NÉZŐPONT INTÉZET

REPORT ON THE RULE OF LAW SITUATION IN THE INSTITUTIONS OF THE EU 2025

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Executive Summary

EU Member States have a shared interest in a strong, effective and successful European Union. For this to happen, it is essential that its institutions themselves operate according to the principles of the rule of law, in accordance with the Treaties, using transparent and accountable procedures, respecting institutional competences, and ensuring fair and equitable judicial procedures. However, there are risks of serious breaches of the rule of law in the European Parliament, the European Commission and the Court of Justice of the European Union. These risks are related to the existence of identifiable practices in the functioning of the EU institutions which are in contravention of the Treaties of the European Union, arbitrary, covert and illegitimate expansion of powers (i.e., competence creep), and widespread corruption within the institutions. In many cases the foregoing is facilitated by the opaque functioning of the institutions, inadequate internal rules, and a lack of accountability. The breaches of the rule of law that have been identified can mainly be grouped into the following four areas.

I. A lack of consequences related to corruption cases undermines trust in EU institutions

There has been no institutional reform aimed at strengthening the integrity of the Commission. This is despite Commission President Ursula von der Leyen's management of the procurement of Pfizer vaccines in a non-transparent manner which bypassed official channels, and the suspicions of corruption and money laundering linked to the term of former Justice Commissioner Didier Reynders, which emerged after the end of his mandate.

The so-called "Qatargate" affair – one of the EU's biggest corruption scandals – involves the European Parliament, the protracted immunity waiver procedures of which are designed to protect not the integrity of the EP, but those accused of common criminal offences. The immunity of Marc Tarabella, accused of involvement in Qatargate, was waived by the EP in just 17 days, but the immunity of two MEPs accused this year of involvement in the scandal had still not been concluded after more than 70 days (up to the date on which this report went to press). The cases of other MEPs accused of common criminal offences – such as Péter Magyar and Ilaria Salis – still await a decision after more than 200 days.

At a systemic level, investigations into individual cases are – in terms of the integrity of EU institutions – essentially a facade that serves not to prevent such cases, but to delay accountability.

II. The accumulation of incompatible positions produces a persistent risk of abuse

Certain lobbying organisations, such as Transparency International and European Movement International, exert excessive and opaque influence on the European institutions.

The Commission routinely approves, before the end of the two-year "cooling-off period" after they have left office, the appointment of former Commissioners to positions in organisations that have previously lobbied those Commissioners when they were in office. In one case, such an organisation is still benefiting from a EUR 4.5 million grant previously allocated to it by the Directorate-General overseen by a former Commissioner who now works for it.

Personal links between the Commission and the judges of the Court of Justice of the European Union jeopardise the impartiality of judicial proceedings between Member States and the Commission. There are, and have been, a number of judges at the Court of Justice of the European Union who have had careers in the Commission spanning decades. A Dutch-born judge was appointed last October after ending a 30-year career at the Commission as Deputy Director-General of the Directorate-General for Competition. He went to the Court of Justice after having been responsible for monitoring, control and investigation of state aid.

III. EU funds are being outsourced to NGOs in a non-transparent way

Through LIFE and other EU funding programmes, the Commission funds a number of lobbying organisations – including an environmental lobby organisation that has participated in more than 300 registered lobbying events in Parliament and at the Commission. This organisation, which has 45 accredited lobbyists in the EP, received 10 percent of its 2024 budget from LIFE (it also benefits from other EU programmes). During the process of providing funding for lobbying organisations, external experts who assess the Commission's distribution of EU funds are allowed to decide even on potential support for their own organisations.

IV. Systemic double standards seriously undermine legal certainty

Political parties at European level can be dissolved on the grounds that they do not respect the values of the Union. In the procedure to deregister parties, the opinion of a "committee of independent eminent persons" must be sought and taken into account. Since January 2025 this committee has included someone who is a member of the Scientific Council of the Foundation for European Progressive Studies (FEPS). This person has stated – in a "Next Left" publication released by FEPS – that she does not consider either Poland's PiS or Hungary's Fidesz to be parties that respect EU values. A procedure based on the subjective opinion of a politically biased person, which can lead to the exclusion of parties, is a fundamental violation of the right to a fair hearing, and also draws attention to systemic double standards in the EU.

The Commission's inconsistent application of the Article 7 procedure, which lacks a uniform standard, is a breach of EU legal certainty. The Commission first condemned Poland for lack of judicial independence, and then abruptly closed the procedure without any substantive results when the Tusk government was elected. With regard to Romania, however, despite the annulment of that country's presidential election, the Commission has not initiated proceedings to protect the independence of the judiciary, democracy or the rule of law.

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Methodology

The frequently quoted Article 2 of the Treaty on European Union (hereinafter referred to as the Treaty, or TEU) emphasises that *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."*[1] Recently the issue of the rule of law – one of the founding values of the European Union, with importance equal to the others – has been the subject of increased attention, especially in relation to Member States. So far less has been said about the fact that the rule of law must also be the basis for the institutional system and the functioning of the Union itself, even though throughout the historical development of the European Union the very purpose of the inclusion of the rule of law criteria in the Treaties has been to ensure that fundamental legal guarantees could also be applied in the functioning of the Union's institutions.[2] Just as the Commission – as Guardian of the Treaties – acts as a monitor of the rule of law in the Member States[3] the Member States and civil society have a responsibility to raise awareness of the situation related to the rule of law in the Union, thus contributing to the EU remaining a community based on the rule of law.[4]

In recent years European political discourse has been dominated by the debate on the situation related to the rule of law in the Member States. This has become a topic that is liable to be revived at any time, due to the lack of a universally accepted definition of the concept of "rule of law". As the Venice Commission's much quoted 2011 study pointed out, the rule of law is *"indefinable"*.[5] Therefore, instead of giving a precise definition, that study sought to identify the fundamental pillars of the rule of law: legality, legal certainty, prevention of the abuse of power, equality before the law and non-discrimination, and access to justice (which includes the right to a fair trial and an independent and impartial judiciary).

Despite the voices in European public life calling for the correct model of the rule of law, there is no uniformly accepted list of criteria for the rule of law that can be followed and cited as a prescription. Although there is an increasingly visible political will to make its meaning more concrete by means of a catalogue of values, the rule of law does not in fact have a single, uniform, accepted form of practice, and its application is therefore only manifest in specific cases, on the basis of common sense rather than a political checklist. The common characteristic of the above pillars is that, in a state under the rule of law, ideological bias must not be allowed to translate into unlawful practices, institutions must not arbitrarily confer new powers on themselves, and they must ensure that the law is enforced in a uniform and impartial manner. Although in recent years ideologically driven political actors have made great efforts to shape the concept of the rule of law to conform to their own set of values, it is important that at least evaluation of the rule of law is not couched in political opinions presented as fact, but rather in statements of reality based on facts.

It is with these requirements in mind that, for the second year,[6] the Nézőpont Institute set out to analyse the institutions of the European Union from the point of view of the rule of law. The aim of this research is to draw lessons from consultations with researchers and experts who are familiar with the functioning of the EU institutions, and to draw attention to the risk of serious and persistent breaches of the rule of law in some of these EU institutions. This year's report[7] is the result of consultations with 25 experts, professors and researchers in three Member States, covering the period from the 2024 EP elections to 22 May 2025. The above-mentioned principles of the rule of law were examined in the institutional activities of the European Commission (EC), the European Parliament (EP) and the Court of Justice of the European Union (CJEU).

Abbreviations

APPF – Authority for European Political Parties and European Political Foundations
CC KIC – Culture and Creativity, Knowledge and Innovation Community
CERV – Citizens, Equality, Rights and Values programme
CINEA – European Climate, Infrastructure and Environment Executive Agency
CJEU – Court of Justice of the European Union
CPI – Corruption Perceptions Index
DG – Directorate-General
DG Home – Directorate-General for Migration and Home Affairs
DG INTPA – Directorate-General for International Partnerships
EC – European Commission
ECR – European Conservatives and Reformists
EIT – European Institute of Innovation & Technology
EMFA – European Media Freedom Act
EP – European Parliament
EPP – European People's Party
EPPO – European Public Prosecutor's Office
ESN – Europe of Sovereign Nations
EU – European Union
Europol – European Union Agency for Law Enforcement Cooperation
FEPS – Foundation for European Progressive Studies
Greens/EFA – Greens–European Free Alliance
ID – Identity and Democracy
IEP – Institut für Europäische Politik
ILGA World – International Lesbian, Gay, Bisexual, Trans and Intersex Association
IV – Federation of Austrian Industries
LGBT – Lesbian, gay, bisexual, transgender
LGBTIQ – Lesbian, gay, bisexual, transgender, intersex, queer
LIFE – Programme for the Environment and Climate Action
MCC – Mathias Corvinus Collegium
MEP – Member of the European Parliament
NI – Independent MEPs
PfE or **Patriots** – Patriots for Europe
PiS – Poland's Law and Justice party
S&D – Progressive Alliance of Socialists and Democrats
TEU – Treaty on European Union
TFEU – Treaty on the Functioning of the European Union
TI – Transparency International
WMCES – Wilfried Martens Centre for European Studies
WWF – World Wide Fund for Nature

The European Parliament

1. The procedure on suspending the immunity of MEPs suspected of common criminal offences can be very protracted, as it is not subject to any deadline

Rule 5(2) of the European Parliament's Rules of Procedure[8] states the following: *"In exercising its powers on privileges and immunities, Parliament shall act to uphold its integrity as a democratic legislative assembly and to ensure the independence of its Members in the performance of their duties. Parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole, and of its Members."* Generally speaking, a waiver of immunity procedure starts with a request from the competent authority of a Member State (or from the European Public Prosecutor) to the EP President, after whose announcement the case is examined by the EP's Committee on Legal Affairs. The Committee's rapporteur in the case must not be of the same nationality or belong to the same political group as the MEP whose immunity is being considered; the MEP in question has the right to be heard during the procedure. At the end of its deliberations, the Committee on Legal Affairs adopts a report with a recommendation either to waive or uphold immunity, and finally this report is put to a vote in an EP plenary session.[9]

As regards the time limit for the Committee on Legal Affairs to examine requests for waiver of immunity, Rule 9(3) of the EP's Rules of Procedure states that *"The committee shall consider, without delay but having regard to their relative complexity, requests for the waiver of immunity or requests for the defence of privileges and immunities."* There is no precise time limit imposed on the work of the Committee on Legal Affairs, which allows some immunity procedures to be carried out quickly and others slowly, according to political will. As a sovereign legislative body, a parliament is empowered to decide on the rules governing the procedure for waiving immunity. However, since Member States can, on the basis of their national law,[10] – decide on the withdrawal or termination of an of MEP's mandate, the EP is exceeding its powers if it delays a decision on waiving the immunity of an MEP without setting a precise deadline – thus making it more difficult for Member States to implement their procedures. Overall, the risk of political considerations influencing the duration of immunity proceedings undermines the stipulation that immunity is a guarantee of independence and not a personal privilege.

Waiver of immunity procedures in the 2024–29 term	
Shortest completed procedure	173 days
Longest completed procedure	257 days
Average length of completed procedures	203 days
Longest ongoing procedure (when this report went to press)	248 days

Table 1: Procedures terminated due to withdrawal of requests are not included. The data collection period extended up to the date when this report went to press (22 May 2025).

2024–29 term | Waiver of immunity procedures | Procedures completed by 22 May 2025					
Subject of procedure (name of MEP, party)	**Rapporteur for the procedure (name of MEP, party)**	**Date the EP President announced receipt of waiver request**	**Date the EP voted on waiver request**	**Was immunity waived?**	**Length of period (in days) between the President's announcement and the Parliament's decision**
Grzegorz Braun (NI)	Dainius Zalimas (Renew)	14 Nov. 2024[11]	06 May 2025[12]	Yes	173
Adam Bielan (ECR)	Dainius Zalimas (Renew)	16 Sep. 2024	11 Mar. 2025	Yes	176
Petras Gražulis (ESN)	Pascale Piera (PfE)	24 Oct. 2024[13]	06 May 2025[14]	Yes	194
Maciej Wasik (ECR)	Mario Furore (The Left)	16 Sep. 2024	01 Apr. 2025[15]	Yes	197
Mariusz Kaminski (ECR)	Mario Furore (The Left)	16 Sep. 2024	01 Apr. 2025[16]	Yes	197
Petr Bystron (II) (ESN)	Dominik Tarczyski (ECR)	16 Sep. 2024	01 Apr. 2025[17]	Yes	197
Petr Bystron (I) (ESN)	Pascale Piera (PfE)	16 Sep. 2024	06 May 2025[18]	Yes	233
Jana Nagyová (PfE)	Krzysztof Smiszek (S&D)	19 Jul. 2024[19]	01 Apr. 2025[20]	Yes	257

2024–29 term | Requests for waiver of immunity | Cases pending as of 22 May 2025			
Subject of procedure (name of MEP, party)	**Rapporteur for the procedure (name of MEP, party)**	**Date the EP President announced receipt of waiver request**	**Length of period (in days) between the President's announcement and this report's publication date**
Michal Dworczyk (ECR)	David Cormand (Greens/EFA)	16 Sep. 2024[21]	248
Klára Dobrev (S&D)	Marcin Sypniewski (ESN)	16 Sep. 2024	248
Péter Magyar (EPP) (I)	ŚMISZEK Krzysztof (S&D)	10 Oct. 2024[22]	224
Ilaria Salis (The Left)	Adrián Vázquez Lázara (EPP)	22 Oct. 2024[23]	212
Péter Magyar (EPP) (II)	Dominik Tarczyski (ECR)	13 Nov. 2024[24]	190
Daniel Obajtek (ECR)	David Cormand (Greens/EFA)	20 Jan. 2025[25]	122
Alessandra Moretti (S&D)	Marcin Sypniewski (ESN)	10 Mar. 2025[26]	73
Elisabetta Gualmini (S&D)	Marcin Sypniewski (ESN)	10 Mar. 2025[27]	73
Petr Bystron (III) (ESN)	Not yet known	03 Apr. 2025[28]	49
Péter Magyar (EPP) (III)	Not yet known	05 May 2025[29]	17
Daniel Attard (S&D)	Not yet known	21 May 2025[30]	1
Salvatore De Meo (EPP)	Not yet known	21 May 2025	1
Fulvio Martusciello (EPP)	Not yet known	21 May 2025	1
Nikola Minchev (Renew)	Not yet known	21 May 2025	1

Table 2: Procedures terminated due to withdrawal of requests are not included. The data collection period extended up to the date when this report went to press (22 May 2025).

In order to more effectively prevent abuse of power, the EP's Rules of Procedure should be amended to include a time limit, especially in view of the recent scandals involving the European Parliament and its Members. The President of the Hungarian Tisza Party, Péter Magyar, is accused of seizing the phone of a man who was filming his activities, leaving the scene and throwing the phone into the Danube. These events occurred in the early hours of 21 June 2024, at and outside a Budapest night club. In September 2024, in order to investigate this aggressive criminal act, the Office of the Chief Prosecutor of Hungary lodged a request for the waiver of the MEP's immunity.[31] The Committee on Legal Affairs appointed a rapporteur in November; but as of 22 May 2025 – the date this report went to press and 224 days after the announcement by the President of the EP – no decision had been taken on the MEP's immunity. So far this term, the EP has decided to waive immunity in eight cases, with an average duration of 203 days[32]. By comparison, as of the date this report went to press, the EP had been considering the case against Magyar for an above-average period (224 days), with no decision in sight. The length of this procedure is compromising the Hungarian authorities' ability to investigate common criminal offences, and demonstrates that here the EP's immunity system is not protecting the integrity of the body, but an MEP who has been accused of a violent act.

In addition to obstructing the investigation of a violent act, the EP's waiver of immunity procedures can, depending on political motivations, also lead to unduly lengthy proceedings related to MEPs accused of corruption. The corruption cases mentioned in Nézőpont's 2024 Report, which have fundamentally undermined trust in the EP, have not only failed to be concluded, but have seen new actors indicted – in early 2025. The case in question – a scandal known to the public as "Qatargate" – led to the arrest of several former MEPs, who are accused of having served the interests of Qatar, Morocco and Mauritania during their terms in parliament. In early March 2025 – almost two and a half years after the scandal broke – it was reported that the Belgian Federal Prosecutor's Office had requested a waiver of immunity for two Italian MEPs: Alessandra Moretti and Elisabetta Gualmini, both from the Progressive Alliance of Socialists and Democrats (S&D). The request for waiver of immunity was announced on 10 March by President of the European Parliament Roberta Metsola, no decision had been taken by the date this report went to press.

By comparison, two years ago, when the EP was under public pressure due to the newsworthy nature of Qatargate, the immunity of Marc Tarabella (one of the MEPs accused of corruption in Qatargate) was waived only 17 days after the President's announcement. The request for a waiver of Marc Tarabella's immunity was made on 28 December 2022, announced by the President of the EP on 16 January 2023, and approved on 2 February 2023.[33] Tarabella is involved in the same scandal as Moretti and Gualmini – yet Tarabella's case was concluded in 17 days, while those of Moretti and Gualmini had still not been concluded after 73 days, when this report went to press. These significant discrepancies demonstrate that the length of the procedure is determined not by protection of the integrity of the EP, but by political considerations and the management of negative public perception. In its current form, the EP's immunity waiver procedure does not contribute in an effective way to the investigation and prevention of abuses of power. As it stands, the EP's system of immunity does not protect the independence of the institution, but rather MEPs accused of corruption or common criminal offences.

Alessandra Moretti's name was mentioned early on in the scandal, as in February 2020 she accompanied her fellow MEP Marc Tarabella (who was swiftly indicted in the early stages of the Qatargate scandal) to Qatar. There they visited a stadium under construction in preparation for the 2022 World Cup, and spoke to the country's Minister of Labour.[34] Qatar has been repeatedly accused of practising "modern-day slavery" in the construction of its stadia.[35]

In addition to Alessandra Moretti and Elisabetta Gualmini, the Belgian MEP Maria Arena (S&D) – who served two terms in the EP (2014–24) – was indicted in January 2025, after the end of her mandate. From the beginning of the scandal, Arena was mentioned in the press as a confidante of Pier Antonio Panzeri (also S&D). Panzeri is accused of being a key figure in a European Parliament network under the financial influence of Middle Eastern states. The close relationship between the two former MEPs is confirmed by the fact that Panzeri handed over the chair of the EP Subcommittee on Human Rights to Arena. Maria Arena resigned from the chair after it emerged that she had failed to disclose trips funded by the State of Qatar.[36] Maria Arena's connection to another Qatargate player, Eva Kaili, was also reported in the press: after the arrest of Kaili's lover and alleged accomplice Francesco Giorgi, Maria Arena was among the first people Kaili called.[37] So although Maria Arena's closeness to several of those accused in the scandal was well known, she was not prosecuted until her immunity had expired. This raises the suspicion that Arena was not prosecuted sooner because the EP's waiver of immunity procedure – both cumbersome and without deadlines – made it unduly difficult.

The Qatar influence-peddling case was not the first time that the Belgian politician Maria Arena had attracted media attention. In 2019 her activism in support of cannabis legalisation drew attention to her when it was revealed that her son Ugo Lemaire was the founder and co-owner of a company called BRC & Co., which sells CBD (cannabis extract) products. When Arena held a cannabis-themed event at the European Parliament, the event was arranged by an organisation called ACTIVE, for which her son was named as regional president. [38] BRC & Co. also came under scrutiny during the Qatargate scandal that later rocked the EP: the co-owner of the business, with whom Lemaire had worked for years, was a man called Nicolas Claise – the son of Michel Claise, the Belgian judge who led the corruption investigation against the EP in the Qatargate scandal. So the son of an MEP suspected of criminal activity was in partnership with the son of the judge who was prosecuting the case related to that criminal activity. These compromising circumstances eventually led to Michel Claise resigning from his judicial post.[39]

2. Lobbying organisations involved in corruption scandals continue to be able to influence the work of the European Parliament

Article 15(1) of the Treaty on the Functioning of the European Union (TFEU) states that *"In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible."*[40] The Treaty therefore sets out transparency requirements for the EU institutions, including the EP. Although the precise rules for this are defined by the institutions themselves, activities aimed at influencing the European Parliament are not made sufficiently transparent.

Following the Qatargate corruption scandal, reforms[41] were introduced to strengthen the integrity of the EP, which also aimed to place stricter controls on activities intended to influence the EP. But the Huawei bribery case, which unfolded in early 2025, highlights that – despite reforms – the EP's weak transparency rules still allow for the exercise of undue influence over the elected body. When the scandal broke, police in Belgium and Portugal searched more than twenty premises. By the end of March, several people had already been charged in connection with the unfolding scandal, and two parliamentary secretaries of the Italian MEP Fulvio Martusciello (EPP) had been arrested.[42] Among those charged is a member of Forum Europe,[43] an organisation organising

policy conferences which regularly involve high-level EU leaders. According to allegations currently made public, in 2021 MEPs received cash payments for signing an open letter which, while not naming Huawei, urged for the development of 5G technology which was in the company's interest. It is alleged that some MEPs accepted gifts, tickets for football matches and other benefits from the technology company. In response to the unfolding bribery scandal Huawei lobbyists were banned from entering both the EP and the Commission. In May, the waiver of immunity procedure of four MEPs was initiated in connection with the case.

Huawei has reported 77 lobbying events involving the Commission since 2015, and 27 involving the Parliament between 2020 and 2023.[44] However, these do not include all the company's lobbying activities, as they do not relate to either covert lobbying or lobbying conducted through intermediaries. MEPs may meet lobbyists featured in the EU Transparency Register (the system for listing EU lobbying activity), but only pre-arranged meetings are required to be registered, and not "spontaneous" meetings, telephone calls and email exchanges.[45] Unregistered interactions between MEPs and lobby groups provide wide scope for covert lobbying. As a result, the European Parliament's transparency rules do not ensure the transparency of the activities of companies involved in scandals, such as Huawei.

In addition to covert or "spontaneous" meetings, the EP does not demand transparency when it comes to lobbying through intermediaries. Huawei, for example, names as one of its partners Acento Public Affairs – a company that engages in lobbying (including in the EU institutions), and which, in the Transparency Register for 2024, declared client fees from Huawei of between EUR 200,000 and 299,999.[46] The Transparency Register,[47] however, merely records the fact that meetings have taken place, and not their content. Therefore, in the register there is no way of linking the lobbying events of Acento Public Affairs and similar organisations to specific clients whose interests are represented. Thus it is not possible to fully track the lobbying linked to the company merely by searching for "Huawei Technologies" in the Transparency Register.

Only since 1 January 2025 has the Commission attempted to register the content of meetings. Since 1 January the Commission has also made public the minutes of meetings with stakeholders – a step towards making the actual content of meetings public. However, such minutes are only available on the Commissioners' own websites, and not through the Transparency Register. A further shortcoming is that the Commission's decision only requires the names of interest representatives to be disclosed in the minutes, which still does not provide sufficient transparency as to which client is behind the consultancy firms' lobbying meetings (See Article 5(2)(d) of Commission Decision (EU) 2024/3082).[48] Since the beginning of 2025 the European Commission has been trying to make the content of meetings more transparent, but the same cannot be said for the European Parliament, which has been deeply involved in the Huawei scandal.

Even though Huawei's direct lobbyists are banned from the European Parliament and Commission, Huawei can still indirectly influence EU activities through other organizations it is part of, which are not banned and continue to lobby or participate in EU projects. For example, Huawei is a member of SolarPower Europe, which – according to its homepage – works with its members to 'shape regulations and business landscapes for solar's growth'.[49] SolarPower Europe is a registered lobbying organisation in the EU and has been supported by the EU since 2015, receiving over €2 million in funding from the Horizon and LIFE programmes. Out of a total of 15 funding programmes in which SolarPower Europe is involved, 13 are still ongoing.[50] After the scandal broke in April 2025, SolarPower Europe stated that it had reduced[51] the financial contributions it had been receiving from Huawei, which had been EUR 60,000 annually.[52] Nevertheless, up until April 2025 Huawei was still named as the vice-chair of the Supply Chain Sustainability[53] and Digitalisation[54] working groups. SolarPower Europe's Digitalisation Working Group is listed because of its contribution to the Cyber Resilience Act, which aims to enhance EU cyber security. During the period when Huawei also held the vice-chair position, the Supply Chain

Sustainability working group participated in the public consultation on the European Commission's Corporate Sustainability Due Diligence Directive and Forced Labour Ban proposals.

Although SolarPower Europe finally excluded Huawei from the organisation in April, it remains a member of EU-registered lobbying organisations such as the Responsible Business Alliance.[55] Thus, despite the scandal, Huawei's influence on the European Parliament through organizations such as SolarPower Europe, the Responsible Business Alliance, or other similar entities cannot be ruled out (unlike the European Parliament, the Commission has prohibited meetings with these other lobbying organizations linked to Huawei if they represent Huawei's interests rather than those of their other clients or members).[56] Moreover, the fact that any lobbying activities carried out through these intermediaries cannot be traced further undermines the EP's weak transparency rules, which merely require registration of meetings having taken place, but not of their content.

The risk of undue and opaque influence over the EP applies not only to Huawei; the same is true for Royal Caribbean Group, one of the world's largest cruise holding company. Ukko Metsola, husband of the European Parliament President Roberta Metsola, is a lobbyist for the Royal Caribbean Group. His name is also registered in the EU Transparency Register as a "person in charge of EU relations". According to the EP's Code of Conduct, which was tightened in the wake of the Qatargate scandal, *"A conflict of interest exists where the exercise of the mandate of a Member of the European Parliament in the public interest may be improperly influenced for reasons involving his or her family, emotional life or economic interest, or any other direct or indirect private interest."* Metsola's presidential duties and her husband's lobbying activity can therefore be considered to be a conflict of interest. Despite the tightened rules, one of the reasons Roberta Metsola's husband's lobbying activities have not been made public is that under the new code of conduct adopted under Metsola's presidency, in addition to rapporteurs and shadow rapporteurs, only a Member taking up the office of *"Vice-President, Quaestor, Chair or Vice-Chair of a committee or delegation"*, is required to submit a declaration *"indicating whether or not he or she is aware of having a conflict of interest"*. In other words, the EP President has no such obligation. (For more information, see the Report on the Rule of Law 2024, Section 1.6: *The shortcomings of the EP's anti-corruption rules violate the principle of prevention of the abuse of power.*)

3. Transparency International exerts excessive influence

In 2023 the European Parliament issued a strengthened Code of Conduct, which allowed MEPs to hold other posts in addition to their work as MEPs, and to receive an allowance for doing so – provided they disclose these commitments. The Code of Conduct, however, prohibits MEPs from engaging in paid lobbying activities directly linked to the EU decision-making process in the performance of their duties.[57] Although not prohibited by these rules, from a rule-of-law point of view it is questionable whether some MEPs' activities are separable from those of certain organisations that also carry out lobbying activities. The situation is aggravated if the lobbying organisation with which the MEP works closely also receives EU funding. Strictly speaking this is not forbidden by the EP's Rules of Procedure, but it is prohibited by the European Commission's Code of Conduct. The Commission states the following[58] on the external activities that may be carried out by its members (Article 8(2)(d)): *"The post must not involve any risk of conflict of interest. Such risk exists in particular when a body receives financing from the EU budget."* Serious rule-of-law concerns about EP rules are raised by the fact that the Commission would consider such a relationship to be a conflict of interest for its own members, while it is routine practice among MEPs.

Daniel Freund, for example, is a classic example of the "revolving door phenomenon", which, according to Transparency International Hungary[59] is a term used to describe the movement between the public and private sectors that allows for "profiteering or undue influence". From 2013 to 2014 Daniel Freund worked in the European Parliament as a political advisor to Green MEP Gerald Häfner.[60] His tasks included advising Häfner – who was shadow rapporteur for the report on revision of the Transparency Register – on matters related to revision of the Register.[61] After leaving his parliamentary post in 2014, Freund joined Transparency International (TI), where he also worked on the Transparency Register (which was repeatedly mentioned as a TI lobby topic between 2016 and 2018) and on revision of the system. In November 2014 he said that "These developments are definitely positive".[62] In October 2014,[63] however, TI launched its own lobbying platform (similar to the EU Transparency Register), called Integrity Watch. This was accompanied by a change in Daniel Freund's view of the EU Transparency Register: in his 2015 TI study, Freund examined eight transparency systems, and ranked the Transparency Register in only fourth place. In order to ensure transparency, Freund recommended using TI's own proprietary Integrity Watch website.[64]

TI's lobbying efforts have been successful, with both the Berlin and Brussels TI offices receiving EU funding for its Integrity Watch project in 2018.[65] The TI project (which included regional offices) received EUR 544,051 in Commission funding.[66] This funding was awarded by the Directorate-General for Migration and Home Affairs (HOME). According to the Transparency Register,[67] prior to the grant being awarded in 2018, in November 2017 two members of the cabinet of the Commissioner of the Directorate-General awarding the grant hosted TI as lobbyists to discuss the topic of "EU anti-corruption policy". It is therefore likely that the award of the EU grant was preceded by a long lobbying campaign by TI. During his career at TI, Daniel Freund was responsible for its EU Integrity Watch project.[68]

Before Freund became an MEP, he was not only a staff member at TI (Brussels office), but his job title was specifically "Head of Advocacy for EU Integrity" – essentially the head of TI's lobbying group related to EU integrity. As he says on his LinkedIn profile, the current MEP was responsible for leading TI's advocacy to the Commission, Parliament and Council, and for coordinating the "advocacy" – or lobbying – activities of TI's regional branches and "other partners".[69] In line with his position, Freund can be found from this period on lobbyfacts.eu as an accredited lobbyist for TI.[70] Freund was an accredited lobbyist in the EU almost continuously between summer 2014 and October 2018, and over these four years TI participated in a total of 41 registered lobbying events with senior Commission staff (commissioners, cabinet members, people in leadership positions at directorates-general), lobbying the Commission on issues including the rule of law, anti-corruption and migration.

After having worked at the European Parliament as an advisor and then in the NGO world as a lobbyist, in 2019 Freund returned to the EP, this time as a Green MEP. According to the EP, between September 2021 and December 2023 TI lobbied MEPs on 54 occasions, on 19 of which Daniel Freund met TI representatives – his former colleagues.[71] In 2021 Freund was the rapporteur for a report on transparency and integrity in the EU institutions, with TI material featuring in the report's preparation. As rapporteur, Freund received information for the report from 16 individuals and organisations, three of which were TI offices.[72] The career path of Nicholas Aiossa,[73] the current director of TI's Brussels office, also demonstrates Freund's close connection with TI. Aiossa (who also worked in the European Parliament until 2013 as a parliamentary secretary, and then as head of office) started work at TI in 2014, the same year as Freund – and when Freund became an MEP, Aiossa briefly took over from him as Head of Advocacy for EU Integrity. As of February 2025, Nicholas Aiossa was one of Transparency International's 12 accredited lobbyists, and so he most likely maintained his long-standing working relationship with Daniel Freund throughout his lobbying activities. The extensive overlap between Daniel Freund and his network of contacts between civil society and parliamentary decision-making raises seri-

ous rule-of-law concerns, as well as suspicions regarding Transparency International's modus operandi – which may enable "profiteering and undue influence" – and its excessive and unaccountable influence.

Nézőpont Institute's earlier analysis also dealt in detail with Transparency International's infamous Corruption Perceptions Index (CPI).[74] Over the past thirty years the index, with its professionally questionable methodology, has become a tool for political pressure, and EU institutions regularly rely on it – together with other TI material – in their decision-making. An analysis by the Nézőpont Institute has challenged the reliability of the CPI's methodology, on the basis of seven factors:

- the CPI is not based on TI's own survey results;
- the CPI measures perceptions of corruption, not fact-based observations;
- the index relies on a narrow base of biased experts;
- the indices of TI and its data providers circular-reference one another;
- from the 13 indices used by TI different and varying numbers of indices are taken into account in each country;
- the annually published index is not based on data from the same year for every country;
- the countries which TI finds to be least corrupt are TI's principal funders.

In 2017 the European Commission's Joint Research Centre analysed TI's Corruption Perceptions Index and endorsed its methodology. By the time the Commission's research service reviewed the CPI's methodology, the Commission had not only regularly used it as a reference (e.g. for the Commission's 2014 Anti-Corruption Report[75]) but had already subsidised TI with tens of millions of euros of taxpayers' money. (see: Nézőpont Institute – Hiteltelen a Transparency korrupciós indexe[76])

The involvement in the EP of TI's former lobbyist Daniel Freund is enough to illustrate the excessive influence that Transparency International has on EU lawmaking. However, TI's ability to influence EU decision-making is not limited to Daniel Freund and its registered lobbying activities. TI's opaque and unaccountable influence can also be seen in its lobbying activities related to the Commission's new Anti-Corruption Directive. On 17 February 2022 the EP demanded that the Commission develop EU rules to fight corruption – something that the EP deemed essential partly on the basis of TI's Corruption Perceptions Index.[77] In response to this, the Commission first commissioned a study on the state of corruption in the EU, during the preparation of which its rapporteurs consulted three NGOs. One of these was Transparency International.[78] Shortly afterwards, on 3 May 2023, the European Commission proposed a new anti-corruption directive, which TI welcomed on the same day, saying that in 2020 the organisation had already "fought" for the introduction of similar principles in the EU institutions.[79]

The joint communication announcing the Commission's proposal contained two references to TI on its first page.[80] With the announcement of the proposal, the Commission created an "EU network against corruption",[81] within which TI immediately started on its active work. As the next step in a process that demonstrates TI's excessive influence, in August 2023 TI gave its opinion and made proposals on the Commission's draft.[82] In February 2024 the EP made proposals on the package, and the rapporteur, Ramona

Strugariu (Renew, Romania), named Transparency International – alongside Europol and the European Public Prosecutor's Office (EPPO) – as one of the organisations from which she had received information in the course of drafting the proposals for amendments.[83] The proposals finally adopted by the EP – which partly incorporated suggestions made by TI – were, according to TI's own statement, an improvement on the Commission's original package.[84] After the EP, the Council issued its opinion on the new Anti-Corruption Directive in June 2024, which also invited criticism from TI and Daniel Freund.[85] The latest development came in September 2024: in preparation for the next step in the legislative process, the European Parliamentary Research Service prepared a briefing on the package for the EP. This briefing, which is only nine pages long, includes half a page on TI's position.[86]

Therefore it can be said that from the very beginning of the process of adopting the Directive, TI has done its utmost to amend the package in order to align with its expectations. TI has been present throughout the process as a proposer, a stakeholder group, an expert, an information provider, a reference base and a pressure group. It has also influenced the expert groups that have assisted in the work of the European Commission and European Parliament, and the members of the institutions themselves. Although this account only refers to the Anti-Corruption Directive, as highlighted in a study published by the Patriots for Europe Foundation,[87] Transparency International has exerted significant influence on many other EU directives, reports (see rule of law reports) and other material. These efforts to exercise undue influence over legislation have been carried out by an organisation that, according to an investigative report by Hungary's Sovereignty Protection Office, received EUR 44 million in funding from the Commission between 2014 and 2023.[88] Overall, it can be said that, from a rule-of-law perspective, Transparency International's activities illustrate that the European Parliament's weak internal regulatory system is unable to curb the exercise of undue influence.

4. European-level political parties can be effectively dissolved on the grounds that they do not respect the Union's values, and during this procedure it is mandatory to seek the opinion of a member of the scientific council of a foundation linked to the Party of European Socialists

Article 10(1) TEU states that *"The functioning of the Union shall be founded on representative democracy."* At Union level this is realised in the institution of the European Parliament (Article 10 (2)). Article 10(4) stresses that *"Political parties at European level contribute to forming European political awareness and to expressing the will of the citizens of the Union."* Thus, according to the Treaty, it is the task of the European Parliament to represent the citizens of the Union, and of the European political parties to express the political will of the citizens of the Union. Moreover, Article 21(1) of the Charter of Fundamental Rights of the European Union prohibits discrimination on the grounds of, *inter alia*, *"religion or belief, political or any other opinion"*. Therefore one must not be subject to either negative or positive discrimination regardless of who one is, and what opinions or political positions one represents.

Even though discrimination on the basis of political opinion is prohibited by the Charter of Fundamental Rights of the European Union, and the Treaty stresses the responsibility of political parties at European level to contribute to the representation of EU citizens, the EU institutions have the power to completely destroy

the viability of certain political parties at European level if they establish that such parties violate the values of the Union. Although the rules detailed below have never been acted upon, it is important to underline that there is a risk that these rules could be used to completely suppress certain political parties at European level.

Regulation No 1141/2014 on the statute and funding of European political parties and European political foundations has been in force since 2014. The Regulation lays down conditions for the registration of political alliances as European political parties. The conditions for registration of political alliances as European political parties include the stipulations that the political alliance must have its seat in one of the Member States, that it must enjoy electoral support in several Member States, and that (according to Article 3(1)(c)) *"it must observe, in particular in its programme and in its activities, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities"*[89] Respect for EU values is therefore a condition for registration as a European political party – but there is no objective yardstick for assessing this.

The Authority for European Political Parties and European Political Foundations (APPF) exists for the registration, monitoring and sanctioning of European political parties.[90] In addition to enacting and maintaining the registration of parties, the APPF is also responsible for regularly verifying *"that the registration conditions laid down in Article 3 […] continue to be complied with by the registered European political parties and European political foundations."*[91] These conditions include respect for the EU values expressed in Article 2 TEU. In its decisions the APPF must take full account of the need to ensure pluralism of political parties in Europe.

If a European political party (which has already been registered) is suspected of not respecting EU values, an investigation into it can be launched. According to Regulation No 1141/2014, Article 10(3), if a European political party (already registered) is suspected of not respecting EU values, an investigation can be launched: *"The European Parliament, the Council or the Commission may lodge with the Authority [APPF] a request for verification of compliance by a specific European political party or European political foundation with the conditions laid down in point (c) of Article 3(1) [...]. In such cases [...], the Authority shall ask the committee of independent eminent persons [...] for an opinion on the subject."* In the event of a manifest and serious breach of EU values, *"Having regard to the committee's opinion, the Authority shall decide whether to de-register the European political party or European political foundation concerned"*. The APPF's decision on deregistration *"shall enter into force only if no objection is expressed by the European Parliament and the Council"*. Since registration with the APPF is a condition for party funding, deregistration of a party on the grounds of non-compliance with EU values would also naturally mean withdrawal of that party's financial support.[92] In summary, there is a possibility that existing European political parties will be deregistered on the grounds that they do not respect the values of the European Union.

Under these rules, in certain cases the APPF will ask the committee of independent eminent persons to give an opinion on whether specific European political parties (or foundations) are complying with EU values. Therefore, if an investigation were to be launched into a political group in the EP in relation to its respect for EU values, this committee would have a crucial role to play. According to Regulation No 1141/2014, Article 11(1), the committee *"shall consist of six members, with the European Parliament, the Council and the Commission each appointing two members. The members of the committee shall be selected on the basis of their personal and professional qualities. They shall neither be members of the European Parliament, the Council or the Commission, nor hold any electoral mandate, be officials or other servants of the European Union or be current or former employees of a European political party or a European political foundation."* The European Parliament, the Council or the Commission may also submit a request to examine a party's compliance with EU values, and such a procedure will also involve seeking the opinion of a committee of independent eminent persons, whose members are appointed by the Parliament, the Council and the Commission.

Although this committee comprises "independent eminent persons", the real independence of some of the currently known members is highly questionable. In January 2025 the European Parliament appointed Anna Paczesniak as one of its delegates to the committee.[93] Ms. Paczesniak has been a member of the Scientific Council of the Foundation for European Progressive Studies (FEPS)[94] since 2018, and in May 2025 the FEPS website still listed her as a member of the Scientific Council (i.e. after her appointment to the "independent" committee). FEPS is a party foundation affiliated to the Party of European Socialists (EP group: S&D), and the APPF has officially registered it as the political foundation affiliated to the Socialists. In addition to examining European political parties, the committee of independent eminent persons is also responsible for examining political foundations with regard to their values, and so it is highly questionable for a person who is a member of a political foundation to also be a member of the committee of independent eminent persons. Although the European Parliament's letter appointing Anna Paczesniak makes no mention of any declaration of conflict of interest, both the Council's[95] and the Commission's[96] statements on appointments stress that *"The appointment is subject to the signing, by each of the designated members, of the declaration of independence and absence of conflict of interests that is annexed to this Decision."* The question arises as to whether Paczesniak declared that there was no conflict of interest between her membership of the FEPS Scientific Council and her membership of the committee of independent eminent persons.

As a member of the FEPS, Paczesniak also could have played a role in the 2023 Polish elections. In September 2022 FEPS organised a discussion with her participation on "the strategy of Polish social democracy before next year's parliamentary elections". During the discussion, the participants – including Paczesniak – were asked about the Polish Left's chances of returning to power, and the strategy to "break the political duopoly of the right wing".[97] After the elections, Paczesniak wrote in the FEPS 2024 Yearbook about "political corruption" in the PiS campaign.[98] In addition, in the 2024 FEPS publication "Next Left" volume 15 she published a study entitled "In search of allies on the road to enhancing the integrity of the EU",[99] in which she clearly stated that (in her opinion) Fidesz and PiS were questioning the values of liberal democracy, and that the actions of the two right-wing governments had struck "a blow against the EU fundamental values and legal order".[100] She went on to write about the need for more effective sanctions against Member States that "violate the rule of law". The appointment of Anna Paczesniak to the committee of independent eminent persons brings with it the risk that in the near future EU institutions will discriminate even more strongly against people with certain political opinions, and that the Treaty obligation that European political parties express the will of EU citizens will be even more severely undermined. In addition, the right to a fair hearing is also violated by the fact that the opinion of a politically biased person must be sought regarding the banning of parties.

In 2023 the Commission appointed Kolinda Grabar-Kitarović as a member of the committee of independent eminent persons. From 1993 to 2015 Grabar-Kitarović was in the Croatian party HDZ, which is a member of the European People's Party.[101] In addition to its influence in the committee of independent eminent persons, the EPP also links to the Director of the APPF: since 2021 that post has been held by Pascal Schonard, who previously worked in the Secretariat-General of the European Parliament. During his time there Pascal Schonard's boss was Klaus Welle, Secretary General of the European Parliament.[102] According to Regulation No 1141/2014, Article 6(3),[103] *"The Director of the Authority [APPF] shall be appointed for a five-year non-renewable term by the European Parliament, the Council and the Commission [...] by common accord, on the basis of proposals made by a selection committee composed of the Secretaries-General of those institutions following an open call for candidates."* So, as the Parliament's Secretary General, Klaus Welle had a role in the selection of his then subordinate Pascal Schonard as Director of the APPF. Since 2023 Klaus Welle has been Chairman of the Academic Council of the Wilfried Martens Centre for European Studies (WMCES). [104] WMCES is registered with the APPF as the political foundation of the European

People's Party. So the Director of the APPF is charged with monitoring, and possibly sanctioning, a party and its affiliated party foundation, one of the key figures in which was his boss – who was also a member of the selection committee playing a key role in his appointment.

While there has never been a case of a party being refused registration or being removed from the register on the grounds that it does not respect EU values, this legislation allows for that eventuality. Attempts have been made to examine the compliance of parties with EU values. In 2018 two professors – Laurent Pech and Alberto Alemanno – lobbied to push for an investigation into the European People's Party[105] and the European Conservatives and Reformists (ECR),[106] regarding their respect for EU values. The stated motive for investigating the EPP was its failure to take action against Fidesz – which at the time was one of its member parties. The justification for the proposed investigation of the Conservatives and Reformists was its failure to act against the Polish Law and Justice party (PiS), which could have led to the political party's deregistration. Although the activities of Pech and Alemanno did not lead to an examination of the parties from the perspective of EU values, there remains a risk of reviving the procedure or the pressure campaign for political reasons.

5. The so-called "cordon sanitaire" discriminates against the EP's third largest political group, and thus obstructs expression of the will of EU citizens

As shown in the previous section, political associations can be registered as European political parties if they respect the fundamental values expressed in Article 2 TEU. In line with this, when they were registered, all the European political parties operating today made declarations of their respect for these values. Declarations to this effect by the Patriots for Europe,[107] the Conservatives and Reformists[108], and the Europe of Sovereign Nations[109] were accepted by the APPF, and the parties were registered. But the practice of "cordon sanitaire" in the European Parliament makes it difficult for these parties to express the will of EU citizens, despite the fact that even the EU institutions do not consider them to be bannable. The EU institutions have not taken any action against any of the EP's parties, nor have they formally questioned whether their declarations of respect for the values of the Union, made at the time of their registration, have been violated by any European national parties. Despite this, the European Parliament has, without any formal procedure, excluded its third largest party (Patriots for Europe) from all leading positions.

The European Parliament's Rules of Procedure, Rule 219(1) also states that *"The diversity of Parliament must be reflected in the composition of the bureau of each committee."* However, despite the non-discrimination requirements laid down both in the Treaties and in the Rules of Procedure, in the 2024–29 term the "cordon sanitaire" will continue to be a determining factor in the functioning of the EP. In our Report on the Rule of Law 2024, we highlighted the exclusion of Identity and Democracy (ID) and the European Conservatives and Reformists (ECR) – party families on the Right – from positions in the European Parliament; meanwhile this year the fate of the similarly aligned Patriots for Europe shows that representing certain convictions and political opinions is the basis for discrimination in the EP. This is despite the fact that these parties' declarations that they respect the values of the Union have not been officially questioned by any of the Union's institutions. And despite the Rules of Procedure, which stipulate that the bureau of each committee must reflect the diversity of the Parliament, the Patriots for Europe – which won 12 percent of the seats in the European Parliament – has not been given a single chair or vice-chair on any

of the EP's committees. Moreover, not a single vice-president or quaestor in the EP belongs to this, the third largest political group.

While the "cordon sanitaire" has disadvantaged the Patriots, the Progressive Alliance of Socialists and Democrats (S&D) and Renew Europe (also known simply as "Renew") are – compared to their share of parliamentary seats – over-represented in all positions. The S&D won just 19 percent of seats, but provide 32 percent of the vice-presidents and quaestors, 23 percent of the committee and subcommittee chairs, and 25 percent of the committee and subcommittee vice-chairs. Renew won only 10 percent of parliamentary seats, but received 16 percent of the posts for vice-presidents and quaestors in Parliament, 15 percent of the posts for chairs of committees and subcommittees, and 14 percent of the posts for vice-chairs of committees and subcommittees. Meanwhile the EPP accounts for 26 percent of vice-presidents and quaestors, 31 percent of committee and subcommittee chairs, and 34 percent of committee and subcommittee vice-chairs. It is therefore over-represented in these positions, in comparison with its proportion of seats in Parliament (26 percent).

The Patriots for Europe, who have risen to become the third largest force in the European Parliament, have not allowed this now established practice of the cordon sanitaire to go unchallenged. In September 2024, members of the Patriots group brought an action against the European Parliament (Case T-496/24), which included a request to the General Court of the European Court of Justice to declare that all decisions relating to the adoption and implementation of the cordon sanitaire are contrary to the standards of the European Union. This action highlights the discriminatory nature of the practice, which seeks to prevent political parties at European level from fulfilling their treaty obligation of expressing the will of EU citizens.

	EPP	S&D	Patriots	ECR	Renew	Greens/ EFA	Left	NI	ESN
Number of MEPs[110]	188	136	86	80	75	53	46	29	26
Percentage of MEPs	26%	19%	12%	11%	10%	7%	6%	4%	4%
Number of vice-presidents and quaestors[111]	5	6	0	3	3	1	1	0	0
Percentage of vice-presidents and quaestors	26%	32%	0%	16%	16%	5%	5%	0%	0%
Number of committee and subcommittee chairs	8	6	0	3	4	3	2	0	0
Percentage of committee and subcommittee chairs	31%	23%	0%	12%	15%	12%	8%	0%	0%
Number of committee and subcommittee vice-chairs	34	25	0	12	14	9	5	0	0
Percentage of committee and subcommittee vice-chairs	34%	25%	0%	12%	14%	9%	5%	0%	0%

Table 3 Note: Based on data for the beginning of 2025. One parliamentary seat is currently vacant. Due to rounding, percentages do not always sum to 100.

The existence of a cordon sanitaire in the European Parliament creates the risk that some parties will be financially disadvantaged. The Bureau of the European Parliament, which consists of the President, 14 vice-presidents and 5 quaestors, plays an important role in determining the funding of the parties in the European Parliament.[112] Rule 25(11) of the Rules of Procedure states that "*The Bureau shall lay down the implementing rules relating to the regulations governing political parties and foundations at European level and the rules regarding their funding",* while Rule 34(3) states[113] that *"The Bureau shall, having regard to any proposal made by the Conference of Presidents, lay down the rules relating to the provision, implementation and monitoring of the facilities and appropriations referred to in paragraph 1, as well as to the related delegations of budget implementation powers and the consequences of any failure to respect those rules."* According to the decision of the Bureau of the European Parliament,[114] the Bureau decides on the parties' applications for funding on the basis of a proposal from the Secretary-General. (The appropriations available to the European political parties are distributed on the basis of a distribution key, according to which *"85% shall be distributed in proportion to their share of elected members of the European Parliament among the beneficiary European political parties."*[115]) Thus the responsibility for regulating and controlling the funds available to the parties (including the PfE), and their requests for funding, lies with a Bureau – from which the third largest party (the PfE) is excluded. This shows the difficulties that the cordon sanitaire poses for what is currently the third largest political community in Europe.

The European Commission

6. The European Media Freedom Act, which seeks to standardise press regulation at EU level, represents an example of competence creep

Under Article 5 of the Treaty on European Union, the EU can act only within the limits of the competences conferred upon it in the Treaties. Closely linked to this are two other principles: subsidiarity and proportionality (Article 5(3) and (4) TEU). The subsidiarity principle aims[116] to ensure that decisions are taken at the level closest to the citizens of the Union, while the proportionality principle requires that action taken by the Union is appropriate and necessary to achieve the desired result, while not imposing a disproportionate burden on those concerned.[117] From this it follows that if the EU seeks, at supranational level, to regulate areas that can be regulated satisfactorily by Member States at national, regional or local level, then there are serious concerns about the rule of law in the functioning of the Union.

The European Media Freedom Act (EMFA), which entered into force in May 2024 and must be fully applied from August 2025, is officially intended to protect media pluralism and independence in the European Union's Member States. Article 4(2)[118] of the Regulation sets out, inter alia, the expectation that *"Member States shall respect the effective editorial freedom and independence of media service providers in the exercise of their professional activities. Member States, including their national regulatory authorities and bodies, shall not interfere in or try to influence the editorial policies and editorial decisions of media service providers."*

This proposal for media regulation has been challenged on the basis of subsidiarity in reasoned opinions by the parliaments of Denmark, France, Germany and Hungary.[119] On 10 July 2024 Hungary brought an action before the Court of Justice of the European Union (C-486/24) for annulment of the Act, challenging both its legal basis and citing infringement of the principles of proportionality and subsidiarity.

In its second legal argument, Hungary pointed out that EMFA seeks to regulate matters which can be – and are – regulated satisfactorily by the Member States at national, regional or local level. Furthermore, it is also debatable whether there is additional value in regulating at EU level (in accordance with the principle of subsidiarity, for there to be action at EU level, it should be proven that it is more feasible than acting at Member State level). The Member States' argument is that media issues are better regulated at national level, and that the Act – which seeks to harmonise media relations between Member States – also infringes the need to respect national and regional diversity (Article 167 TFEU).

Bearing in mind the principle of proportionality, it is particularly objectionable that the Act has established the European Board for Media Services ("Board" or "Media Board"), an advisory body at EU level with the stated aim of *"gathering national regulatory authorities or bodies and coordinating their actions*",[120] which started its operations in February 2025.[121] According to a press release from the Commission,[122] the Board *"will provide opinions on national measures that could significantly affect the operation of media providers, on media market concentrations, and on common measures to protect the internal market from non-EU media providers that pose threats to public security, for example, when it comes to foreign information manipulation and interference."* The proportionality principle may raise the question of whether the Board should even be set up, and whether it is appropriate for such a supranational body to express opinions on national measures in individual Member States, bearing in mind the fact that respect for national and regional diversity is a fundamental principle of the Union. Moreover, the principle of proportionality also relates to the question of whether or not the setting up of the Board imposes a disproportionate burden on Member States: according to EMFA, Member States will, where necessary, need to appropriately increase the resources allocated to national regulatory authorities or bodies to enable their participation in the work of the Board.

As with the matters discussed in our Report on the Rule of Law 2024 in relation to the Commission's Defence of Democracy Package (1.2: *It is in breach of the Treaties for the EP to interfere in the national security affairs of Member States*), the EU has sort to legally justify EMFA by invoking Article 114 TFEU [123] on the establishment and functioning of the internal market. Last year our Report argued that, just as the section of the Treaty describing harmonisation of the internal market cannot be cited in support of intervention in Member States' regulations on foreign influence as a matter of national security, so too the regulation of media freedom lacks a permanently acceptable basis in Article 114 TFEU.

Harmonisation of the internal market is intended to remove barriers to trade in the single market and to correct potential distortions of competition. On the other hand, the European Media Freedom Act is intended, as its name suggests, to ensure media freedom – something which is clearly more than a purely internal market issue.[124] In addition to highlighting the Act's infringement of subsidiarity and proportionality, in the case it initiated (C-486/24) Hungary also noted that *"the regulation does not actually govern the economic aspects of those [media] services. [...] The true primary objective of the regulation is to foster the fundamental values of the European Union – democracy and the rule of law – by promoting media freedom and media pluralism, for which Article 114 TFEU does not provide an appropriate legal basis."*

The above assertion by a Member State that the EU intends to use EMFA primarily to promote the rule of law and democracy is supported by the fact that EMFA provides for the Commission's annual reports on the rule of law to be taken into account in relevant cases – and, of course, such material from the Commission does not relate to the internal market. The text of the Act underlines that, in order to ensure pluralistic media markets, *"Where relevant, the national authorities or bodies in their assessments and the Board in its opinions should also take into account the findings of the Commission's annual rule of law reports related to media pluralism and media freedom.*"[125] The Act states that *"the Board shall advise and support the Commission on matters related*

to media services within the Board's competence", and that when forming its opinions it is thus also required to draw on the Commission's material.

In the Protocols annexed to the Treaties, Member States have also expressed reservations about the EU's detailed powers of intervention in media regulation, including the right to regulate the media. Protocol (No 29)[126] states that *"The provisions of the Treaties shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting and in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and in so far as such funding does not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account."* Even if this Protocol is interpreted as a recognition by Member States of public service broadcasting as part of the single market,[127] the basis on which the EU intends to regulate non-market aspects of the media remains an open question.

7. Corruption cases involving Ursula von der Leyen and her Commissioners continue to incur no consequences

The EU Treaties emphasise the integrity of the Commissioners, with TFEU Article 245 stressing that *"The Members of the Commission shall refrain from any action incompatible with their duties."* Several bodies exist to oversee the integrity of the Commission: the Independent Ethical Committee;[128] the ethics and transparency network contact points in the cabinets of Commissioners; the new Interinstitutional Ethics Body that is being formed;[129] the Commission's web page called "Commissioners and ethics"; and the Commission's annual report on the application of its Code of Conduct. Despite the existence of countless committees, contact points, reports and panels, the Commission had no procedure in place to deal with Ursula von der Leyen's exchanges with the CEO of Pfizer. Furthermore, for an entire term within the European Commission, for a long time no suspicions were raised in relation to Commissioner Didier Reynders, who is under investigation for corruption.

Last year we were already describing corruption cases involving the Commission – specifically Pfizergate, involving the newly re-elected President of the European Commission (see our Report on the Rule of Law 2024, *2.6. The fact that the "Pfizergate" affair – which is linked to the Commission – is still unresolved after three years is a violation of the principle of anti-corruption, which relates to the rule of law*). According to the allegations, Ursula von der Leyen exchanged personal messages with Albert Bourla, the CEO of Pfizer Inc., which resulted in an increase in both the number of vaccines ordered by the EU, and the price paid for them. The contract with BioNTech and Pfizer was the Commission's largest purchase of vaccines during the COVID pandemic, enabling the procurement of 1.8 billion doses for EU Member States.[130] The New York Times, which sought to expose the case, filed a lawsuit against the Commission (Case T-36/23) after it had refused to release the text messages in question. The hearing in the case was in November 2024 – when, for the first time, the Commission's representative admitted that there were indeed messages exchanged between Pfizer and the President of the Commission.[131] The Commission's representative maintained that the messages were not released to the public because they were not relevant; but when asked on what basis this decision was made, the Commission was unable to describe the procedure that had been followed.

In May 2025 the General Court of the European Union ruled in favour of the New York Times in its case against the Commission, condemning the Commission's conduct. The Court annulled the Commission's decision to refuse access to the text messages between Ursula von der Leyen and Albert Bourla sent in the period from 1 January 2021 to 11 May 2022. It condemned the Commission's failure to provide credible explanations related to the existence of the texts which had been requested, and to why they were not in its possession. The judgment also criticised the Commission for failing to clarify whether or not the messages had been deleted, and why the Commission considered that the *"text messages [...] did not contain important information or information involving follow-up the retention of which must be ensured."*[132] Thus, the General Court condemned the Commission's opaque operations – which, however, carries almost no real consequences, merely declaring the previous explanation void.

The Pfizer affair involving the President of the European Commission is far from over, but already the Commission's work has been overshadowed by another corruption case. Didier Reynders – a member of the Belgian party Reformist Movement, part of Renew Europe – was EU Commissioner for Justice from 2019 to 2024, with responsibility for overseeing the European Rule of Law Mechanism and for exposing and preventing rule-of-law abuses in the Member States, as well as for supporting the work of the European Public Prosecutor's Office (EPPO). Prior to his appointment, the Belgian-born politician had a distinguished career in his home country, holding ministerial posts from 1999 to 2019. For example, he was Belgium's finance minister from 1999 to 2011, during which time he also oversaw the Belgian National Lottery, from 2007 to 2011.[133]

Reynders was under police investigation for corruption and money laundering in 2019, after Belgium had already nominated him as a commissioner. It is suspected that Reynders laundered illegally obtained funds by trading in antiques, works of art and real estate.[134] There have been some allegations that the illicit payments were from arms dealers and a Congolese presidential candidate.[135] However, the investigation was dropped shortly after it was made public – just days before Reynders' confirmation hearing in the European Parliament. According to reports at the time, the EP hearing *"concluded with a loud applause, testifying that MEPs have been satisfied with his answers" [sic]*. Then, a few hours later, the EP formally confirmed the nomination of Reynders, the former suspect.[136] Cleared of suspicion, for the next five years the politician would be seen as the personification of the Commission's fight against maladministration and corruption.

Having been known since 2019 to have been under investigation, Reynders faced renewed charges at the end of 2024 – after the end of his term as Commissioner. The Belgian police raided his home, suspecting him of buying lottery tickets with illegally obtained funds in order to launder the money through lottery winnings. Although the Commission denied knowledge of the investigation into Reynders, press reports[137] suggest that the police had launched an investigation during his term as Commissioner, presumably following notification from the Belgian National Lottery in 2022,[138] and that his home was searched two days after the end of his mandate – and also, therefore, after his period of immunity.[139] It is also worth noting that while the Commission's fight against money laundering and terrorist financing was previously the responsibility of the Directorate-General headed by Reynders, when Reynders took up his duties as Commissioner in January 2020 this responsibility was transferred to the Directorate-General for Financial Stability, Financial Services and Capital Markets Union.[140]

Although the investigation covers – in addition to his time in previous positions – Reynders' entire mandate as Commissioner, the Commission firmly maintains that it was unaware of his dubious dealings.[141] The following question seems valid: if, as alleged, a Commissioner was able to conduct suspicious dealings

for several years without the Commission's knowledge, and if the Commission was not even aware of an investigation into them by a Member State, what is the real purpose of the Commission's numerous ethics bodies and reports? In addition to the case of Ursula von der Leyen, the corruption scandal involving Didier Reynders shows that the Commission's internal rules are unfit for the purpose of preventing maladministration and abuse of power.

8. The European Commission is engaged in the opaque funding of lobbying organisations which act as pressure groups within EU institutions and in Member States

In 2023 the European Commission proposed its new Anti-Corruption Directive, which states[142] that *"Effective anti-corruption approaches often build on measures to enhance transparency, ethics and integrity, as well as by regulating in areas such as conflict of interest, lobbying and revolving doors. Public bodies should seek the highest standards of integrity, transparency and independence as an important part of tackling corruption more broadly."* Corruption is not only present in the Member States, however, but also in the institutions of the European Union – and so compliance with these findings also needs to be examined in relation to EU institutions.

The EU's funding of civil society and the lobbying activities of civil society in the EU institutions are questionable in terms of the principles of "transparency", "ethical standards", "integrity" and "conflict of interest". MCC Brussels,[143] for example, points out that the Commission is engaged in propaganda under the guise of support for civil society. The MCC report draws attention specifically to the grants awarded under the CERV (Citizens, Equality, Rights and Values) programme, which has a budget of around EUR 1.5 billion. According to the MCC analysis, the EU is using the programme to promote deeper integration and to fight euroscepticism and anti-EU sentiment, among other things. CERV also supports organisations (e.g. the Union of European Federalists and the Young European Federalists) that hold openly federalist views, and even lobby the EU institutions,[144] including on the issue of "treaty reform". [145] The MCC report underlines that it is acceptable for civil society to independently support the EU and advocate for deeper integration, but the fact that the Commission itself is spending public money to promote this perspective raises doubts about the functioning of the Union[146] and its attempts to influence public opinion.

The accusation that the Commission uses civil society as a proxy for lobbying purposes has also been raised in connection with other cases. Between 2021 and 2027, the Commission is funding EUR 5.4 billion in environmental projects through the LIFE programme. In January 2025 it was alleged that – under the supervision of the European Climate, Infrastructure and Environment Executive Agency (CINEA), which manages LIFE – grant agreements had been signed with environmental NGOs also engaged in lobbying that required these NGOs to lobby both in the European Parliament (EP) and the European Commission, as part of the supported projects. During a parliamentary debate on the matter, Commissioner Piotr Serafin said that the Commission had been seeking to amend these agreements since it became aware of the problem in 2024. According to Politico, in November 2024 the Commission notified LIFE-funded NGOs that they could no longer use EU funds to actively lobby in EU institutions,[147] although they could still use such funds to hold workshops, conferences, awareness-raising campaigns and training courses.

A specific example of a LIFE-funded project aiming to exert pressure has been identified. Although the agreements between the EU and the NGOs receiving funding are not made public, project descriptions and stated objectives can, for example, be used to identify the following project as being problematic: *Effective and Fair European Carbon Trading: Ensuring EU carbon pricing and revenue use serves the climate and society*. According to the project description, the nine NGOs jointly funded under the project have also committed to lobbying activities.[148] Seven of the nine organisations had already been registered as lobbying organisations before 2023 – i.e., before the project was awarded (the project is being implemented between 2024 and 2027). Two of the nine organisations – Germanwatch and the European Environmental Bureau – were registered in 2009, and thus have a history of lobbying the EU institutions going back more than a decade and a half. The European Environmental Bureau, for example, has participated in a total of 198 registered lobbying events at the Commission since 2014, and 130 at the European Parliament between 2020 and 2023. In the first five months of 2025 (part of the period for which the organisation is receiving LIFE funding), the European Environmental Bureau had already participated in 33 lobbying events at the Commission, lobbying the teams of more than 10 different Commissioners. According to information on the Transparency Register, the European Environmental Bureau has 55 full-time EU lobbyists,[149] 45 of whom are accredited – i.e. with access to the Parliament. In 2024 the organisation received 10 percent of its budget from LIFE,[150] but it also receives funding from other EU programmes in addition to LIFE. This example illustrates how LIFE-funded organisations lobby other Commission directorates-general on green issues, which are also represented by CINEA, the executive agency managing LIFE.

The LIFE scandal, which broke in early 2025, was investigated by the Vice-Chair of the EP Committee on Budgets, the German EPP MEP Monika Hohlmeier. During a debate in the European Parliament, she confirmed that there had been "misappropriation" of certain EU funds."[151] In the debate she also stated that the NGOs participating in the LIFE agreements and programmes that she had reviewed were also organisers of protests which were held with the intent of influencing legislators.[152] However, the credibility of this German MEP investigating the LIFE lobbying scandal was soon called into question, as she herself was involved in a lobbying scandal – in addition to being a financial beneficiary of a company receiving funding from LIFE. Monika Hohlmeier's lobbying scandal featured in our Report on the Rule of Law 2024 (1.6: *The shortcomings of the EP's anti-corruption rules violate the principle of prevention of the abuse of power*). During the COVID pandemic Hohlmeier reportedly gave a lobbyist the opportunity to meet Germany's Minister of Public Health through a personal acquaintance; the Ministry later bought masks from the company represented by the lobbyist. In relation to Monika Hohlmeier, the accusation of EUR 800 million in public money remains unresolved. Monika Hohlmeier receives an annual income of EUR 75,000 from an agricultural company called BayWa AG.[153] BayWa r.e. Solar Projects GmbH (part of the BayWa Group) has received a total of EUR 6.5 million in EU funding from the LIFE programme under two funding schemes, while also being a registered lobby organisation in the EU.[154]. Hohlmeier has claimed that until she was confronted with the allegations she was unaware that BayWa was also receiving LIFE funding.

In the face of the growing scandal, the Commission has insisted that when awarding funding for lobbying activities within the EU it has acted in accordance with the LIFE regulations. Indeed, the Commission's information page on the LIFE programme stresses that funding is intended for organisations active in the field of climate action, and whose objectives include the development, implementation and enforcement of EU environmental and/or climate policy and legislation.[155] From a rule-of-law perspective, the fact that EU legislation has allowed EU funding of EU lobbying highlights the risks within the EU in terms of the good-faith use of public money, as well as issues related to "transparency", "ethical standards", "integrity" and "conflicts of interest".

Defenders of the Commission have pointed out that the grant agreements do not explicitly stipulate what values NGOs must uphold during their EU-funded lobbying activities.[156] Unfortunately this claim cannot be publicly evaluated, as the Commission's contracts with grant recipients are not publicly available. Partly as a result of this, János Bóka – Hungary's Minister for EU Affairs – has demanded disclosure of agreements for non-repayable grants,[157] and the Patriots for Europe MEP Csaba Dömötör has stated that the disclosure of EU grant agreements will be enforced, through legal action if necessary.[158] The Patriots for Europe have also issued a statement demanding the disclosure of agreements with NGOs.[159] The party stated that the vast majority of the budgets of many so-called "civil society actors" come from the EU, so they cannot be considered independent, self-organising social groups at all, but arms of the Commission. In its report, the European Court of Auditors also found that the Commission's NGO funding was not sufficiently transparent, therefore it recommended improving the definition of NGOs and the quality of information in the Transparency Register. It also criticised the damaging effect that funding lobbying has on the Commission's reputation.[160] In addition, the EP's Committee on Budgetary Control has requested access to 28 grant contracts from the Commission. [161]

Although the lack of public disclosure of agreements makes it impossible to prove that the Commission did not explicitly specify what values grantees had to represent in their lobbying activities, it can be said that the Commission's own policy considerations certainly played a role in the selection of LIFE grantees – and that organizations which align with the Commission's Green Deal were selected. CINEA (which manages the LIFE programme) *"plays a key role in supporting the EU Green Deal through the efficient and effective implementation of its delegated programmes."*[162] Therefore CINEA, the body managing the LIFE grant programme, is also responsible for promoting the Commission's Green Deal. In addition, Paragraph (3) of the regulation [163] establishing the Programme for the Environment and Climate Action (LIFE) sets out the following: *"In pursuing the achievement of the objectives and targets set by environmental, climate and relevant energy legislation, policy and plans, in particular the objectives set out in the communication of the Commission of 11 December 2019 on the European Green Deal [...], the LIFE programme should contribute to a just transition towards a sustainable, circular, energy-efficient, renewable energy-based, climate-neutral and -resilient economy…"* Thus, from its inception, LIFE has had the integral objective of contributing to the achievement of the European Green Deal. Logically it would follow from this that the organisations selected for LIFE funding would be in agreement with the Green Deal – and so their lobbying in the EU institutions should also be aimed at promoting the Green Deal. So the Commission is using civil society actors as paid lobbyists for advocacy in the EU institutions.

The claim that the Commission does not prescribe the ideological orientation of the lobbying supported by it is contradicted by one of the LIFE programme's 2020 calls for proposals: the "LIFE 2020 Call for Proposals from NGOs on the European Green Deal",[164] awarded funding with the explicit aim *"to mobilise and strengthen civil society participation and contribution to the implementation of the European Green Deal"*. Grants issued to support and implement the Green Deal were used, among other things, for local lobbying activities under the coordination of Legambiente Nazionale (registered as a lobby organisation in the EU in 2009): in Italy a total of 268 participants attended 5 webinars for local government officials.[165] Also aimed at lobbying to promote the Green Deal at local and European level was the LIFE programme grant to the Bulgarian branch of the World Wide Fund for Nature (WWF).[166] WWF–Bulgaria's objectives included "strategic policy advocacy" within the framework of the Commission-funded project, while also monitoring the implementation of NextGenerationEU and the Resilience and Recovery Fund in Bulgaria. The project resulted in, among other things, the preparation of 16 policy documents (on EU and Member State drafts), 47 statements and resolutions (sent to the Bulgarian parliament), briefings to 6 municipalities, and 13 roundtable discussions. WWF–Bulgaria is part of WWF–Central and Eastern Europe, which has been a registered lobbying body in the EU since 2012.[167] These examples show that the Commission has provided

money not only to promote its own projects (e.g. the Green Deal), but also – through NGOs paid by it – to lobby Member State legislatures, as well as the European institutions.

Although the scandal which broke in January 2025 only concerned the LIFE programme, it is far from the only European Commission programme that also funds lobbying. European Movement International, for example, does not receive LIFE funding, but it and its regional member organisations do benefit from other Commission programmes (e.g. CERV and Horizon). The European Movement International aims to promote European integration, and its website[168] states: *"Since 1948, the European Movement has played an essential role in the process of European integration by exercising its influence on European and national institutions. It fought in favour of the direct election of the European Parliament by all European citizens, in favour of the Treaty on the European Union and also for a European Constitution."* Therefore it can be said that European Movement International is essentially a lobbying organisation: according to the Transparency Register, it is registered in the EU as an interest representative, and as of 2025 it had five accredited lobbyists with rights of access to the EP. The organisation, funded by the Commission, but also lobbying in other EU and national institutions, has also set its sights on reform of the Treaties.[169] From a rule-of-law perspective, it is highly questionable whether the Commission may use lobby organisations funded by it to lobby on an issue that depends not on the EU institutions, but on the collective will of Member States.

According to the MCC report, between 2021 and 2025 European Movement International's regional branches received a total of over EUR 15 million in European Union funding sources.[170] It is also important to note that European Movement International has declared (voluntarily, through the Transparency Register) a total budget for 2024 of EUR 1,445,000, of which EUR 1,319,000 is identified as being from EU funding sources. Based on this information, therefore more than 90 percent of European Movement International's budget comes from the EU.[171] So this organisation lobbies EU institutions – even urging for Treaty amendments – while being predominantly funded and maintained by the Commission. The fact that the EP also provides a smaller amount of funding to European Movement International draws even more attention to related rule-of-law anomalies: in 2023[172] European Movement Ireland received EUR 60,000 in funding from the European Parliament, while in 2022 the Brussels-based European Movement received EUR 250,000.[173] For 2024, European Movement International declared (through the Transparency Register) EUR 177,000 in grant funding from the EP.[174] It is important to note that since 2023 the President of European Movement International has been the former Belgian MEP (and Renew Europe member) Guy Verhofstadt, [175] who sat in the EP from 2009 to 2024.

Led by Guy Verhofstadt, European Movement International also encouraged voters to participate in the 2024 EP elections as a "Communication Partner for the European Elections 2024".[176] The European Parliament initiative, which aimed to involve as many people as possible in the democratic life of Europe during the election campaign, listed European Movement International as one of its official partners.[177] In addition, European Movement International also worked with the Commission during the European elections: its "Talking Europe – About the European Elections" project was carried out in partnership with the Commission.[178] According to its website, European Movement International held interviews as part of the Talking Europe video series with the following: Alin Mituța (Renew), Daniel Freund (Green), Marc Angel (S&D), Rasmus Andresen (Green), Domènec Ruiz Devesa (S&D), Frances Fitzgerald (EPP), Hannah Neumann (Green) – and, of course, with Guy Verhofstadt (Renew). So this EU-backed lobbying organisation, led by a politician who was still active in 2024, used its EU-funded campaigning to feature its own president (Guy Verhofstadt). It is also important to note that of the eight politicians interviewed, two were from Renew, three from the Greens, two from S&D and one from the EPP. In discussions related to the 2024 elections held (in partnership with the European Commission) by European Movement International, which is led by a representative of Renew, it was not considered important to include representatives from either ECR or ID.

Such a high degree of interconnection between lobby groups and EU publicly-funded organisations raises suspicions of abuse, while also highlighting that the Commission's operations can be criticised in terms of "transparency", "ethical standards", 'integrity' and "conflict of interest".

9. There is a systemic risk of conflict of interest, as external experts evaluating the allocation of EU funds may decide on funding for their own organisations

TFEU Article 325 draws attention to the need to fight against fraud affecting the financial interests of the Union, and in Paragraph 4 it underlines[179] that the necessary measures must be taken *"in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies."* However, the way in which some of the Union's funding programmes are evaluated – involving, for example, the assistance of external experts in the evaluation and monitoring of proposals – raises doubts as to whether the Commission is providing "effective and equivalent protection" in preventing and combating fraud affecting the Union's financial interests.

The EU's financial rules related to the general budget allow for the participation of external experts in evaluation panels assessing applications for EU funds.[180] However, external experts participating in evaluation panels must comply with conflict-of-interest requirements. According to the above-mentioned rule, a conflict of interest exists when *"the impartial and objective exercise of the functions"* of the person in question *"is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest."* On this basis, the EU Expert Code of Conduct details[181] the conditions for exclusion of experts on grounds of conflict of interest. Evaluation and monitoring experts can in principle be excluded if they have an interest in the evaluation of a proposal or project. In several of the cases listed, however, the Code of Conduct highlights that in exceptional cases an expert may be allowed to participate in the evaluation panel despite a conflict of interest: if the expert does not work in the exact department applying for EU funding; if the departments within the organisation have a high degree of autonomy; and if the expert's expertise is necessary for the evaluation. So, despite the conflict-of-interest requirements of the Financial Regulation, the Expert Code of Conduct allows for a decision permitting a given external expert of the EU to participate in the evaluation of his or her own organization's application for EU funding.

Since it is not known what form of involvement some experts (evaluators, supervisors or other experts) have in particular EU funding programmes, nor which proposals some external experts are assessing, it is not known which institutions have had EU external experts acting on behalf of their own institutions. There are, however, examples of members of certain NGOs being involved as experts in grant programmes from which their institutes have received funding for certain projects. Dimitrina Petrova, for example, is named as an expert in both the Horizon Europe and the Citizens, Equality, Rights and Values (CERV) EU funding programmes. Petrova's areas of expertise include gender law, democratic institutions and the rule of law, LGBT equality and Roma rights and governance. The information available identifies Dimitrina Petrova[182] as the project leader of the Bulgarian Helsinki Committee and founder of Bulgarians Organising

for Liberal Democracy. Early in her career, Petrova was also co-founder of the Budapest-based European Roma Rights Centre and the London-based Equal Rights Trust. For six months Petrova was also a Reagan–Fascell Fellow at the National Endowment for Democracy in Washington, DC. With the exception of Bulgarians Organising for Liberal Democracy, over the years all three of the other organisations with which Dimitrina Petrova is listed as being associated have received EU funding.

In both 2022 and 2023 Dimitrina Petrova was on the CERV programme lists of external experts, and in 2022 the same CERV programme granted the Bulgarian Helsinki Committee EUR 93,297 (within a programme worth EUR 219,663). The Bulgarian Helsinki Committee received this funding for the very area in which its expert, Dimitrina Petrova, is a specialist: support for LGBTQ communities and Roma equality.[183] Petrova's participation in the CERV evaluation committee's assessment of the Bulgarian Helsinki Committee's application cannot be verified against publicly available records, but it should be pointed out that the Helsinki Committees of many other countries (e.g. Hungary and Serbia) have also received funding through the CERV programme. Even if Petrova was not involved in the evaluation of the Bulgarian Helsinki Committee application, the rules do not appear to bar her – as a member of an NGO operating within this international partnership structure – from participating in the evaluation of projects of Helsinki Committees in other countries. It should also be pointed out that a large number of organisations (Transparency International, Amnesty International, etc.) regularly cooperate with the Helsinki Committees and fight for common causes – including with funding from CERV. Even if Dimitrina Petrova did not participate in the evaluation of her own organisation's, Helsinki Committee's application, the fact that – based on the available information – she could be involved in the evaluation of projects of other countries' Helsinki Committees or similar institutions (e.g. Transparency International), raises serious concerns about the way the Union manages EU funds. The above-mentioned EU Financial Regulation applicable to the general budget also highlights "political [...] affinity" as possible grounds for a conflict of interest, but the Expert Code of Conduct suggests that staff from NGOs which work closely together may be able to assess one another's projects. Overall, from a rule-of-law perspective it is problematic for EU funding programmes to be evaluated and monitored by experts whose own organisations receive EU funding.

In an interview with the Hungarian website Economx,[184] Dr. Bernadett Petri – the ministerial commissioner responsible for coordinating the use of EU direct funding – reported a similar case. In the autumn of 2023 the Knowledge and Innovation Community (KIC) for Culture and Creativity at the European Institute of Innovation and Technology (EIT) notified a consortium of 22 applicants that they had been awarded EIT Culture and Creativity grants, which would have provided each grantee with approximately EUR 400,000 for the implementation of their project. After the announcement of the results, however, the contract was postponed; although in April 2024 the winners were encouraged to continue their work on the project, in December 2024 they were informed that the project would not go ahead. The refusal to pay the awarded grant caused financial damage to those members of the consortium who had already started working on the project. In February 2025 the EIT also announced on its Culture and Creativity website that it would not proceed with projects selected in 2023, citing an investigation by the European Institute of Innovation and Technology (EIT), which had found procedural irregularities.[185]

According to Economx, the EIT's 2024 monitoring report revealed a conflict of interest between the evaluators and the grantees, with some EU funds being paid to organisations close to the evaluators: *"The EIT monitoring report at the end of 2024 [...] mentioned by name two evaluators with interests in winning organisations – one of whom was actually the Director of the KIC."*[186] Despite the irregularities, the EIT continued to fund Culture and Creativity. This case shows that the EU's system for evaluating proposals – and in particular the use

of external experts – is incapable of abiding by conflict-of-interest rules. And if projects are subsequently cancelled after proposals have been evaluated on the grounds of conflict of interest, applicants who have acted fairly in their applications may also suffer financial loss. This highlights the need for an anti-corruption reform of the EU grant application system.

In addition to existing regulatory anomalies that do not seem to guarantee the exclusion from procedures of experts with conflicts of interest, another concern related to the rule of law is a lack of transparency in EU funding. The downloadable Excel list of experts for Horizon Europe's funding programme contains 23,787 experts for 2023 alone. The only information included in relation to each expert is his or her name and "field of expertise". This opaque system does not reveal where an expert works or which projects he or she has been involved in evaluating. Neither does publicly available information reveal whether an expert has received "special permission" to participate in the evaluation of a proposal despite a conflict of interest. It is also not clear whether a given expert has participated in evaluating a proposal from an institution competing with an organisation which that expert is a member of. This lack of data, combined with the very weak code of conduct on conflicts of interest, raises serious rule-of-law concerns, since there is a risk that EU funds are being allocated in a biased manner.

10. The European Commission applies the Article 7 procedure inconsistently, targeting Poland for a supposed lack of judicial independence, while not addressing the Constitutional Court of Romania's annulment of the Romanian presidential election

According to Article 2 TEU, *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."* Article 10(1) and (3) TEU add that *"The functioning of the Union shall be founded on representative democracy"*, and that *"Every citizen shall have the right to participate in the democratic life of the Union."* Furthermore, Article 7 TEU provides the possibility for the institutions of the European Union to take action against – and, where appropriate, sanction – Member States in which there is a clear risk of a serious breach of the values referred to in Article 2 TEU, or which seriously and persistently violate those values. The Commission proposal to the Council on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law stated the following: *"The European Union is founded on a common set of values enshrined in Article 2 of the Treaty on European Union, which include the respect for the rule of law. The Commission, beyond its task to ensure the respect of EU law, is also responsible, together with the European Parliament, the Member States and the Council, for guaranteeing the common values of the Union."*[187] An "Article 7 procedure" was launched by the Commission against Poland in 2017, because – according to its Reasoned Proposal – of the clear risk of a serious breach of the rule of law, a core EU value.

The Commission criticised Poland for undermining the independence of the judiciary, and – among other things – called for changes to its rules on the appointment of judges. While the Commission has examined the independence of Polish judges, it has not taken any procedural action against Spain; this is despite the fact that members of the Spanish General Council of the Judiciary (CGPJ), whose mandate expired in 2018, remained in office until 2024, as the Spanish parliament was unable to reach agreement on their re-election or the election of new members. The twenty members of the CGPJ – which is responsible for

the appointment, promotion and disciplinary oversight of judges in Spain – must be elected by Parliament with a majority of 60 percent.[188] In 2018, however, when the mandate of the members of the CGPJ expired, the Spanish Socialist Workers' Party (PSOE) and the People's Party (PP) could not agree on who to appoint. Therefore, despite the fact that their mandates had expired, the existing members remained in office until the summer of 2024, when the two parties reached an agreement with the mediation of the Commission.[189] During these five years of legal uncertainty, up until it was asked to mediate in early 2024, the Commission took no action related to this unresolved situation – other than registering its disapproval in its rule of law reports. No Article 7 proceedings were brought by the Commission against Spain, despite the fact that political influence over the judiciary had clearly led to an uncertain rule-of-law situation in that country.

In Article 7 procedures the Commission has very wide discretionary powers, which allow the procedure to be used for political reasons. As shown in our Report on the Rule of Law 2024 (2.1: *The Commission's so-called "rule of law framework" is in breach of the Treaties*), the Commission terminated the procedure against Poland in 2024, shortly after the election of the left-wing Tusk government – which at that time was itself already guilty of violations of the rule of law. In our Rule of Law Report 2024 we focused on how the Commission's discretionary powers led to the politically-motivated termination of the Article 7 procedure against Poland, while this year we can point to political considerations possibly resulting in the Commission not launching an investigation into another Member State, despite the fact that it has violated fundamental democratic values by annulling an election and depriving two of its citizens of the right to stand as candidates in the democratic sphere.

The events in Romania at the end of 2024 and the beginning of 2025 ought to have provided grounds for the Commission to initiate proceedings against that Member State – unless the annulment of elections or the barring of candidates from participating in elections for ideological reasons are compatible with the Union's values. In the autumn of 2024, the Romanian Constitutional Court banned the far-right politician Diana Șoșoacă of S.O.S. Romania from standing in the country's presidential elections. The Court ruled that the politician, who was elected as an MEP in 2024, was not fit to defend Romania's democracy and constitution, while her views would also put the country's EU and NATO membership at risk.[190] This is the first time that the Constitutional Court of Romania has barred a candidate from a political contest based on a politician's speeches and values. The first round of the presidential elections was held on 24 November 2024, and was unexpectedly won by Călin Georgescu. Another strongly right-wing candidate, he was accused of gaining electoral support through Russian interference – mainly by using TikTok to communicate his political messages. The second round of the elections was due to take place on 8 December, but two days before it the Constitutional Court of Romania annulled the first-round results. When the Court announced its decision, Romanian citizens abroad had already started voting. The parliamentary election, which was held on 1 December, was not annulled by the Constitutional Court of Romania,[191] despite public calls for it to do so. As a continuation of the scandal, house searches were conducted in Romania in February 2025, and Călin Georgescu was taken in by the police. After hours of interrogation by prosecutors, it was decided that Georgescu would be released on remand for 60 days, and was forbidden from leaving the country.[192] In March 2025 Georgescu was finally barred from participating in the rerun election.[193]

The European Commission not only failed to initiate an Article 7 procedure or investigation (in defence of the values of democracy, the rule of law, or judicial independence) in response to the events involving the annulment of the elections and the disqualification of two candidates, but instead appeared to follow these events with tacit approval. Indeed, the Commission intensified its scrutiny of TikTok, which was accused of facilitating Russian influence.[194] The Commission's failure to take appropriate action was unaffected by

criticism from the US administration, in the person of Vice President JD Vance. In a speech in Munich, the Vice President made reference to the violations of democracy that had occurred in connection with the annulment of the Romanian presidential election.[195] All this clearly shows that the initiation of an Article 7 procedure – or the failure to initiate one – remains at the Commission's discretion, meaning that political considerations may play a strong role in the decision.

The Commission has failed to take action against Romania not only in relation to Article 7, but also in relation to the infringement procedures that typically precede it. This is wholly inconsistent with the Commission's previous actions. Earlier, both the EP[196] and the Commission expressed concerns about the integrity of the 2023 Polish election. Following an initiative to set up a body to investigate Russian and Belarusian influence, the Commission launched[197] infringement proceedings against Poland, arguing that *"the new law unduly interferes with the democratic process. The activities of the committee, e.g., investigations and public hearings, risking to create grave reputational damage for candidates in elections and, by finding that a person acted under Russian influence, could limit the effectiveness of the political rights of persons elected in democratic elections."* According to the Commission's infringement procedure, the Polish law violated, inter alia, the principle of democracy (TEU 2). However, the question may arise as to why the European Commission did not reach the same conclusion regarding the events in Romania: the Romanian decision also interfered with the democratic process, and the court's ruling severely damaged the reputation of candidates in the elections; meanwhile, in Romania the determination that someone acted under Russian influence limited the effectiveness of the political rights of an elected individual just as much as in Poland, which was penalized with an infringement procedure.

The problem of the Romanian elections points to the finding, also raised in our Rule of Law Report 2024 (*The European Commission's discretionary powers in relation to infringement procedures breach the prohibition on the abuse of power and jeopardise legal certainty*), that the Commission's discretionary powers in both Article 7 and infringement procedures can lead to the politically-motivated use of those powers. Since the Commission itself decides which Member States to initiate infringement procedures against, when and on what grounds (or whether to initiate them at all), there is a risk that the Commission will abuse its broad and vaguely defined powers. Discretionary power raises doubts in relation to the rule of law, as it does not prevent abuse of power and jeopardises legal certainty.

11. Four outgoing Commissioners were too quickly permitted to take up posts at lobbying organisations with which they were associated during their term on the Commission

According to Article 245 TFEU, *"The Members of the Commission […] shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits."* The Code of Conduct for the Members of the European Commission (Article 11) further specifies the rules applicable to former Members after their term of office.[198] According to this Code, former Members must inform the Commission if they wish to engage in professional activities (whether remunerated or not), and the Commission must examine these communications (and where appropriate, the Independent Ethical Committee must also be consulted). In addition, the Code also stresses that *"Former Members shall not lobby Members or their staff on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio for a period of two years after ceasing to hold office."*

So the Commission's Code of Conduct provides for a "cooling-off" period of two years for former Members (and three years for former Presidents) during transitions from the public to the private sector, and prohibits lobbying by former members in their former portfolio areas during this period. Yet in reality the Commission has approved positions which raise the strong suspicion of being in breach of these provisions of the Treaty and the Code of Conduct. The following examples illustrate new positions held by former Commissioners that contravene the rules, but which the Commission has nevertheless approved:

- In October 2024 Thierry Breton (former Commissioner for Internal Market until 2024) informed the Commission that he wished to accept a position at Bank of America. In January 2025 the Commission approved Thierry Breton's position, with some conditions.[199] Breton stressed that he had no plans to lobby and would respect his confidentiality obligations, which were confirmed in writing by the Commission. In the EU, Bank of America is a registered lobbying organisation, and has participated in 37 meetings with Commission staff; no lobbying activities were carried out by Bank of America staff in Thierry Breton's team.

- Johannes Hahn was the Commissioner for Budget and Administration in the first von der Leyen Commission. Like Breton, Hahn intended to continue his career after the end of his mandate, and his position at the Federation of Austrian Industries (IV) was approved by the Commission with conditions similar to those imposed on Thierry Breton. Mr Hahn stressed that he would not be lobbying, but would focus on organising events for IV. The Federation of Austrian Industries also describes itself as an organisation representing the interests of Austrian industry,[200] and has lobbied the Commission on several occasions. During his term of office, Commissioner Hahn received representatives from the Federation in person on 15 occasions. The last record of Commissioner Hahn's meetings with interest representatives dates from 8 November 2024, and the representatives he met were from the Federation of Austrian Industries.[201] According to the Commission's Decision,[202] five days later, on 13 November, Hahn informed the Commission that he wished to accept a position with the Federation. Despite these dubious circumstances, in May 2025 the Commission appointed Hahn as Special Envoy for Cyprus.[203]

- Similar confidentiality clauses and a ban on lobbying were also attached to the Commission's approval of the activities with GLOBSEC being conducted by Věra Jourová, former Vice-President for Values and Transparency.[204] According to the European Commission's Financial Transparency System, between 2016 and 2023 GLOBSEC contracted with the Commission for more than EUR 2 million in grant projects. In addition to receiving EU funding, GLOBSEC's lobbying activity is also very strong: according to the Transparency Register, the organisation met either with Jourová personally or with members of her cabinet 14 times. The Commission approved Jourová's links with GLOBSEC on 19 March 2025, and in a press release[205] five days later GLOBSEC announced that Daniel Braun, former Head of Cabinet to Věra Jourová, would join them as the organisation's new CEO. Daniel Braun was a member of Věra Jourová's cabinet during her first term as Commissioner (2014–19), before becoming her Head of Cabinet during her second term. Braun was present at 8 of the 14 meetings between representatives of GLOBSEC and Jourová or her cabinet.

- After her term of office, Jutta Urpilainen, formerly Commissioner for International Partnerships, joined the Women Leaders' Network, part of the Africa–Europe Foundation. She did so under conditions similar to the above-mentioned Commissioners.[206] During her term, Jutta Urpilainen oversaw the Directorate-General for International Partnerships (DG INTPA), which, according to

the Transparency Register, engaged in consultations with the Africa-Europe Foundation. The Africa–Europe Foundation has received EU funding for 4 projects (worth a total of EUR 4,899,789). Three of these were awarded funds by the DG INTPA, and will run until the end of 2025. Therefore it can be said that EUR 4.5 million was disbursed to the Africa–Europe Foundation during Commissioner Urpilainen's mandate by a Directorate-General under her supervision, with EU-funded projects still in progress when Urpilainen joined the Foundation after the end of her mandate. When seeking approval for her position, the former Commissioner sought to allay concerns by explaining that while the Africa–Europe Foundation did receive EU funding, the Africa–Europe Foundation's Women Leaders' Network (where she was seeking to take up a position) is an independently run group within the organisation receiving funding from the Africa–Europe Foundation and not directly from the EU. This argument seems to have convinced the Commission, which approved her taking up the position, with certain conditions.

The above appointments demonstrate that, despite the cooling-off period specified in the Code of Conduct, for outgoing Commissioners the Commission routinely approves positions in organisations that have actively lobbied either the Commissioner in question or his or her team, or even in organisations which have directly received public funding from that Commissioner who joined the organisation after the end of her mandate. The approved positions demonstrate that the Commission's practice poses a risk to the integrity of rules preventing Commissioners from engaging in activities representing conflicts of interests after the end of their mandates, as it does not respect the Treaty's requirement for Commissioners to *"behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits."*

The Court of Justice of the European Union

12. The fact that a Dutch-born judge of the Court served the Commission for thirty years represents a conflict of interests

Article 19(2) TEU stresses[207] that *"The judges and the Advocates-General of the Court of Justice and the judges of the General Court shall be chosen from persons whose independence is beyond doubt"*. According to Article 18 of Protocol (No 3) on the Statute of the Court of Justice of the European Union (CJEU),[208] *"No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity."* So, in addition to the independence requirement, the Treaty also draws attention to the importance of the impartiality of judges (which may be affected by their involvement in a given case before being appointed as a judge).

The unquestionable independence and impartiality of judges are, beyond the Treaty requirement, also the basis of the rule of law. As we argued in our Rule of Law Report 2024 (3.3: *The Court of Justice's integrity and independence is open to question*), the personal commitments of the members of the Court of Justice raise doubts about their independence and the impartiality of their judgments. Last year's report drew attention to the political party affiliations of judges prior to their appointment, but beyond this still unresolved issue, doubts about the independence and impartiality of the Court are also raised by the overlap between Court members and Commission staff.

The Legal Service of the Commission plays an active role in infringement proceedings and represents the Commission in cases before the CJEU. Representatives from the Legal Service represent the Commission before the Court both as applicants (e.g. in infringement proceedings) and as defendants (e.g. in actions for annulment). According to its annual report, the Legal Service has *"the unique responsibility of defending the Commission"*.[209] If there is movement of personnel from the Commission's Legal Service to the CJEU, rule-of-law questions arise, since such a "revolving door" effect would allow the Commission, which brings actions against Member States, to have friendly lawyers in the Court adjudicating the cases; at the same time it would be evidence of the conflation of prosecutorial and judicial functions – thus calling into question the independence and impartiality of the CJEU.

There are examples of movement of personnel between the Commission's Legal Service and the CJEU. Allan Rosas was Principal Legal Adviser in the Commission's Legal Service from 1995 to 2001, and its Deputy Director-General from 2001 to 2002. Rosas was transferred directly from the Commission's Legal Service to the CJEU, where he served as a judge from January 2002 to October 2019.[210] Therefore the deputy head of the Legal Service, which is tasked with defending the Commission before the CJEU and bringing actions against Member States for breaches of obligations, was appointed to a judicial position. This resulted in numerous cases in which Allan Rosas was the judge in infringement cases which had been brought against Member States by the Commission while he was still at the Commission.

On 30 April 1999 (when Allan Rosas was the Commission's Principal Legal Adviser) the Commission initiated infringement proceedings against Germany in a case concerning a wastewater collection contract. The proceedings were unresolved, however, and the Commission launched a further action against the Member State in January 2001. In the judgment published in April 2003 (C-20/01 and C-28/01), [211] Allan Rosas appears as one of the judges in the case. The CJEU ruled in favour of the Commission. In February 2001 (when Allan Rosas was at the Commission) the Commission brought an action against the United Kingdom as part of an unresolved infringement case. The case (C-98/01) – in which the Court found that the United Kingdom had failed to fulfil its obligations – was decided in May 2003, when Allan Rosas was involved in it as a judge.[212] One of the Commission representatives heard by the judges in the case was F. Benyon. Shortly before his appointment to the Court, Rosas had appeared before the CJEU on 8 May 2001 as an applicant together with Benyon – then collegues as Commission officials – in an action (C-469/98)[213] brought against Finland for failure to fulfil its obligations. In this case the Court also found in favour of the Commission, and against Finland. This overlap between the Commission and the Court naturally raises the question of the independence of prosecutorial and judicial functions.

Allan Rosas's dual links with the Commission and the Court continue to this day. Immediately after leaving his post as a judge in 2019, Rosas became a member of both bodies at the same time. One of his positions is on the European Commission's Independent Ethical Committee, and the other is on the "Article 255 Committee", which gives opinions on the suitability of candidates for the positions of judge and advocate-general at the Court of Justice and the General Court. He has chaired the latter since April 2020.[214] Thus, Allan Rosas examines both the suitability of candidates as judges and advocates-general, and also Commissioners' compliance with the ethics rules. As described in our Rule of Law Report 2024 (3.4: *There is a risk of arbitrariness in the selection process for judges and advocates-general*), the Article 255 Committee can issue a negative opinion on candidates nominated by Member States – and experience has shown that Member States have withdrawn their candidates whenever the Committee has issued a negative opinion. Between 2010 and 2022, the Article 255 Committee expressed negative opinions on 21.5 percent of Member States' nominees, but the reasoning in

individual cases is unknown, as it does not publish its decisions. The work of the Committee is questionable, as it gives negative opinions on national candidates for unknown reasons and its work is opaque: the latest available report dates back to 2022.[215]

Following the departure of Allan Rosas in 2019, it did not take long to appoint the next member of the CJEU with close links to the Commission. Bernardus Maria Polycarpus (Ben) Smulders, who had worked for the European Commission for more than 30 years before his appointment to the Court, was appointed as a judge of the Court in October 2024. Smulders joined the Legal Service of the European Commission in 1991, was a member of the cabinet of Commission President Romano Prodi from 2000 to 2004, was Principal Legal Adviser, as Director, to the Legal Service of the Commission from 2008 to 2014, and Head of Cabinet of Frans Timmermans,[216] First Vice-President of the Commission, from 2014 to 2019. From 2020 to 2022 Smulders was Senior Legal Adviser in the Legal Service, also in the capacity of Director, and from 2022 to 2024 (until his appointment by the Court) he was Deputy Director-General of the Commission's Directorate-General for Competition.[217] As Deputy Director-General he was specifically concerned with the control and investigation of state aid: Member States are only allowed to use state aid in certain circumstances, and compliance with this condition can be investigated and sanctioned by the Commission.[218] In his positions he represented the Commission or the EU in more than 100 cases, including before the Court of Justice and the General Court,[219] and including infringement cases in which he represented the Commission against Member States (e.g. C-526/08).[220] Once again, therefore, the Commission has a judge at the CJEU who has served its interests for decades, defending the Commission's rights in legal proceedings; indeed, a significant part of his career has been spent at the Legal Service, where he played a key role in infringement proceedings against Member States. One may ask whether the Member States can see him as a judge at the CJEU who – after a 30-year career at the Commission – will be able to give impartial and unbiased judgments in disputes between Member States and the Commission.

The interconnectedness of the CJEU and the Commission and the impact of this relationship on judicial impartiality are also reflected in court cases. Actions were brought before the General Court against the European Commission by Lukáš Wagenknecht in 2020 (C-130/21 and T-350/20) and by Giovanni Frajese in 2022 (C-586/23 P and T-786/22). Both were dismissed, however. In both cases, one of the judges who gave judgments at the General Court was Johannes Christoph Laitenberger, whose impartiality was questioned by the applicants in both of the relevant appeal cases, on the grounds that he had worked for the Commission for two decades. Laitenberger started working in the EU institutions in 1996, and worked at the Commission from 1999 until his appointment as a judge in 2019. He was a member of Commissioner Viviane Reding's cabinet from 1999 to 2003, then her Head of Cabinet from 2003 to 2004, a member of the cabinet of Commission President José Manuel Barroso from 2004 to 2005, and then a Commission spokesman from 2005 to 2009. He continued serving the European Commission as Head of Cabinet to José Manuel Barroso from 2009 to 2014, then as Deputy Director-General of the Legal Service from 2014 to 2015, and Director-General of the Directorate-General for Competition (DG COMP) from 2015 to 2019. Immediately after the latter position he joined the Court in 2019.[221]

In one of the cases in which Laitenberger was a judge, the applicant commented on the relationship between the judge and the Commission in the following terms: *"when assessing the independence of a tribunal, appearances also count"*, and *"Thus, the independence of a judge is infringed both where the judge is actually influenced and where he or she may be influenced in abstracto, since suspicion is in itself liable to undermine citizens' trust."* In the other case (C-130/21), during the appeal there was an objection centred on the fact that, approximately nine months after leaving the Commission, Laitenberger had ruled in favour of the Commission in a case concerning an alleged breach by his former employer: the Commission. Thus *"there appeared to be a conflict of interests in the case."* The appellant also pointed out that, as Director-General of the DG COMP, Mr. Laitenberger had already

answered questions and expressed opinions through his spokesperson on a matter that was closely related to the current court case, thus raising a conflict of interest related to his role as a judge in the case. In both cases, the arguments concerning Laitenberger's possible lack of impartiality were rejected on appeal. The Court reasoned that *"the mere fact that a member of the formation of the General Court worked for the Commission, the defendant at first instance, before performing his duties as a Judge at the General Court is not sufficient to cast a doubt as to his objective impartiality"*. As regards the fact that Mr. Laitenberger, as Director-General of the DG COMP, had already exchanged correspondence on a similar matter through his spokesperson, the Court considered it to have been a different matter and that, since the correspondence was exchanged through a spokesperson, it had not been established that *"Mr. Laitenberger personally drafted or approved the answers provided."*

In the course of the appeals, the Commission asked the Court to determine that the criticisms levelled at Laitenberger were unfounded. In Case C-130/21 P, one of the representatives of the Commission who considered the criticisms against Mr. Laitenberger to be unfounded was a certain "F. Erlbacher". Friedrich Erlbacher has worked in the Commission's Legal Service since 2004,[222] and was therefore a colleague of Laitenberger from 2014 to 2015 (when the latter was Deputy Director-General of the Commission's Legal Service). Indeed, from a 2014 case (T-754/14), it appears that Erlbacher replaced Laitenberger as the Commission's representative when Laitenberger left the Legal Service for the DG COMP. Thus the Court was asked to declare the impartiality of Laitenberger as a judge by a person from the Commission who had been a colleague of Laitenberger at the Commission.

Therefore, based on the judgments, it can be stated that the CJEU would consider a conflict of interest proven in the case of judges who were former Commission employees only if it were proven that they were adjudicating a case that they specifically dealt with during their work at the Commission. However, on the basis of the information currently available to the public, it is not possible to prove such specific links, as there is insufficient knowledge of all the cases dealt with over the decades by Commission staff who later become judges. Thus the Commission's lack of transparency continues to cast a shadow over the impartiality of the CJEU. Moreover, the question may legitimately be raised as to why – in order to safeguard the independence and impartiality required by the Treaty – there is no ban on the appointment as EU judges of persons who have represented the Commission in legal cases over a number of decades – including against Member States in infringement proceedings.

13. There is a risk of corruption arising from the fact that, within 24 days of the end of his mandate, the Danish Vice-President of the Court of Justice of the European Union took up a position at a law firm involved in the Court's proceedings

Article 9 of the Code of Conduct for Members and former Members of the Court of Justice of the European Union[223], states the following:

"(1) After ceasing to hold office, Members shall continue to be bound by their duty of integrity, of dignity, of loyalty and of discretion.

(2) Members undertake that after ceasing to hold office, they will not become involved

- *in any manner whatsoever in cases which were pending before the Court or Tribunal of which they were a Member when they ceased to hold office;*
- *in any manner whatsoever in cases directly and clearly connected with cases, including concluded cases, which they have dealt with as Judge or Advocate General, and*
- *for a period of three years from the date of their ceasing to hold office, as representatives of parties, in either written or oral pleadings, in cases before the Courts that constitute the Court of Justice of the European Union.*

(3) In cases other than those referred to in the three indents of paragraph 2, former Members may be involved as agent, counsel, adviser or expert or provide a legal opinion or serve as an arbitrator, provided that they comply with the duties arising under paragraph 1."

The rules do not therefore prohibit former judges of the CJEU from pursuing their careers in international law firms after their mandate has expired, but such a practice would increase the risk of the former judge violating the conditions described in Paragraph 2. There is a particular risk of a breach of the conditions referred to in Paragraph 2 if the former judge takes up a position with a law firm which represented clients before the CJEU during his or her mandate as a judge. This risk is also highlighted by the careers of two judges who left the Court in October 2024.

Nils Wahl served first as Advocate General at the General Court (2006–12), then as Advocate General at the Court of Justice (2012–19), and as a judge at the CJEU (2019–24).[224] In March 2025, not long after his term of office ended on 7 October 2024, the international law firm Covington & Burling LLP announced on its website that the retiring judge Nils Wahl would bring his expertise to their firm.[225] Nils Wahl's now-colleagues in Covington & Burling were already familiar with him during his time at the Court, as the law firm has regularly represented clients at the CJEU. One of Covington & Burling's partners, Bart Van Vooren,[226] has represented various clients in dozens of cases brought before the CJEU – including one (C-438/23) in which Nils Wahl, as the judge-rapporteur, considered observations including that of Bart Van Vooren, as a representative of Beyond Meat Inc. The judgment in that case was in favour of Beyond Meat Inc., and was delivered on October 4, 2024, shortly before Wahl's mandate ended and he joined Covington.

The mandate of the Vice-President of the CJEU, Lars Bay Larsen, ended on 7 October 2024, and a few weeks later – on 31 October – the Dutch law firm Gorrissen Federspiel reported that he had become their lead consultant in the firm's EU law team.[227] Larsen started serving on the Court in 2006 and was Vice-President from 2021 to 2024. When he joined Gorrissen Federspiel, he was reunited with a former colleague, Henrik Saugmandsgaard Øe, who was Advocate General at the CJEU from 2015 until the end of his mandate on 7 October 2021,[228] after which he joined Gorrissen Federspiel on 1 November that year.[229] According to its website, Gorrissen Federspiel also regularly represents clients before the CJEU[230] – now with two staff members who were previously a judge and advocate general respectively at the Court. Their career paths do not in themselves constitute a breach of the Code of Conduct, but there is the risk of infringement of the rules referred to in Paragraphs 1 and 2 – particularly if they have been involved *"in any manner whatsoever in cases which were pending before the Court or Tribunal of which they were a Member when they ceased to hold office"*.

Lars Bay Larsen was appointed Vice-President of the Court on 8 October 2021, and a few weeks later – on 27 October – Poland was fined a record EUR 1 million a day (C-204/21 R) for failing to comply with the CJEU's interim provision on judicial independence.[231] Under pressure from this litigation, Poland amended its laws, but the daily fine continued to accrue until the CJEU's judgment in June 2023. Since the Member State introduced the requested legislative amendments, it questioned whether it would have to pay the full amount of the daily accumulating fine. In February 2025 the General Court ordered the Member State to pay the total amount of EUR 320.2 million.[232] As with Poland, the Court has also imposed a record fine on Hungary: a total of EUR 200 million and a daily penalty payment of EUR 1 million, reasoning that Hungary failed to comply with a Court judgment on migration. In addition to the EUR 200 million lump sum, a penalty of EUR 1 million per day has been accruing against the Member State since 13 June 2024.[233]

Fines on such a huge scale were not a feature of the CJEU in the past. The Court was given the power to impose fines on Member States only in the 1992 Maastricht Treaty, with the first such fine being imposed on Greece eight years later, in 2000 (at a level of just EUR 20,000 a day). Since that date, the frequency and scale of fines has rapidly increased. This increase in the level of fines is possible because Article 260 TFEU (which gives the CJEU the power to impose fines) does not adequately limit the fines that can be imposed. Article 260 TFEU merely states that the Commission *"shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances."* Thus the Commission, which has brought the action against the Member State, is entitled to specify the fine that can be imposed. If a Member State has failed to fulfil its obligations to notify of measures transposing an adopted directive (see Article 260(3) TFEU), the CJEU may impose a penalty not exceeding the amount proposed by the Commission. However, the TFEU does not set the amount proposed by the Commission as the maximum fine in the event of a Member State failing to take the necessary measures to comply with a judgment of the CJEU. In such cases the CJEU can itself set the level of the fine, without limit. This is what happened in the Hungarian migration case: *"While in its application the Commission asked the Court of Justice to set the lump sum fine at EUR 1 million and the daily penalty at EUR 16,000, in its judgment the Court of Justice increased the lump sum fine to EUR 200 million and the daily penalty to EUR 1 million."* (See our Report on the Rule of Law 2024, 3.1: *The Court of Justice's misuse of its powers when interpreting the Treaties is contrary to the principle of the prevention of the abuse of powers*).

The career paths described above also highlight the shortcomings of the CJEU's Code of Conduct. There were 170 days between the expiry of the mandate of Nils Wahl and the announcement of his new position at Covington & Burling LLP; 24 days between the expiry of the mandate of Lars Bay Larsen and the announcement of his new position at Gorrissen Federspiel; and 25 days between the expiry of the mandate of Henrik Saugmandsgaard Øe and the announcement of his new position at Gorrissen Federspiel. If not in relation to Nils Wahl, then in relation to Lars Bay Larsen and Henrik Saugmandsgaard Øe one may ask when they started negotiating with the law firm Gorrissen Federspiel to continue their careers there after their mandates expired. If before the end of their mandates they were already in dialogue with a law firm that regularly represents clients before the CJEU, this raises serious rule-of-law concerns regarding the potential influence on their judicial activities. In light of this, the Code of Conduct could stipulate that it is not acceptable for judges to negotiate terms of employment and salary with law firms before the end of their mandates. To facilitate this, a cooling-off period could be considered for members of the CJEU (similar to the rules for Commissioners, but stricter).

14. The impartiality of the Court is compromised by the fact that its German Vice-President is a member of the board of trustees of a political organisation which criticises Member States on ideological grounds

Article 4(1) of the Code of Conduct for Members and former Members of the Court of Justice of the European Union emphasises that *"Members shall avoid any situation which may give rise to a conflict of interest or which objectively may be perceived as such."* In line with this, there are strict rules (laid out in Article 8) on the external activities in which Members of the Court may engage.[234] Among the permissible external activities are protocol events and those related to the dissemination of EU law, dialogues with judicial forums, participation in educational institutions, and other foundations operating in the field of law for CJEU members. Indeed, the vast majority of the members of the CJEU are only involved in external activities such as dialogue with judicial forums and educational activities. However, the external activities of the current Vice-President of the Court of Justice can be considered as political activities, incompatible with his position as a judge.

Thomas von Danwitz has been a judge at the CJEU since 2006, and was elected Vice-President of the Court in October 2024. According to his currently available declaration of interests, he is a member of the Board of Trustees of the Institut für Europäische Politik (IEP).[235] Although records of the external activities of the judges are only publicly available up to 2023, these show that von Danwitz visited the Institut für Europäische Politik in Germany on 28 September 2023.[236] The Institute states that it is engaged in research, training and analysis of European policy and integration issues.[237] In the EU Transparency Register it has been registered as a lobby organisation since 2009, and in 2022 it held two meetings with Green MEP Daniel Freund.[238] By its own account, *"Most of all, IEP is lobbying in the European Parliament and at certain national Permanent Representations of the member states for continuous and even stronger support and structural inclusion of think tanks in funding and tender possibilities."*[239] In addition to Judge von Danwitz, several former and current politicians are members of the IEP's Board of Trustees[240] (e.g. Niels Annen and Axel Schäfer, both from Germany's Social Democratic Party). According to the Financial Transparency System, between

2014 and 2023 the IEP received EUR 2.5 million in EU funding. The IEP engages in political and lobbying activities, and therefore the involvement in it of Thomas von Danwitz, the current Vice-President of the Court of Justice, can be seen as incompatible with his judicial position.

The IEP has also done work on Hungary, the financing and objectives of which are described as follows: *"Supported by a grant from the Open Society Foundation gGmbH in cooperation with the Open Society Foundations, IEP creates a confidential framework for meetings between German stakeholders from politics, business and civil society. The aim of "Ungarn neu denken – rethink Hungary" is to create greater awareness in Germany of the consequences of the dismantling of democracy and the rule of law in Hungary. In addition, a policy paper shows how Berlin should address the situation in Hungary nationally, multilaterally and at the European level."*[241] Rule-of-law issues relating to Hungary are regularly the subject of CJEU decisions – so the Court's impartiality is called into question by the fact that Judge von Danwitz is involved in a political organisation that openly speaks out and seeks to raise awareness about Hungary's alleged abuses of the rule of law.

15. The Advocate General of the Court exceeded his powers when in his Opinion he criticised the independence and impartiality of the Polish constitutional court

As quoted in the previous sections, Article 19(2) TEU[242] states that *"The Judges and the Advocates-General of the Court of Justice and the Judges of the General Court shall be chosen from persons whose independence is beyond doubt."* The independence and impartiality of the members of the CJEU, as required by the Treaty, can hardly be compatible with interfering, under the guise of legal opinions, in the internal political debates of the Member States. Although the Court should promote the interpretation of and respect for the law, and not the fulfilment of political agendas, Advocate General Dean Spielmann's motion questioning the independence of the Polish constitutional court is a clear political statement in favour of Polish prime minister Donald Tusk and his camp.

In our Rule of Law Report last year we referred to the dispute between Poland's constitutional court and the CJEU (and the Commission). The Polish constitutional court ruled (e.g. Judgement K 3/21 of 7 October 2021) that the CJEU's interpretation of the law was incompatible with the Constitution of Poland. This was challenged by the Commission (first in the form of infringement proceedings, and then before the Court of Justice), on the grounds that Poland did not respect the autonomy and primacy of EU law. The case (C-448/23) was discussed in our last report (3.3: *The Court of Justice's integrity and independence is open to question*), as the CJEU was able to have the final say in a case against a decision by a Member State which challenged its judgement: *"ultimately the CJEU could itself decide on which body has final jurisdiction on ultra vires issues; this is an area in which the Court itself, in its decision, is accused of having exceeded its powers."* This case demonstrates the fact that the CJEU is not institutionally independent, as it seeks to declare its own primacy in its own case, and over the opinions of the national constitutional courts (breaching the principle of nemo iudex in causa sua: "no one may be the judge in his own case").

In this case the Commission is also challenging the independence of the Polish constitutional court. Advocate General Spielmann published his Opinion in the case on 11 March 2025. In his Opinion, the Advocate General concludes, inter alia, that the Court of Justice should "*declare that the Trybunał Konstytucyjny*

(Constitutional Court) does not satisfy the requirements of an independent and impartial tribunal previously established by law". The Advocate General held that "*The infringements attributed to the Republic of Poland therefore constitute a direct and frontal attack on the principle of the primacy of EU law by the Trybunał Konstytucyjny (Constitutional Court), in the name of the Konstytucja Rzeczypospolitej Polskiej (the Constitution of the Republic of Poland; 'the Constitution') or the constitutional identity of that Member State.*" So Dean Spielmann does not consider the Polish constitutional court to be independent, and has accused it of a "frontal attack" on EU law.

The fact that the Advocate General's motion argues that the Polish constitutional court cannot be considered independent is not only an unprecedented attack on the sovereignty of a Member State, but is explicit political interference in Polish domestic politics, couched in legal opinion, seeking to validate the current Tusk government. In the past the Tusk government has routinely ignored the rulings of the Polish constitutional court, claiming that it is not legitimate. For example, the Tusk government closed down the public media in defiance of the Constitutional Court's decisions, excluded judges appointed after 2018 from certain cases, ignored presidential pardon decisions which were inconvenient to it, and restricted religious education in schools.[243] The Tusk government has systematically refused to publish the Constitutional Court's rulings (the Prime Minister must publish these rulings in order for them to have legal effect), meaning that the Government is arbitrarily selective in its choice of rulings. The Polish lawyers' group *Prawnicy dla Polski* ("Lawyers for Poland") has also spoken out against attacks on the Polish constitutional court.[244] Critics of the Tusk government have used its disregard of constitutional court decisions as an argument to prove that over the past year the Government has committed serious, politically-motivated breaches of the law. If, on the basis of Advocate General Spielmann's Opinion, the CJEU – and thus the EU – were to accept that the Polish constitutional court is not independent and therefore not legitimate, they would be acting hand in glove with the Tusk government. By seeking to discredit the Polish constitutional court, the CJEU is helping to legitimise the Tusk government and its political actions.

In our report last year we also highlighted (*3.2: The Court's organisation and its allocation of cases are open to abuse, therefore infringing the principle of the right to a fair trial*) that the allocation of cases at the CJEU does not meet the standards that the Commission expects from the Member States. Hungary has been repeatedly criticised by the Commission for the fact that the President of the Curia (Supreme Court of Hungary) decides which cases are assigned to which judges – thus, in the Commission's view, allowing for the biased allocation of cases. In "Milestone 214" within the framework of conditions for Hungary to access funds from the Recovery and Resilience Facility (RRF), the Commission finally obliged Hungary to modify the case allocation system in the Curia. Unlike the Member States, the CJEU has not been criticised for the fact that the President of the Court of Justice personally assigns judges to cases and the First Advocate General personally assigns advocates general to cases. If Member States' case allocation systems have been criticised on the grounds of allowing for a biased allocation of cases, then the system operated at the CJEU should also be criticised.

The risk of political bias being exercised by Maciej Szpunar, the First Advocate General of the CJEU, was discussed in our report last year (*3.3: The Court of Justice's integrity and independence is open to question*). Before his appointment to the Court, Szpunar worked as a deputy state secretary in the Polish foreign ministry during Donald Tusk's premiership. When Szpunar was appointed to the CJEU, the then Polish foreign minister Radosław Sikorski praised his work.[245] Today Szpunar's former boss, Radosław Sikorski, also serves as Foreign Minister in the current Tusk government.[246] As First Advocate General, Szpunar decides which advocates general will act in cases before the CJEU, and it was he who delegated the case concerning the Polish constitutional court to Advocate General Dean Spielmann. Advocates general do not have voting

rights in CJEU decisions, but the legal opinions prepared by them can have a major influence on the CJEU's decisions, as the judge-rapporteurs begin drafting the decision after the advocates general's opinions are prepared. In summary, it can be said that in the case concerning the Polish constitutional court, the person issuing the first legal opinion at the CJEU, Dean Spielmann, is a subordinate of First Advocate General Szpunar, who has political and personal ties to the Tusk government. The political decisions of the Tusk government have been reinforced and validated by the Advocate General's Opinion.

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Notes

NÉZŐPONT INTÉZET