorities and the rule of law on the whole territory.

The EU took advantage of the bargaining strategy based on the "reinforcement by reward" and imposed democratic membership conditionality through which it was possible to implement a EU rule transfer in the CEECs. This way, the EU provided the CEECs' governments with external incentives aimed at pushing them reach the compliance with conditions set by the EU.

Membership conditionality worked as a strategy because the willingness and desire of those countries to join the Union was high, the concept defined "determinacy" in the External Incentive Model by Schimmelfennig and Sedelmeier (2004, 2019) and it worked because the rewards/incentives offered by the EU (the membership) were credible. The "credibility" indeed played a fundamental role in the accomplishment of the strategy, something which is nowadays not happening for the future enlargement wave on Western Balkans (Schimmelfennig, Sedelmeier: 2019)

Together with the "determinacy" and "credibility" factors, this strategy was particularly effective mainly due to the long multiple-step process of joining the EU which implied a multi-level influence over the time based on a system of gradual rewards for the fulfilment of said steps (Kelley:2004).

However, the EU seems to have missed to address the real functioning of the institutions that the government had ad hoc created for fulfilling the EU's formal requirements, somehow avoiding addressing the democratic transition of the population.

This process of Europeanisation of CEECs' socio-political systems, thus created a duality: From the one hand, the Copenhagen criteria pushed for the establishment of formal institutions typical of the liberal democratic states which could guarantee the proper functioning of the rule of law and the development of democracy, while on the other hand the democratisation did not reach the citizens and the development of proper informal civil society institutions was still lacking, which brought, in the end, the real world's dynamics to remain unchanged in the CEECs (Attila Ágh: 2017). In the end, the transition desired by the EU occurred only at the surface with the establishment a formal network of institutions, while relevant political participation was still lacking. This opposition between (accomplished) external and (not accomplished) internal Europeanisation led to deep tensions and, as a result, in the Central and Eastern European region democracies turned out to be not as stable as expected.

What emerges is that the treatment of the monitoring of democratic values and of the sanctioning of breaches of democratic values in the pre-accession phase and in the post-accession phase are not balanced. Indeed as Schimmelfennig and Sedelmeier (2019) point out, the most influential factor considering this difference is the certainty of the sanction as it is much lower for Member States rather than for candidate countries. Indeed, if the sanction for candidate countries is represented by the stopping of the accession negotiations, for the Member States the sanctioning system is uncertain and it has not proven to work until so far. The low credibility of the threat to use sanctions for Member States, together with the low determinacy of the state that does not need to prove its compliance with the EU standards again to be part of the Union, create an unbalanced situation potentially destructive for the Union.

This opens the debate on the EU (rather limited) instruments to monitor and to react to the breach of democratic values in the Member States. In the EU framework, democracy is protected by the primary EU law, by the national laws, and by the conventions that the EU has signed. More specifically, the EU democratic values, the fundamental rights and the rule of law are guaranteed by the set of constitutional principles and rules of the Member States, by the European Convention on Human Rights (and by the decisions of the ECtHR), by the founding Treaties of the EU, the European Charter of Fundamental Rights, by the Council of Europe, particularly with the Venice Commission, and the jurisprudence of the Court of Justice of the EU.

The EU legal order provide the institutions with different mechanisms that can be used in case of breach of the rule of law by a Member State, and these can be divided into legal and political mechanisms.

The legal tools are the Article 7 TUE procedure and the infraction procedures, while the political tools – which have no legally binding effects – are the initiatives by the institutions which aim at enhancing and upholding the monitoring and the prevention of the democratic and rule of law shortcomings: Commission’s Rule of Law Framework (2014), The Council’s Annual Rule of law Dialogue (2014) and the Commission Communication on Further strengthening the Rule of Law within the Union (2019).

These are political initiatives that the institutions have envisaged to respond to the threats of democratic deficiencies in the Member States. By using, more or less efficiently, the tools available in the EU legal and political framework, the institutions have addressed the phenomenon of the recent cases of breach of democratic values and rule of law in the three most relevant cases of democratic backsliding: Hungary, Poland and Romania

The debate on strengthening rule of law in the European Union did not develop only among the Council and the Commission, but the European Parliament has also made a major contribution in this debate and the Parliament has played a vital role in this context. On several occasions, the European Parliament has requested that EU countries could be regularly assessed on their compliance with the fundamental values of the EU as well as the requirements of democracy and the rule of law.

As the Parliament plays a role in the strengthening the respect of the rule of law and democracy in the Member States and it can make use of the instruments at hand in the EU institutions to counter the shortcomings and since it is at the heart of EU-level of political contestation and it is also a fundamental source for institutional pressure on democratic backsliding (Sedelmeier: 2017), it was interesting to see how MEPs have reacted by expressing their vote when called to give their preference on protection of democracy in motions for resolutions and in legislative proposals.

The dataset was created on purpose to examine these nine legislative acts. In order to properly collect the votes, the collection of data has been focused on the identification of the MEP, with the name and surname, Member State belonging, regional belonging between West and East (see Figure 3) , and European party group and, ultimately, the set of votes in the cases selected. The analysis has been carried out taking into consideration nine legal acts concerning the rule of law and addressing the issue of erosion of democracy in the Member States. More specifically, the nine cases regard the rule of law situation in three Member States (Hungary, Poland and Romania), one EP resolution for the establishment of a mechanism for

strengthening democracy and the rule of law and the latest Commission proposal for the protection of the budget in case of breaches of rule of law.

Due to the special nature of the EP, analysing the dynamics of the parliament is not as easy as for national parliaments. In the 8th EP, party politics consisted of competition between eight transnational party groups, each consisting of multiple national member parties (more than 220 in total) from the 28 Member States. For this reason, the MEPs substantially differ from national MPs because they have a two-fold nature: they answer to both national and EPGs principal, thus creating a dual agent problem (McElroy and Benoit: 2012). The aggregation of data has thus followed these two aspects. Firstly, we have aggregated the MEPs vote divided into Member States belonging to assess the hypothesis on the West-East dividing line, and secondly, we have aggregated the MEPs vote into European Party Groups to assess their ideological coherence. The dataset is one and serves as the basis of analysis for both the hypothesis and all the tables and figures that appear in this third chapter.

The first hypothesis, based on the theoretical framework and the literature of the first chapter, aims at assessing whether there is a division into regional blocs alongside an East-West line in the vote of the MEPs in the nine cases selected for this study, to see if the CEECs show compact support or opposition to the matter on a national bases.

From a statistical point of view, this relation does not hold true and as largely acknowledged in the literature (Hix), this shows that nationality is thus not the key influential factor in the voting behaviour of MEPs. Even though the relation has not shown to have meaningful result, it is still interesting to be examined as we can see a general trend that somehow confirms that the CEECs are generally supported less the cause of protection of democracy in the nine cases. This outcome is however interesting because by aggregating the data according to the territorial blocs, taken together Western countries on the whole have voted 73% of the time positively, while the Central and Eastern countries only 52% (Table 4). Thus, even though we have proven that the nationality does not really play a role in the voting behaviour of the MEPs, this last outcome gives an indication of the general regional trend.

We have thus reverted to a second hypothesis to understand if a possible correlation between voting behaviour and political belonging of the MEPs could be found. While the first hypothesis concentrates on the nationality of the MEPs, the second regards the MEPs' ideological affiliation to European Party Groups (EPGs). Indeed, the second hypothesis bases on the literature on the voting behaviour of MEPs, party policy positioning and coherence among EPGs.

The analysis is being carried out by analysing the three dimensions of left/right, green-alternative-libertarian/ traditional-authoritarian-nationalist (GAL-TAN) and pro- or against-European integration. If there has been positive results in the first two dimensions, proving that it is identifiable a division of the votes into a left/right (with the isolation of left and right groups) and GAL-TAN dimensions (respecting the expected division in three defined categories GAL/middle/TAN), we have found instead that the pro- or against- EU integration has not a relatable result in particular for what concerns the voting behaviour of the left GUE/NGL and the centrist EPP. Indeed, the MEPs of GUE/NGL, that is not a pro-European integration Party, have shown their support even more than the EPP (75,1%, while EPP 72,8%) while we expected to see greater support by EPP and lesser support from the GUE/NGL.

Given this negative outcome, the research continues with a second hypothesis to understand if a possible correlation between voting behaviour and political belonging of the MEPs can be found. While the first hypothesis concentrates on the nationality of the MEPs, the second regards the MEPs' ideological affiliation to European Party Groups (EPGs). The analysis is being carried out by analysing the three dimensions of left/right, green-alternative-libertarian/ traditional-authoritarian-nationalist (GAL-TAN) and pro- or against- European integration. If there has been positive results in the first two dimensions, proving that it is identifiable a division of the votes into a left/right (with the isolation of left and right groups) and GAL-TAN dimensions (respecting the expected division in three defined categories GAL/middle/TAN), we have found instead that the pro- or against- EU integration has not a relatable result in particular for what concerns the voting behaviour of the left GUE/NGL and the centrist EPP. Indeed, the MEPs of GUE/NGL, that is not a pro-European integration Party, have shown their support even more than the EPP (75,1%, while EPP 72,8%) while we expected to see greater support by EPP and lesser support from the GUE/NGL.

In the light of this last outcome, the last paragraph is a case study on the EPP voting behaviour aimed at assessing whether the Party has acted differently depending to the cases. A comparative analysis between the legal acts addressing Poland and Hungary has proven that the EPP has had a peculiar attitude: the result is really significative. For the four cases related to Poland, the EPP has voted on average 82,6% of the time positively, while for the cases related to Hungary only 46% (see Table 14). It is clear that the Party has had a different voting attitude depending on the cases addressed.

To interpret this interesting outcome, we reverted to the regime juxtaposition literature debate on how to explain the existence of subnational authoritarianism within nationally democratic

regime. Many scholars demonstrate that authoritarian enclaves can persist at state level within democratic federal regimes. Gibson (2005) describing that in the world there is unevenness of the territorial distribution of the practices and institutions of democracy within the nation-state system, interestingly defines the “regime juxtaposition” as the «situation where two levels of government with jurisdiction over the same territory operate under different regimes, understood as the set of norms, rules, and practices that govern the selection and behaviour of state leaders».

An authoritarian leader in an EU Member State who delivers votes to an EU-level political coalition (the European party group in our case) may not be targeted and exposed publicly (as in this case by voting for the adoption of resolutions on the situation of democracy in the State or - even more - for triggering the Art 7 procedure) by its EU-level co-partisans who will be instead encouraged to tolerate the Member State's democratic backsliding and protect it from being exposed. The European Party Groups containing MEPs from parties which are in power in illiberal governments (ECR for Poland and EPP for Hungary) protect them against the EU initiatives of condemning illiberal instances to protect the local autocrats (Sedelmeier:2017). Indeed, autocrats deliver needed votes and seats to the coalitions at the European Parliament. We have seen this in Table 17 when comparing the percentage of positive votes by EPP MEPs in the two cases Hungary and Poland. It is clear that the EPP's aim was to protect Fidesz, as for the first legal act, the Resolution on the situation in Hungary (17 May 2017) only 33,7% of the MEPs gave their preference to the positive vote of the Resolution. In other words, only one EPP MEP in three has supported the resolution, while 2 in 3 have opposed. For what concerns the second resolution, concerning the proposal on calling on the Council to launch Art 7(1) (12 September 2018) only one in two has voted positively.

This is interesting for us as it seems to describe what happened with EPP and the decision to freeze the membership of the Fidesz MEPs. The standstill situation was creating some doubt and political instability within the Party that a change of direction was necessary. Gervasoni (2005) suggests that the intervention is made when the political liability of the autocrat's allies at federal level is threatened. Indeed, the standstill situation was creating some doubt and political instability within the Party that a change of direction was necessary.

We can read in this light the decision taken by the EPP Political Assembly with 190 votes in favour and 3 against on the 20 March 2019 to suspend the membership of the party Fidesz with immediate effect.

To conclude, we have seen from the one side the uncertainty of the sanctioning system in the Member States and its unbalance with the pre-accession, and on the other side the EU instruments that the EU can use to protect democracy in the Member States. Once the EU takes measures to address the authoritarian drifts, the problem of the political will, or rather of the reluctance to censure a backsliding government became real. Indeed, as Sedelmeier (2017) concludes, the EU success in pressing for changes in undemocratic practices was limited to some countries under specific conditions (mainly limited to the Polish case) and party politics played a decisive role as the ECR has shown less resistance to publicly opposing the PiS, while this is not happening for Hungary, as we have discovered in case study of paragraph 3.4.3. Also Kelemen (2017) assesses that the EP has not addressed all the authoritarian drifts of the Member States equally suggesting that treatment of the Member States has been different and this is backed by the result we have shown (Sedelmeier: 2013,2017; Kelemen: 2017).

We can thus conclude that making EU politics more partisan may turn out to be less efficient when it comes to sanctioning for democratic backsliding