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**The European Union's
Democratic Turn**

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Abstract

This working paper argues that we are witnessing a democratic turn in EU initiatives to protect and promote EU values. If, for many years, EU institutions framed their interventions mostly in rule of law terms, since the first von der Leyen Commission took office democracy has become much more central in EU legislative and enforcement efforts. The WP analyzes the main pillars of the turn, discussing the core components of the European Democracy Action Plan and of the Defence of Democracy Package, and identifies its main drivers. Next to the need to provide better answers to constitutional backsliding processes, also other European and global challenges, such as the digital transition and the risks associated to foreign interferences in democratic processes, have pushed the EU institutions to bring forward new democratic initiatives. The WP then offers an initial analysis of the constitutional impact of the turn and reflects on some of the core challenges that EU institutions are facing in operationalising the value of democracy.

Keywords: European Union; democracy; rule of law; EU values; constitutional backsliding; media freedom; digital constitutionalism; infringement actions

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The European Union's Democratic Turn

Matteo Bonelli¹

Introduction

The “constitutional backsliding” crisis in the European Union (EU) started almost fifteen years ago.² Since then, EU institutions have sought to address and reverse backsliding processes in the Member States with a variety of tools, initiatives and strategies. As is well known, the two most remarkable cases of constitutional backsliding have been those of Hungary, under Viktor Orbán’s governments, and of Poland, at least until the parliamentary elections of autumn 2023, won by a coalition of political forces committed to scale back the controversial reforms of the Law and Justice governments that ruled between 2015 and 2023.³

For at least the first half of these fifteen years, the events in Hungary and Poland, and at times also in other EU Member States,⁴ were most often described as a “rule of law crisis”, or as cases of “rule of law backsliding.” This conceptualisation of the crisis was prevalent both in the academic⁵ and the institutional debate.⁶ In line with that approach, EU institutions reacted to the crisis with the adoption of several instruments that strived to offer better protection to the rule of law, one of the Union’s founding values of Article 2 Treaty on EU (TEU). Already in 2015, the Commission adopted the “Rule of Law Framework”, a dialogical framework to be activated in case of systemic threats to the rule of law; a few years later, it introduced the

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² That is, if we take as a starting point Viktor Orbán’s return to power in Hungary after the April 2010 elections.

³ On the challenge to restore democracy and the rule of law in the Member States, see for example the contributions to Michał Bobek et al. (eds), *Transitions 2.0 - Re-establishing Constitutional Democracy in EU Member States*, Nomos, 2023.

⁴ See e.g. the discussions on Romania in Armin von Bogdandy and Pál Sonnevend (eds.), *Constitutional Crisis in the European Constitutional Area - Theory, Law and Politics in Hungary and Romania*, Hart Publishing, 2015; or more recently Ondrej Kadlec and David Kosař, “Romanian version of the rule of law crisis comes to the ECJ: The AFJR case is not just about the Cooperation and Verification Mechanism”, *Common Market Law Review* 59/6, 2022, 1823–1852.

⁵ Among many: Carlos Closa and Dimitry Kochenov (eds.), *Reinforcing Rule of Law Oversight in the European Union*, Cambridge University Press, 2016; Matthias Schmidt and Piotr Bogdanowicz, ‘The Infringement Procedure in the Rule of Law Crisis: How to Make Effective Use of Article 258 TFEU’, *Common Market Law Review* 55/4, 2018, 1061 – 1100.

⁶ See among many: Remarks by First Vice-President Frans Timmermans on further strengthening of the rule of law in the EU, Brussels, 3 April 2019, Doc. SPEECH/19/1972.

“Rule of Law Reports”,⁷ through which it regularly monitors rule of law performances in all 27 Member States. To strengthen monitoring efforts, the Council also developed a (timid) rule of law peer-review scheme.⁸ In 2020, the European Parliament (EP) and the Council then adopted the so-called “Rule of Law Conditionality Regulation”,⁹ which allows EU institutions to suspend EU funds when a Member State breaches certain rule of law standards, and that breach affects the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way. Furthermore, in the *Repubblika* case,¹⁰ the Court of Justice of the EU (CJEU) developed the principle of “non-regression” on rule of law standards after accession. These efforts have led to the creation of a rather comprehensive “rule of law toolbox” that is now in the hands of the EU institutions.¹¹

The initial focus and emphasis on the rule of law in EU action was, at least to an extent, logical. Both in Hungary and in Poland, ruling majorities brought severe attacks to core rule of law principles, and in particular to the independence of the judiciary. They reformed systems of judicial appointments, disciplinary proceedings, tried to curb the national courts’ possibilities to rely on EU and European Convention on Human Rights (ECHR) standards and case law domestically, and increased political control over national councils of the judiciary. Widespread corruption has also been a strong concern in Hungary,¹² but also in other older and newer Member States.¹³ Furthermore, from the point of view of the legitimacy of EU intervention, the Union institutions could rely on the fairly robust rule of law credentials of the EU, arguably stronger than the democratic ones, given the rather popular critique of the Union’s democratic deficit.

Nonetheless, already in the early stages of the fight against constitutional backsliding, some observers stressed that the EU should not only focus on the rule of law, but needed to address challenges to all Article 2 TEU values, including the value of the democracy, if it wanted to

⁷ Note that the Rule of Law Report adopts a broad conception of the rule of law, which also incorporates for example media freedom.

⁸ The so-called Rule of Law Dialogue: for a discussion, see Thomas Conzelmann, “Peer Reviewing the Rule of Law? A New Mechanism to Safeguard EU Values”, *European Papers* 7/2, 2022, 671-695.

⁹ The final title of the Regulation – Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget – does not however make explicit reference to the concept of the rule of law.

¹⁰ CJEU, C-896/19 *Repubblika* EU:C:2021:311.

¹¹ The expression has been adopted also by the Commission: see e.g. <https://commission.europa.eu/document/download/0202c616-e7e6-4378-9961-512c56d246c5_en?filename=rule_of_law_mechanism_factsheet_en.pdf>. For a recent analysis of the toolbox: Cristina Fasone, Adriano Dirri and Ylenia Guerra (eds.), *EU Rule of Law Procedures at the Test Bench - Managing Dissensus in the European Constitutional Landscape*, Palgrave Macmillan, 2024.

¹² As shown in the Council decision suspending funding under Regulation 2020/2092: Council Implementing Decision 2022/2506 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, OJ L325/94.

¹³ Armin von Bogdandy and Michael Ioannidis, “Systemic Deficiency in the Rule of Law: What It Is, What Has Been Done, What Can Be Done”, *Common Market Law Review* 51/1, 2014, 59-96.

offer adequate answers to the Hungarian and Polish crises.¹⁴ Yet, in the first years, the focus of EU institutions remained essentially on the value of the rule of law.

The approach started to shift when the first von der Leyen Commission took office in 2019. Building on earlier initiatives under the Juncker presidency,¹⁵ the Commission identified “A new push for European democracy” as one of six priorities in the political guidelines for the 2019-2024 mandate.¹⁶ Among other measures,¹⁷ in order to concretize that “push”, the Commission presented in the years that followed two packages of legislative and policy initiatives on democracy: the “European Democracy Action Plan”¹⁸ (EDAP) and the “Defence of Democracy” package (DOD).¹⁹ Next to these law-making initiatives, the Commission also made democracy more central in its enforcement strategy. In particular, it has initiated infringement actions that explicitly strived to protect democracy in the Member States relying on Article 2 TEU, which proclaims democracy as one of the EU’s founding values, as well as to Article 10 TEU, which sets out the dual (national and European) channel of democratic legitimacy in the EU.²⁰ Moreover, the new Citizens, Equality, Rights and Values (CERV) programme created for the 2021-2027 Multiannual Financial Framework has made EU funding available for democratic initiatives in the Member States.²¹

This working paper (WP) argues that we are witnessing a “democratic turn” in EU initiatives to protect and promote EU values. This democratic turn complements, but does not replace, the initiatives developed in the last decade to strengthen the rule of law in the EU and the Member States, as well as the Union’s fundamental rights policy that has even earlier roots. The WP analyzes the main pillars of the turn and identifies its main drivers: next to the need to provide better answers to constitutional backsliding processes, other European and global challenges have pushed the EU institutions to bring forward new democratic initiatives. The WP then offers an initial analysis of the constitutional impact of the turn and reflects on some

¹⁴ See e.g. Jan-Werner Müller, “Should the EU Protect Democracy and the Rule of Law inside Member States?”, *European Law Journal* 21/2, 2015, 141-160; Editorial Comments, “Talking about European Democracy”, 13 *European Constitutional Law Review* 13/2, 2017, 207-220.

¹⁵ The political guidelines of the Juncker Commission included ‘A Union of Democratic Change’, but did not yet envisage a full policy strategy that included concrete legislative initiatives: see <https://commission.europa.eu/document/download/ad3f4ceb-aed8-4cc5-b6bb-4c60f448a5f2_en?filename=juncker-political-guidelines-speech_en.pdf>. The 2018 package “Securing Free and Fair European Elections” similarly did not lead to introducing new legislative proposals.

¹⁶ See Ursula von der Leyen “POLITICAL GUIDELINES FOR THE NEXT EUROPEAN COMMISSION 2019-2024” at <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024_en>.

¹⁷ Those included, for example, the organisation of the Conference on the Future of Europe, or the commitment to support institutional reforms envisaging stronger rights for the European Parliament, including the right of initiative and co-decision in the legislative process.

¹⁸ European Commission, Communication on the European Democracy Action Plan, Doc. COM/2020/790 final.

¹⁹ European Commission, Communication on Defence of Democracy, Doc. COM/2023/630 final.

²⁰ On which see e.g. Armin von Bogdandy, “The European Lesson for International Democracy: The Significance of Articles 9 to 12 EU Treaty for International Organizations”, *European Journal of International Law* 23/2, 2012, 315-334.

²¹ Generally, on the use of EU funding to promote EU values: Marco Fisicaro, “Beyond the Rule of Law Conditionality: Exploiting the EU Spending Power to Foster the Union’s Values”, *European Papers* 7/2, 2022, 697-719.

of the core challenges that EU institutions are facing in operationalising the value of democracy.

After a brief introduction to democracy as an EU value in section 1, sections 2 and 3 deal respectively with Commission's enforcement actions based on democratic values and principles, and then with EU legislative initiatives on democracy. Section 4 explores then the drivers of the Union's democratic turn. Section 5 reflects on the impact of the democratic turn, and section 6 reflects on the open challenges.

1. Democracy as an EU Value

The framing of the reaction to backsliding in rule of law terms was certainly not driven by the idea that the EU Treaties downplay the role of democracy, or that democracy does not feature as prominently as the rule of law in the EU constitutional system. On the contrary, democracy and the rule of law go hand in hand in the Treaties' framework. Both, together with human rights, find recognition in Article 2 TEU as the core constitutional values on which the EU is founded, and that are common to the Member States. Similarly, democracy and the rule of law are mentioned in Article 21 TEU as two of the values that the EU strives to promote in its external action, and similar lists containing references to both values, as well as once again to human rights, can be found in the preambles of the TEU and of the Charter of Fundamental Rights. Next to the rule of law and human rights, democracy is then a key accession condition for candidate countries.²² The core Treaty instrument to protect EU values in the Member States – Article 7 TEU – can then in principle be used to sanction both democratic and rule of law breaches, as well as human rights' violations. The overall status of democracy in the Treaties is therefore certainly not inferior to that of the rule of law: both have equal standing as constitutional foundations of the EU and its Member States, and together with fundamental rights they can be seen as forming the "holy trinity" of European constitutionalism.²³

Next to these broad proclamations on the relevance of democracy in the EU constitutional framework, the TEU also includes in its Title II a set of "Provisions on Democratic Principles". The crucial one is Article 10 TEU, which affirms that the EU institutions function on the basis of the principle of "representative democracy" (paragraph 1),²⁴ and then, in paragraph 2, sets out the dual channel of democratic representation in the EU: citizens are "directly" represented in the EP, and then indirectly represented in the European Council and Council by their national governments, "themselves democratically accountable either to their national Parliaments, or to their citizens". Article 10(3) TEU recognizes the citizens' right to participate in the democratic life of the Union and the next paragraph speaks of the role of political parties in the EU democratic systems. Other provisions of Title II regulate *inter alia* the European Citizens' Initiative (article 11 TEU) and the role of national parliaments in the EU

²² See Article 49 TEU and the Copenhagen political criterion.

²³ For a discussion: András Sajó and Renáta Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism*, Oxford University Press, 2017.

²⁴ According to the CJEU, C-502/19 *Junqueras Vies* ECLI:EU:C:2019:1115, para 63, Article 10 "provides that the functioning of the Union is to be founded on the principle of representative democracy, which gives concrete form to the value of democracy referred to in Article 2 TEU".

(article 12 TEU). Furthermore, the Charter of Fundamental Rights offers protection to the right to vote in local and European elections,²⁵ but also to other key democratic rights such as freedom of expression, or freedom of association.

Whereas the key status and relevance of democracy in the Treaties is therefore unquestionable, once we zoom in further, more difficult questions emerge. Identifying precise obligations and standards flowing from the value of democracy is not an easy task, given both the very wide diversity between Member States, which conceptualize and concretize democracy in a variety of ways, and the limited EU acquis in the area. There is no document comparable to the Charter of Fundamental Rights that clarifies the meaning of democracy in the EU,²⁶ and while the rule of law has been defined more precisely in recent times with the Rule of Law Framework and Reports, but also in the Conditionality Regulation,²⁷ similar lists of democratic principles are not available.²⁸ Even during different rounds of enlargement, EU institutions never offered a conclusive definition of democracy as a membership condition, with the Commission largely monitoring *ad hoc* democratic issues in accession candidates.²⁹ Furthermore, the case law of the Court of Justice on the value of democracy has traditionally been rather limited and has mostly concerned the prerogatives of the EP,³⁰ although, as discussed in section 2 of the WP, there have been significant developments on that front. Lastly but crucially, the Treaties do not offer explicit legal bases that allow the EU to take action to harmonize national democratic processes or set out common democratic standards. It is therefore hard to disagree with Nemitz and Ehm when they claim that in the “triangle” of Article 2 TEU values, democracy has been “the weakest link” and that it needs more work.³¹

More structurally, the democratic debate in the EU has mostly focused on a single, although fundamental, issue: the (alleged) democratic deficit of the EU, and the need to tackle it through institutional reforms as well as with a broad commitment to openness and transparency.³² Democratic conditions in the Member States were never the main point of attention and concern, at least until the start of constitutional backsliding processes. But even

²⁵ See Articles 39 and 40 EUCFR. Note that the Charter does not contain a general right to free elections and democratic elections comparable to Article 3 of Protocol no. 1 to the ECHR.

²⁶ The modest list of democratic principles available in the “Declaration on Democracy”, adopted by the European Council in Copenhagen on 7 – 8 April 1978, is certainly not comparable to the Charter of Fundamental Rights neither in terms of its legal effects nor of the level of detail of its content.

²⁷ See Regulation 2020/2092, Article 2(a).

²⁸ For similar considerations: Paul Nemitz and Frithjof Ehm, “Strengthening Democracy in Europe and its Resilience Against Autocracy: Daring More Democracy and a European Democracy Charter”, in Sacha Garben, Inge Govaere and Paul Nemitz (eds.), *Critical Reflections on Constitutional Democracy in the European Union and its Member States*, Hart Publishing, 2019; see in particular p 349 highlighting that for democracy “EU primary law does not contain the necessary consolidations and concretisations as were achieved regarding fundamental rights in the Charter of Fundamental Rights of the European Union”.

²⁹ For a discussion of the approach to democracy in the Big-Bang Enlargement: Dimitry Kochenov, *EU Enlargement and the Failure of Conditionality*, Kluwer Law International, 2008.

³⁰ See famously CJEU, C-138/79 *Roquette Frères v Council* ECLI:EU:C:1980:249; and a summary of the early case law of the Court in Giuseppe Federico Mancini and David T Keeling, “Democracy and the European Court of Justice”, *Modern Law Review* 57/2, 1994, 175-190.

³¹ Nemitz and Ehm, “Strengthening Democracy in Europe”, 349.

³² See also Yasmine Bouzora, “The Value of Democracy in EU Law and Its Enforcement: A Legal Analysis”, *European Papers* 8/2, 2023, 809-851, for similar observations.

then, as noted earlier, EU institutions initially concentrated mostly on the protection of the rule of law. The Union's own democratic deficits might have been one of the very reasons why the Commission and other EU players preferred mostly to frame the discussion in rule of law terms.³³

Yet things have started to change especially since the start of the mandate of the first von der Leyen Commission. Even in the absence of any fundamental institutional reform that granted the EU and its institutions a stronger mandate to oversee democratic conditions in the Member States, or the introduction of new legal bases in the Treaties, a new emphasis on the value of democracy is evident in the institutional initiatives that have developed since then. The next sections of the WP introduce these initiatives.

2. The democratic turn: enforcement initiatives

As noted earlier, EU action to tackle constitutional backsliding in the Member States largely focused on the value of the rule of law in the first decade of the crisis. EU institutions developed a new set of procedures to monitor rule of law compliance (the Commission's Rule of Law Framework and later the Rule of Law Reports and the Council Rule of Law Dialogue) and introduced mechanisms of budgetary conditionality based on respect for the rule of law.³⁴ In the first-ever proposal to activate Article 7(1) TEU against Poland in 2017, the Commission made direct reference to the value of the rule of law,³⁵ and the Council put on its agenda "the respect for the rule of law in Poland" several times since then. And while it is true that the Article 7(1) procedure launched by the Parliament against Hungary explicitly covered *all* values of Article 2 TEU,³⁶ the prevalence of rule of law concerns – and to a lesser extent, also fundamental rights' ones – was again visible in the infringement actions promoted by the Commission to fight constitutional backsliding. After the landmark CJEU decision in the *Portuguese Judges* case,³⁷ the Commission initiated several Article 258 Treaty on the Functioning of the EU (TFEU) cases against Poland on violations of judicial independence.³⁸

³³ For a reflection on the topic, see Anna Gora and Pieter de Wilde, "The Essence of Democratic Backsliding in the European Union: Deliberation of Rule of Law", *Journal of European Public Policy* 29/3, 2022, 342-362, who argued that the emphasis on the rule of law might be due to the fact that the debate has been mostly framed by lawyers (although the latter empirical observation would need to be tested further).

³⁴ See again Regulation 2020/2092, but also the rule of law considerations included – explicitly or implicitly – in the Next Generation EU system and in the revised Common Provisions Regulation: Regulation 2021/1060 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

³⁵ European Commission, Reasoned Proposal in accordance with Article 7(1) of the Treaty on European Union regarding the Rule of Law in Poland - Proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, Brussels, 20 December 2017, Doc. COM(2017) 835 final.

³⁶ European Parliament, Resolution on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, Strasbourg, 12 September 2018, Doc. 2017/2131(INL).

³⁷ CJEU, C-64/16 *Associação Sindical dos Juizes Portugueses*, EU:C:2018:117.

³⁸ CJEU, Case C-619/18 *Commission v Poland (Supreme Court)*, EU:C:2019:531; C-192/18 *Commission v Poland (Independence of ordinary courts)*, EU:C:2019: Case C-791/19 *Commission v Poland (Régime disciplinaire des*

The Commission's infringement policy thus focused centrally on the protection of judicial independence on the basis of Article 19 TEU, next to some infringement actions based on the Charter of Fundamental Rights started against Hungary.³⁹

Democracy was instead largely absent in the Commission's enforcement efforts even after the start of constitutional backsliding processes. The only limited exceptions were a few infringement actions launched between 2012 and 2013 on voting rights and political participation of EU citizens. Those actions had a rather narrow scope, as they focused crucially on possible breaches of Article 22 TFEU, which provides for the EU citizens' right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State. They made no explicit references to other EU law provisions on democratic values and principles. And they actually remained frozen for a rather long time. After issuing reasoned opinions in 2014, the Commission waited until 2021, and thus after the start of the democratic turn described in this WP, to bring two Member States – the Czech Republic and Poland – before the Court of Justice as they limited membership of political parties to their own nationals. The Court decided the cases in November 2024, finding in both cases a violation of Article 22 TFEU, as the two Member States failed to guarantee equal treatment to EU nationals in terms of their participation to local and EU elections.⁴⁰ While the two rulings did not immediately concern directly constitutional backsliding processes, they are nonetheless remarkable and contribute to “unveil” key democratic elements at the EU level,⁴¹ such as the role of political parties in the EU multilevel democratic system.⁴² In arguing for an extensive reading of Article 22 TFEU, both the Opinion of the Advocate General and the Court explicitly connected it to Articles 2 and 10 TEU,⁴³ by saying that it contributes to give expression to the democracy as one of the values on which the European Union is founded.⁴⁴

After these first steps, things started to change more fundamentally with the infringement action on LGBTIQ+ rights in Hungary, where the Commission for the first time directly relied on Article 2 TEU in an infringement action currently pending before the Court.⁴⁵ While that action does not directly concern core democratic principles, but is rather focused on human dignity and other fundamental rights, the pending case is crucial as it might open the door for direct enforceability of Article 2 TEU, and therefore potentially also of the value of democracy,

juges), EU:C:2021:596; Case C-204/21 *Commission v Poland (Indépendance et vie privée des juges)*, EU:C:2023:442.

³⁹ CJEU, Case C-78/18 *Commission v Hungary (Transparency of Associations)*, EU:C:2020:476; Case C-66/18 *Commission v Hungary (Higher Education)*, EU:C:2020:792.

⁴⁰ CJEU, Case C-808/21 *Commission v Czech Republic () and qualité de membre d'un parti politique* EU:C:2024:962; Case C-814/21 *Commission v Czech Republic () and qualité de membre d'un parti politique* EU:C:2024:963.

⁴¹ Nora Vissers, “Unveiling Democracy”, *Verfassungsblog*, 2024, < <https://verfassungsblog.de/unveiling-democracy/> > [accessed 01.09.2025].

⁴² As the Court put it in C-808/21, *Commission v Czech Republic* para 112: political parties ‘fulfil an essential function in the system of representative democracy.

⁴³ See C-808/21, *Commission v Czech Republic* para 114.

⁴⁴ On the rulings, see Nora Vissers, “Join the (political) party: The CJEU's emerging role as a guardian of democracy in Cases C-808/21 and C-814/21”, *Maastricht Journal of European and Comparative Law*, 2025 (OnlineFirst).

⁴⁵ See pending case CJEU, C-769/22 *Commission v Hongrie (Valeurs de l'Union)*.

before the Luxembourg Court. An expansive reading of Article 2 by the Court could create a novel way to enforce democracy in the EU, as the Commission could potentially acquire the possibility to target national measures undermining democracy directly on the basis of Article 2 TEU, possibly even outside the scope of EU law.⁴⁶

While the case is still pending, the Commission has developed other ambitious constructions in other two infringement actions that relate directly to democratic principles: the actions started against Poland on “Lex Tusk”,⁴⁷ and against Hungary on the Defence of National Sovereignty Law.⁴⁸ In both cases, when launching the infringement procedure, the Commission explicitly argued that the legislation adopted in the Member States violated democratic values and principles, advancing similar, although not identical, legal arguments. In the Lex Tusk case, with its letter of formal notice,⁴⁹ the Commission argued that the Polish law violated “the principle of democracy” expressed in Article 2 and 10 TEU. It raised these claims as the first ground of violation of EU law, without attempting to show that the national measures fell within the scope of EU law because of a breach of, for example, free movement provisions. In the Defence of Sovereignty case, the Commission in the letter of formal notice did not directly refer to Articles 2 and 10 TEU, but spoke of a possible “violation of the democratic values of the Union” as well as of “the principle of democracy and the electoral rights of EU citizens”. Here again, the democratic claim was the first issue raised by the Commission. The Commission seemed therefore to suggest that Article 10 TEU could play for democracy a role analogous to what Article 19 TEU does for the value of the rule of law, and in particular for the principle of judicial independence,⁵⁰ namely a source of autonomous obligations that can trigger the Court’s jurisdiction even beyond the scope of EU law.

The arguments based on both Article 2 and Article 10 still need to be tested before the Court. The Hungarian LGBTIQ+ case will offer some clarity on the former, although it is unlikely to offer full clarity on a crucial question: whether it is possible to invoke Article 2 TEU even beyond the scope of EU law. This is because the Commission relied on a wide range of EU substantive law provisions, therefore demonstrating that the national measure in question falls within the scope of EU law, before advancing the Article 2 argument. As for Article 10, the infringement action on Lex Tusk did not proceed beyond the letter of formal notice, after

⁴⁶ I discuss this possible development more in detail in Matteo Bonelli and Monica Claes, “Crossing the Rubicon? The Commission’s use of Article 2 TEU in the infringement action on LGBTIQ+ rights in Hungary”, *Maastricht Journal of European and Comparative Law* 30/1, 2023, 3-14.

⁴⁷ On Lex Tusk, see Wojciech Sadurski, “The Law to take out Tusk”, *Verfassungsblog*, 2023, <<https://verfassungsblog.de/the-law-to-take-out-tusk/>> [accessed 01.09.2025].

⁴⁸ On which see the critical opinion of the Venice Commission, Opinion on Act LXXXVIII of 2023 on the Protection of National Sovereignty, adopted by the Venice Commission at its 138th Plenary Session (Venice, 15-16 March 2024), Doc CDL-AD(2024)001-e.

⁴⁹ For comments, see Nora Vissers, “Enforcing Democracy”, *Verfassungsblog*, 2023, <<https://verfassungsblog.de/enforcing-democracy/>> [accessed 01.09.2025]; and Franca Feisel, “Walking A Democratic Tightrope”, *Verfassungsblog*, 2023, <<https://verfassungsblog.de/walking-a-democratic-tightrope/>> [accessed 01.09.2025].

⁵⁰ For a discussion, see e.g. Armin von Bogdandy and Luke Dimitrios Spieker, “Transformative Constitutionalism in Luxembourg: How the Court Can Support Democratic Transitions”, *Columbia Journal of European Law* 29, 2023, 65-92.

the change of government in Poland; and in the procedure against Hungary on the Defence of Sovereignty Law, the Commission ultimately did not rely on Articles 2 and 10 in the case pending before the Court.⁵¹

It is therefore still to be seen whether Article 10 can truly become the “new” Article 19. The text of the former is less explicit than the latter’s: whereas Article 19 clearly introduces obligations binding on Member States (“Member States *shall*⁵² provide remedies sufficient to ensure effective legal protection in the fields covered by Union law”), the focus of Article 10 is rather on EU institutions and on how they represent EU citizens. Even when it speaks of national democratic processes as necessary to ensure EU democratic legitimacy, Article 10 seems to mostly *describe* the national indirect channel of democratic legitimacy, rather than imposing any concrete obligation on Member States.⁵³ The decision of the Commission to ultimately refrain from making an explicit argument based on Article 10 TEU before the Court in the infringement action on the Defence of Sovereignty Law can be seen as demonstrating that the exact meaning and legal effects of the provision remain ambiguous. Yet, in the already mentioned cases against the Czech Republic and Poland, the Court may have opened the door for future attempts to enforce Article 10. When describing Article 10 as “[giving] concrete expression” to democracy as a value,⁵⁴ the Court adopted the same language it uses to connect Articles 2 and 19 TEU, and makes an implicit reference to a key paragraph of the judgment on the validity of the Conditionality Regulation, where it stated that values “are given concrete expression in principles containing legally binding obligations for the Member States”.⁵⁵

In any event, the recent enforcement initiatives are a sign of the Commission’s more robust commitment to develop a democracy toolkit next to the well-established rule of law toolkit, and of its effort to make democracy protection a key element of its broader values-oversight strategy. Enforcement efforts via Article 258 TFEU may be further complemented and strengthened by the legislative actions discussed in section 3 below, as the adoption of secondary legislation at the EU level allows in fact the Commission to enforce those common standards in case of non-compliance by the Member States with the new pieces of legislation, and to bring new democratic questions before the Court where necessary.

3. The democratic turn: legislative initiatives

Since von der Leyen took office for the first time in 2019, the Commission proposed numerous legislative proposals dealing with fundamental democratic issues, and several of them were adopted by the co-legislators in the past legislative term (2019-2024). While analysing in detail each proposal goes beyond the scope of this contribution, this section strives to offer an

⁵¹ See text of the pending case CJEU, Case C-829/24 *Commission v Hungary*.

⁵² Italics of the author.

⁵³ For a much more ambitious reading of Article 10 TEU, reading concrete obligations in it: John Cotter, “To Everything There is a Season: Instrumentalising Article 10 TEU to Exclude Undemocratic Member State Representatives from the European Council and the Council”, *European Law Review* 47/1, 2022, 69-84.

⁵⁴ See C-808/21, para 114.

⁵⁵ CJEU, Case C-156/21 *Hungary v European Parliament and Council* EU:C:2022:97.

overview of the main pillars of the two packages of democratic initiatives developed by the first von der Leyen Commission, in order to grasp the scope and key aims of the democratic turn of the Union. These measures must also be seen next to other initiatives that, while not explicitly framed in democratic terms or inserted in the two packages, advanced related objectives: key examples are the Digital Markets Act (DMA)⁵⁶ or the Digital Services Act (DSA),⁵⁷ core elements of the “digital constitutionalism” strategy of the EU, which, as will be argued in section 4, is also one of the drivers of the Union’s democratic turn; or the Whistleblowers Directive,⁵⁸ which contains references to fundamental democratic principles in the preamble.

The Commission launched the first comprehensive package of democratic initiatives in 2020 with the European Democracy Action Plan (EDAP). This was the immediate response to the “new push for European democracy” promised by President von der Leyen after the 2019 elections. Notably, whereas von der Leyen’s political guidelines still focused mostly on strengthening democratic structures at the EU level,⁵⁹ the EDAP shifted already the emphasis on democracy at the level of the Member States.⁶⁰ In line with the 2020 *zeitgeist*, the EDAP Communication spoke of building “resilience in times of challenges” and to address the vulnerabilities of democratic processes. It included three core pillars: a) Promoting free and fair elections and strong democratic participation; b) Supporting free and independent media; and c) Countering disinformation.

Under the first pillar, the most remarkable initiative was the “Regulation on the Transparency and Targeting Political Advertising” proposed by the Commission in November 2021 and adopted in March 2024.⁶¹ Based on the internal market legal basis of Article 114 TFEU, the Regulation introduced a harmonised common standard of transparency for providers of political advertising services, covering all media outlets. Political advertising is broadly defined in the Regulation as “the preparation, placement, promotion, publication, delivery or dissemination” of a message on behalf of a political actor,⁶² “which is liable and designed to influence the outcome of an election or referendum, voting behaviour or a legislative or regulatory process”.⁶³ Next to imposing transparency and due diligence obligations on providers of political advertising, the Regulation includes also rules on the use of personal data

⁵⁶ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

⁵⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

⁵⁸ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, see in particular points 33 and 48 of the preamble.

⁵⁹ Referring to issues such as the Parliament’s right legislative initiative or the desire to improve the *spitzenkandidaten* system.

⁶⁰ I am grateful to Manuel Müller for this observation.

⁶¹ Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising.

⁶² In contrast, according to Article 1(3) of Regulation 2024/900, “Political opinions that are expressed in a personal capacity shall not be considered to be political advertising”.

⁶³ Article 3(2) of Regulation 2024/900.

for targeted political advertising online, and a ban on using certain categories of personal data (racial or ethnic origin, religion, sexual orientation, etc)⁶⁴ for targeting purposes.⁶⁵ To address risks of foreign interference on democratic processes, the Regulation furthermore prohibits advertisement from outside the EU during the three months that precede an election.⁶⁶

Next to the Political Advertising Regulation, the first pillar of the EDAP also included proposals to revise the Regulation on European political parties⁶⁷ and the Directives on electoral rights for European Parliament and municipal elections, which have not yet been adopted; as well as other non-legislative measures such as recommendations on e-voting or on the strengthening of EU electoral missions.

The second pillar of the EDAP dealt with media freedom and contained what is perhaps the flagship proposal of the plan, namely the European Media Freedom Act (EMFA).⁶⁸ Presented in 2022 together with a complementary “Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector”,⁶⁹ and then adopted in 2024, EMFA responded to the growing calls for a stronger intervention of the EU in protecting media freedom and media pluralism.⁷⁰ These calls became more urgent in the context of constitutional backsliding processes that targeted media outlets and limited media freedom, but also in light of the difficulties traditional media are facing in responding to the digital transition and the large online platforms’ challenges to their business models. Also based on Article 114 TFEU, and justified by the Commission on the basis of a growing fragmentation of national regulatory approaches to media freedom and pluralism, EMFA is applicable to all offline and online media⁷¹ and touches upon several elements of media regulation, from the

⁶⁴ Those referred in Article 9(1) of the GDPR: Regulation (EU) 2016/67 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁶⁵ On the democratic risks inherent to the use of personal data for targeted political advertising, see Maja Brkan, “EU fundamental rights and democracy implications of data-driven political campaigns”, *Maastricht Journal of European and Comparative Law* 27/6, 2020, 774-790.

⁶⁶ Article 5(2) of Regulation 2024/900.

⁶⁷ Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations.

⁶⁸ Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act).

⁶⁹ Commission Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector, Doc. C/2022/6536 final.

⁷⁰ EMFA can be seen as part of longer-term shift in media policy where the Commission has gone beyond a purely economic perspective to media regulation: Christina Holtz-Bacha, “Freedom of the media, pluralism, and transparency. European media policy on new paths?”, *European Journal of Communication* 39/1, 2023, 37-55.

⁷¹ See the definition of media service in Article 2(1) of Regulation 2024/1083: “providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility of a media service provider”. Previous interventions had been more targeted to specific media sectors, see e.g., Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. Note, however, that there is criticism that the definition of media and media service provider under the new Regulation is still too narrow: see Theresa Seipp, Ronan Ó Fathaigh and Max van Drunen, “Defining the ‘media’ in Europe: pitfalls of the proposed European Media Freedom Act”, *Journal of Media Law* 15/1, 2023, 39–51.

transparency of media ownership, to independence and funding of public service. It also contains specific rules on the protection of journalists including from “intrusive surveillance”,⁷² or on the dissemination of media content in the online environment.⁷³ Furthermore, it provides for specific rules on media concentration – the so-called “media pluralism test”⁷⁴ – and sets up a new institutional structure, the European Board of Media Services, to promote better enforcement of the new Regulation.

Another key initiative under the second pillar of the EDAP is the anti-SLAPP Directive,⁷⁵ which strives to tackle abusive litigation targeting journalists and natural and legal persons engaging in public participation. Like EMFA, the Directive was proposed in 2022 and adopted in 2024, and also accompanied by a parallel recommendation on the protection of journalists and human rights defenders.⁷⁶ Unlike most other pieces of legislation discussed in this WP, the anti-SLAPP Directive is not based on Article 114 TFEU, but on Article 81(2)(f) TFEU that allows for the adoption of rules of civil procedure under Chapter 3 of the TFEU, dedicated to judicial cooperation in civil matters. The Directive asks Member States to provide safeguards against “manifestly unfounded claims or abusive court proceedings”, brought on the account of someone’s engagement in public participation,⁷⁷ when those cases have cross-border implications.⁷⁸ Safeguards include early dismissal of cases of “manifestly unfounded court proceedings” and remedies for SLAPP victims.⁷⁹

Finally, under the third pillar on countering disinformation and information manipulation, the EDAP did not envisage specific legislative initiatives but still a wide range of actions, including crucially the strengthening of the Code of Practice on Disinformation,⁸⁰ the setting up of monitoring frameworks on disinformation and foreign interference, and actions to support

⁷² Article 4(3)(c) of Regulation 2024/1083.

⁷³ See the “media privilege” system in Article 18 of Regulation 2024/1083.

⁷⁴ See Article 22 of Regulation 2024/1083. For a critical analysis: Marta Sznajder, “European Media Freedom Act and its implications for both merger control and media pluralism: the Polish perspective”, *European Law Review* 49/1, 2024, 66-77.

⁷⁵ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’).

⁷⁶ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’), covering domestic SLAPPs with no-cross border impact.

⁷⁷ The Directive does not contain a closed list of groups of people who can receive protection: any natural or legal person engaging in public participation – defined in Article 4(1) of Directive 2024/1069 as “making of any statement or the carrying out of any activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting or assisting action directly linked thereto, and which concerns a matter of public interest” – can benefit from the protection offered by the Directive.

⁷⁸ According to Article 5(1) of Directive 2024/1069, “a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation concerned are located only in that Member State”.

⁷⁹ See Chapters III and IV of Directive 2024/1069 respectively.

⁸⁰ See The Strengthened Code of Practice on Disinformation 2022 available at <<https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>> [accessed 01.09.2025].

civil society. On these issues, the EDAP also referred back to the DSA proposed separately in the same period.

While the negotiations on the EDAP legislative proposals proceeded, the Commission developed a second programme of democratic initiatives with the 2023 Defence of Democracy Package. In the wake of Qatargate, there was a growing concern at the EU level⁸¹ with foreign interferences in democratic processes – the third of the drivers of the Union’s democratic turn that will be discussed later, and a rationale evident also in measures external to the package such as the Foreign Subsidies Regulation.⁸² The package aims to tackle the risks of foreign interferences with measures presented as promoting transparency and democratic accountability, and includes initiatives on civic engagement and citizens’ participation.

Next to non-binding initiatives such as a Recommendation on inclusive and resilient elections⁸³ or a Recommendation on promoting civic engagement and citizen participation⁸⁴, the key proposal of the package is the draft “Directive establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries”.⁸⁵ The initiative was presented by the Commission in December 2023 and is still under negotiation between the co-legislators. Once again, the Commission relied on the legal basis of Article 114 TFEU, arguing that “interest representation” is a service, usually provided against remuneration, and that differences in national laws and regulatory fragmentation create obstacles to trade that the proposed Directive strives to address. The draft Directive seeks to provide a common high level of transparency and democratic accountability when it comes to lobbying campaigns performed on behalf of third states. It envisages the creation of transparency registers in the Member States where entities providing interest representation activities for third countries would have to register and disclose their activities, and also provides for sanctions in case of non-compliance with the new obligations.

In comparison with most EDAP initiatives, the DOD, and in particular the proposed Directive on interest representation, signals a shift in tone, emphasis, and goals, towards a more explicit “defensive” effort that more easily accepts limits to democratic participation in order to protect democratic processes. In a context in which different controversial laws on transparency and NGOs participation have been adopted both right outside the EU (Georgia

⁸¹ See e.g. European Parliament Resolution on foreign interference in all democratic processes in the European Union, including disinformation (2022/2075(INI)).

⁸² Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union; see also Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries.

⁸³ Commission Recommendation (EU) 2023/2829 of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament.

⁸⁴ Commission Recommendation (EU) 2023/2836 of 12 December 2023 on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes.

⁸⁵ Commission Proposal for a Directive establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937, Doc. COM/2023/637 final.

and Russia being two notable cases) and even in EU Member States,⁸⁶ the proposed Directive has raised controversies in civil society⁸⁷ and more generally generates new questions on a possible “militant democracy turn” of the Union.⁸⁸

4. The drivers of the democratic turn

The need to find more effective and adequate solutions to cases of backsliding has been a crucial driver of the Union’s democratic turn, but not the only one. In particular, the legislative initiatives in the context of the EDAP and of the Defence of Democracy package reflect, and attempt to respond to, other broad constitutional challenges the EU and its Member States have faced in recent times. In the EU democratic initiatives, we see therefore the interaction of different constitutional trajectories, each bringing different demands and concerns in the spotlight, something that at times can create tensions in how the EU frames and develops its action. Without attempting to be exhaustive, in the sense that specific initiatives may have also been pushed by other, more sector-specific, factors,⁸⁹ this section reflects on the core drivers of the democratic turn identified and discussed in this WP.

To start from an uncontroversial point, fighting constitutional backsliding undoubtedly played a key role in the development of the democratic initiatives analyzed in these pages. The narrow focus on the rule of law was increasingly perceived as inadequate and insufficient to adequately address constitutional backsliding processes.⁹⁰ By concentrating only on the rule of law, and at times even more specifically on the independence of national courts, EU institutions were missing the bigger picture, the political roots of constitutional backsliding phenomena in the Member States.⁹¹ During the first years of backsliding, EU institutions did too little, for example, on the media freedom and media pluralism front, and did not put forward broader strategies to protect civil society in the Member States. Furthermore, and paradoxically, by framing action on the basis of the value of the rule of law, the EU allowed national governments to frame intervention “from Brussels” as anti-democratic, and to claim

⁸⁶ See the “lex NGO” judgment of the Court of Justice: CJEU, C-78/18 *Commission v Hungary*.

⁸⁷ See e.g. European Civic Forum, “Press Release - PRESS RELEASE: European Commission adopts problematic foreign funding directive, ignoring civil society warnings” <<https://civic-forum.eu/press/press-release-european-commission-adopts-problematic-foreign-funding-directive-ignoring-civil-society-warnings>> [accessed 01.09.2025].

⁸⁸ See for a discussion Franca Feisel, “One Step Forward, Two Steps Back”, *Verfassungsblog*, 2023, <<https://verfassungsblog.de/one-step-forward-two-steps-back/>> [accessed 01.09.2025].

⁸⁹ Just to offer an example, the anti-SLAPP Directive reflects both the broader challenges presented in this section and, more specifically, the reaction to the murders of journalists such as Daphne Caruana Galizia in Malta, and Jan Kuciak and his partner Kušnírová in Slovakia. The anti-SLAPP Directive has in fact often been referred to as “Daphne’s law” in the debate.

⁹⁰ For a reflection on the topic, see András Jakab, “Three misconceptions about the EU rule of law crisis”, *Verfassungsblog*, 2022, <<https://verfassungsblog.de/misconceptions-rol/>> [accessed 01.09.2025].

⁹¹ On which see among many Dariusz Adamski, “The Social Contract of Democratic Backsliding in the “New EU” Countries”, *Common Market Law Review* 56/3, 2019, 623-666 ; and; Bojan Bugarič, “A crisis of constitutional democracy in post-Communist Europe: “Lands in-between” democracy and authoritarianism”, *International Journal of Constitutional Law* 13/1, 2015, 219-245.

that they were acting to protect their own national democracy from the European, technocratic rule of law.⁹²

In addition, as processes of backsliding advanced, ruling majorities in Hungary and Poland put forward bolder legislative interventions directly targeting key democratic principles and rights, notable examples being the already mentioned Lex Tusk in Poland and the Defence of Sovereignty package in Hungary. The attempt to dismantle key democratic mechanisms and institutions became more and more evident, and EU institutions came therefore to the realisation that they had to complement their rule-of-law-protection initiatives with stronger and more explicit democratic efforts. The partial reframing of EU action strived to counter the objection, mentioned above, that EU intervention limited, or even undermined, national democracies by opposing and imposing a technocratic version of the rule of law, and that the EU disturbed national democratic choices reducing the margin of action of domestic political actors. Framing EU oversight in democratic terms better shows that the EU has the goal to *protect* democracy at the national level, and, in doing so, it tries to foster a stronger mobilisation of those domestic actors that are ultimately central in restoring constitutional values, as we have seen in Poland in recent times. This first driver of the EU's democratic turn is evident first and foremost in the enforcement initiatives based on Article 10 TEU described in section 2, but also for example in the development of the European Media Freedom Act. One of the main purposes of EMFA is in fact fighting attempts of backsliding governments to take control of public and private media, a challenge that has been pointed out also in the media freedom chapters of the annual Rule of Law Reports.⁹³

A second driver for the EU's democratic turn stems from the challenges that the digital transformation creates for core constitutional values. Over the last decade, the EU has developed a series of strategies and measures with the overarching goal of re-affirming and extending constitutional guarantees to the digital world and more strictly control the powers and actions of digital giants, an approach that has often been described as "digital constitutionalism".⁹⁴ Landmark measures include the GDPR,⁹⁵ the DMA and DSA package,⁹⁶

⁹² See Müller, "Should the EU protect democracy", 142, arguing that, while the EU is claiming to safeguard "liberalism" national governments "assert proper democracy". Thus, "leaving the 'd-word' – democracy – to proto-authoritarian governments" is an error. On this discussion see also Beáta Bakó, "National Democracy vs European Rule of Law? The lack of public demand for the rule of law in Hungary", re:constitution Working Paper, Forum Transregionale Studien 13/2023, available at <<https://reconstitution.eu/working-papers.html>> [accessed 01.09.2025].

⁹³ On these challenges, see for example Małgorzata Kozak, "The Media Pluralism Principle, The Financing of Public Broadcasters, and EU Law", *German Law Journal* 25/1 2024, 111-127.

⁹⁴ See in particular Giovanni De Gregorio, *Digital Constitutionalism in Europe - Reframing Rights and Powers in the Algorithmic Society*, Cambridge University Press, 2022; and Edoardo Celeste, *Digital Constitutionalism - The Role of Internet Bills of Rights*, Routledge, 2023.

⁹⁵ On the GDPR as an instrument of democratic protection, see Maja Brkan, "The regulation of data-driven political campaigns in the EU: from data protection to specialized regulation", *Yearbook of European Law* 41, 2022, 348-373.

⁹⁶ For a horizontal analysis, see Martin Eifert, Axel Metzger, Heike Schweitzer, Gerhard Wagner, "Taming the giants: The DMA/DSA package", *Common Market Law Review* 58/4, 2021, 987-1028.

and more recently the AI Act.⁹⁷ Whereas these pieces of legislation have mostly not been formally presented as democratic initiatives in the context of the European Democracy Action Plan or the Defence of Democracy package, they are nonetheless inspired by an evident democratic rationale: digital regulation is a way to protect democratic rights and other constitutional values first and foremost online, but also in society at large.⁹⁸ In any event, since 2019 and von der Leyen's push for European democracy, the democratic rationale of the digital constitutionalism initiatives has been brought to the fore more explicitly. The Commission's 2019-2024 priorities made it explicit: as the role of digital platforms continues to grow, the EU should ensure that "they are not used to destabilise our [i.e., European] democracies", and thus a new approach and common standards to address inter alia disinformation⁹⁹ and online hate speech¹⁰⁰ are needed. The Commission Communication on the EDAP was then even clearer on the impact of the digital revolution on democratic politics, the challenges it has created (including disinformation, polarisation, and the survival of traditional media) and the need to react to it. It showed, in particular, that mechanisms of self-regulation of digital actors were not enough, and called for regulation or re-regulation by public actors, including crucially at the EU level.¹⁰¹ Next thus to the big developments of the DMA/DSA package and the AI Act, some of the initiatives of the EDAP such as the Political Advertising Regulation,¹⁰² or the European Media Freedom Act, are other ways to respond to the digital transformation and attempt to uphold democratic guarantees in it.¹⁰³ The latter initiatives are not exclusively concerned with regulation of the internet or of online platforms, but both also deal with the interaction between democratic processes and the digital world, with the "media privilege" system established by Article 18 of the EMFA offering an excellent example of the interaction between democratic and digital regulation. Digital constitutionalism is thus one of the EU responses to the challenges that the digital

⁹⁷ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

⁹⁸ See for a discussion Anu Bradford, "Europe's Digital Constitution", *Virginia Journal of International Law* 64, 2023, 1-68.

⁹⁹ On which see Ethan Shattock, "Lies, Liability, and Lawful Content: Critiquing the Approaches to Online Disinformation in the EU", *Common Market Law Review* 60/5, 2023, 1313 – 1348.

¹⁰⁰ On (digital) hate speech in the EU Judit Bayer & Petra Bárd, Hate Speech and Hate Crime in the EU and the Evaluation of Online Content Regulation Approaches, Study commissioned by the European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs (2020), <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU\(2020\)655135_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655135/IPOL_STU(2020)655135_EN.pdf)> [accessed 01.09.2025]; Evangelia Psychogiopoulou "The Fight Against Digital Hate Speech: Disentangling the EU's Regulatory Approach and Hurdles", *German Law Journal* 25/7, 2024, 1182-1196.

¹⁰¹ See again Bradford, "Europe's Digital Constitution", 28, highlighting the growingly common belief in the EU that "democracy cannot be sustained by relying on free speech and platforms' self-regulation alone" and that governments need to step in in order to guarantee political rights".

¹⁰² Highlighting this connection between the new Regulation and the EU desire to increase control over digital players and safeguard constitutional values in the algorithmic society: Max Zeno van Drunen, Natalie Helberger and Ronan Ó Fathaigh, "The beginning of EU political advertising law: unifying democratic visions through the internal market", *International Journal of Law and Information Technology* 30/2, 2022, 181–199.

¹⁰³ On the interplay between the European digital strategy and EDAP see also Sanja Bogojević and Xavier Groussot, "Illiberal Democracy and Rule by Law from an EU perspective" in Allan Rosas, Juha Raitio and Pekka Pohjankoski (eds), *The Rule of Law's Anatomy in the EU: Foundations and Protections*, Bloomsbury, 2023.

transformation is bringing to national democratic processes, and another driver of the legislative initiatives of the Union's democratic turn.

A third driver for the democratic turn is then becoming progressively more central in EU democratic action: the protection of European democracies from interferences by foreign governments and actors. This concern is often linked to the threat of disinformation and therefore closely connected also to the second driver discussed in the previous paragraphs. Already in the aftermath of the 2016 Brexit referendum, the Cambridge Analytica scandal showed the fragility of democratic processes vis-à-vis external attempts to influence electoral results and public debate at large. The growing reports of foreign actors, Russia above all, allegedly interfering, also via often opaque forms of funding, with European politics further pushed the EU to reflect on whether and how to intervene to address this phenomenon.¹⁰⁴ Once again, this rationale was acknowledged in the political priorities of the first von der Leyen Commission, which stated that European “democratic systems and institutions have come increasingly under attack in recent years from those who wish to divide and destabilise” the EU, which in turn therefore needed to do more to protect democracy from external interference. The third driver is particularly evident in initiatives such as the Regulation on Political Advertising, and especially in the ban on foreign political ads in the three months before elections;¹⁰⁵ but, in the wake also of the Qatargate scandal, the Commission offered a more comprehensive response in its Defence of Democracy Package. In particular with its proposed Directive on interest representation, the Commission strives to shield national and EU democratic processes from external influences by imposing tight transparency and registration obligations. Similar concerns underpin also the “European Democracy Shield” which the second von der Leyen Commission is developing,¹⁰⁶ and have become more pressing after reports of Russian interferences led to the annulment of the presidential election in one EU Member State, Romania.¹⁰⁷ As noted above, in comparison to earlier initiatives, the approach followed by the Commission is more controversial, as it envisages to restrict, rather than promote democratic participation, and reflects a more explicit militant democracy rationale, where limitations to democratic rights are introduced with the goal to protect democracy itself. In doing so, it raises a whole new set of questions on the possibility of the EU to become a, or rather acquire tools of, genuine militant democracy.¹⁰⁸

¹⁰⁴ See for analysis Judit Bayer and others, *Disinformation and Propaganda – Impact on the Functioning of the Rule of Law in the EU and Its Member States* (European Parliament 2019) <[https://www.europarl.europa.eu/RegData/%20etudes/STUD/2019/608864/IPOL_STU\(2019\)608864_EN.pdf](https://www.europarl.europa.eu/RegData/%20etudes/STUD/2019/608864/IPOL_STU(2019)608864_EN.pdf)> [accessed 01.09.2025].

¹⁰⁵ See again Article 5(2) of Regulation 2024/900.

¹⁰⁶ See further discussion in the concluding section of this WP.

¹⁰⁷ Constitutional Court of Romania, Decision No 32/2024, 6 December 2024. The Romanian events also pushed the Commission to open formal proceedings against TikTok under Articles 34 and 35 of the DSA.

¹⁰⁸ For a discussion: Franca Feisel, “Thinking EU Militant Democracy beyond the Challenge of Backsliding Member States”, *European Constitutional Law Review* 18/3, 2022, 385–411; Tom Theuns, “Is the European Union a militant democracy? Democratic backsliding and EU disintegration”, *Global Constitutionalism* 13/1, 2024, 104–125.

These three drivers, again next to more precise factors that pushed and justified specific interventions, as was for example the case for the anti-SLAPP directive, led the EU to develop a series of coordinated democratic initiatives in the EDAP and the DOD. Something important to highlight, and crucial in terms of establishing an EU competence to legislate under the legal basis of Article 114 TFEU that has been used to develop many of the key legislative initiatives, is that national systems differed widely in terms of their regulatory approaches. This is true for example for issues such as media regulation or political advertising. And these differences were even growing, as domestic systems were often responding to the challenges described above with diverse or even divergent regulatory responses. This was leading to a further fragmentation of the legal environment on regulation of, for example, digital platforms or online media, something that affects the EU internal market and that can therefore justify intervention under Article 114 TFEU.

5. The constitutional impact of the democratic turn

Since the first von der Leyen Commission took office in 2019, a new emphasis on the value of democracy is therefore evident.¹⁰⁹ EU institutions adopted groundbreaking legislation on key democratic issues such as media freedom and pluralism and political advertising, and the second von der Leyen Commission has already announced future initiatives.¹¹⁰ Compared to the less ambitious actions taken by the Juncker Commission, the EDAP and DOD are a clear step forward, as the EU moves from softer intervention via recommendations and other soft law instruments, to the adoption of binding legislation, often in the form of regulations. Furthermore, the Commission has made democracy more central also in its enforcement initiatives, although still with some hesitations, as arguments explicitly based on Article 10 TEU and EU democratic principles have not yet reached the Court. Looking back at the list of EU values in Article 2, recent initiatives finally begin to develop also the third element of the “trinity” of constitutionalism next to the rule of law and human rights, complementing rule of law and human rights initiatives and policies.

To be clear, the democratic turn is noteworthy and remarkable, but still in its early stages. While bold and far-reaching, the legislative initiatives of the Commission remain scattered: the EU intervenes to regulate elements of media freedom, political advertising, lobbying and interest representation, but has little to say on, for example, electoral laws, or broader institutional structures of democracy. Member States remain responsible to regulate democratic processes domestically and largely free from EU influence when doing so. EU legislative and enforcement initiatives respond to specific challenges, rather than presenting a comprehensive view of what democracy should mean in the EU and its Member States. The broader constitutional thinking that for example Nemitz and Ehm had suggested¹¹¹ is still

¹⁰⁹ And certain shift in tone can be noted also in the academic debate, which has also moved from a narrower rule of law frame to focus more often on values or democracy: for two important examples, see Luke Dimitrios Spieker, *EU Values Before the Court of Justice*, Oxford University Press, 2023, and Tom Theuns, *Protecting Democracy in Europe*, Hurst, 2024.

¹¹⁰ See the discussion on the “European Democracy Shield” in the concluding section.

¹¹¹ Nemitz and Ehm, “Strengthening Democracy in Europe”.

missing, and does not yet seem to be the core objective of recent initiatives. And again, the Court has not yet fundamentally stepped in as done in the rule of law field, or many decades earlier for fundamental rights.

Yet, seen in a broader context, the democratic turn described in these pages contributes, and adds new layers, to the broader process of EU constitutionalisation¹¹² that has accelerated in recent times. First of all, as it is obvious, the turn contributes to define another core value of Article 2 TEU, following the footsteps of what has happened for the rule of law in the earlier years of the constitutional backsliding crisis. While, as will also be discussed in section 6, the meaning and content of democracy as an EU value still remains less precisely defined than that of “rule of law”, or “human rights”, the legislative initiatives developed offer clear reference points for certain sub-principles, with media freedom being the most notable example. The infringement procedure against the Czech Republic and Poland on EU citizens’ membership of political parties allowed the Court to set out for the first time the role of parties in the EU multilevel democratic system, and possible future reliance on Article 10 TEU in infringement procedures, but also preliminary references from national courts, could offer further opportunities to bring additional clarity on other democratic elements. The clarification of the meaning of Article 2 TEU values is not only important per se, but it can also enhance the legitimacy of EU intervention by bringing more transparency to the assessment and limit double-standards accusations.

Second, whereas the democratic turn has not yet resulted in the development of new mechanisms – the Commission has not proposed anything like “Democracy Reports” assessing democratic conditions in the Member States, or has not extended Rule of Law Reports to other democratic elements –, it is actually bringing a new layer to the constitutionalisation process. A layer that distinguishes it from the emphasis of the rule of law of the last decade. EU action to protect the rule of law has been essentially reactive: the EU adopted instruments to monitor possible threats (Rule of Law Reports and the Rule of Law Dialogue) and to intervene when threats materialize and threaten the EU structure (the Rule of Law Framework and the Rule of Law Conditionality Regulation). The democratic turn signals however a shift from that essentially reactive to a more proactive approach, where the EU, via legislative initiatives, sets standards that can contribute to strengthen democracy before a crisis, and prevent new threats.¹¹³ The proactive approach is visible not only in the legislative initiatives, but also in the development of new funding programmes.¹¹⁴

¹¹² Among many, using constitutionalisation in a way comparable to that developed here, Wojciech Sadurski, *Constitutionalism and the Enlargement of Europe*, Oxford University Press, 2012.

¹¹³ The Commission itself has spoken of a “proactive approach to uphold EU values” in its Communication on the Defence of Democracy Package, see page 3. See also De Gregorio, *Digital Constitutionalism in Europe*, p 24: “the rise of European digital constitutionalism should not be seen as a mere answer, but rather as a long-term strategy to protect constitutional values from the interferences of private powers in the digital age. Put another way, rather than just a firm reaction, it is also a proactive approach calling the Union and Member States to intervene to mitigate the threats to democratic values”.

¹¹⁴ See the already discussed Citizens, Equality, Rights and Values (CERV) programme.

Third, the democratic turn focuses, perhaps for the first time ever, on democracy *in the Member States*. As noted earlier, the democratic discourse in EU law had been essentially mono-dimensional, both in the sense that it focused almost exclusively on the Union level; and because it focused almost exclusively on one specific question, namely the Union's democratic deficit. That page has been turned: the attention of the EU institutions is now *also* on democratic conditions in the Member States, both at the level of legislation and of enforcement.¹¹⁵ Democracy has become truly multidimensional in the EU law and policy debate.

That said, the democratic turn of the EU is still in its early stages. Most legislative measures are not yet fully operational: EMFA, for example, will only fully enter into force in August 2025, and the deadline for transposition of the anti-SLAPP Directive is in May 2026. And the proposed Directive on interest representation has not been adopted yet. It will therefore take months, and even years, to reflect on the concrete impact of the legislative measures in the Member States. Nonetheless, the turn reaffirms clearly that democracy is a common interest of the EU and its Member States, and perhaps for the first time shows that the EU is a political actor that can set binding rules on key democratic issues such as media pluralism. And naturally, it can then intervene to protect democracy in the Member States where the domestic situation becomes problematic. A recent letter of eleven Ministers of European Affairs, calling the Commission to intervene more forcefully to protect the integrity of national democratic and electoral processes, is a further demonstration of the growing role of the EU in protecting democracy in the Member States.¹¹⁶ The rule of law frame of earlier initiatives has not been fully abandoned, but the institutions are also finally talking about European democracy.¹¹⁷ That, of course, brings a set of new questions and challenges.

6. Open questions and challenges

The democratic turn of the EU is in fact not uncontroversial. It opens new sets of questions, from the need to conceptualize the role of the EU as a possible militant democracy,¹¹⁸ to whether it is acting to protect democracy at the EU or national level (or both?), but also what understanding of democracy underpins EU action. This section wants however to highlight two other more pragmatic questions and challenges, the first essentially concerning the Union's legislative initiatives, and the latter the enforcement ones: competences and standards.

¹¹⁵ In this respect, see R. Daniel Kelemen, "Europe's Other Democratic Deficit: National Authoritarianism in Europe's Democratic Union", *Government and Opposition* 52/2, 2017, 211-238.

¹¹⁶ See Letter on protecting elections from foreign interferences, signed by the Ministers of European affairs of Belgium, Croatia, Czech Republic, Denmark, France, Germany, Greece, Netherlands, Romania, Slovenia, Spain, 3 February 2025, available at <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2025D04136&did=2025D04136> [accessed 01.09.2025].

¹¹⁷ The reference here is to EuConst Editorial Comments, "Talking about European Democracy".

¹¹⁸ See again Feisel, "Thinking EU Militant Democracy".

6.1 Competences

When it comes to legislative initiatives, the most obvious challenge, and in fact the most common critique raised in the academic and political debate, is the existence of adequate and sufficient EU competences to regulate democratic issues and processes in the Member States. In this sense, it is uncontroversial to point out that the EU lacks an explicit legal basis in these areas. To overcome that limitation, in most of the key proposals of the EDAP and DOD – the Political Advertising Regulation, EMFA, and the proposed Directive on interest representation – the Commission opted to rely on a usual suspect: the internal market legal basis of Article 114 TFEU.¹¹⁹ For the Political Advertising Regulation and EMFA, the co-legislators have then endorsed and confirmed that choice during the legislative process. The use of Article 114 TFEU as a legal basis for those pieces of legislation has however raised doubts in the academic debate¹²⁰ and has been challenged before the Court by Hungary in the case of EMFA.¹²¹

The logic developed by the Commission in the three cases is similar: political advertising, media, and interest representation activities are considered services under EU internal market law; and the EU therefore can, and in fact should, act to harmonize national rules given that fragmentation and divergent approaches in different Member States are undermining the internal market and the free movement of the services in question. According to the Commission, EU intervention is permissible and justified because it strives to remove (future) obstacles to trade in the mentioned services, in line with the requirements of CJEU case law.¹²²

The basic logic underpinning the use of Article 114 for these pieces of legislation is not unprecedented. The Court has already accepted that, via Article 114, the EU legislature can also promote non-market values, as was the case in the past for example with health, fundamental rights, or also cultural policies.¹²³ Those non-market values and objectives can also be the very key factors for the choice to regulate that field.¹²⁴ In other words, it is not a requirement under Article 114 TFEU and the related case law of the Court that the main objective of legislation is necessarily the promotion of a *free* market. Furthermore, the legal basis of Article 114 TFEU is horizontal, in the sense that it allows institutions to adopt legislation, once the conditions for the use of the internal market legal basis are fulfilled, also

¹¹⁹ The internal market legal basis has also supported the adoption of most digital regulation, including the DMA/DSA package; for a discussion see Bradford, “Europe's Digital Constitution”, 40.

¹²⁰ For political advertising see again van Drunen, Helberger and Ó Fathaigh, “The beginning of EU political advertising law”, but also Miikka Hiltunen and Sam Wrigley, “‘Why am I seeing this regulation?’: Exploring underlying issues from the proposed Political Advertising Regulation”, *European Law Review* 48/3, 2023, 312-336; for EMFA, Sznajder, “European Media Freedom Act and its implications” and Viktoria Kraetzig, “Freedom governed by Brussels”, *Verfassungsblog*, 2023, <<https://verfassungsblog.de/freedom-governed-by-brussels/>> [accessed 01.09.2025].

¹²¹ See pending case CJEU, C-486/24, *Hungary v Parliament and Council*.

¹²² See the leading cases CJEU, C-376/98 *Germany v Parliament and Council (Tobacco Advertising)* EU: C:2006:772 and C-58/08 *Vodafone* EU:C:2010:321.

¹²³ For discussions of the CJEU case law, Vasiliki Kosta, *Fundamental Rights in EU Internal Market Legislation*, Hart Publishing, 2015; Bruno De Witte, “A Competence to Protect: The Pursuit of Non-market Aims through Internal Market Legislation”, in Phil Syrpis (ed), *The Judiciary, the Legislature and the EU Internal Market*, Cambridge University Press, 2012.

¹²⁴ Elise Muir, “The fundamental rights implications of EU legislation: Some constitutional challenges”, *Common Market Law Review* 51/1, 2014, 219-245.

in areas where the EU would not otherwise have harmonising powers, or where competences have not been directly conferred to the EU. This is for example the case for media law and policy, which falls within the policy area of “culture” under the TFEU, and where Article 167(5) TFEU only allows in principle the adoption of “incentive measures”, but not the harmonisation of national laws.¹²⁵

Looking at the Court’s case law and academic debate on Article 114 TFEU, the basic competence structure and justification for EU intervention is probably more solid than most commentators put it.¹²⁶ The usually broad interpretation of Article 114 offered by the Court, which leaves ample margin of manoeuvre to the Commission and the co-legislators to support EU intervention under the internal market banner, seems able to support the logic of pieces of legislation such as EMFA or the Political Advertising Regulation. Yet, it might not be straightforward that each and every provision included in the three instruments can be reconciled with the Article 114 logic, as the case law of the Court’s requires. For some, the connection with the internal market is not immediately obvious, with examples being the already mentioned three-months ban on foreign political advertising before elections, or measures protecting journalists under EMFA.¹²⁷ In these cases, it is clear that we are at the outer boundaries of the Article 114 TFEU as a legal basis.

Furthermore, questions of subsidiarity, raised by several national parliaments mostly in the context of EMFA,¹²⁸ are certainly relevant politically but also legally, although the Court traditionally leaves ample room to the political process in this respect. At least for EMFA, the Court will offer more clarity on the legitimacy of using Article 114 to introduce legislation on core democratic issues in the pending annulment case started by Hungary, but in any event further reflections on the possibility and limits the provision grants and puts are necessary. There is in fact little doubt that the use of Article 114 for the discussed democratic initiatives further expands the traditional internal market logic into core areas of national law that are essential for the functioning of democratic processes, and traditionally a reserve of Member States,¹²⁹ where *prima facie* the EU would not seem to have legislative, or at least harmonising, competences.

The reliance of Article 114 TFEU produces however also a different, almost opposite type of questions: key issues are left out of new EU legislative instruments because it would be

¹²⁵ This is what leads some commentators to be critical on the legal basis of the acts under discussion: see e.g., Sznajder, “European Media Freedom Act and its implications” arguing that through the use of Article 114, EMFA would “circumvent” the limits of Article 167 TFEU. Yet this is a fairly standard practice in EU internal market legislation, see for example the cultural policy considerations embedded in the Directive on Audiovisual Media Services, Directive 2010/13/EU on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, and the discussion in De Witte, “A Competence to Protect”.

¹²⁶ For a defence of the use of Article 114 TFEU as a legal basis for EMFA, see e.g., Roberto Mastroianni, “Freedom and pluralism of the media: an European value waiting to be discovered?”, *Media Laws* 1/2022, 2022, 100-110.

¹²⁷ See article 4(3) of Regulation 2024/1083.

¹²⁸ See in particular the Opinion of the German Bundesrat, “Decision of the Bundesrat on the announced European Media Freedom Act”, Official Document 52/22.

¹²⁹ As put also by van Drunen, Helberger and Ó Fathaigh, “The beginning of EU political advertising law”, 197.

difficult, or even impossible, to justify them through an internal market rationale. EMFA, for example, does not contain explicit rules on conflict of interests for media ownership, which are arguably crucial for having a free and pluralistic media system, but might have been difficult to justify on the basis of Article 114.¹³⁰ The Regulation on Political Advertising then does not envisage rules on the content of political advertising, or on the availability of political advertising during electoral campaigns.¹³¹ The limitations of EU competences have emerged clearly also for a piece of legislation not based on Article 114, namely the anti-SLAPP Directive: there, the use of the legal basis of Article 81(2)(f) TFEU contributed to narrowing down the scope of EU intervention to civil cases only, excluding criminal ones, and only to cases with a cross-border dimension, and not purely internal ones. It is not a coincidence that both EMFA and the anti-SLAPP Directive were therefore complemented by parallel recommendations which, while not legally binding, strived to nudge the Member States to take measures also in fields not covered by the legislative instruments, such as for example domestic SLAPP cases.

The peculiar effect of using Article 114 TFEU and other “creative” legal basis for democratic initiatives is that the EU is criticized, at the same time, for doing too much and too little. That EU competences are stretched too far, but cannot be extended far enough. So for example, according to Polyák, EMFA has the paradoxical effect of being too intrusive for countries with a functioning media system, and too weak for backsliding Member States where the EU rules cannot adequately address issues such as the capture of public media and other independent authorities by the executive.¹³² Competences are therefore considered questionable, but once the EU decides to use them and steps in, the limitations of competences risk negatively affecting the effectiveness of EU intervention. This is a paradox and a dilemma that ultimately only a Treaty reform could address, for example granting explicit legal basis for EU intervention on certain democratic issues. The legitimacy of EU action would be clearly enhanced and in fact guaranteed by such move. But the chances of that happening in the short term are almost non-existent. Further analysis is therefore needed to grasp the contours of EU competences to harmonize democratic rules, and in particular on the extent to which the internal market legal basis of Article 114 TFEU can be used to pursue democratic objectives.¹³³

¹³⁰ See however Elda Brogi et al., “The European Media Freedom Act: media freedom, freedom of expression and pluralism”, Study commissioned by the European Parliament, Policy Department for Citizens’ Rights and Constitutional Affairs, 2023, <[https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747930/IPOL_STU\(2023\)747930_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747930/IPOL_STU(2023)747930_EN.pdf)> [accessed 01.09.2025] for an argument that conflict of interests rules could be squared with the logic of Article 114 TFEU.

¹³¹ See Article 2(2) of Regulation 2024/900: “This Regulation shall not affect the content of political advertisements or Union or national rules that regulate aspects related to political advertising other than those covered by this Regulation, including the rules on the organisation, financing and conduct of political campaigns, the rules on general bans or limitations on political advertising during specified periods, and, where applicable, the rules on electoral periods.”. Hiltunen and Wrigley, “Why am I seeing this regulation?”, are critical on that provision, and they argue that this limitation can actually undermine the internal market objective of the new instrument.

¹³² Gábor Polyák, “Too Much for Others, too Little for Us”, *Verfassungsblog*, 12023, <<https://verfassungsblog.de/too-much-for-others-too-little-for-us/>> [accessed 01.09.2025].

¹³³ For some, there is otherwise a risk that Article 114 might evolve in something like a super-competence: see e.g. the arguments of van Drunen, Helberger and Ó Fathaigh, “The beginning of EU political advertising law”, 195.

The pending CJEU case on the validity of EMFA will be an important contribution to that reflection.

6.2 Standards

When it comes to enforcement activities, the emerging challenges are essentially two. First, as noted earlier, whether it is possible to construct Article 10 TEU in a way similar to Article 19 TEU, and thus whether it can be considered as including binding obligations on the Member States, possibly also outside the scope of EU law as traditionally intended. In its infringement actions on Lex Tusk – which however will most likely not end up before the Court – and at least in the first steps on the Hungarian Defence of Sovereignty Law, the Commission proposed a reading of Article 10 that can be compared to that of Article 19 in the rule of law field, but it is still to be seen whether that argument will ultimately arrive before the Court and, if so, how the Court will treat it. As noted earlier, the Court’s statements on Article 10 “giving concrete expression to the value of democracy” could be seen as an opening for future initiatives. At the same time, the question could be rendered moot, or at least less significant, in case the Court moves to the direct enforceability of the values of Article 2 TEU in infringement actions, even outside the scope of EU law. That might render reliance on Article 10 TEU as a separate ground of infringement unnecessary. First indications will possibly be given in the pending Hungarian LGBTIQ+ case.

Yet, even if the Court follows the latter route, or alternatively supports a broad interpretation of Article 10 TEU, the second, and perhaps even more difficult, question is one of standards. As noted in section 2, the value of democracy is understood and operationalised in very different ways in the Member States, and the EU democratic *acquis* is limited: the Court’s case law has dealt essentially on the prerogatives of the EP and few other issues; legislation on democratic issues, despite the recent progress mapped in this WP, remains scattered and ultimately fairly narrow in scope; and the Charter of Fundamental Rights, as noted earlier, says relatively little on democratic rights and principles. While the practice of the enlargement process does offer a few reference points, it stops short of providing a clear checklist of democratic standards or a full conceptual clarification of what models or types of democracy the EU promotes and requires. The progress made in clarifying the value of the rule of law, both at a more conceptual level, and in terms of concrete obligations and standards deriving from it, remains at a very initial stage for the value of democracy. And of course, there is nothing comparable to the Charter of Fundamental Rights. Still today, if we look at the trinity of core constitutional values of Article 2 – democracy, the rule of law, and human rights – democracy remains certainly the last defined one at the EU level.

This raises obvious questions for the possibility of direct judicial enforcement by the Court of Justice. Is there a sufficiently clear common core of democracy that can be applied and enforced by the Court? Is it possible to identify precise legal obligations that the Court can use as benchmarks to assess possible violations? Even scholars proposing to operationalize Article 10 TEU hesitate at the moment.¹³⁴ One way to approach the problem could be to focus on a

¹³⁴ See e.g., Cotter, “To Everything There is a Season”.

specific sub-component of democracy, as done for example for the principle of judicial independence for the rule of law. While also for the latter value one could question whether the commonality in the EU is sufficient for its judicial enforcement, the European standards on judicial independence are in contrast relatively clear and can be more easily subject of a precise legal and judicial analysis.¹³⁵ The same might be true for example for certain electoral rules on active and passive suffrage. There, drawing on case law of the European Court of Human Rights and on common constitutional traditions, the Court of Justice could find sufficiently precise standards and rules to be enforced judicially. For electoral systems more broadly, however, the level of commonality and precision are arguably already inferior.

A more ambitious way to proceed would be to work at the EU level on the identification of common principles, drawing from sources such as the ECHR, constitutional traditions, but also the work of the Venice Commission. This would follow the footsteps of what had been done for the rule of law first in the Commission's Framework, and then in the Commission's Reports, and in fact potentially pave the way for the extension of existing rule of law monitoring frameworks also to democracy. The drafting of common principles, and then the constant monitoring of democratic conditions in the Member States would contribute to clarifying EU democratic standards and, next to the legislative initiatives explored in this WP, would in turn facilitate judicial enforcement of democratic principles against the Member States when necessary.

Conclusion

This WP has explored the democratic turn in EU initiatives to protect and promote the founding values of Article 2 TEU that has taken place since the first von der Leyen Commission took office in 2019. Moving away from framing the reaction to constitutional backsliding in "rule of law" terms, the Commission has made democracy more central in its enforcement activities and, notably, also in legislative initiatives, presenting two packages of democratic measures (EDAP and DOD) that have significantly expanded the EU democratic acquis to new areas such as media freedom and political advertising. While the fight against constitutional backsliding has been a crucial driver for the Union's democratic turn, the WP has highlighted that other factors, including the digital transition and the threats deriving from foreign interference, have also contributed to the new emphasis on protecting and promoting democracy at the EU level. The previous sections have reflected on the constitutional impact of the turn, noting in particular a shift from an essentially reactive to a more proactive approach via legislative initiatives, but also funding policies; and highlighted questions and challenges, including crucially the presence of adequate EU competences and of sufficiently common standards that can be enforced judicially.

As noted above, the democratic turn of the EU is still in its early stages. Legislative initiatives are still limited in scope, and some even still need the approval of the co-legislators. None of

¹³⁵ For an analysis, looking at the case law of the two European Courts, Robert Spano, "The Rule of Law as the Lodestar of the European Convention on Human Rights: The Strasbourg Court and the Independence of the Judiciary", *European Law Journal* 27/13, 2021, 211-227.

the infringement cases started by the Commission and based on Articles 2 and 10 TEU has been already adjudicated by the Court of Justice, and the Commission actually showed hesitation in bringing before the Court questions explicitly based on Article 10 in the case on the Hungarian Defence of National Sovereignty Law. Nonetheless, the second von der Leyen Commission has already promised further initiatives to consolidate the turn. At a more symbolic level, democracy now appears in the portfolios of two Commissioners, vice-President Henna Virkkunen (Tech Sovereignty, Security and Democracy) and Commissioner Michael McGrath (Democracy, Justice, and the Rule of Law).¹³⁶ More concretely, in her speech as Commission President candidate before the EP plenary in July 2024, von der Leyen put forward the idea, already suggested during the electoral campaign, of a “European Democracy Shield”.¹³⁷ The details of the proposal are still to be seen, and will only be presented in the second half of 2025, but von der Leyen’s speech suggests an emphasis on countering foreign interference and information manipulation, again highlighting the importance of imposing transparency obligations on foreign funding (and therefore likely building on, or advancing, the proposals of the DOD); further initiatives on media freedom; and a focus on supporting and defending civil society, which would be a relative novelty of the “Shield” if translated into specific legislative proposals, as, in earlier plans, efforts to support civil society mostly consisted in non-binding recommendations or funding initiatives.¹³⁸ The Shield also features prominently in the mission letters of commissioners McGrath¹³⁹ and Virkkunen,¹⁴⁰ again with a focus on foreign interference, media freedom and civil society.

While some have expressed reasonable doubts on whether the new Commission will continue its robust commitment to uphold values in the Member States in light of the results of the 2024 EP elections, the European Democracy Shield proposed by von der Leyen is a signal of a certain degree of continuity between the two Commissions and that the protection and promotion of democracy remains on the political agenda. Both the language and the type of measures proposed may also suggest growing emphasis on more defensive efforts and of possibly accepting rights’ restrictions in the name of democracy itself. A similar approach is also reflected in the already mentioned letter of the Ministers of European Affairs of February 2025, which also focuses on the protection of democracy and electoral processes from foreign interference, and invites the Commission to move forward with the Democracy Shield. As noted in the previous pages, that calls for further reflections on the possible “militant democracy turn” of the EU, its instruments, possibilities and limits.

¹³⁶ Symbolically, the difference is striking in comparison to the 2014 Juncker Commission: whereas there was one Commissioner (Frans Timmermans) in charge of “the rule of law”, democracy did not feature in any of the Commissioners’ portfolios.

¹³⁷ See Statement at the European Parliament Plenary by President Ursula von der Leyen, candidate for a second mandate 2024-2029, <https://ec.europa.eu/commission/presscorner/detail/en/statement_24_3871> [accessed 01.09.2025].

¹³⁸ One exception being the protection against abusive litigation offered by the SLAPP Directive.

¹³⁹ Available at: <https://commission.europa.eu/document/download/907fd6b6-0474-47d7-99da-47007ca30d02_en?filename=Mission%20letter%20-%20McGRATH.pdf> [accessed 01.09.2025].

¹⁴⁰ Available at: <https://commission.europa.eu/document/download/3b537594-9264-4249-a912-5b102b7b49a3_en?filename=Mission%20letter%20-%20VIRKKUNEN.pdf> [accessed 01.09.2025].