E-PAPER

From democratic resilience to democratic security

A post-2024 democracy agenda for the EU

By Sophie Pornschlegel
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About the author

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Executive summary

In 2019, the newly elected president of the European Commission, Ursula von der Leyen, decided to establish a democracy portfolio with a direct Vice-President in charge of it. While democracy had been enshrined in the EU Treaties for quite some time, the topic was not seen as a policy field that the EU had to work on beforehand. However, in view of the rapid democratic backsliding across EU Member States, the Commission proposed an ambitious agenda. Looking back at the 2019-2024 mandate, the Commission managed to deliver on many of its proposals; and it went further than initially planned in the 2019 political guidelines.

The successful adoption of new policies and instruments happened in a context in which several crises affected the EU's ability to focus on this policy field – most notably Russia's full-scale invasion of Ukraine – despite making the issue potentially more salient overall. Between 2019 and 2021, the Commission proposed several new pieces of legislation, initially set out in the European Democracy Action Plan. Between 2022 and 2024, the pace slowed down. In addition, the Commission started to focus mostly on foreign threats, all the while not paying much attention to domestic threats. This was particularly the case for the Defence of Democracy package, which was not adopted before the June 2024 European elections, and was criticised by civil society and European parliamentarians alike. Additionally, the state of democracy in Europe further degraded between 2019 and 2024 and anti-democratic forces gained ground.[1] Against this backdrop, the pace of EU legislation to defend democracy can be seen as largely insufficient to counter the speed of the backsliding, which is intentionally undertaken by certain political actors, domestic and foreign, with the objective to achieve state capture, fragment societies and weaken the EU.

Based on the 2024 political guidelines and mission letters to the new Commissioners, the EU's approach towards democracy seems to have shifted from a focus on democratic resilience towards democratic security.[2] While this slightly changed approach is understandable in view of the threats, such as disinformation and foreign interference, the EU institutions will have to double, or even triple, their efforts to ensure that democracies are protected from both authoritarian decision-makers within the EU and from third countries' interference, which undermine democratic processes in Europe.

To do so, the EU should consider strengthening democracy as a strategic policy field, relevant for citizens' well-being, for a striving European economy and for national security. In the next mandate, the European Commission should propose an ambitious democracy agenda, which focuses on all aspects of democracy: rule of law, media freedom, disinformation, anti-corruption, electoral integrity, and aspects of accountability and transparency in EU institutions, as well as improving citizen participation at EU level and investing in civic education. While all these aspects are mentioned in the existing official documents at the beginning of the mandate, it remains to be seen whether the Commission will follow

up on this discourse with ambitious initiatives, or whether it will consist mostly of political announcements. Based on the assessment of the new political guidelines and mission-letters for the new Commissioners, it looks like the EU plans to focus mostly on external threats to democracy – election meddling and online disinformation – rather than the domestic threats stemming from far-right parties and organisations in their ecosystems, such as the 'Identitarian Movement'.

After a thorough examination of the EU's 2019-2024 democracy agenda, this study presents recommendations for the next legislative cycle. First and foremost, democracy should under no circumstances be considered an obstacle for effective policymaking and crisis management. The Commission should use all the tools and instruments at its disposal to safeguard democracy and sanction those who do not respect the values enshrined in Article 2 of the Treaty on the European Union (TEU), while ensuring full compliance and enforcement of its own legislation in the field, for instance to counter disinformation. It also should more systematically assess and regularly review its response to democratic backsliding to avoid a weaponisation of its own legislation, ensure appropriate funding is allocated to this policy field and ensure alignment of all EU legislation with democratic standards, especially in the field of migration and asylum policy. The planned European Democracy Shield should try to respond to both domestic and foreign threats alike.

In addition, the EU will have to get its own house in order after the Qatargate scandal, and ensure that democratic standards are upheld with higher accountability and transparency rules in all the institutions. In particular, the European Council and the Council of the EU should stop politically instrumentalising EU values by viewing them as bargaining chips to reach political agreements in other policy fields, such as foreign and defence policy. Lastly, the EU institutions should improve the EU's internal governance on democracy, both within their own administration and in the inter-institutional relations. In particular, the EU institutions will have to be more strategic and streamlined in their way of tackling the issue – for instance by establishing a task force for democracy within the Secretariat General of the European Commission, and/or ensuring that the new Executive Vice-President in charge of democracy has sufficient leverage to 'mainstream' democracy within all EU policy fields. In particular, EU Member States that are still considered stable democracies, such as France, Germany, Spain, the Netherlands and Sweden, should support the EU's efforts in safeguarding what has been one of the biggest achievements of the past centuries and allowed European countries to live in peace together, namely democracy.[3]

Abbreviations

ACM – Netherlands Authority for Consumers and Markets

CAP – Common Agricultural Policy

CASE – Coalition Against SLAPPs in Europe

CDU – Christian Democratic Union

CERV – Citizens, Equality, Rights and Values

CSDP – Common Security and Defence Policy

CSOs – Civil Society Organisations

CSU – Christian Social Union

CVM – Cooperation and Verification Mechanism

DG JUST – Directorate-General for Justice and Consumers

DMA – Digital Markets Act

DSA – Digital Services Act

DSCs – Digital Services Coordinators

EACEA – European Education and Culture Executive Agency

ECHR – European Convention on Human Rights

ECJ – European Court of Justice

ECR – European Conservatives and Reformists

EDAP – European Democracy Action Plan

EEAS – European External Action Service

EIRN – European Interest Representation Number

EMFA – European Media Freedom Act

EP – European Parliament

EPP – European People's Party

EPPO – European Public Prosecutor's Office

ERGA – European Regulators Group for Audiovisual Media Services

FRA – Fundamental Rights Agency

MdB – Member of the German Parliament, German: Mitglied des Deutschen Budestages

MEP – Member of the European Parliament

MFF – Multiannual Financial Framework

RRF – Recovery and Resilience Facility

SGP – Stability and Growth Pact

SLAPPs – Strategic Lawsuits Against Public Participation

TEU – Treaty on the European Union

UAE – United Arab Emirates

VLOPs – Very Large Online Platforms

VLOSEs – Very Large Online Search Engines

Publisher's foreword

In a recent interview, Věra Jourová, the (soon to be) former European Commission Vice-President for Values and Transparency, reflected: "In 2019 we still lived with the conviction that democracy cannot be seriously endangered." Five years later, that conviction is gone.

Democracy and democratic institutions have become visibly more brittle in the European Union. These days, the EU faces a complex cascade of democratic internal and external challenges including democratic backsliding, rising hate speech, and the erosion of the rule of law in various EU Member States, along with foreign interference, hybrid threats and disinformation.

It is against this backdrop that we are pleased to publish the study 'From democratic resilience to democratic security: A post-2024 democracy agenda for the EU'. Understanding the scope and effectiveness of the European Commission's past efforts is essential to defending democracy against its internal and external adversaries. In this vein, this research offers a timely and critical review of the European Commission's democracy agenda from 2019 to 2024, evaluating the measures and initiatives adopted, while offering clear recommendations for the future.

The author, Sophie Pornschlegel, Deputy Director at Europe Jacques Delors and a lecturer at Sciences Po Paris, draws on years of research and field experience, to provide an authoritative perspective on the challenges and opportunities facing European democracy.

The findings and the discussion of this study aim to offer valuable guidance for shaping a robust, future-proof democracy agenda for the next five years. A notable theme is the tension in Ursula von der Leyen's framing of democracy as closely tied to security. This is exemplified by the proposal for a 'European Democracy Shield' to protect against foreign interference and disinformation, and the risk that this focus on external threats may overshadow the need for internal reflection on the state of democracy within the EU. Can external defences alone truly safeguard democracy, or is a broader internal strategy required?

Looking ahead to the next legislative cycle, this study serves as both a reflection and a call to action. It urges the EU institutions to redouble their efforts to protect democratic values, to ensure that the legislative tools at their disposal are fully implemented and enforced, and to guard against a counterproductive weaponisation of democratic instruments.

At the Heinrich-Böll-Stiftung's European Union Office, we are delighted to have collaborated with Sophie Pornschlegel and would also like to extend a special thanks to Anna Lührmann, Minister of State for Europe and Climate at the German Federal Foreign Office, for her insightful introductory remarks that underscore the political salience of this issue.

We encourage readers to engage with the findings of this study and hope that it will inspire meaningful actions by the incoming European Commission and policymakers.

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October 2024

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Introductory remarks

How do we strengthen our democracies?

A few years ago, one might have asked why we at the Foreign Office are concerned with the state of democracies in the European Union. Today, this has become a pivotal question for Europe. The state of our democracies and foreign policy questions are closely linked. European societies are challenged by disinformation. Yet, strong democracies thrive on active, informed citizens and a civil society that gets involved. At the same time, our freedoms are under pressure within some EU Member States. Polarisation and division are increasing in the European Union.

The European Union as well as national governments must respond to these developments. Firstly, because a strong democracy is the best protection against attempts at foreign influence. We must therefore strengthen networks of civil society and participatory democracy. The more people are involved in decision-making processes, the less they are to believe false information. As a result, attempts of manipulation are less effective. Moreover, media literacy plays a major role in ensuring that democracies function well. Our civil society must be enabled to identify reliable information. It is not our task as governments to decide what information is true or false. But it is our responsibility to protect the freedom of democratic debate.

Free access to reliable information is the foundation of democracy. Therefore, we must invest more resources in uncovering the mechanisms of information manipulation. In the German Foreign Office, we have enhanced our capacity to detect disinformation, such as with the 'Doppelgänger' campaign – a Russian disinformation operation producing false official websites to undermine support for Ukraine. At the EU level, we have also implemented regulatory measures to hold platforms responsible, such as the Digital Services Act. But we know it takes an alliance of all democratic minds to defend our freedoms against external interference, because civil society is the backbone of our democracy.

To be resilient, we must also strengthen rule of law within the EU. It is the foundation of a free and democratic Europe. The rule of law enables the protection of our fundamental values, strengthens our economies, and it guarantees the free exchange of opinions. That is what autocrats fear. And that is why they attack the very foundation of our values. Therefore, we cannot accept an erosion of the rule of law within in the EU. It is a fundamental part of who we are as the European Union. That is why Germany has worked hard to ensure that the EU strengthens its instruments to protect the rule of law. Some progress has already been made, but we must continue along this path. Anyone who does not adhere to our fundamental values must face consequences.

All these aspects are covered in this study. That is what makes it so valuable. And that is what we currently need: concrete ideas, proposals and discussions about how to strengthen our democracies. After all, strong democracies thrive on active and informed citizens, on open debate, and a civil society that gets involved. Or to say it with the words of Heinrich Böll "Getting involved is the only way to stay relevant."

October 2024

Dr. Anna Lührmann MdB
Minister of State for Europe and Climate
German Federal Foreign Office

1. Introduction and methodology

Rapid democratic backsliding is a relatively new phenomenon in Europe compared to the previous decades, but it reflects a broader trend: according to Freedom House, 2024 counts as the 18th year of steady democratic decline worldwide.[4] Until 2019, the European Commission had touched upon the topic when issues arose but in an unstructured manner, without necessarily following a systematic approach. Democracy was considered self-evident, and something unshakeable that would never be called into question.[5] For instance, Article 7 of the TEU – the suspension of voting rights in the EU Council for the non-respect of the values of the Union – was seen as an almost unimaginable scenario when the Lisbon Treaty entered into force in 2009. This widely shared belief among decision-makers is one of the reasons why the EU missed the opportunity to respond adequately to the first signs of backsliding within its Member States.

During von der Leyen's first mandate, a neo-fascist party rose to power in Italy, and yet another conservative party, Forza Italia, decided to break the 'cordon sanitaire' policy with the far right. The far right also joined government coalitions in the Netherlands, with Geert Wilders' Party for Freedom, and in Sweden, with the Sweden Democrats. The French Rassemblement National managed to get over 40% of the votes in the 2022 presidential elections. In Germany, the far-right Alternative for Germany won over 30% in the regional elections in Thuringia and Saxony in September 2024, even though they openly follow a national-socialist ideology and are under supervision of the domestic security services for anti-constitutional activities. In Greece, media pluralism has been drastically reduced and journalists illegally put under surveillance.[6]

Democracy in Europe has also increasingly come under attack by external actors. Russia's war of aggression against Ukraine has heightened our exposure to Russian hybrid warfare, with known interference in electoral processes across Europe, large-scale disinformation campaigns and funding of far-right political parties in several EU Member States, as well as cyberattacks and attacks on infrastructure in Estonia, Germany, France and Finland. Russia is not the only country which tries to gain undue influence in Europe, with the objective of weakening democracy and the EU. While it has received much less public scrutiny, China has also been trying to instil its authoritarian ideals in Europe, in addition to practising economic espionage for years and gaining more and more access to critical infrastructure.[7] Similarly, Qatar, the United Arab Emirates (UAE) and Iran are also trying to influence European states far beyond the means of public diplomacy. The latest example of foreign interference was the Russian covert influence operation with the Voice of Europe media outlet, which the Czech government discovered was involved with Russian oligarchs close to the Kremlin. In addition, Putin's regime allegedly approached several Members of the European Parliament (MEPs) and paid them to spread Russian propaganda.[8]

For a long time, democracy was not considered a policy field as such, mostly because there seemed to be no need for it: it was one of the core assumptions for the construction of the EU, as set out in the Copenhagen criteria to join the EU, as well as in the EU Treaties, as set out in Article 2 of the TEU.[9] However, with the collision course of Hungary and Poland

with the EU, the European Court of Justice (ECJ) started to define in more detail what exactly these values entail. The fact that democracy is not considered a traditional policy field in the way that agriculture or cohesion policy are has led to certain shortcomings in the EU's response so far. For instance, the EU considered democracy, human rights and rule of law as separate items for a long time. It also had to face new problems, which were not even on the agenda beforehand: disinformation and foreign interference in elections only became a problem with the spectacular rise of social media platforms such as Facebook, X, Instagram and TikTok. In addition, the EU institutions – aware of its limited competences – mostly looked at rule of law issues through the lens of the single market. As a result, the erosion of the rule of law was not considered systematically, and the EU only acted when it saw the implications for threatened businesses, rather than for citizens as well.

Hence, the EU did not necessarily consider itself in charge when Member States started systematically infringing on Article 2 of the TEU. And when it reacted, it did so very reluctantly for a very long time, aware that this would be not only be a sensitive topic to address, but would anger Member States, therefore having an impact on the relations between the European Commission and the EU Council, as well as within the EU Council itself. The EU also initially worked with a very limited toolbox of instruments. For a very long time, Article 7 of the TEU was the only mechanism available for the EU to penalise Member States that did not respect EU values. The EU Justice Scoreboard was only established in 2012. In 2015, the European Parliament passed a resolution asking for the creation of an annual monitoring of compliance with democracy, the rule of law and the situation of fundamental rights.[10] Other aspects, such as media pluralism, the protection of an independent civil society and countering disinformation, were not considered at all.

While the EU's approach has slowly shifted in the 2019-2024 mandate, it will have to continue to build capacity and strengthen this relatively new policy field in order to defend democratic standards across the 27 Member States and within its own political system in the coming years. This study intends to contribute to this objective. First, it takes stock of the main initiatives taken in the 2019-2024 mandate, from the European Democracy Action Plan to the Defence of Democracy Package, as well as initiatives in the field of media pluralism, countering disinformation and increasing citizen participation in EU decision-making. In the second part of the study, the author lists a number of recommendations on how the EU could move forward with its democratic agenda, taking into account the changed geopolitical and domestic political contexts.

While this study is a stocktaking exercise of the past mandate, there was nevertheless a need to limit the scope. The author decided to focus on those initiatives in which the EU had the most competences and left out the ones in which the EU's scope of action was more reduced in terms of proposing hard law. As such, the study does not assess the strategies of the Commission on combating discrimination, such as the range of new strategies that were published in the past mandate (e.g. on combating antisemitism, the Roma Strategic Framework or the Equality Strategy for LGBTQI). Please note that this does not in any case correspond to a hierarchisation of topics in terms of relevance, but simply a choice based on the author's expertise and the limitations of this project in terms of scope.

This study is based on desk research, carried out during the summer of 2024, as well as a range of interviews with practitioners and decision-makers at the EU level. For the research, the author, with the support of an assistant, researched and analysed a range of different initiatives and their progress, and had a closer look at the different assessments and positions from stakeholders on these files. In addition, the author conducted a range of interviews to better understand and assess the current state of play and to discuss potential improvements with decision-makers and civil society experts. In the framework of this research project, the author also conducted an interview with the Vice-President for Values and Transparency, Věra Jourová, which was published at the end of August 2024.[11]

2. Looking back: the EU's democracy agenda in the last legislative term (2019-2024)

In 2019, Commission President Ursula von der Leyen presented democracy as one of the six priorities in her political guidelines, under the heading 'A new push for European democracy'. The appointment of Věra Jourová as Vice-President for Values and Transparency, and of Dubravka Šuica as Vice-President for Democracy and Demography, highlighted her dedication to the topic.

Besides these two appointments, the Commission made some ambitious proposals throughout the legislative term. First, the European Democracy Action Plan (EDAP) was presented one year after the Commission took office, in December 2020; the European Media Freedom Act (EMFA) and the package to protect journalists from strategic lawsuits followed in September 2021. It was followed by the Defence of Democracy package at the end of 2023, as well as several legislative proposals to counteract disinformation and foreign interference.

Lastly, the Commission organised a Conference on the Future of Europe, which ran from April 2021 to May 2022, and which was a first serious attempt at increasing citizen participation in the EU.[12] After Russia's full-scale invasion of Ukraine in February 2022, the EU's focus in the field of democracy gradually shifted towards more security-related issues, which are now largely dominating the Commission's new political guidelines for the next legislative term (2024-2029). In the following chapter, this study will review the different measures the EU took from 2019 to 2024, analyse their scope and use, and assess the progress made so far.
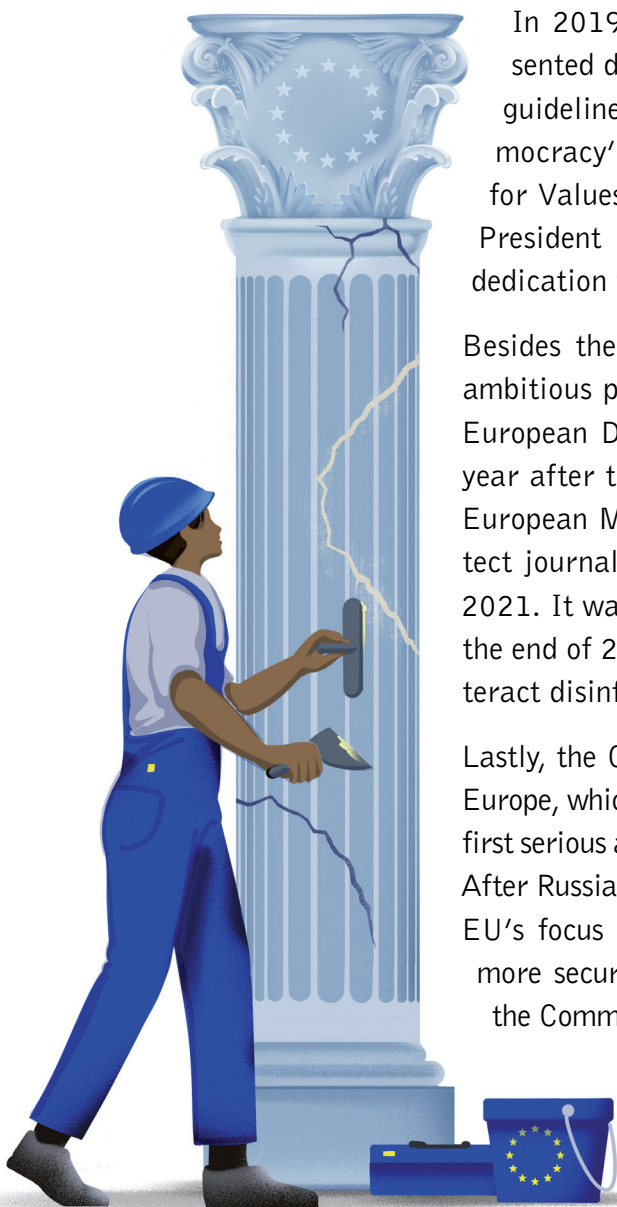
Table 1: Overview of the European Commission's main legislative packages 2019-2024

Date	02.12.2020	25.11.2021	12.12.2023
Name	**European Democracy Action Plan**[13]	**Reinforcing Democracy and Integrity of Elections Package**[14]	**Defence of Democracy Package**[15]
Objectives	• Protect the integrity of elections and promote democratic participation • Strengthen media freedom and media pluralism • Counter disinformation, foreign interference and information influence	• Clear rules on transparency and targeting of political advertising • Update of EU rules on EU political parties and foundations, and on electoral rights	• Ensure transparency of foreign interest representation • Strengthen electoral processes in the EU • Foster inclusive participation of citizens and civil society organisations in public policymaking
Includes	• Regulation on transparency and targeting of political advertising • Revision of the regulation on the funding of European political parties • A new operational mechanism for electoral resilience through the European Cooperation Network on Elections • A recommendation on the safety of journalists to be presented by 2021 • Anti-SLAPP directive • Strengthening the Code of Practice on Disinformation	• Regulation on transparency and targeting of political advertising • Recast regulation on the statute and funding of European political parties and European political foundations • Recast directive on the right to vote and stand as a candidate in elections to the European Parliament and recast directive on the exercise of the right to vote and to stand as a candidate in municipal elections	• Proposal for a directive on Transparency of Interest Representation on behalf of Third Countries • Proposal for a regulation accompanying this directive • Recommendation on promoting the engagement of citizens and civil society organisations in public policy-making processes • Recommendation on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament

2.1. An ambitious European Commission put democratic resilience at the forefront of the new mandate

In the political guidelines in 2019, the Commission president proposed measures aiming at increasing citizen involvement in EU political processes and strengthening the democratic character of EU decision-making, and promised 'more transparency and scrutiny' by creating an independent ethics body. It also announced the European Democracy Action Plan, which was to include legislative proposals setting out rules on the transparency of political advertising and the funding of European political parties.[16] While the Commission's political guidelines covered quite a lot of ground, it very much focused on the EU institutions themselves and little on the threats democracies face at the national level. The Commission's work on rule of law was not part of the chapter on democracy in the 2019 political guidelines, but under the pillar 'Promoting a European way of life'.[17] There, the Commission announced that it was "making rule of law an integral part of the Multiannual Financial Framework" and an "additional comprehensive European Rule of Law Mechanism with reporting requirements".

In terms of work distribution between the different Commissioners in charge of this agenda, Věra Jourová, as Vice-President for Values and Transparency, was tasked with coordinating several threads: the EDAP, the work on disinformation, media freedom and pluralism, as well as the rule of law, and monitoring the upholding of the EU's Charter of Fundamental Rights.[18] However, these tasks would have to be tackled in close cooperation with the Commissioners in charge of the various policy fields on which these initiatives touch upon: with the Commissioner for Justice, Didier Reynders, on rule of law; with the Commissioner for Budget, Johannes Hahn, and Elisa Ferreira, Commissioner for Cohesion, on the rule of law conditionality mechanism; and with Commissioners Thierry Breton and Margrethe Vestager on the digital files. Jourová also had to coordinate the work on anti-discrimination with Commissioner for Equality Helena Dalli, and on migration and fundamental rights with Ylva Johannsson and Margaritis Schinas. This already shows the difficult coordination task at hand, and the difficulties of streamlining the Commission's work.

Besides Jourová, the Vice-President for Democracy and Demography, Dubravka Šuica, was tasked with leading the Commission's work on the Conference on the Future of Europe as an effort to promote citizen participation in the EU.[19] While her portfolio seemed more straightforward, it came with little to no access to Directorate-Generals within the Commission, hence giving little budget and leverage to her portfolio.

The inclusion of democracy as a key focus in the Commission's political guidelines and the appointment of two vice-presidents in her College of Commissioners demonstrated von der Leyen's ambition in the field, at least compared to her predecessors. This ambitious agenda was quickly set in motion, with the first comprehensive legislative package already published one year after being in office, in December 2020.

2.1.1. The foundational legislative package: the European Democracy Action Plan

The European Democracy Action Plan was presented by the Commission on 3 December 2020 as one of the major initiatives of its 2020 Work Programme.[20] The EDAP sets out measures relying on three different pillars: protecting election integrity and promoting democratic participation; strengthening media freedom and media pluralism; and countering disinformation. It was the first strategy to focus on strengthening democracy. In addition, the EU went further than initially planned in certain fields – especially on the rights of mobile citizens in EU and municipal elections, and on the European Media Freedom Act.

The Commission was also fairly successful in the adoption of the different measures set out in the EDAP. As of December 2023, 20 out of 30 initiatives foreseen had been completed, seven were still in progress and three had not been started.[21] Unfortunately, the full adoption of legislation proposed in the EDAP was affected by the multiple crises that hit the EU, in particular Russia's war of aggression in Ukraine, which caused significant delays and prevented some actions from being completed. For instance, not enough progress has been made on e-voting and the disenfranchisement of voting for European citizens with a disability. In addition, there was a lack of transparency in some procedures, such as the establishment of the media literacy expert group and the toolbox on countering foreign interference.

2.1.2. Strengthening the EU's rule of law toolbox: the annual rule of law report and the rule of law conditionality regulation

Besides the European Democracy Action Plan, the launch of its first ever annual Rule of Law Report was another measure the European Commission underlined as one of its main initiatives to protect democracy.[22] Announced in a communication in July 2019, the Rule of Law Report's main objective is to be a preventive tool to monitor significant developments in all 27 Member States.[23] While this tool is helpful to get a full picture of the situation in all the Member States, many civil society organisations and academics criticised that another preventive mechanism was not adapted to the current situation of the EU, where several Member States are far beyond the initial point of backsliding.[24] It was also initially criticised for using soft language and euphemisms to describe what has been a year-long and systematic destruction of democracy in Poland and Hungary.

Throughout the 2020-2024 period, improvements have been made in response to this criticism. For instance, new topics were added, such as review of the implementation of judgements from the European Court of Human Rights, and country-specific recommendations were introduced from 2022 onwards.[25] However, there still is significant room for improvement, in particular by broadening the scope of the Rule of Law Report's four pillars (justice system, anti-corruption framework, media pluralism and institutional issues related to checks and balances), as well as by enhancing its rec-

ommendations' specificity, timeliness and enforceability.[26] Most importantly, the European Commission should be aware that it is not merely its role to 'monitor' democratic backsliding, but to act on it, as the Commission is the Guardian of the Treaties and thus has a responsibility to do so.

In addition to this new report, the other major development in the field of rule of law in the past mandate was the adoption of the rule of law conditionality mechanism. The regulation was adopted on 16 December 2020, after difficult negotiations in the EU Council, and entered into force in January 2021. In particular, Hungary and Poland did not want to accept the new regulation, which would apply to the Recovery and Resilience Facility (RRF) as well as regular EU funds such as cohesion and structural funds, from which Hungary and Poland largely benefit. Due to this opposition from Hungary and Poland, the EU institutions decided to reverse the regular legislative procedure: the Commission had to wait for a ruling by the European Court of Justice before finalising the guidelines to apply the conditionality mechanism. In the meantime, Hungary and Poland unsuccessfully brought legal action before the EU Court, seeking to annul the rule of law conditionality mechanism in March 2021.[27]

The regulation's objective is to protect the EU's financial interests, and as such allows for reduction, suspension, or even prohibited access with regard to EU funding when breaches of the rule of law are detected.[28] Unsurprisingly, the Commission decided to apply the conditionality mechanism to Hungary in December 2022, when the Commission proposed to freeze around €22 billion of EU cohesion funds destined to Hungary, or 65% of three cohesion programmes. In the end, the Commission decided to hold back a much smaller amount of €6.3 billion.[29] However, one year later, in December 2023, the EU decided to release more than €10 billion of frozen funds to Hungary. The official reason was because the Commission considered that Hungary had implemented the required changes to its rule of law. In practice, this decision was taken as a trade-off to ensure Hungary would vote for the €50 billion aid package intended for the ongoing EU support to Ukraine.[30]

The rule of law conditionality mechanism adds an important new instrument to the EU's toolbox, with very real consequences for the Member States that do not respect the rule of law within the EU, and can be seen as the main achievement of von der Leyen's first mandate in this field. However, its main shortcoming is that it does not cover all breaches of the rule of law, but only those that have a sufficiently direct economic impact on the EU. In addition, it works in conjunction with certain EU funds, such as cohesion funds or the Recovery and Resilience Facility.[31] Another shortcoming is its political instrumentation, as could be observed in the past mandate. The European Commission and the EU Council can use the instrument to negotiate changes in policy positions in other fields, such as on foreign policy, without applying it equally to other Member States, which might also breach Article 2 of the TEU but are less confrontational in the EU Council. This might, in the long run, undermine the legitimacy of this new conditionality mechanism, as it might be seen as a politically
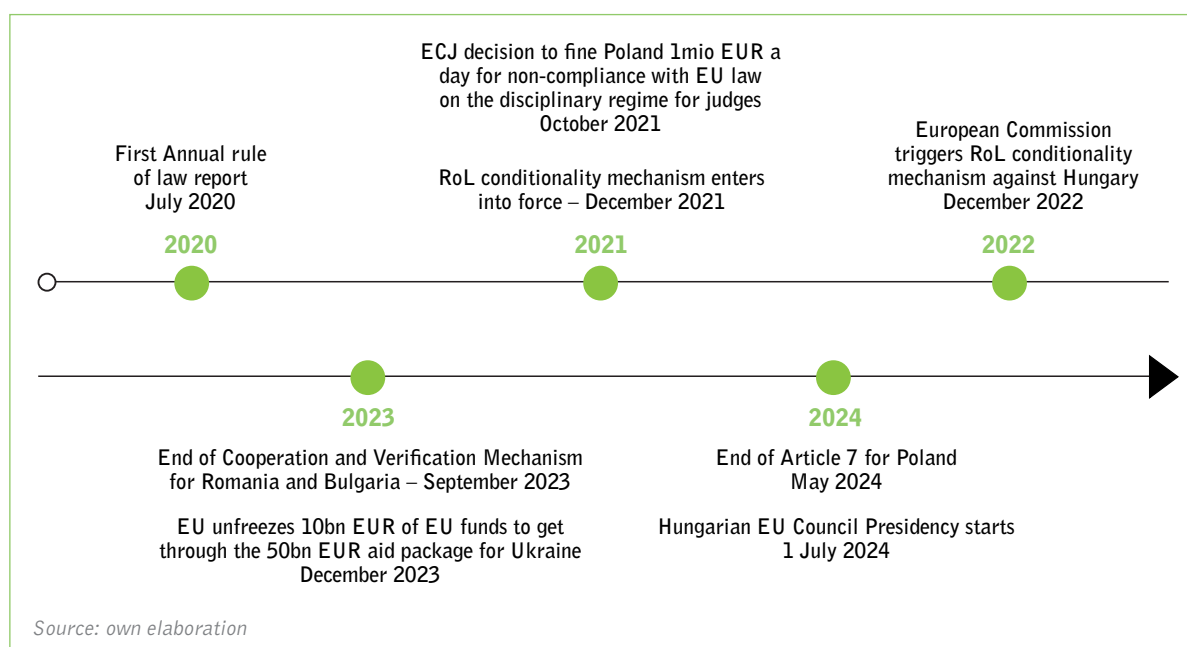
instrumentalised tool for the EU to force Member States towards certain policy positions, and delegitimise the serious concerns of democratic backsliding.

The topic of rule of law remains an extremely sensitive one for the EU, especially since the erosion of the rule of law has been a serious problem in the past years. The Commission has been extremely cautious to not overstep its mark, scared that the EU Council would turn down any proposals to protect EU Treaties and EU interests. The European Parliament (EP) was the most active institution in the field, with several reports published on the state of rule of law in Hungary and Poland; but without much movement from the EU Council, the EP was not able to do much to encourage the 27 Member States to better protect fundamental values. The amount of infringement procedures linked to rule of law violations increased for some countries, as did the non-implementation of the court rulings, which led to harsh financial penalties in some cases. For instance, the decision to fine Poland €1 million a day for its failure to suspend its disciplinary mechanism for judges made headlines, but did not bring the PiS government to review its state capture strategies.[32] While instruments that restrict funding and decision-making powers of Member States that infringe on basic values are the most effective tools at the hand of the EU, eventually the only real safeguard for democracy is to make sure that parties elected to power respect democratic standards. The case of Poland shows that while the EU can limit the damage done by governments that lead the democratic backsliding, they can only go as far. While the Law and Justice Party harmed Polish democracy, they did not manage to destroy it as Viktor Orbán has done with Hungary, a country in which free and fair elections do not take place anymore.[33] As a result, the EU should follow both preventative and remedial procedures: continue to bring forward infringement procedures and apply the rule of law conditionality mechanism, all the while investing much more money in prevention, especially for the countries where it is not yet too late, such as France, Slovenia or Germany.

Besides the annual rule of law report and the rule of law conditionality mechanism, there have been further developments in the 2019-2024 legislature that are worth mentioning. First, some Article 7 hearings took place in the EU Council, in relation to the ambition of the different EU Council presidencies.[34] On a positive note, the Article 7 procedure was stopped for Poland in May 2024, a few months after the Civic Platform of Donald Tusk won the election in Poland in December 2023.[35] In September 2023, the Commission also decided to terminate the Cooperation and Verification Mechanism (CVM) for Romania and Bulgaria, with mixed results as to whether this instrument really helped the two countries improve their rule of law standards and anti-corruption frameworks.[36] The CVM shows that the 'Copenhagen dilemma' continues to be an issue: once countries have joined the EU, there is almost no way to put pressure on them to uphold democratic standards. While Bulgaria and Romania were lagging behind in terms of democratic standards when they joined the EU, there was little incentive for them to improve once they were in.

Most importantly, this past mandate saw an escalation of tensions with Hungary, not on the topic of rule of law itself, but because of Viktor Orbán's position on Russia. While other heads of states and governments had been incredibly lenient towards his government, despite the obvious violations of human rights and rule of law in the past years, there seemed to be a shift when Orbán threatened to disrupt the EU's otherwise united position of supporting Ukraine. The tension peaked in December 2023, when Orbán threatened to veto the €50 billion aid package to Ukraine.[37] Orbán also: threatened to veto opening the accession talks with Ukraine for EU membership; vetoed a joint position by the EU to look into suspected Russian war crimes in Ukraine; and vetoed €6.6 billion worth of funds to reimburse European capitals for weapons through the European Peace Facility. This has led to a serious discussion not only on unanimity on foreign policy decisions, but also on possibilities to circumvent Orbán's obstructionism.[38]

Figure 1: Timeline of the main developments in the field of rule of law (2019-2024)

ECJ decision to fine Poland 1mio EUR a day for non-compliance with EU law on the disciplinary regime for judges
October 2021

European Commission triggers RoL conditionality mechanism against Hungary
December 2022

First Annual rule of law report
July 2020

RoL conditionality mechanism enters into force – December 2021

2020   **2021**   **2022**

2023   **2024**

End of Cooperation and Verification Mechanism for Romania and Bulgaria – September 2023

End of Article 7 for Poland
May 2024

EU unfreezes 10bn EUR of EU funds to get through the 50bn EUR aid package for Ukraine
December 2023

Hungarian EU Council Presidency starts
1 July 2024

Source: own elaboration

2.1.3. Protecting media freedom: the anti-SLAPP directive and the European Media Freedom Act

Media freedom is one of the three pillars of the European Democracy Action Plan, besides election integrity and countering disinformation. While the EU remains one of the safest places on earth for journalists, the EU rightfully understood that media freedom is also threatened in Europe. Right before the start of von der Leyen's first mandate, two journalists were killed in the EU, sparking disbelief and political protests: Daphne Caruana Galizia was assassinated in 2017 in Malta, while investigating corruption charges involving the highest level of government. In 2019, Ján Kuciak was murdered in Slovakia, also in relation to his investigative work on corruption in the Slovak government.

To respond to these shocking developments, the European Commission published a recommendation on the safety of journalists, which focused on protecting them from intimidation and criminal attacks, on 16 September 2021.[39] Shortly after, in April 2022, it also published a package on strategic lawsuits against public participation (SLAPPs), which comprised an anti-SLAPP recommendation and a proposal for an anti-SLAPP directive.[40] This legislative package was a response to the case of Daphne Caruana Galizia, who, at the time of her death in 2017, was facing around 50 lawsuits aimed at preventing her active public engagement.[41] Following her assassination, the advocacy of her family and civil society prompted the Commission to formulate a proposal for a binding legal instrument against SLAPPs. While the anti-SLAPP recommendation focuses on non-legal measures, such as data collection, support mechanism, awareness-raising and training, the anti-SLAPP directive sets clear procedural safeguards for targets of SLAPPs.[42] Measures include an early dismissal mechanism to filter out SLAPPs, the possibility to impose dissuasive penalties on initiators of SLAPPs, damage compensation for targets and the protection against third-country SLAPPs. Although the directive has been welcomed by the Coalition Against SLAPPs in Europe (CASE) and other civil society organisations, its transposition into national law will require additional scrutiny, as the EU's provisions only set a minimum standard of protection.[43]

Besides the work on strategic lawsuits, the European Commission decided to go further than what was originally planned in the European Democracy Action Plan on media freedom, and announced the European Media Freedom Act (EMFA) in the 2021 State of the Union address.[44] Hailed by many civil society organisations as a major step towards the protection of the right to information, it is the first EU regulation specifically dedicated to media freedom and pluralism.[45] The legislative piece aims at protecting media freedom and pluralism by touching upon various aspects. It introduces safeguards for editorial independence, improves transparency of ownership and funding, tackles media market concentrations, plans more protection for media service providers, journalists and sources, and establishes a new European Board for Media Services, replacing the European Regulators Group for Audiovisual Media Services (ERGA).[46] Several amendments improved the legislative proposal during the inter-institutional negotiations (so-called trilogues), such as removing the possibility to deploy surveillance against journalists on the basis of national security and increasing the independence of the European Board for Media Services from EU institutions.[47]

While the EMFA is a crucial piece of legislation to preserve media freedom and pluralism, some issues and gaps remain. For instance, the publicly available national media ownership databases have not yet been created. In addition, certain civil society organisations (CSOs) have criticised media exemption under Article 17, potentially undermining the Digital Services Act (DSA).[48] Others also pointed out that the EMFA is not adapted to the context of every Member State: in the case of Hungary, the regulation is unlikely to bring any substantial improvement to the current situation, as it is more tailored for functioning democracies with media freedom issues

than for actual autocracies.[49] Regardless of these shortcomings, CSOs deem that the EMFA's implementation needs to be carefully monitored and complemented by adequate funding programmes at the EU level.[50]

2.1.4. Countering disinformation: a priority for the European Commission

Countering disinformation was a priority in the EU's democracy agenda in the last mandate and was closely interlinked with the Commission's work to tackle the monopolies of big tech companies, both in the single market and with regard to their effects on the public sphere.

As announced in the European Democracy Action Plan, the Commission released guidance on how to strengthen the existing Code of Practice on Disinformatino on 26 May 2021, learning from the implementation of the initial Code of Practice on Disinformation from 2018 and the Covid-19 'infodemic'.[51] A little more than a year later, in June 2022, the Commission adopted this strengthened Code of Practice on Disinformation, which introduced new non-binding rules on demonetising disinformation and making online political and issue-based advertising more transparent.[52] However, although its intention is commendable, the strengthened Code of Practice on Disinformation still relies upon digital platforms' self-regulatory efforts, hence resulting in unsatisfactory compliance from big tech companies such as Alphabet, Meta, Microsoft, TikTok or X.[53]

With more legislative power than a facultative code of conduct, the adoption of the Digital Services Act (DSA) in October 2022, alongside the Digital Markets Act (DMA), was an important legislative piece to address the issue of online disinformation.[54] The DSA, which includes a range of measures to regulate online services, also comprises measures to prevent online disinformation, including rules on content moderation, the transparency of online advertising and 'recommender' algorithms, as well as risk assessments and mitigation measures, both for Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs).[55] In addition, the European Commission published, in April 2024, a set of guidelines for providers of VLOPs and VLOSEs on the mitigation of systemic risks for electoral processes.[56]

The DSA is a positive step forward in the fight against online disinformation, even if it remains flawed.[57] As CSOs have warned, the DSA entails the risk of excessive content removal by digital platforms attempting to elude any liability due to the 'notice-and-action' mechanism, which empowers users to notify hosting services providers about allegedly illegal content.[58] Furthermore, the DSA's effectiveness will largely depend on its implementation, and how the European Commission, together with the national Digital Services Coordinators (DSCs) and the newly established European Board for Digital Services, will monitor and enforce the provisions.[59] However, signalling that the EU will take enforcement seriously, the Commission has already opened formal proceedings against Elon Musk's online platform X in December 2023 and against AliExpress in March 2024, under provisions that touch upon information manipulation, illegal content dissemination and user profiling.[60]

Additionally to the DSA, the European Commission also made a proposal for the AI Act, which was adopted in June 2024, albeit the final text had already been agreed a little earlier.[61] As the world's first piece of legislation regulating AI, it introduces a framework classifying AI systems in three categories: prohibited, high risk and limited risk. Prohibited AI systems include, for instance, social scoring and real-time remote biometric identification. As for high-risk AI systems, they are either covered by the EU's product safety legislation or explicitly set out in the Act's Annex III, due to their impact on health, safety or fundamental rights. In particular, Annex III foresees two types of high-risk AI systems that may impact democratic processes, such as AI systems used to assist judicial authorities in interpreting and applying the law, or AI systems used to influence the outcome of an election or a referendum.

The AI Act provides some safeguards for fundamental rights protection. For instance, it includes the obligation for deployers of high-risk AI systems to perform impact assessments for fundamental rights ex ante. The AI Act also grants authorities the right to request the testing of a high-risk AI system in case of infringement of the Charter of Fundamental Rights, and grants users the right to obtain a meaningful explanation on a decision made by an AI system.[62] However, for some CSOs, these provisions remain insufficient, as the Act provides loopholes for law enforcement, migration, asylum and border control authorities.[63] Regarding the fight against disinformation and electoral integrity, the AI Act also does not seem to provide sufficient protections, as most AI systems that could pose a threat to elections (e.g. deep-fakes and general-purpose AI systems such as generative AI chatbots like ChatGPT) are not categorised in the 'high-risk' category.[64]

Last but not least, although the Act has been designed to be able to adapt to the ever-evolving landscape of AI systems, its enforcement remains a challenge.[65] As of September 2024, only two Member States – Ireland and Greece – have passed national legislation providing for the labelling of AI-generated content and requiring disclaimers, and in seven Member States, the use of AI-generated content was detected in online campaigning for elections.[66] The impact of AI-generated disinformation could even be worsened by the Act's newly delayed compliance deadlines.[67]

2.1.5. Involving citizens in EU decision-making: the Conference on the Future of Europe

Involving European citizens in EU decision-making was another key priority in the Commission's political guidelines for the last legislative term. This was also reflected in President von der Leyen's mission letter to Dubravka Šuica, whom she appointed as Vice-President for Democracy and Demography.[68] The Commission announced the Conference on the Future of Europe as an exercise to promote deliberative democracy and better include citizens in EU decision-making. Initially planned for 2020 and foreseen to run for two years, the Conference on the Future of Europe was postponed due to the Covid-19 pandemic.[69] Eventually, negotiations on a joint declaration kicked off at the end of June 2020 between the Commission, the European

Parliament and the EU Council, in order to agree on the objectives, content, scope, composition and governance structure of the Conference on the Future of Europe.[70] In a typical EU compromise fashion, it took more than eight months to come to an agreement, especially as the leadership structure, the question of Treaty changes and the follow-up were controversial points. In the joint declaration published on 10 March 2021, the Commission, the European Parliament and the EU Council agreed on the following:

"*The Conference on the Future of Europe is a citizens-focused, bottom-up exercise for Europeans to have their say on what they expect from the European Union. It will give citizens a greater role in shaping the Union's future policies and ambitions, improving its resilience. It will do so through a multitude of Conference-events and debates organised across the Union, as well as through an interactive multilingual digital platform*".[71]

The Conference on the Future of Europe was launched on Europe Day on 9 May 2021 and ran for one year, until the closing conference in May 2022. It included four thematic Citizens' Panels, each gathering 200 randomly selected European citizens, as well as a multilingual digital platform and several decentralised events. In addition, the conference plenary, in which representatives of all stakeholders could participate, discussed the proposals made during the four Citizens' Panels and on the digital platform based on the work of nine working groups dedicated to topics such as climate change, digital transformation, the economy, social justice, jobs, health, migration, democracy, the rule of law and education. The conference plenary was also in charge of adopting the conclusions formulated in the final report, prepared by the conference executive board.[72] The Conference ended on 9 May 2022, with the commitment of all three EU institutions to follow up on the 49 proposals and 326 specific measures drawn up in the conference's final report.[73]

While some proposed reforms suggested by the citizens can be conducted under the existing legislative framework, other measures would require a revision of the EU Treaties.[74] In this regard, the European Parliament adopted, on 9 June 2022, a resolution calling on the European Council to set up a Convention to start a Treaty revision process, as mentioned under Article 48 of the Treaty on the European Union (TEU).[75] However, the resolution was ignored by the European Council in 2022, which prompted the European Parliament to relaunch the call in November 2023.[76] Until now, the European Council has not given any response.[77]

Table 2: Timeline of the Conference on the Future of Europe

Date	Event
9 May 2021	Launch of the Conference on the Future of Europe
17 June 2021	First Citizens' Event in Portugal
18-19 June 2021	Inaugural Conference Plenary
17-19 September 2021	European Citizens' Panel 1, first session
24-26 September 2021	European Citizens' Panel 2, first session
1-3 October 2021	European Citizens' Panel 3, first session
8-9 October 2021	European Youth Event
15-17 October 2021	European Citizens' Panel 4, first session
22-23 October 2021	Conference Plenary
5-7 November 2021	European Citizens' Panel 1, second session
12-14 November 2021	European Citizens' Panel 2, second session
19-21 November 2021	European Citizens' Panel 3, second session
26-27 November 2021	European Citizens' Panel 4, second session
10-12 December 2021	European Citizens' Panel 2, third session
17 December 2021	Working groups
7-9 January 2022	European Citizens' Panel 3, third session
21-22 January 2022	Conference Plenary
11-13 February 2022	European Citizens' Panel 4, third session
25-27 February 2022	European Citizens' Panel 1, third session
11-12 March 2022	Conference Plenary
25-26 March 2022	Conference Plenary
8-9 April 2022	Conference Plenary
9 May 2022	Closing event

Source: [Conference on the Future of Europe: What worked, what now, what next?'](), high-level advisory group report, 22 February 2022

Despite this failed attempt of the European Parliament to trigger a revision of the EU Treaties, the Conference on the Future of Europe also delivered positive results. In its 2023 Work Programme, the Commission followed up on several outcomes of the Conference on the Future of Europe and announced the organisation of a 'new generation' of European Citizens' Panels.[78] Three of these panels were organised in 2023, on topics such as food waste, virtual worlds and learning mobility. Moreover, two other panels on energy efficiency and the fight against hatred were concluded in the first half of 2024.[79] And the Commission intends to continue with those in the next mandate, as announced in the new political guidelines.[80]

2.2. After the Russia's war of aggression against Ukraine: 'muddling through', but upwards?

While the Commission proved rather laborious in the field of democracy in the first years of the mandate, the Russia's full-scale invasion of Ukraine, which started on 22 February 2022, shifted the EU's attention towards security, defence and geopolitics. For the EU's democracy agenda, that meant two things. Firstly, that the political focus would shift away from any legislative files that were being discussed. Secondly, it also meant that the already existing focus on external threats to democracy – in particular election meddling and online disinformation – would be further highlighted, in particular the threat coming from Russia. While the Russia's war of aggression against Ukraine might have shifted the focus away from democracy, it had the positive effect that Western EU Member States finally took the hybrid warfare threat, which Central and Eastern European countries had underlined for years, seriously.

However, this new focus on democratic threats coming from outside the EU also posed new challenges, as many considered the only enemies of democracies must be foreign actors, rather than also domestic ones. This approach risks minimising the danger coming from political parties and media outlets inside the EU, even though links have been established between various far-right parties in Europe and Putin's regime. Until now, none of the political parties known to cultivate links to Russia had to face serious criminal charges for representing the interests of foreign actors – only some individual politicians have had to deal with criminal charges.[81] The same is true of many social media platforms and media outlets which have been disseminating Russian propaganda and infiltrated by Russian bots, although the EU has tried to legislate on it to tackle this challenge.

2.2.1. New rules on political advertising: a first step in the right direction to combat foreign interference

The EU adopted new rules on targeting and transparency of political advertising on 13 March 2024, right before the European elections. The regulation introduces a whole range of new rules: a (limited) ban on political advertising sponsored by non-EU actors; provisions on non-discrimination of political advertising services within the Union; enhanced transparency and due diligence obligations; harmonised

labelling of political ads; strengthened mechanisms for notifying potentially unlawful political ads; and specific requirements for the use of targeting and ad delivery techniques involving the processing of personal data (including the prohibition of 'profiling'). The regulation also creates a publicly accessible European repository for online political ads.[82]

While this regulation is a step in the right direction, more efforts will be needed to tackle foreign interference and the lack of transparency of political ads on online platforms. The trilogues for this regulation went on for approximately nine months, showcasing the difficulties in finding compromise on such a sensitive issue, with both digital platforms lobbying against stronger rules, as well as Member States wary that the EU would interfere in their national, regional and communal election processes.

Moreover, the regulation's final text remains flawed. For instance, the identification of online political advertising depends on self-declarations by political ad sponsors, which could undermine the transparency safeguards introduced by the regulation, as undeclared ads would be left out of the repository.[83] Another example is the regulation's failure to prohibit the use of inferred and observed data during ad delivery, as users can still be targeted with political advertising through widespread data collection.[84] On a positive note, the regulation allows for European political parties to campaign transnationally, therefore creating a first step towards more Europeanised election campaigns.

2.2.2. The Defence of Democracy package: a counterproductive 'foreign agents law'?

The Qatargate scandal in the European Parliament at the end of 2022, as well as the widening of influence operations from Russia in Europe, pushed the European Commission to work on a new legislative package to combat foreign interference.[85] The Defence of Democracy package was presented by the Commission in December 2023 as a package that would 'enhance transparency and democratic accountability of interest representation activities on behalf of third countries', which in practice means tackling undue foreign influence in the EU by countries such as Russia, China or Qatar.[86]

The Defence of Democracy package is composed of three main pillars: first, ensuring transparency of foreign interest representation; second, strengthening electoral processes in the EU; and third, fostering inclusive participation of citizens and civil society organisations in public policymaking. In terms of legislation, the package included one legislative proposal and two recommendations: a proposal for a directive on 'transparency of interest representation on behalf of third countries'; a recommendation on 'inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament'; and a recommendation on 'promoting the engagement of citizens and civil society organisations in public policy-making processes'.

As part of the objective to harmonise the rules on foreign interference at the EU level, the Commission asked Member States to create publicly accessible national registers of interest representation activities carried out on behalf of third states and to attribute a unique European Interest Representation Number (EIRN) to each registered entity.[87] This new provision has been criticised, as the EU Transparency Register already exists at the EU level and remains non-binding, even if it also applies to third country actors, unless those 'third-country governments are represented by entities without diplomatic status or intermediaries such as firms providing consultancy services', which is not a rare occurrence in political capitals, including Brussels.[88]

While both recommendations were welcomed due to their coverage of the full spectrum of electoral integrity and civic engagement, the proposal was criticised by civil society for bearing too strong a resemblance to 'foreign agents laws'.[89] Indeed, the legislation creates a misleading link between receiving funding from third states and acting on their behalf. This may, in turn, lead to a stigmatisation and restriction of foreign-funded civil society organisations, and even worsen their situation when the national authorities involved in management and supervision are not independent from the government any more.[90] In Hungary, Russia and Georgia, such laws have been passed to clamp down on CSOs that work across borders, for instance on democratic and academic freedom, environmental protection, LGBTQ+ rights or humanitarian aid. These 'foreign agents laws' have been criticised by the EU itself, explaining that they limit CSOs activities funded from abroad which are not in line with government positions.[91] As a consequence, many CSOs emphasised that the EU's proposal may undermine the EU's credibility as a defender of democracy and human rights abroad.[92] Another major issue lies in the proposal's singling out of foreign funding and sole focus on external interference, as it demonstrates its failure to address threats to democracy stemming from within the EU.[93] As put by the European Partnership for Democracy: 'In focusing only on interest representatives who receive certain types of foreign funding, this directive will not capture internal threats of undue influence, allow for easier circumvention by malign actors, and yield very limited data.'[94]

To improve this legislative package, MEPs and civil society organisations have proposed several amendments, amongst others to look at the definitions, in particular on interest representation activities, and to make sure that the definitions do not allow for loopholes. Another suggestion is to introduce safeguards to preserve the right to civil participation and to protect foreign-funded CSOs, for instance by distinguishing between for-profit and not-for-profit activities, and by adding provisions for sanctions against public officials engaging in stigmatisation and harassment campaigns against foreign-funded non-governmental organisations (NGOs) and CSOs. Some have also called for an expansion of the scope of the directive's proposal to cover all types of interest representation activities. This could be done by creating a general transparency register that also includes entities receiving domestic funding. MEPs have also made clear that they need to further look at provisions related to the proportionality of transparency requirements, the effectiveness of supervision, cross-border coopera-

tion, access to data and sanctions.[95] While the Defence of Democracy package recommendations have been passed, the directive, which was announced in the package, has been tabled but not been adopted. As a result, the European Commission could table an improved proposal in the new mandate and make sure that the directive is effective in practice without unintentionally harming those it is supposed to protect.

2.2.3. The Qatargate scandal in the European Parliament: cleaning up one's own backyard

The Qatargate scandal in December 2022 seriously damaged the European Parliament's reputation and the standing of the EU. The Belgian authorities in charge of the investigation arrested four members of the European Parliament, most prominently one of the vice-presidents of the European Parliament, Eva Kaili, and several other people linked to the scandal, on charges of receiving bribes from Qatar, Morocco and Mauritania. Unfortunately, since then, the investigation has not advanced much, with the judge in charge being accused of conflicts of interests.[96]

So far, the response from the EU institutions to improve transparency and accountability of parliamentarians has been disappointing. The presidents of the European political groups, during the so-called Conference of the Presidents, adopted a reform plan in February 2023, which included a revision of the declaration form on financial interests and a cooling off period for MEPs who wish to lobby the European Parliament after their mandate is over. A committee within the EP (the special committee on foreign interference – ING2) was tasked with looking more closely at foreign influence, and the EP adopted two resolutions: one only calling for the establishment of an EU ethics body by the Commission; and another one including recommendations on improving integrity, such as introducing a ban on side activities that could create conflicts of interests, something that is not yet legally prohibited as long as it is made public.[97]

Commission President von der Leyen called for an independent EU ethics body to be created, a proposal she had already put in her 2019 political guidelines but had not yet delivered yet at the time of the scandal.[98] The European Ombudsman, Emily O'Reilly, also called for a body to be created with real investigatory and sanctions powers. However, once the Commission's proposal was published, it was immediately criticised by MEPs. Stéphane Séjourné, by then the leader of Renew Europe, even called the proposal a 'farce'.[99] It was also heavily criticised by civil society for being a 'toothless tiger', with no investigation and sanctions power.

Looking back, the Qatargate scandal has led to little to no change until now. The much broader issue of a reigning culture of impunity has not been touched upon, with MEPs continuing to enjoy parliamentary immunity, continuing to get a generous monthly general expenditure allowance on top of their salaries, and continuing to be legally allowed to hold lucrative side jobs, even those that create conflicts of interests. Even worse, the Qatargate scandal has been politically instrumentalised to weaken civil society. For instance, the European People's Party (EPP) decided to put the blame

on NGOs, to shift away from the actual problem, which lies with politicians and the lack of accountability and transparency rules and their adequate implementation.[100]

Generally speaking, the EU has made little progress on its anti-corruption work. The Commission's proposed directive on combating corruption, which was tabled on 3 May 2023, was still not adopted before the 2024 EP elections. The proposal included a definition of criminal offences and sanctions associated with corruption, and proposed measures to enhance preventing and combating corruption.[101] The EU Council agreed on a general approach in a June 2024 meeting, but the directive is still not passed. Lastly, Commission President von der Leyen proposed in her state of the union address in 2022 to include corruption in the EU sanctions regime.[102] However, as this related to Common Security and Defence Policy (CSDP), the High Representative and Commission can only make a proposal, which they published on 30 June 2023, and which then must be adopted by unanimous decision in the EU Council, making any new legislation much more difficult to adopt.

Overall, the last two years before the EP elections in 2024 proved difficult for the EU to advance on any of the democracy-related files. The Defence of Democracy package and the proposal for an independent EU ethics body were heavily criticised and were not adopted. Hungary's polarising positions on Russia led to escalating tensions, which reached the highest level in the European Council and provoked diplomatic spats. The tensions escalated even further due to Orbán's 'peace missions' to Moscow and Beijing in July 2024. The EU Council's and Commission's decisions to unfreeze EU funds in exchange for Orbán's approval of the aid package to Ukraine also made it clear that the EU institutions almost openly use EU values as trade-offs to reach political compromises, seriously damaging the standing of democratic standards in the EU. The EU Council and Commission also seem to have chosen to turn a blind eye to violations of EU values by other Member States – such as Greece on media freedom – as long as these continue to support Ukraine and generally remain cooperative partners on other policy files such as migration. However, the mere fact that that the Commission tabled some proposals seems to indicate that there was a wish to continue working on the topics – hence a 'muddling through', but upwards.

Table 3: Overview of key democratic initiatives starting with legally binding measures followed by soft law instruments

Rule of Law	✅ Rule of Law Conditionality Regulation (adopted 06.12.2020)
	✅ Establishment of the annual Rule of Law Report (first edition published 08.07.2020)
Electoral security	✅ Regulation on Transparency of Political Advertising (adopted 13.03.2024)
	⌛ Recast Regulation on the Statute and Funding of European Political Parties and European Political Foundations (announced 25.11.2021, adoption pending)
	⌛ Recast Directives on the Electoral Rights of Mobile EU Citizens in Municipal Elections and in Elections to the European Parliament (announced 25.11.2021, adoption pending)
	⌛ Directive on Transparency of Interest Representation on behalf of Third Countries (announced 12.12.2023, adoption pending)
	✅ Recommendation on Inclusive and Resilient Electoral Processes in the Union and Enhancing the European Nature and Efficient Conduct of the Elections to the European Parliament (published 12.12.2023)
	✅ Recommendation on Promoting the Engagement and Effective Participation of Citizens and Civil Society Organisations in Public Policy-making Processes (published 12.12.2023)
	✅ Joint Mechanism for Electoral Resilience (announced 25.11.2021, in place)
Media freedom and pluralism	✅ European Media Freedom Act (adopted 11.04.2024)
	✅ Anti-SLAPP Directive (adopted 11.04.2024)
	✅ Anti-SLAPP Recommendation (published 27.04.2022)
	✅ Recommendation on the Safety of Journalists (published 16.09.2021)
Disinformation	✅ Digital Services Act (adopted 19.10.2022)
	✅ European AI Act (adopted 13.03.2024)
	✅ Guidance on Strengthening the Code of Practice on Disinformation (published 26.05.2021)
	✅ Strengthened Code of Practice on Disinformation (published 16.06.2022)
Corruption	⌛ Directive on Combating Corruption (proposed 03.05.2023, adoption pending)
	⌛ EU Anti-Corruption sanctions regime (proposed 03.05.2023, adoption pending)
	⌛ Proposal for the creation of an inter-institutional Ethics Body (proposed 08.06.2024, adoption pending)
	✅ Start of the European Public Prosecutor's Office's operations (EPPO) (01.06.2021)
	✅ Start of the EU Network Against Corruption (announced 03.05.2023)

Source: own elaboration   ✅ adopted   ⌛ adoption pending

2.3. The EU's new priorities after the 2024 European elections: what role for democracy in the next agenda?

On 18 July 2024, President-elect Ursula von der Leyen presented her new political guidelines for the upcoming mandate. While security and competitiveness were the main priorities, there were still two pages (out of approximately 25) dedicated to democracy, covering a broad range of topics, including rule of law, media freedom, disinformation, civil society engagement and citizen participation. Most of the text underlined the importance of the topic and stressed the continuation of the work in the field. There were, however, a few concrete announcements that are worth mentioning.

The biggest announcement is a so-called European Democracy Shield to combat foreign interference. This initiative seems to be – at least from what one can guess so far – a repackaging of the Defence of Democracy package, which was proposed at the end of 2023 but did not go through the legislative machinery before the EU elections in June 2024.[103] Similarly, to protect elections and ensure greater transparency, the Commission promises to tackle the use of deep-fakes, by properly implementing the transparency requirements of the AI Act and by 'strengthening the EU's approach to AI-produced content'. Lastly, the Commission wants to step up enforcement to counter online disinformation, invest in digital and media literacy, and create a Network of European Fact-Checkers. In her political guidelines, von der Leyen also proposed a 'general regime of conditionality', which can be interpreted as an extension of the rule of law conditionality mechanism to all aspects of the Multiannual Financial Framework (MFF), and which would mean that it extends to all types of funding programmes.[104] She also proposed to widen the rule of law report to track the implementation of the recommendations, which were added to the annual reports in the midst of the last mandate. Furthermore, she proposed to include other accession countries and to add a single market dimension to the report, which would further align it with the European Semester.

In the next Commission, the Irish Commissioner-Designate Michael McGrath, a former finance minister, will be in charge of democracy, justice and rule of law. It is the first time 'rule of law' makes it into a Commissioner's portfolio, which can be read as a sign of the growing importance of the topic. However, while in the 2019-2024 Commission, Věra Jourová oversaw the portfolio of Values and Transparency, new Executive Vice-President Henna Virkkunen will be in charge of a larger portfolio, including Tech Sovereignty, Security and Democracy. This is a sign that the new Commission has shifted its focus on democratic security, seeing democratic resilience mostly through the perspective of countering foreign threats. The new Commissioner and Executive Vice-President will be asked to work closely together on the European Democracy Shield and the protection of the rule of law. Virkkunen will also be in charge of the digital files, and therefore also the implementation of passed legislations such as the DSA, DMA and the AI Act. In what way she will include the democracy perspective is yet to be seen; however, her large portfolio could also mean that there will be a 'democracy mainstreaming' in other policy fields. McGrath's mission letter mostly reads as a continuation of what has been decided in the past term, with little new initiatives mentioned. There is, however, one novelty: the Civil Society Platform, which

could potentially be interpreted as a more structured way to support civil society in Europe. On justice, von der Leyen intends to propose a new Digital Fairness Act, which could potentially be seen as an extension of the DMA and the DSA.

On the European Council side, democracy and rule of law are mentioned in the official version of the European Council's Strategic Agenda. However, it reads more like a 'preamble' to the official programme, which focuses on security and competitiveness. In the last mandate, the European Council has not been the most fervent defender of democracy, with many heads of states and governments willing to rather openly trade off democracy for other priorities. The most striking example was the release of EU funds to Hungary to avoid Orbán's veto against the aid package for Ukraine; but this has not been the sole instance in which rule of law has been used as a pawn for other political decisions. The fact that the European Council has willingly put EU values at the same level as any other policy field means that they have been downgraded and that it will be difficult to 'upgrade' them back to what they should be. The Commission, as the official Guardian of the Treaties, could try to push back against this development, as could independent Member States, which consider EU values as non-negotiables. However, as the political context has become even more polarised, there are little incentives for the Commission and Member States to touch upon controversial and sensitive topics if not absolutely necessary.

In view of the political shifts, with more far-right governments in power than ever before in Europe, as well as a raging war on the EU's doorstep, the EU institutions will have to ensure in the coming years that our political systems are stable enough to cope with the multitude of challenges. The growing pressure on Europe's economic model, linked to rising geopolitical tensions, are likely to put our democracies under further pressure, at a time when they are already considerably weakened.

3. Looking ahead: recommendations for the next mandate (2024-2029)
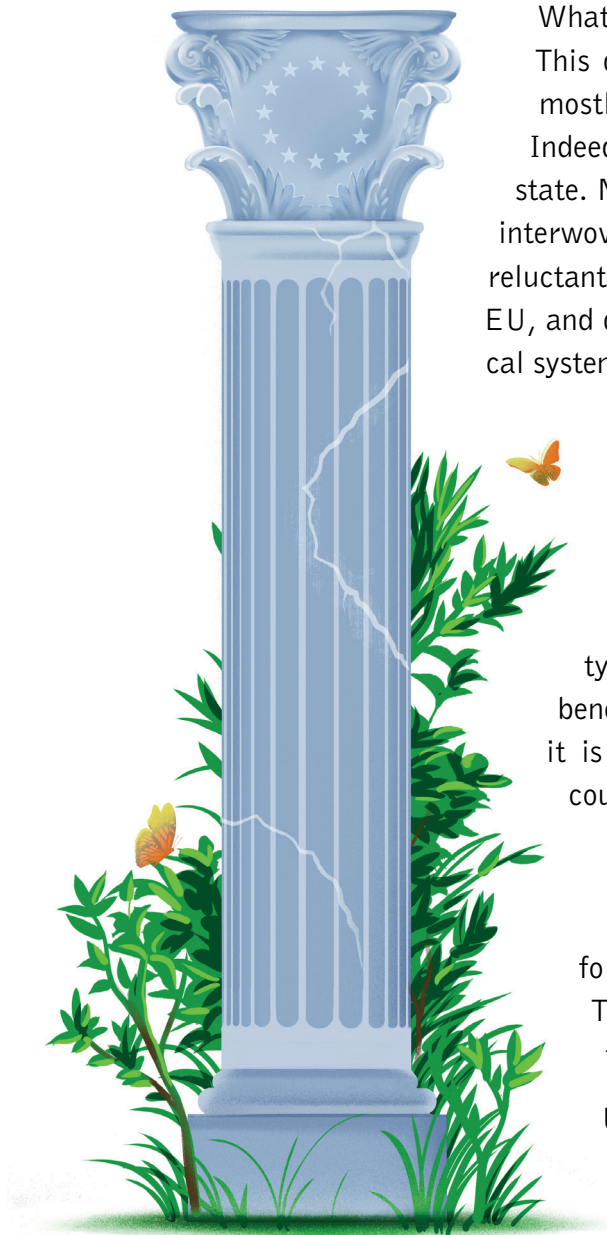
What role should the EU take in the field of democracy? This question has been widely debated over the years, mostly amongst legal scholars and political scientists. Indeed, democracy is traditionally rooted in the nation state. National sovereignty and democracy are inevitably interwoven. Additionally, national governments are often reluctant to give up more of their sovereign powers to the EU, and do not wish the EU to interfere in their own political systems. However, with the creation of the EU as a multi-level governance system, with its own legal system that is recognised by all Member States, and by having taken over certain regal policy fields such as the currency or border controls, Member States have accepted giving up a certain degree of sovereignty for a 'European sovereignty', in the knowledge that it would be to everyone's benefit. While this risk has paid off in the past years, it is based on the assumption that all participating countries would abide by certain rules – amongst others, remaining stable democracies. This promise, however, has been broken by certain countries, leading to a situation in which the EU sees itself forced to remind these countries that respecting EU Treaties is a compulsory requirement to be part of the Union.

Unfortunately, the EU had not foreseen the situation in which we find ourselves, with several countries going through an erosion of democracy; it had also not foreseen that external actors would to such a degree undermine European democracy. This development has led to the difficult question of how far the EU can go in terms of safeguarding democracy, without overstepping its own competences, and without disregarding individual political cultures in the 27 Member States. As a result, the EU has to handle the fear of certain Member States that the EU would like to take away from their own prerogatives and get too involved in their national affairs – a fear which has been instrumentalised by authoritarian leaders who intentionally want the EU to have less of a say in their domestic affairs. While this is partially understandable, Member States should also be aware that the EU only upholds what the countries themselves had promised when joining the Union, the so-called Copenhagen

criteria. In addition, there is a 'strength in numbers': the EU and its Member States can do more to push back against democratic backsliding in certain countries than, for instance, the opposition and civil society in a country with authoritarian leaders in government ever could.

This reflection is important to understand the EU's difficult position, as an actor that has not traditionally been granted competencies in this field, but sees itself forced to constrain Member States to respect the basic values to make the European project work in the long run. While the main objective is not to extend the competences of the EU, the urgency, seriousness and scale of democratic backsliding in the EU should lead to an in-depth reflection of the EU institutions, most notably the Commission, about its own leverage and scope of action in the field. For instance, based on its own annual report, which allows the EU to have a clear picture of the current status of democratic standards in the EU, the EU should systematically check whether the EU has the ability to protect the areas it recognises as absolutely necessary for the functioning of the Union in the future. While giving country-specific recommendations to the countries as part of the annual rule of law report is a positive development, it is unlikely to have any effect in practice, as Member States have little to no incentive to make the necessary changes when the people who are in power are those that are driving democratic erosion. This is why the EU should critically assess in which particular fields it can strengthen its democratic agenda, and to what degree it can better implement its decisions.

Figure 2: Overview of recommendations

1. Democracy should not be considered as an obstacle in the way of effective decision-making and crisis management.

2. The EU institutions should make full use of existing powers and instruments to protect and sustain democracy.

3. The European Commission should ensure full compliance and enforcement of its own legislation in the field of democracy.

4. The EU institutions should systematically assess and regularly review their response to democratic backsliding and avoid a weaponisation of their own legislation.

5. The EU should consider democracy a public good and invest in it.

6. The European Commission should ensure alignment of all EU legislation with EU values.

7. The EU institutions should ensure that democratic standards are respected within the EU institutions and decision-making processes.

8. The EU should stop politically instrumentalising EU values.

9. The EU institutions should improve their internal governance on democracy.

3.1. Democracy allows effective policymaking and crisis management – it should not be considered an obstacle

In the past mandate, the EU and its Member States were faced with a plethora of crises. An easy trap to fall into is to blame democracy for being an ineffective system, which takes time, and therefore consider it an obstacle for time-sensitive decision-making. This could be observed in France after the terrorist attacks of 2015, when the rights to demonstrate were curtailed and the powers of the executive largely increased. The same happened during the Covid-19 pandemic, when parliamentary prerogatives were curtailed in several Member States, based on the argument that such a historic crisis needed to be managed by the executive.

The EU institutions will have to ensure that democracy is not seen as an obstacle in the way of the EU's current priorities – in particular security and defence – but rather as a foundation to it. For instance, transparency requirements or checks and balances can easily be seen as obstacles in the way of an effective foreign and defence policy.

In fact, the contrary is the case: a resilient democracy is a guarantor for better decision-making, as the Covid-19 crisis has shown.[105] Parliamentary controls, pressure from public opinion and civil society, as well as transparency and accountability requirements, are all fundamental pillars to ensure that legislation is mostly benefitting citizens – the only reason why governments are in place.

3.2. Democracy needs power: make full use of the EU's toolbox to safeguard democracy

Until now, the EU institutions have not used the full scope of their powers to protect democracy. A probable reason is the fragile inter-institutional balance required in the EU to make sure that the EU legislative machinery works well. The Commission has been very cautious in the past not to overstep its competences in the field, mostly to ensure its good relations with the EU Council, which is necessary to also move forward in other policy fields. The EU Council has not been very active in the field, mostly because Member States do not wish to confront others on matters that are still considered of national competence, and also because they need to find compromises with these countries on a range of policy issues. Lastly, democracy in another European country is of little electoral interest to the heads of states and governments sitting in the European Council – what is, for instance, the incentive for Spain to push for better rule of law standards in Estonia, when many Spanish citizens will never set foot in the Baltic state? Additionally, the changed geopolitical context has led to a shift in priorities, putting democracy far beyond a range of other issues, such as security, defence, competitiveness, industry and energy. However, the escalating tensions with Hungary made it clear that turning a blind eye to democratic backsliding might lead to problems further down the line. Lastly, the European Parliament was the most ambitious of the three institutions in the field, but the Qatargate scandal muddled the EP's legitimacy.

Despite these limitations, the EU should use the full extent of its existing toolbox, which includes a range of hard and soft law measures, to ensure that both Member States and the EU adhere to the principles enshrined in Article 2 of the TEU. In particular, it should use the full array of its rule of law toolbox and be more stringent in the application of measures, such as with the conditionality mechanism. It is unclear on what basis the Commission decided to freeze funds from the Recovery and Resilience Facility and three different cohesion programmes, rather than a wider range of EU funds that Hungary receives. This seemed to be a purely political decision rather than based on empirical evidence: Why should Hungary receive money from the Common Agricultural Policy (CAP) when it is as likely to be embezzled as EU cohesion funds?

Even when the instruments are deemed not effective enough, there is often room for improvement. Typically, Article 7 of the TEU, which allows for the suspension of voting rights in the EU Council, has been seen as an imperfect tool as it requires unanimity to move forward – the situation in which more than one Member State that does respect EU values was not taken into account. Even if the unanimity requirement is unlikely to be changed anytime soon (except if there are EU Treaty reforms), the way in which hearings on Article 7 were conducted were not conducive to any changes. There was a shocking lack of transparency on the hearings conducted in the last five years, and very probably little peer pressure applied to the Member States against which the procedure was started.[106] Most importantly, the Commission should not only focus on the preventive arm of its toolbox on democracy, but also on the remedial measures. As democracy is already seriously under attack and reduced to the bare minimum in certain Member States, spending resources and time on prevention mechanisms will be ineffective in cases where democratic backsliding has already happened. The EU should therefore assess the 'erosion stage' and ensure that it uses the adequate measures depending on the situation in the different Member States.

3.3. Democracy needs enforcement: ensuring full compliance and enforcement of EU legislation in the field of democracy

The European Commission should invest time and effort to ensure the full application of existing legislation in the field of democracy. The EU's weakness continues to be its inability to enforce legislation on the ground, with the implementation largely in the hands of national authorities. However, as EU values are put into question, there is an even bigger need for the primacy of EU law to be upheld efficiently.[107]

Some have called for a Commissioner in charge of implementation and enforcement, which would ensure that EU legislations are properly applied, and also that the enforcement mechanisms correspond to the original idea of the legislators, especially for directives which give more leverage to national authorities in the transposition of EU law. In terms of enforcement, the EU needs to step up its supervisory powers, for instance to avoid the practice of 'gold-plating' EU legislation by national authorities, namely changing the initial intention by adding further rules or administrative hurdles to the original EU legislative piece.[108]

In particular, the Digital Services Act, the AI Act and the regulation on political advertising will have to be implemented properly in the coming years. First problems are already occurring to ensure a full implementation and enforcement of these legislations. For instance, Member States are slow in the transposition of EU law. In the Netherlands, the Dutch authority in charge of implementation and enforcement of the DSA, the Netherlands Authority for Consumers and Markets (ACM) – so-called Digital Services Coordinator – could not fulfil its mandate for several months because the Dutch government had failed to implement the draft bill for the DSA implementation act, which is a necessary step to make the DSA part of national legislation. As such, the DSA could not be implemented in the Netherlands until the implementing act was proposed in April 2024.[109] In addition, the European Commissioner in charge of the DSA, Vice-President Vestager, even admitted that there is 'distrust' that certain Member States – for instance Ireland – would act as an effective regulator against big tech.[110] Lastly, while the European Commission has been granted extensive enforcement powers, these tasks will also have to be carried out properly, and will require significant investments in human resources, both in terms of team size and skills, in order to be able to carry out this new role as the enforcer of the DSA. Therefore, the EU needs to invest financial and human resources in the proper enforcement of its legislation and ensure that national authorities are also doing their job properly.

In addition, the European Commission has not yet fully used the possibilities of its own rules to ensure that media pluralism is enforced in Europe. For instance, in several Member States, media pluralism is under threat, which in turn means that certain media markets have been concentrated. This has been the case in Hungary, for instance, but such mergers are also visible in Italy, with Berlusconi's Mediaset conglomerate, or in France, with Vincent Bolloré's latest buying spree of French media. Some mergers and abuses of dominance, as well as anti-competitive agreements, would fall under the scope of the EU competition rules. Therefore, the European Commission could trigger infringement procedures against these media conglomerates, not only assessing antitrust and mergers through a price perspective, but also taking into account consumer rights, diversity and privacy concerns.[111]

In addition, the European Commission should ensure the full compliance of Member States with the ECJ's decisions. The Commission should become much more efficient in triggering infringement procedures in the field of systematic breaches of EU values. It should allocate sufficient resources to the Directorate-General for Justice and Consumers (DG JUST) in order to: step up the Commission's enforcement capacity; provide a comprehensive, accessible and transparent public database for all infringement documents; ensure faster overall infringement handling by the Commission; and have more systematic follow-up and monitoring of implementation steps by Member States following a court ruling. These recommendations, which were developed for environmental law, are equally applicable to infringements of EU law concerning violations of EU values.[112]

Lastly, the EU should consider updating and, where necessary, extend the mandates of relevant EU agencies, as well as in certain cases increase their funding. In particular, this concerns: the office of the European Ombudsman to ensure transparency and accountability within the EU institutions and combat undue influence and abusive practices; the

Fundamental Rights Agency (FRA), which could, for instance, also have a larger mandate to tackle the issue of shrinking civic space; the European Public Prosecutor's Office (EPPO) to preserve the financial interests of the Union; and as the European Education and Culture Executive Agency (EACEA) for issues related to civic education, as well as media and digital literacy.

3.4. Closing the loopholes: reviewing EU legislation to avoid weaponisation

Building an EU democracy agenda that targets the right actors, is effective and impactful, and is easily enforceable is no small feat. The Commission should learn from the different initiatives and proposals of the past five years, in order to avoid repeating mistakes of the past.

First, the EU should carry out comprehensive impact assessments before proposing new initiatives. While the EU is rather advanced in terms of impact assessment and post-evaluation of legislation compared to many Member States, some legislative packages still lack a proper impact assessment, which has repercussions on the feasibility of the legislation. When impact assessments are hastily done or not done at all, or when the consultations of stakeholders lack diversity, the proposal risks backfiring.

Second, the European Commission should ensure that there are no potential loopholes, which could potentially lead to a weaponisation of the legislation against its intended purpose. For instance, particular EU provisions on anti-money laundering have had an adverse effect on civil society organisations in the past, because the requirements for reporting their funding were disproportionate to the CSOs' size and structure.[113] These kinds of mistakes happen when the European Commission does not work transversally enough, and does not consider the potential adverse effects of one legislation on particular stakeholders.

Third, the European Commission should ensure that the analysis of threats to democracy is comprehensive and includes threats coming both from within and outside the EU. For instance, the Defence of Democracy package focuses mostly on foreign threats – including organisations based in the EU that would receive money from foreign governments. However, it does not include domestic threats, as there are organisations based in the EU receiving funding from sources within the EU, but which still threaten democracy. By not making the difference between actors with clear intentions to polarise and weaken democracy and those who wish to support EU values, the EU risks also harming external actors who support democratic resilience.

Fourth, the European Commission should assess the effectiveness of its own instruments and see in which fields it could become more impactful. For instance, in the field of civil society, the European Commission could be much more supportive if it would choose to have a more stringent strategy on how to cooperate with civil society on EU legislation through an established civil dialogue, and also to support an independent civil society within the Member States.[114]

3.5. Democracy is a public good which needs EU investment

There have been more and more discussions around the importance of public goods in the past years, in particular related to the future of the European economy, competitiveness and industrial policy. In 2024, both the Letta and Draghi reports were published, which made a strong point for a European industrial policy, increased and smart investments in the EU's clean tech sector, and support for the green transition. While housing, transport infrastructure, healthcare and energy grids are considered public goods, immaterial public goods such as education or democratic standards are little considered in these debates, with repercussions as to the funds dedicated to it.

The next mandate will be one dominated by discussions on the next Multiannual Financial Framework (MFF), for which the European Commission will present a proposal in 2025. The economic base of Europe has fractured with the pandemic, followed by the energy crisis. The EU and its Member States have had to spend significant amounts of money to support Ukraine's defence, as well as its economy, and also provide humanitarian aid to deal with the consequences of the war. In addition, the Recovery and Resilience Facility (RRF) repayments will start in 2026, further crunching the EU's fiscal space. Additional problems arise from the fact that certain Member States – in particular Germany and the Netherlands – are unwilling to repeat what has been done in 2020 with NextGenerationEU, namely allow the European Commission to borrow money on financial markets. While a modified EU budget with lower spending for agriculture and cohesion funds is likely to be necessary, the EU should not use this opportunity to reduce spending on agenda items that seem less urgent in the short term, such as democracy. If it did, it would endanger the foundations on which the EU exists.

In the 2021-2027 EU budget, democracy was put under 'resilience and values', a sub-item under 'cohesion, resilience and values'. Less than €50 million was allocated to this budget item. In the next 2028-2034 budget, it will be crucial that this budget item is not further cut and that the Citizens, Equality, Rights and Values (CERV) programme remains. In addition, money allocated to the education portfolio should lead to significant investments in digital and media literacy, as promised by Commission President von der Leyen in her political guidelines. That will also require cooperation with national education authorities, which are traditionally reluctant to change school curriculums and have the EU interfere in their field. Citizenship education is also a sensitive topic, but one that should be put back on the table of discussions to ensure that citizens across the EU fully understand the significance of EU values.[115]

Most importantly, democracy needs to be 'mainstreamed' in other budget items and across EU programmes. For instance, in the budget funding allocated to migration and border management, it will be crucial to ensure that human rights are not regarded as a footnote, or even violated. In addition, more money should also be allocated to ensuring that EU law is properly applied across the 27 Member States, with more stringent controls and enforcement mechanisms. For instance, the European Commission should systematically check whether decisions from the European Court of Justice, such as interim measures, have

been applied. While the Commission made sure that Member States thoroughly followed the required changes to receive the money from the bailout packages during the euro crisis, there has not been the same level of scrutiny applied to the RRF, especially in the case of Hungary, despite it clearly putting the EU's financial interests at risk.

Lastly, Ursula von der Leyen announced in her political guidelines, in July 2024, that she would 'propose that EU funding also be dedicated to national measures, for example on fighting corruption, and to protecting the EU financial interests'. It is unclear how exactly the Commission President imagines that this would work in practice. It is highly unlikely that the Hungarian government under the leadership of Viktor Orbán would use that money to fight corruption or protect EU financial interests, when all he has done in the past years is exactly the opposite. More generally, none of the EU Member States are the Guardian of the Treaties as the Commission is. Therefore, the Commission should not try to externalise its responsibility for democracy to Member States – it has to hold those governments accountable. That said, having dedicated funding available at the EU level to fight corruption on a much broader scale would certainly be useful. For instance, it could: give more powers and resources to the European Public Prosecutor's Office (EPPO); ask Member States to share relevant data and cooperate better and more closely on anti-corruption; step up training and knowledge-sharing to ensure that such cross-border cooperation is possible and make sure that the resources are used more efficiently; and ensure that (independent) enforcement authorities have sufficient funding to step up their efforts.

3.6. Mainstreaming democracy: ensuring alignment of all EU legislation with democratic standards

As the EU touches upon a plethora of policy fields, it can be easy for some legislation to not be coherent and fully aligned. This has prominently been the case with the Green Deal and the Common Agricultural Policy (CAP), where some criteria to receive funds drive emissions rather than reduce them, or direct subsidies to fossil fuels persisting despite the climate laws that target emission neutrality by 2050.

In the next mandate, the EU should follow its own rules, ensuring that EU legislation does not contradict itself and/or the EU Treaties. Qatargate is an obvious example of how the EU does not follow its own rules on transparency and anti-corruption. Similarly, the EU Pact on Migration and Asylum, which was adopted in December 2023 after years of difficult negotiations, already gives plenty of leverage to governments to control immigration. This means weakened protections for people seeking asylum, expanded and arbitrary detention at borders, and extensive digital surveillance of migrants. This has prompted criticism from several NGOs, which pointed out that it would lead to a 'surge in suffering' and diminish the rights of immigrants – despite the EU's commitment to human rights.[116] Similarly, the practice of Frontex, the EU's border and coast guard agency, has been criticised more than once. It is suspected to have allowed and potentially participated in illegal pushbacks at EU borders, and to have cooperated with the Libyan coast guards, sending migrants back to Libya where they know they will be exposed to abuse and violence.[117] This would be no surprise as the former head of the agency, Fabrice Leggeri, decided to run as a candidate

for the extreme far-right National Rally in France for the EU elections. Lastly, the use of remote biometric identification in the context of the EU's new migration and asylum pact also seems to contradict certain aspects of the European AI act, which classifies remote biometric identification as a high-risk use of AI and therefore largely prohibits it, with some exceptions. Several NGOs have criticised the potential double standards, where certain population groups are excluded from enjoying their privacy rights.[118]

If the EU is serious about its democracy agenda, it needs to make sure that its own institutions and its own legislation do not contradict the basic values enshrined in the Treaties. Doing so leads to a loss of legitimacy for the EU, especially when it publicly continues to defend safeguarding democracy, rule of law and fundamental rights. Going forward, establishing alignment and coherence for all EU legislation, especially in the field of migration, with the EU's democracy agenda will be crucial.

Similarly, the EU's security agenda needs to avoid an environment in which the rights of certain groups are curtailed, transparency measures cut, executive powers increased, and checks and balances left aside. In particular, the planned European Democracy Shield needs to avoid weaponising civil society organisations. Bringing together the portfolio of security and democracy, as has been done in the portfolio of Virkkunen, could be an opportunity to ensure that democracy is not an afterthought in the EU's security agenda in the next mandate.

3.7. Getting one's own house in order: ensuring democratic standards in the EU institutions and decision-making processes

Since the Qatargate scandal in 2022, there have been a few attempts to better regulate interest representation, with very limited impact for now. However, the threat of undue influence from foreign governments and corporate entities will remain if the EU does not tackle it properly. While the Commission's ethics body proposal was harshly criticised as soon as it was out, the question is whether it would be necessary to create new structures to combat corruption and undue influence, especially when these new bodies do not have the powers and resources to do so. Instead, the EU institutions should ensure that existing bodies, such as the European Ombudsman, are not elected positions, which automatically creates conflicts of interests. In addition, transparency and accountability requirements in the EP should be implemented properly. Commissioners should also not be mired in corruption scandals, have previous abuse of power or embezzlement charges, or have clear conflicts of interests, as it has too often been the case in the past. In the end, the responsibility also lies with the national political parties and national governments sending their people to Brussels. If there is a culture of impunity already at the national level, this is likely to be reflected at the EU level.

Strengthening watchdog bodies is one important step the EU could and should take. For instance, the European Public Prosecutor's Office (EPPO) should have sufficient resources and be able to prosecute criminals in the EU. Similarly, the mandate of the Fundamental Rights Agency (FRA) could be widened, to more broadly include democracy, rule of law and

civil society work. Especially in view of the urgency of the topic, the EU could decide to prop up the FRA's work to monitor, analyse and provide data to EU decision-makers about the state of democracies in Europe and within the EU's political system – and free up time for DG JUST to focus on the infringement procedures rather than on writing reports. The FRA could also get enforcement and compliance functions, as other EU agencies have – especially as the agency has noted the lack of Member States structured engagement with the implementation of the EU's Charter of Fundamental Rights.[119]

Another important step would be for the EU to finally access the European Convention on Human Rights (ECHR), which would allow citizens to not only bring the countries that are part of the EU in front of the European Court of Human Rights, but also take action against the EU if the EU should infringe on the ECHR. This accession has still not been passed in the last five years. There is also a need to reform the electoral law, which for now is too fragmented to allow for truly European elections. Despite a failed attempt at reform in 2022, the European Parliament should bring the topic back to the table and push decision-makers in the EU Council to discuss the file before the next EP elections in 2029. European elections can only be seen as truly democratic when there is a European public debate, and when voters do not consider EU elections as an opportunity to cast a vote to either confirm or criticise their own governments rather than EU policy.

3.8. Stopping the instrumentalisation of EU values in the European Council

Former Commission President Jean-Claude Juncker famously said that the rules of the Stability and Growth Pact (SGP) in the EU theoretically apply equally to everyone, but that there are exceptions in practice, for instance for France. This public admission was harshly criticised, as it meant that EU rules do not equally apply to all Member States, and that they are subject to political negotiation. Unfortunately, the same is true for the rule of law and democratic standards. The EU institutions have turned a blind eye to human rights violations at the EU's borders in Greece, Poland and Italy, because stopping migration has been an important political objective for many governments in the EU. EU institutions have also been incredibly lenient when it comes to surveillance of journalists in Greece or corruption in Romania and Bulgaria, simply because the two countries have been cooperative partners in the European Council and followed the EU's general support for Ukraine, despite Bulgaria's close ties with Russia, even after the Russia's full-scale invasion of Ukraine.

Lastly, the escalating tensions with Hungary have shown that the EU considers rule of law a trade-off for other decisions. Hungary has started to politically instrumentalise rule of law, and the EU has, unfortunately, decided to accept playing this game. As such, it has started to consider EU values as negotiables, which can be traded off for other political concessions. The fact that the European Commission unfroze €10 billion of EU funds once Viktor Orbán had retrieved his veto on the aid package to Ukraine is exactly the kind of political deal the EU should have never accepted. And while the situation was surely not an easy one, the other Member States could easily have decided upon the package outside of the EU

structures, for instance by using enhanced cooperation mechanisms, or a similar approach as that taken to Schengen, which was also originally decided upon outside of the EU before being integrated. Going back to the 'before times' once the floodgates are open will not be easy, but the European Council should in any case avoid any further instrumentalisation of EU values as political trade-offs, and find alternatives if Hungary or other Member States do not wish to cooperate on certain urgent matters. The European Commission should also not play the game of the European Council in this respect, and be a strict Guardian of the Treaties, using the law as a tool to defend itself from such politicisation.

While the annual rule of law report looks at countries equally, the EU institutions will need to start acting upon violations equally too. The EU needs to stop waiting until it becomes politically relevant for them to act, such as was the case with Hungary, as this is often too late – free and fair elections are not given any more in Hungary, which has drastically reduced the chances of the opposition winning elections in the future. The EU institutions also need to be fairer in their action, especially when countries such as Germany start openly infringing on EU law by re-establishing border controls, as was in the case in September 2024.

3.9. Improving the EU's internal governance on democracy

The EU institutions should ensure that they follow an integrated approach, both within and between EU institutions. In the past, there have been a few cases of ineffective distribution of tasks among different services and between different institutions. For instance, the European External Action Service (EEAS) and the European Commission's DG Connect were both responsible for countering disinformation online. The Vice-President's Cabinet had to coordinate with several Commissioners and Directorate-Generals, namely those in charge of justice and the budget on the rule of law conditionality mechanism, and those in charge of competition and digital files on disinformation, and with the Commissioner in charge of equality for the anti-discrimination work. The compartmentalisation of a lot of the Commission's work has led to a certain lack of effectiveness and a slowed down process, as initiatives ended up in too many hands. To ensure more coherence internally, the European Commission could, for instance, create a task force in charge of mainstreaming democracy within its Secretariat General, which would look at whether its legislation does promote democratic standards. This task force could also coordinate new initiatives on the various policy fields touching upon democracy. Alternatively, the next Executive Vice-President in charge of democracy, Henna Virkkunen, could have the competences to coordinate services from certain Directorate-Generals if they touch upon democracy.

In terms of approach, the EU institutions also need to better integrate the work that has been divided between rule of law, democracy and fundamental rights, what the Vice-President of the European Commission in charge for Values and Transparency likes to call the 'Holy Trinity'. Only if the Commission follows a systematic approach will it be able to respond to democratic backsliding in Member States, as authoritarian leaders have been using various tools and instruments at their disposal to undermine democracy. For instance, in Poland, the government followed a strategy of systematic democratic backsliding, with several decisions to reduce the independence of judges and to create obstacles for civil society organisa-

tions that were not in line with government thinking, and by taking over public media. As a response, the Commission launched several infringement procedures on the different pieces of legislation, without necessarily seeing the bigger picture. However, the Commission did not recognise the more systematic nature of Poland's democratic backsliding. Consequently, the EU's approach should opt for a comprehensive approach. It could develop a systematic roadmap to respond to democratic backsliding in a particular Member State, which would then automatically activate different instruments and measures available.

Furthermore, the European Commission should ensure that both citizens and civil society are more systematically involved in the decision-making process. This could happen by establishing a comprehensive civil society strategy, and by advocating for the European Statute for Associations, which was adopted by the European Parliament in March 2024 and is still waiting for the EU Council's position.[120] In addition, the European Commission should continue its efforts to involve citizens in EU decision-making, after the 'test run' that was the Conference on the Future of Europe. The EU should learn from this experience and ensure that the governance is more streamlined and that this new form of deliberative democracy is better integrated in the regular decision-making process, for instance by making sure that the recommendations of citizens are taken seriously by the other legislators.[121]

4. Conclusion

The new European Commission will start its work at the end of 2024. European Commission President von der Leyen will be busy trying to deal with a range of challenges, including defence, security and competitiveness, while democracy continues to erode across the EU. At the same time, the space for political compromise becomes smaller and smaller, as the increased representation of the far right reduces the possibilities to find partners willing to strengthen the EU's democracy agenda. With a European Commissioner-Designate in charge of Democracy, Justice and Rule of Law (Michael McGrath), and an Executive Vice-President-Designate with 'democracy' in her portfolio title (Henna Virkkunen), democracy will surely remain on the EU's agenda. It is, however, unclear how much of a role it will play compared to the 2019-2024 mandate, also because of the strong focus on security and competitiveness in the new EU agenda.

One can only hope that the EU – together with a range of actors defending democracy at the national level – will be able to take sufficient measures to stop democratic backsliding within the EU. This is becoming increasingly difficult: in July 2024, Hungary took over the rotating EU Council presidency and provoked a public disgrace for EU diplomacy with its 'peace missions' to Moscow and Beijing. In the EP, the Patriots for Europe and the European Conservatives and Reformists (ECR) are the third and fourth biggest political groups, respectively. In the Commission, the Italian Raffaele Fitto has been designated as the first Executive Vice-President ever from the ECR.

Going forward, decision-makers need to recognise the danger of authoritarian leaders for democracies and for EU policymaking. Especially those still believing in democratic values, such as the French, German, Spanish and Polish governments, will have to support a much more ambitious programme, both within their countries and at the EU level, to ensure that our democracies in Europe remain resilient. Decision-makers will have to much more strongly combat malign interference, without leading to a 'shrinking' civic space within the EU by adopting legislations with loopholes and built-in gaps. They should equally consider preventive measures, but also invest in defensive ones, such as the rule of law conditionality mechanism and infringement procedures, with a much more stringent application of the 'toolbox' for those infringing on Article 2 of the TEU. EU decision-makers should also consider the EU's political system to be as equally fragile as the national ones and ensure that scandals such as Qatargate are properly dealt with, by pushing through legislation that creates the accountability and transparency necessary to ensure that EU legislation can be trusted.

The most important ingredient to tackle this gargantuan task will be political will. And timing will be crucial: the slower the solutions, the quicker authoritarians will have time to take over. This is why any new initiatives should be considerably accelerated, while of course keeping the quality of the legislation. Last but not least, the future of democracy remains very much in the hands of national political parties. And while the EU has little say over these organisations, EU decision-makers all originate from Member States' national political parties. As such, they should ensure that their own parties do not drift towards anti-democratic positions and allow the far right to come to power – this is particularly true for von der Leyen's CDU (Christian-Democratic Union) and junior Bavarian partner CSU (Christian-Social Union). The EU should use the (limited) regulatory power it has to ensure that national political parties also respect the values enshrined in Article 2 of the TEU.

Most importantly, EU decision-makers need to grasp that their own future is at stake if we do not collectively manage to safeguard democracy, both at the national and EU level. Authoritarian governments are more often than not against any form of constructive cooperation beyond the nation-state, except if it serves their ideological project of turning Europe into a white, homogeneous fortress. They do not see any value in diplomacy, striking compromises and solving problems through nonviolent conflict management at the EU level. As the positioning and lack of work of far-right parties in the EP has shown in the past years, they have little to no interest in pro-actively trying to find solutions to policy problems. Instead, they will put all their efforts into undermining the EU from within: weakening its institutions, de-legitimising its values, disregarding EU law and blocking any form of new legislative measures, despite the clear need for joint initiatives to tackle the growing challenges, from the climate crisis to competitiveness. If the EU is interested in securing its future, it should invest significant time, effort and money in upholding democratic standards in the EU.

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