In the new institutional cycle, the European Union is facing unprecedented challenges. This report studies and analyses some of the most outstanding aspects such as competitiveness and reindustrialisation in the light of competition from the USA and China; the transition to a decarbonised Europe; the need to defensively strengthen the Union and its foreign action; the migratory issue; the European social pillar or the rule of law.

All this comes within a complex geopolitical context that helps to approach structural reforms to renewed institutions such as the European Parliament and the European Commission, where more conservative positions have thrived.

Fundación Alternativas

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THE STATE OF THE EUROPEAN UNION 2024

POLÍTICA EXTERIOR Y DE SEGURIDAD

Fundación Alternativas

FRIEDRICH EBERT STIFTUNG

The State of the *European Union* 2024

Integration vs. Nationalism



No.14 / 2024

The State of the European Union 2024



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Integration vs. Nationalism

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Report
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INTRODUCTION

Integration vs. Nationalism

by Diego López Garrido

Another year on, Fundación Alternativas is drafting its Report on the State of the European Union, which aims to study how the Union is developing politically, looking firmly to the future. On this occasion, the Report's focus is structured around the start of a European institutional cycle (2024-2028), following the election of a new European Parliament and a new European Commission.

These two institutions are going to devise the Union's policies to a large extent, participating decisively in community legislation (Regulations and Directives), always in conjunction with consensual guidance agreed within the European Council and the Council of Ministers, comprising heads of government and ministers from the 27 member states of the European Union.

Thus, recent European elections —which have a more national than European dynamic in practice— revealed a variation that is going to condition how the Union acts over the next five years. This refers to growth in representation for the right-wing and the populist far-right. Their ideology is characterised by euro-scepticism, nationalism and protectionism. This is cast into a clearly xenophobic discourse, in parallel with what is trumpeted by the Republican Party in the United States, under Donald Trump.

The racism which comes through in their discourse is objectively contrary to the general interests of European

citizens, both from a moral stance and regarding an economy which needs large-scale immigration to maintain the West's home-grown Welfare State. Migratory movements vary according to the needs of the job market and are consequently structural in our socio-economic model.

Analysis of the election results across Europe demonstrates that the rise of the far-right is masculine by nature. For the first time since 1979, there are fewer women and more men in the European Parliament, with a clear correlation between this increase and the rise of more right-wing parties. However, in the light of more conservative political forces, the European Parliament has maintained a pro-Europe majority, comprising centre-right parties (the Popular Party won the elections), socialists, liberals and greens.

Despite their natural differences, these parties defend an economically-open and politically-multilateral concept. They also support the Pact on Migration and Asylum approved during the Spanish Presidency of the Council (second semester of 2023).

Looking at the composition of the European Commission presided over by Ursula Von der Layen, for the first time, the number of women has dropped, and the number of men has increased, marking a quantitative step back. An attempt has been made to qualitatively compensate for this by appointing four female vice-presidents. The first of them is bound to be Spain's Teresa Ribera, who will hold the powerful portfolio for Competition and for Clean, Just and Competitive Transition.

The European Union is thereby facing a real 'latent' political dilemma, speaking in Merton's terms, although this is not 'manifestly' expressed. This is a struggle between an integrating Europe and a nationalist version which is attempting to break up the European space. This is the political scenario awaiting the Union's new institutional cycle.

Approaching this outlook in terms of economic policy, the Commission asked Enrico Letta and Mario Draghi to write reports which have proved to be most enlightening.

Both raise the alarm on fragmentation of the European market, which is less 'single' than it should be, and

which suffers from poor productivity —much lower than the USA— which will require investment.

Draghi proposes €800bn [4.7% GDP] of investment every year in Europe to avoid an agonizing downturn. In terms of productivity, 80 % depends on investment. Draghi talks about an industrial strategy in Europe to compete with China and the USA and believes that competition rules should be relaxed. He demands a unified European response and criticises a lack of coordination in energy, industrial and commercial and fiscal innovation policies.

It is difficult to counter these shortfalls with a common budget that does not exceed 1 % of the European GDP and the absence of a capital market or a Banking Union. Europe must integrate its banking system —predominantly national right now— if it wishes to invest at the level required by the productivity shortfall. Productivity has dropped by around 30 % in Europe compared to the USA since the 1990s, which ECB sources attribute to the continent's incapacity to draw on the benefits of developing digital technology.

The USA's productivity soared after the 2020 pandemic, by relocating workers into other jobs, as opposed to Europe which decided to protect jobs using the furlough scheme (the Welfare State is greater in Europe).

Productivity (average production of one worker in one hour of work) has now increased at an annual rate of 1.6 % in the USA compared to 0.5 % in the European Union.

The fundamental reason behind this difference is most likely market fragmentation within the EU. Economic fragmentation also explains the trade war which has broken out between Europe and China, relating to increasing tariffs on Chinese electric cars.

Protectionism and the division of the global economy will damage growth for everyone and will make it difficult for us to gain control over the rifts intended to affect the next few decades: Artificial Intelligence, the disruptive geopolitics of the 21st century, that will impose interdependencies, and climate change, that is forcing us to no longer base our economy on consumption but on recycling, reuse and longevity (Financial Times).

The Union's aging demographics will condition its future. The working-age population, between 20 and 64 years

old, who contribute the most to tax-related income, fell from 270 million people in 2011 to 261 million this year, according to UN estimations. Regarding the total population, the working-age group stood at 61.4 % in 2008 and has currently dropped to 58 %. Consequently, GDP per capita has also dropped. The EU fertility rate dropped to 1.46 in 2022 (1.16 in Spain) which is below the replacement level (2.1).

All these points argue the need for immigration that, nevertheless, is being used politically by the far-right. On the other hand, as a positive aspect, it should be highlighted that Europe boasts a higher life expectancy than any other continent. In 2022, only 6 % of people aged over 65 were working (one quarter in Japan). These figures pile pressure on public health spending, which is national. European fragmentation also affects security, even though the Commission launched the European Defence Industry Strategy in March 2024. Right now, there is no 'strategic autonomy', or integration of the defence policy and industry. Over the last two years, 78 % of military equipment was purchased outside the European Union, mostly in the USA.

Europe thereby has 27 complex military industries, now without the United Kingdom, which increases costs and lowers efficiency. This happens with each member of NATO. In all these fields, nationalism makes reforms much more difficult, which leads us ever-further away from the United States and China, from worldwide value and supply chains.

A further demonstration of the difficulties for integration to prevail over nationalism lies in weak European foreign policy. According to Letta, the problem is that the policy was forged for a multilateral world at peace, based on rules and norms. Today, however, the world is turbulent, with a very acute anti-Western attitude in Russia and China and international institutions in a difficult situation. Furthermore, the 'Global South' mistrusts Western powers.

To finish off this introduction, I would like to mention that six European think tanks got together last July to draft an "open letter to the European Institutions". These were: Centre for European Reform (London, Brussels and Berlin); Fondazione Astrid (Roma); Fondazione ResPublica (Milán); Las Gracques (Paris); Terra Nova (Paris) and Fundación Alternativas.

The letter is headed “Europe’s Choice” and claims to provide a response from pro-European forces to anti-integration concepts, focussed on what unites us.

An ambitious agenda for the European Union must include six components:

1. A security and defence policy within the Atlantic Alliance, although with sufficient autonomy and visibility in the face of isolationist tendencies that might emerge in the United States after the elections in November 2024.

2. Fundamental reform of the EU Budget based on fiscal capacity that provides public goods in green and digital transitions, financed by new Own Resources. Given the investment needs, it is appropriate to expand the Budget up to 2 % of European GDP.

3. Adopting measures at national and European level to mitigate the impact of green and digital transitions so that they are economically, financially and socially viable. In this respect, active participation from citizens is essential, as the Commission mentioned in its Communication to the Parliament of December 2019.

4. Credible enforcement of the new fiscal rules to ensure sustainable national public finances and support long-term economic growth and competition, thereby ensuring the necessary investments.

5. A move towards integrated, well-regulated European financial markets. A Banking Union and a Capital Market Union that help to mobilise financial wealth, to stimulate private investments that boost productivity, competition and sustainable growth in the European Union.

6. An industrial policy that supports competitiveness and innovation, avoiding protectionist temptations. The single market must be strengthened, creating new instruments to safeguard the role of the Union in international value chains, with the aim of combining innovative production, effective services,

high-quality education systems and specialised, well-trained workers. A special effort should be made in including migrants.

The implementation of this agenda is crucial to preserve and strengthen the European social model, thus offering a sustainable future to new generations. This can only be achieved by reforming Europe's decision-making rules, by moving to majority voting in the Council of the European Union and a joint decision by the European Parliament. This reform must happen before, not after, the next enlargement, overcoming the taboo of treaty changes.

The European Union must be a global actor in the world order, reviving multilateralism and avoiding the pure logic of power in international relations.

To sum up, this requires European integration to prevail over nationalism.

1

The New European Parliament

Composition and balance of power

by CARLOS CARNERO

1. FORTY-FIVE YEARS OF DIRECT ELECTIONS TO THE EUROPEAN PARLIAMENT

The first elections to the European Parliament (EP) by direct ballot took place in 1979, meaning the vote held in 2024 marked the 45th anniversary of the start of this procedure, an extraordinarily important step in the process of the EU gaining greater political depth.

Since then, the European Union has seen numerous variations in the number of Member States and changes in its basic law before arriving at the 27 current partners and the Lisbon Treaty (95% of which comes from the Constitution drafted by the Convention).

With those changes, the EP has steadily evolved in terms of number of seats and duties to become a legislative body with powers resting on dozens of legal bases, virtually full budgetary authority and a chamber that elects the president of the European Commission and the college of commissioners they lead, among other responsibilities.

The EP's institutional centrality, then, has afforded it extraordinary political relevance in community debate and decision, resulting in an exponential increase in its public and media exposure, a far cry from its inception as a purely deliberative delegate assembly.

2. PERSISTENT ABSTENTION: FIGURES, REASONS AND REMEDIES

Despite the importance the European Parliament has gained in the eyes of public opinion, citizen engagement with the European elections has yet to take off, to the point that it appears endemic and practically irremediable.

Neither its role in the face of successive crises that have rocked the EU (pandemic, Ukraine, economic) nor the numerous decisions taken on matters that directly improve citizens' quality of life (the cost of roaming to mobile phone customers is a prime example) have succeeded in lowering abstention, even if only by a few percentage points. On the contrary, voter turnout remains on a downward trend, albeit by a few tenths of a percent.

One only need look at the election turnout history:

– 1979: 61,99 %
– 1984: 58,98 %
– 1989: 58,41 %
– 1994: 56,67 %
– 1999: 59,51 %
– 2004: 45,47 %
– 2009: 42,97 %
– 2014: 42,61 %
– 2019: 50,66 %
– 2024: 51,05 %

When reading these figures, it is worth remembering that there were differences in turnout by country in the

2024 vote, when it appears election fatigue was particularly (though not exclusively) acute in nations incorporated in the last enlargement:

– Belgium: 89,01 %*
– Denmark: 58,25 %
– Germany: 64,74 %
– Ireland: 50,65 %
– France: 51,49 %
– Italy: 48,31 %
– Luxembourg: 82,24 %
– The Netherlands: 46,18 %
– Greece: 41,39 %
– Spain: 49,21 %
– Portugal: 36,63 %
– Sweden: 53,39 %
– Austria: 56,25 %
– Finland: 40,40 %
– Czechia: 36,45 %
– Estonia: 37,60 %
– Cyprus: 58,86 %
– Lithuania: 28,35 %
– Latvia: 33,82 %
– Hungary: 59,46 %
– Malta: 73 %
– Poland: 40,65 %
– Slovenia: 41,80 %
– Slovakia: 34,38 %
– Bulgaria: 33,78 %
– Romania: 52,42 %
– Croatia: 21,35 %

*(Member States in alphabetical order according to name in original language)

Naturally, none of this detracts from the chamber's legitimacy or representativeness, but it does invite the pro-European parties to consider why abstention is so high and what can be done to substantially reduce it.

Here, it would be useful to look at several factors.

First, those related to domestic politics, including:

– The popularisation of the idea by governments, political parties and media that the European elections are secondary in comparison with national, regional and local ballots.

– The appropriation by governments of "positive" decisions, while blaming the EU for the "unpleasant" ones.

– Hence the persistence of the widespread idea that it is the national governments that "really" make the decisions in Brussels, keeping citizens in the dark about the reality of co-decision between the Council and the EP. This makes national elections the truly decisive votes and the European elections, at best, a complementary ballot and, at worst, purely decorative.

– The presentation of candidates who voters perceive as "second-tier" or seeking a "gilded retirement", even though this is unfair in both cases.

– The "nationalisation" of the European election campaign, featuring the party leaders even if they are not candidates to sit in Strasbourg, making the

vote appear more dispensable than it actually is.

– In connection with that nationalisation, the transformation of European election campaigns into a public forum of debate between the government and opposition in which European affairs are sidelined in favour of domestic policy issues.

– The absence of a systematic education of citizens in the community decision-making process, from school to university, from the media to political discourse. This impedes understanding of the importance of the EP and the elections that determine its composition.

It is true, however, that the existence of an issue that acts as a common denominator would make it easier to spotlight that voting in European elections is not only important in the country a ballot is cast, but rather forms part of an aggregate decision across the whole of the EU, which would be an incentive to go out and vote.

That happened in the elections of 2024, with the signalling of what I venture to call a "federating dilemma": the march of the far right, which featured as a "danger" in the campaigns of all the pro-EU parties and as an "incentive" in the campaigns of the parties that are part of that trend.

Yet it failed to trigger an increase in turnout, perhaps because it was the first time it had appeared; because it was not seen that way in several countries where the far right is already in government; or because it was conveyed in an irremediably heterogeneous manner in the 27 Member States as there are no Europe-wide media outlets.

Along with all those factors (where it would be enough to act differently) there are others we might call "positive", which focus on improving and standardising European electoral legislation. These include various measures proposed by the European Parliament that unfortunately have been left to gather dust.

One of them, which is fundamental, is the presentation of transnational lists, from which a specific number of MEPs would be elected, and which would be topped by the candidates to become president of the European Commission.

That would have been possible in the 2024 elections had the attitude of certain governments not prevented it.

There are a number of advantages to transnational lists:

– They serve as an instrument to denationalise the European election campaign.

– They showcase the value of European citizenship with the casting of a multinational ballot.
– They bolster the role of the European political parties, which do laudable work but are always gaslighted by the national parties.

– They raise awareness of the European political parties' manifestos, which

are what really count once the EP is formed and which in 2024 have presented some genuine policy direction and concrete proposals.

– They lend credibility to the candidates to head the European Commission (the Spitzenkandidaten) and to the article in the Treaty that establishes that the Council shall propose one of them to preside it, taking into account the result of the European elections.

However, it should be noted that the candidates to lead the Commission must be the first to abide by that article and stand to be elected MEPs. Neither von der Leyen for the EPP nor Schmidt for the Socialists or The Left candidate appeared on any electoral list. One might imagine they would have done so had they been able to head their respective transnational list.

As well as confirming its persistence, examining abstention serves another significant purpose: to highlight its effect in favour of anti-European and Eurosceptic parties, in the assumption that they would wield less clout had the turnout been higher.

3. THE RESULTS OVERALL: PRO-EUROPEAN PARTIES WIN THE DAY, BUT THE FAR RIGHT MAKES GAINS

On the subject of those figures, the 2024 election results, while concerning, were a far cry from the gloomiest predictions, which forecast a huge advance for the far right and a shift in majorities with likely consequences for European construction.

That advance did happen, certainly, but not to the extent of determining decision-making in the European Parliament and nullifying a repetition of the pro-European consensus among conservatives, socialists and liberals that has dominated the European institutions since their inception.

A contributing factor was the "federating dilemma" (far right: yes or no) around which the election campaign revolved, doggedly and vociferously sustained from the outset by Socialists, liberals, the Greens and The Left, and ultimately (though with certain caveats) by the EPP candidate.

The ballot boxes delivered the following results, if we divide them into pro-European and far-right camps:

Pro-European (500 seats)

– European People's Party: 188 seats (presidency: Manfred Weber, Germany)

– Socialists & Democrats: 136 seats (Iratxe García, Spain)

– Renew (liberals): 77 seats (Valèrie Haye, France)

– Greens: 53 seats (Bas Eickhout, the Netherlands, and Terry Reinke, Germany)

– The Left: 46 seats (Manon Aubry, France, and Martin Schirdewan, Germany)

Far right (187 seats)

– Patriots for Europe: 84 seats (Jordan Bardella, France)

– European Conservatives and Reformists: 78 seats (Joaquim Stanilaw, Poland, and Nicola Procaccini, Italy)

– Europe of Sovereign Nations: 25 (René Aust, Germany)

There is a third group of seats known as non-inscrits, which includes several MEPs who are openly far-right.

If we go by percentages of seats, the breakdown would be as follows:

Pro-European

– PPE; 26,11 %

– Socialists & Democrats: 18,89 %

– Renew (liberals): : 10,69 %

– Greens: 7,36 %

– The left: 6,39 %

Far right

– Patriots for Europe: 11,67 %

– European Conservatives and Reformists: 10,83 %

– Europe of Sovereign Nations: 3,47 %

Which means that – excluding the non-inscrits from either camp – the pro-Europeans obtained 69.44% of the seats and the far right, 25.97%.

Could we divide the results between right and left? Of course, but it would be misleading, for several reasons:

– We would have to group in the same camp parties that, unlike in the traditional setup at home, do not have a common ideological identity in the European sphere. The EPP, for example, is pro-European while the far right is not.

– The same applies in terms of policy specifics that currently form a fault line: the EPP is Atlanticist and backs Ukraine while on the far right it is frequently quite the opposite.

– The situation also arises on the left on key issues: the Socialists have supported new European fiscal rules while The Left has been totally opposed.

– The big pro-European groups strike broad agreements to last the entire legislative period (as is the case regarding the choice of Commission president

and her programme), even if they do occasionally agree on the odd legislative decision in impromptu deals with groups on their right or on their left that are neither ideological nor form part of their manifestos.

4. FRAGMENTATION OF THE FAR RIGHT

Grouping the far right into a single bloc may make sense if we are talking about general political orientation, with the exception of their stance on NATO, Ukraine and Putin's Russia.

Yet the interests of each of the parties that make up the far right have resulted in its split into three groups in the European Parliament: Patriots for Europe, European Conservatives and Reformists and Europe of Sovereign Nations.

The first of these, comprising 13 parties, is led by two groups: Marine Le Pen's RN from France and Viktor Orbán's Fidesz from Hungary.

The second is led by Giorgia Meloni's Brothers of Italy and Poland's PiS, and the third, by Alternative for Germany.

This division could act as a lure to those in the EPP (like its president, Manfred Weber) who favour selective rapprochement with some on their right, namely the Conservatives and Reformists, as they consider them akin given their positions on international affairs. Those hopes were thwarted in the first instance as Meloni's Conservatives and Reformists voted with the rest of the far right against von der Leyen's election.

In any event, we must keep in mind that the far right already sits in the Council of the EU (given its presence in the governments of Italy, Finland, Slovakia, Hungary, the Netherlands and Croatia, with external support for the government Sweden) and that will feed directly into the positions of its parliamentary groups in Strasbourg.

5. BALANCE OF POWER: A PRO-EUROPEAN AND CENTRED CHAMBER

Several conclusions can be drawn from the results of the June 2024 vote:

– The clear winner of the elections was the European People's Party, with the Socialists remaining on a downward trend and a drop in support for the liberals, Greens, and The Left.

– The relative majority (321) of the EPP and Socialists combined is well short of an absolute majority (361).

– An absolute majority can only comfortably be achieved by including the liberals (401).

– The absolute majority is greater still if we add the Greens (454) and The Left (500); groups however that will often differ with the centre right and c entre left.

– The far right had never achieved such a good result, but it fell well short of some of the pre-election poll predictions.

– The far right lacks the numbers to win or block neither absolute majority votes nor simple majority votes of those present in the European Parliament.

– Discounting any global or standing agreement, it will, however, depend on the European People's Party to strike ad hoc agreements with the far right on certain issues, because between them they could form a majority.

In any case, as we shall see later, von der Leyen's election as head of the European Commission demonstrated the desire to form a pro-EU majority on key issues, comprising the EPP, Socialists, liberals and Greens. It may vary according to the political and legislative decision under debate, but it will always be sufficient to halt the advance of Eurosceptic and anti-European positions.

In other words, the balance of power in the European Parliament elected in 2024 is clearly pro-EU and occupies the political centre ground between conservatives and progressives, with two hegemonic parties: the EPP and the Socialists.

The same applies to the European Council, the Council of the EU and the European Commission, which means the EU's political government and legislative action is on solid ground in every one of its institutions.

6. FIRST VOTES: A FUNCTIONING BROAD PRO-EUROPEAN MAJORITY

The European Parliament was constituted on 17 July, beginning its tenth term.

The first votes, i.e. the election of the parliament's President and new Bureau, for one, and the President of the European Commission, for another, clearly showed the pro-European majority running like clockwork.

Roberta Metsola (EPP, Malta) was re-elected as head of the institution by 562 valid votes cast by MEPs – with very broad support, then – against the only alternative candidate, Irene Montero, standing for The Left, who obtained 61 ballots.

While MEPs vote in a secret paper ballot, the votes obtained by Metsola indicate that they came from the EPP, Socialists, liberals, Greens and, to a certain extent, from the far right, starting with the Conservatives and Reformists, which could be down to some of her ideological positions (her opposition to abortion) and her Mediterranean origin.

The election of the vice-presidents (the EP has 14, who along with the President make up the Bureau: three from the EPP, five Socialists, two ECR, two from Renew, one from the Greens and one from The Left) was also an illustration of that majority, as the those from the biggest groups were elected in the first round of voting, while those from other groups (like the one from Meloni's party) having to go to a second ballot.

An interesting situation arose here, because the Conservatives and Refor-

mists' entry into the Bureau contrasted with the fact that the other two far-right groups, Patriots for Europe and Europe of Sovereign Nations, were left out. This was interpreted as a cordon sanitaire around the most radical far-right groups. We shall see whether this barrier has worked later, when we look at election of the parliamentary committee bureaus.

Metsola will only be President of the European Parliament in the first part of the term, after which she will be replaced by a Socialist, under the deal struck between these political families and the liberals when von der Leyen was designated candidate for President of the Commission; the Portuguese Socialist António Costa was appointed President of the European Council; and the Estonian liberal Kaja Kallas was named High Representative for Foreign Affairs and Security Policy. And despite the EPP's unsuccessful bid to secure her mandate for five years.

But where not only the traditional but also a broad pro-European coalition really shone through was in the election of the German candidate to lead the Commission. Taking it for granted that the EPP, Socialists and liberals would vote in favour, von der Leyen was able to bring the Greens on board too, thanks to her programme pledges. On explaining its vote, the group declared they felt part of substantial four-way agreement destined to last the entire legislative period.

The support of the Greens also made it clear that the candidate proposed by the European Council was dropping her initial idea (at least in her election) of wooing the Conservatives and Reformists to secure their vote, in what should be a lasting choice. Only time will tell if this is the case.

Von der Leyen garnered the votes of 401 members, with 284 against and 54 abstentions, well above the absolute majority threshold and the support she received when elected for the first time in 2019.

Some, however, see the margin von der Leyen won by as narrow. Yet previous Commission presidents were also elected in tight votes.

Her election gave her the mandate, in consultation with the Member States and the political families, to propose a College of Commissioners whose members appear individually before the EP committees pertaining to the duties assigned by the Commission President. If they come through these rigorous hearings, they are voted in as a whole and take office, providing further evidence that the pro-European majority assembled by von der Leyen is working.

The EP elected the Commission President based on a programme of "political priorities" that represents her engagement with the European Parliament (and with the European Council, in fact) and will guide its action, starting with the legislative action, as the institution safeguarding the Community interest. It revolves around six main themes:

– A new plan for sustainable prosperity and competitiveness

– Food security, water and nature

– A new era for European defence and security

– Supporting people, strengthening our societies and our social model

– A global Europe

– Preparing the European Union for the future

A thorough study of their content (which is not the purpose of this chapter of the report) reveals von der Leyen has strived to present detailed priorities that match the broad pro-European majority that backs her, satisfying the main demands of the four groups that make it up. In the case of the Socialists, for example, they are in the social field – including housing and community investment for prosperity and competitiveness – and for the Greens, continuing to pursue the climate and environmental agenda – with "pragmatism", in her words.

The virtue will lie in fulfilling it without serious or excessive contradictions. The EU, however, has a long and successful history of resolving such contradictions.

7. A CORDON SANITAIRE AROUND THE MORE RADICAL FAR RIGHT IN THE EP COMMITTEES?

The complex functioning of the EP (the large number of members from 27 nations, the number of official languages, the complexity of the issues addressed) is possible thanks to a careful structure of parliamentary committees.

In its tenth term, the EP will have 20 standing committees and four subcommittees (the subcommittee on Public Health is new and a significant and sensible decision in view of events), plus 48 standing delegations.

When the committees are formed after the first plenary session of the term, each one elects its chair and vice-chairs (members and substitutes) who form the Bureau.

Did the cordon sanitaire that kept the Patriots and Sovereign Nations out of the European Parliament Bureau work in the committees?

The answer is this: as with the election of the vice-presidents of the EP, a kind of cordon sanitaire was thrown around Patriots for Europe and Europe of Sovereign Nations. It did not include the Conservatives and Reformists.

Hence the parliamentary groups came to an agreement by which they observed the distribution based on the D'Hondt system, sharing out the presidencies and vice-presidencies that would have gone to the most radical right.

As with the Bureau, in this instance ECR was given three committee presi-

dencies: Agriculture, Budgets and Petitions, all of which come with significant political, economic and media clout

8. PROFILE OF THE EP IN ITS TENTH TERM

In its tenth legislative period, the EP has some significant features:

– 54% of the members are first-time MEPs

– 39% are women, compared to 40% in the ninth term

– the average age of MEPs is 50; the oldest is 77 and the youngest is 23

What surely stands out is the disappointing figure that distances the European Parliament from gender parity. It is a negative situation that community legislation for European elections establishing mandatory parity criteria when drawing up electoral lists would help to redress.

9. RECOMMENDATIONS

1. It is essential to maintain the EP's pro-European majority that came together to elect Ursula von der Leyen so as to guarantee the pursuit of greater political depth and answers to citizens' needs, isolating the far right.

2. It is necessary to make it a priority goal to steadily and substantially increase voter turnout in EP elections,

3. To this end, it would be a positive move to unblock the existence of transnational lists in EP elections in 2029; for the candidates to lead the European Commission to stand to be MEPs; and for national political parties, in the government and in the opposition, to pledge to "Europeanise" EP elections through a code of conduct endorsed before the election campaign begins,

4. The EU must complete political union, including granting greater legislative powers to the EP – starting with the legislative initiative it currently lacks, as the Commission President proposed in her investiture speech – in the framework of a constitutional reform that should take place throughout the current term.

Acronyms

ECR: European Conservative and Reformist

Fidesz: Fidesz-Magyar Polgári Szövetség (Fidesz-Unión Cívica Húngara)

NATO: North Atlantic Treaty Organization

EP: European Parliament

EPP: European People's Party

RN: Rassemblement National (National Rally)

EU: European Union

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The rise of the *far right* in the *European Union*

by JOSÉ ENRIQUE DE AYALA

The elections to the European Parliament (EP), held between 6 and 9 June, confirmed the growth in Europeans' support for far-right parties, a phenomenon that has been developing steadily for over a decade, albeit at varying speeds and in different ways according to each Member State. In the European Union (EU) as a whole, there has been a sharp rise. Taking the start of the last major economic crisis in 2008 – which probably gave this ideology a significant boost – as the reference point, we see that in the EP elections of 2009 these parties obtained 35 MEPs out of 736, from a total of 13 European countries. At the end of the last legislative period, that figure had risen to 126 out of 703, made up of the European Conservatives and Reformists and Identity and Democracy (before the expulsion of Alternative for Germany from this latter group), plus a further 14 non-attached Members who also shared these beliefs. As we shall see later, the legislative period starting in 2024 has 198 far-right MEPs out of a total of 720. They are gathered into three groups or sit as non-attached Members; and they come from 24 countries, 40% more than in the last term.

While this increase in electoral support was not as large as feared, given the pre-election polls, it does confirm a trend that has now reached such a level as to cause concern over the effect that parties declaring themselves to be nationalist – and therefore Eurosceptic or even anti-European – could have on the process of European integration and on the internal stability of some Member States, including the leading ones. This chapter will try to analyse the causes and consequences of this political phenomenon and provide some pointers on the path to follow to neutralise it as far as possible.

1. STRONGER BUT DIVIDED

The existence of far-right parties is not a recent phenomenon, of course. Many of them were around in the last century. With the Second World War barely over, the Italian Social Movement (MSI) was founded in 1946. It would become the National Alliance in the 1990s before turning into Brothers of Italy (FdI). The Freedom Party of Austria was created in 1956 and entered the government in 2000. France's National Front – now National Rally (RN) – was founded in 1970; Belgium's Vlaams Blok (Flemish Bloc) – today Vlaams Belang (Flemish Interest) – in 1979; Fidesz-Hungarian Civil Alliance, in 1988; the Danish People's Party, in 1995. What has occurred over the last two decades, however, is a spread of parties of this nature to nearly every Member State, an increase in electoral support for almost all of them, and the rise of some to become that party that wins the most votes in their respective elections, like Fidesz (in alliance with the Christian Democrats) in 2010; FdI in the legislative elections of 2022, and RN in France, in this year's parliamentary elections.

But it was in the last elections to the EP when the spread of these parties and

the increase in votes they receive became more apparent in the EU as a whole. Far-right parties won in five countries (Austria, Belgium, France, Hungary and Italy) and came second or third in another five, including Germany. Their electoral support increased in 20 Member States (though they did not secure EP representation in all of them) and fell in seven. Twelve new parties, from nine countries, entered the EP for the first time with a total of 26 MEPs. In all, 48 parties that could be considered to be on the far right of the political spectrum, as well as some independent candidates, won seats in the EP. They came from 24 Member States. Only three countries – Ireland, Malta and Slovenia – have no representatives who could be included in this ideology. The parties have gathered into three parliamentary groups: Patriots for Europe (PfE), led by Marine Le Pen's RN from France, which is made up of 84 MEPs from 14 parties and 12 countries (the third biggest group in the chamber); European Conservatives and Reformists (ECR), led by Giorgia Meloni's FdI, which comprises a total of 78 MEPs from 21 parties and 18 countries (the fourth biggest group); and Europe of Sovereign Nations (ESN), led by Alternative for Germany (AfD), which consists of 25 MEPs from eight parties and eight countries (the eighth and smallest group). There are also some far-right MEPs who sit as non-attached Members.

It should be noted that this initial composition of the groups may vary over the course of the legislative period. In fact, it usually does. The three groups combined amount to a total of 187 MEPs, one less than the most numerous group, which is the European People's Party (EPP) and 51 more than the second biggest, the Socialists and Democrats (S&D), which has 136. But if we include the non-attached far-right MEPs, i.e. those who do not form part of a parliamentary group (but may do so in the future), who come to a total of 11 MEPs from seven parties and seven countries, the figure becomes 198: nine more than the EPP, 27.5% of the 720 MEPs in all and the most numerous ideological movement in the EP. Most Member States have representatives in the European Parliament from more than one party from this end of the ideological spectrum, spread across the various groups and non-attached Members. There are five Polish parties; four Czech; three Greek, Hungarian, Latvian, Lithuanian and Romanian parties; and two Belgian, Bulgarian, Danish, Dutch, French (plus independents), Italian, Slovenian and Spanish parties. A total of 21 of these parties have just one MEP and a further 11 have two or three. It is a very loose, heterogenous collection, from which it is practically impossible to get a common position, sometimes not even among those who form part of the same parliamentary group.

While we group all these parties under the common heading of "far right", the truth is they cover a broad ideological spectrum. From small minority and clearly neofascist parties such as Slovakia's Republic Movement or Czechia's Freedom and Direct Democracy, to those that exercise power or have done so, like

FdI or the Freedom Party of Austria (FPÖ), which has led them to take more pragmatic positions and less radical stances.

Nevertheless, attempts to divide these parties into bad, not so bad and tolerable such as, for instance, the initiative to detach the ECR from the other two groups and accept it into the European fold based on its alleged moderation, are entirely unjustified. The only thing that distinguishes this group from the others is the unconditional support for NATO and Ukraine of most of its members and its hostility towards Russia. It is as if its alignment with a geopolitical position, the majority one in Europe but which is actually led by the United States and the United Kingdom, served as a free pass or to whitewash political views that run counter to European values on issues such as women's reproductive freedom, LGBTIQ collectives or immigrants. Why should FdI, the successor to the neofascist MSI and led by a woman who has publicly praised Mussolini be more moderate than Mateo Salvini's Lega? Or than Fidesz – also in PfE – which formed part of the EPP until recently? To spell it out, the ECR includes two of the most extreme parties in Europe: Greek Solution, the successor and heir to the outlawed neo-Nazi Golden Dawn, and the National Popular Front from Cyprus, also linked to the same party. They are much more radical than others incorporated into PfE or even ESN.

There is little need to promote division among the parties on the far right; they do it themselves. It is precisely the diversity of their interests and political positions that undermines them when it comes to making their number and votes count inside or outside the EP and limits their political clout on a European level, even if they rise to power in some Member States and pose a latent threat to the stability and political progress of the European Union.

2. ARGUMENTS AND REASONS

Surely the most interesting issue to study is how we got here; why a minority ideological trend across the EU a decade ago – with the odd exception – should have grown to be the most numerous in the European Parliament; what arguments have drawn millions to these parties; and what are the real reasons why those people have opted to place their trust in them.

The far right's key and principal (if not only) instrument of political action is demagogy. Manipulators connive to use people's basest emotions – fear, selfishness, resentment, envy, despair – to further their interests. The message is that everything bad that happens to a powerless public is no way any fault of their own – they are good and decent – rather the culprits are others, external agents who are making their lives a misery and preventing their happiness: political and intellectual elites, foreigners who hate them, bizarre international conspiracies, immigrants, feminists, a profligate state and, above all, the left.

They sometimes shamelessly claim to be anticapitalist, despite the fact that since the inception of the various forms of fascism this ideological tendency has always been bankrolled by big business to set it against socialism, its real enemy. In those countries where it has played or plays a role in government it has never promoted a law to limit the action of capital or its profits, but rather worked in its favour.

Although, as we have said, far-right parties are very diverse, and that includes their political proposals, there is a series of common concepts that form the bedrock of this ideology and which they have all used to a greater or lesser degree to attack the prevailing conservative-socialist-liberal political system in Europe and present themselves as the only possible solution to its negative effects. The most important ones are as follows:

– **Antiglobalisation**. Globalisation has clearly had both positive and negative impacts, but they have been more positive for movements of capital and for big multinational corporations than for Europe's small and medium-sized businesses and workers, who have been subjected to competition from countries whose lack of labour and social regulation gives them insurmountable advantages. The upshot is that in many countries with low standards of living, particularly in Asia and Africa, several million people have risen out of poverty, while at the same time many Europeans have suffered a decline in living standards and, more importantly, their expectations of improving them. The far right points to globalisation as the cause of all evils, glossing over the objective conditions of our times – swift and cheap transport and information and communications technologies – which make it inevitable. Nor do they offer any proposal to mitigate its undesired effects. Yet in many countries this stance has earned it the support of a part of the working class who have turned their backs on the traditional left-wing parties to seek solutions in these parties, given the formers' lack of effectiveness in addressing this problem.

– **Nationalism**. This is perhaps the key point, around which the whole far-right ideology revolves, and which is without exception a common feature of every party at this end of the political spectrum. It is also the one that triggers the greatest aggression. The only answer to an invasive and impoverishing globalisation that seeks to erase our identity and exploit our labour is to return to a strong nation state that defends above all else – or only – its interests: selfishness in power. To this end, it extols national values, historic feats, the virtues of one's own culture over others, particularly those nearest, or the dominant ones.

Naturally, nationalism is against all foreign influence, suspicious of international and multinational institutions, and by extension is also opposed

– in varying degrees – to the EU's progress towards political union or its intervention in affairs considered internal. This approach is particularly fruitful in the countries of Eastern Europe, which jealously guard an independence that was curtailed under the Warsaw Pact, or which disappeared outright as they were absorbed into the Soviet Union.

– **Distrust of state action**. While they advocate a strong nation state, far-right ideologies are wary of its action, particularly in the economic field, where most are proponents of a radical neoliberal state which they have taken to calling "libertarian". Basically, the state should take care of security and external action to foster the best conditions for domestic economic actors, but not interfere in social or economic relations. Taxes must be reduced and as a result so should the welfare state. In their eyes, the law of the jungle is a good tool for curing society's ills; social assistance only leads to inefficiency and injustice. It is on this aspect that they are closest to the democratic right, though their proposals are much more radical.

– **Decrying the lack of affordable housing, low salaries and job insecurity**. These are deep-seated problems that have become more acute over the last few years in most European countries in the wake of the economic and health crises and, more recently, relatively high inflation. They particularly affect young people, and this is one of the keys to the mounting disaffection with mainstream parties among younger voters. Of course, far-right parties have no magic formula to fix problems which are structural and will take years to see a solution, if there ever is one. But they criticise them, magnify them and utilise them regardless to draw large groups of discontents, particularly young people, who form a significant part of their electorate.

– **Climate change denial and discredit of environmental policies**. Denialism is a valuable tool because it is easily digested by strata of society prone to believing they are forever being hoodwinked by powerful conspiracies with sinister intent. The far right used it profusely, to great success, during the COVID-19 epidemic and against the vaccines, playing on many people's fears. Climate change denial is even more rewarding because it is more enduring and environmental policies are eyed with suspicion by many, from vehicle owners required to upgrade them or facing restrictions on entry into major cities to farmers who are seeing how under the green measures the EU demands from them their products are no longer competitive or they are becoming poorer. Hence in its defence of intensive agriculture and livestock farming, hunting or the unrestricted use of vehicles and machinery, the far right has a broad audience.

On the subject of this denial, the far-right rails against the inherent evil of the 2030 Agenda – its bête noire – and its supposed instigators, who hail from the world of woke progressivism and are the enemy of working and sovereign people. It appears their sole purpose is to lift certain international elites to power who would benefit from its effects. One might wonder how many of its voters have actually read the Sustainable Development Goals and precisely which of them they think might harm them should they be attained.

– **Antifeminism and criticism of LGBTIQ policies**. Many people cannot comprehend the social changes taking place in European countries (among others) and fail to make sense of new models of relationships or identities that openly contradict the education they have received and with which they feel most at ease. A certain section of men – it varies according to age and education – feel threatened by a feminism they consider to be too aggressive, which defies traditional roles and which some women frown upon too. Non-binary genders and public displays of alternative sexual behaviour are difficult to accept for these sectors of society, who would rather see them restricted to the private sphere, at the very least. The far right capitalises on this rejection, exaggerating the money allocated to related policies, emphasising the dysfunction these new models cause in the traditional family and the harm – according to them – they could bring to children.

– **Immigration**. This is the far right's real flagship issue, its greatest weapon, a perennial topic from which they squeeze the most gain, although they are often forced to share it with the more extreme sectors of the mainstream right who refuse to forego the returns this subject provides from broad strata of society. Figures are exaggerated, impacts are magnified, while the humanitarian aspect is obscured. They paint a picture of a situation out of control, one that seriously affects the local population, both in terms of jobs and security, and even in terms of identity. And they are prophets of doom regarding the future. Here the audience is concentrated in communities that must coexist with a significant number of people from very different cultures to their own and the most basic working class – the ones competing with immigrants for the least qualified jobs and for social assistance. Immigration is probably the issue that gives the far right most votes throughout Europe.

To understand how these sometimes absurd and antisocial views should have been such a success with many millions of people we must look at the recent history of Europe, but also at the fact that more often than not they are diagnoses that are based on real – always manipulated and skewed – situations. However, those who propound them are of course incapable of providing a solution that actually works.

One of the causes of the current political crisis is the Great Recession of 2008-2012. The policies to exit it were imposed by the dominant countries in the EU, the creditors and the richest, and were based on cuts in social spending and extreme austerity in terms of public expenditure. They did enormous harm to the social and productive fabric, relegating large swathes of the middle classes who were driven into grave uncertainty over their future, leading many to seek refuge in anti-establishment parties, in the same way that the Great Depression starting in 1929 contributed to the rise of Nazism and other similar movements in Europe six years later. The COVID-19 pandemic was another watershed moment, given the fear and rejection the confinement measures triggered in many and which those on the far right exploited with mass use of social media that were exploding at the time.

It is true, moreover, that globalisation has contributed to a decline in the working conditions, salaries and labour rights of certain sectors of European workers, in the face of unfair competition from non-EU countries. It is also true, however, that business owners have often made the most of that competition – and the unemployment that came after the Great Recession – to degrade those conditions unnecessarily. The tough years of the Great Recession also increased many European citizens' scepticism regarding the EU's capacity to solve their problems. They looked to national solutions, which has undoubtedly favoured the parties that espouse nationalism as the only answer. The upsurge of feminism and new interpersonal relations has been too swift and too alarming for many people, who have seen their standards suddenly crumble. And it is also true that sectors of society who have faced certain competition from immigrants, or have had to accept restrictions on the grounds of saving the environment, have not seen trade-offs or reforms to help ease the ensuing difficulties. Lastly, the war in Ukraine has also contributed to the public's sense of insecurity and the desire to seek refuge in nationalist proposals.

Yet hanging over all these (real) causes is the most important one: moderate right, socialist or liberal governments have proved incapable of providing a solution to society's most pressing problems, be it maintaining living standards, housing, job stability or security. And, above all, they have failed to offer a realistic and sufficiently attractive future. This is what has caused frustration, fear and even resentment in part of the population, hence considerable disaffection with mainstream parties and, ultimately, a significant increase in support for their extremist counterparts.

In any event, the sharp rise of parties on the far right could not have happened without the intensive work of sympathetic media outlets, some of which have come into existence solely for this purpose and whose funding is shrouded in mystery, and – above all – social media platforms, whose expansion and influence have evolved over

the last few years in a very similar manner to the far right. Without X, TikTok or Telegram, the fake posts and disinformation these parties spread could not have reached the public they have succeeded in luring. The biased and manipulated narrative, which is the underlying cause and secret of their success, beyond any of their proposals, would not have had the broad dissemination it has obtained thanks to these media outlets and platforms.

3. FICTION OVER FACT

This expression might normally be written the other way round: fact over fiction. And that is how it should be. Any narrative must bow to the facts and when the facts contradict it, the narrative should collapse. But it does not always work this way and it is often quite the opposite. The narrative hides the true facts and provides a self-serving view of social and political issues to obtain popular support for certain theories. This is the key to the demagoguery that, alongside offering magical solutions to every ill, explains the relative success of the far right among a population that seeks culprits for its problems, without too much thought. Extremists and sympathetic media routinely use skewed, incomplete, exaggerated, manipulated or outright false narratives, distorting or concealing anything that might contradict them, to reinforce their ideological position.

A prime example is the narrative on immigration. According to far right, immigrants are criminals, social misfits and idlers who come to Europe to live off public subsidies provided by the welfare state, at the expense of honest and hardworking European citizens. They are also the cause of nearly all the problems those citizens face. It skirts the fact they are human beings, victims of persecution or dire need and dehumanises them. Apparently, most are in an irregular situation, infringing the law and out of control. And yet they have access to better benefits than the local population and pose a danger to coexistence. Naturally, all this manipulation draws on data that is partially true, or on experiences and anecdotes that some citizens have experienced, making them the norm on which to build an alternative reality, magnifying problems and painting a highly conflictive situation that has no other remedy than proceeding to their expulsion – or better still, putting an end to such a permissive political system as the present one. The milder version is to accept the "good ones", those who adapt to our way of life and are hardworking and honest.

In this case, the half-truth it is based on is that in EU Member States crime rates are higher among non-nationals than among the local population. In Germany, which has a foreign population nearing 20%, 41% of criminals in 2023 came from that sector, according to the country's interior ministry. In Spain in 2019, 10.61% of foreigners committed 25.44% of crimes. But these sta-

tistics must be qualified. First, they refer to the entire foreign population, including nationals from other EU Member States and from other developed countries who are not usually categorised as immigrants. Above all, however, it is not a balanced comparison. The whole of the local population is equated with an immigrant population that is appreciably younger, poorer and less cultured or educated. A collation with sectors of the local population of a similar demographic and social composition would doubtless give very different percentages. We can reasonably expect that as the immigrant population find jobs and integrate into society, and their level of education matches that of the locals, crime rates will gradually even out. Extremist demagoguery only presents the negative figures and magnifies the crimes committed by immigrants, with no thought for the causes or the chances of turning the situation around. Immigrants, then, commit crimes because they are innately evil, they are morally deficient as they belong to inferior races, or simply because they come to Europe to commit crimes. Or to commit crimes and live off subsidies, if the two things are compatible.

Yet this outlook is debunked by the real data. According to Eurostat, there are 23.8 million non-Member State nationals in the European Union, amounting to 5.3% of the total population. In 2022 – the last year for which there are consolidated figures – of the 193.5 million people between the ages of 20 and 64 active in the labour market in the EU, 9.93 million were citizens of non-EU countries, or 5.1% of the total. That year in the EU there were 3,454,000 legal immigrants, meaning those who obtained their first residence permit, as against 326,000 irregular immigrants. In other words, immigrants in an irregular situation – despite rising by 63% over the previous year – accounted for 9.4% of total immigration and 0.07% of the EU population.

These are the data. Irregular immigrants are a small minority. In the EU the overwhelming majority of nationals from other countries are in work, in a proportion that is slightly inferior to those born in Member States but generally in low-qualified jobs that locals reject, such as personal care, cleaning, the hospitality industry or construction, for which most are overqualified. In addition, anti-immigration demagogy deliberately ignores the fact that numerous studies by the United Nations, the Wittgenstein Centre and the Center for Global Development estimate that Europe will need between 60 and 70 million immigrants in 2050 to sustain its economy, offsetting the drastic ageing of the local population on account of the low birth rate, and current migration policy will only cover between 23% and 30% of those figures.

But the real data is not common knowledge – it is too complicated to be newsworthy – and fails to reach the wider public. And, of course, it is stealthily concealed by parties on the far right when they are not interested in it becoming

well-known, to gain acceptance and votes among a misinformed population via media close to that ideology or fake posts on social media. People's perception depends more on the information and opinions they receive than on facts and figures. In Italy, for example, which hosts 10.09% of all the immigrants in the EU (10.78% of its population) only 19% of the population consider immigration to be the main problem facing the EU, while in Czechia, which has just 1.2% of the immigrants (5.15% of its population) 42% believe it is the major issue.

Immigration is not the only issue to suffer far-right manipulation in Europe, although it is perhaps the one that makes it most political capital. Discrediting the fight against climate change, minimising the impact of global warming and accusing the scientific community of falsifying data or its causes in pursuit of unclear hidden purposes; the anti-vaccine movement; arguments against globalisation, blaming it for a decline in working conditions for which employers are responsible; conspiracy theories implicating sinister woke agents and their most renowned representative George Soros, whose goal is nothing less that the destruction of nations and Western civilisation: these are other chapters of an apocalyptic narrative that depicts a hostile and incomprehensible world sliding into chaos, whose only salvation involves handing them political power.

Not all these parties' voters believe these narratives, of course, or some of them. Many vote for them because they think they will best defend their interests, even while they are aware of their demagoguery, or as a last resort in the face of the other parties' inability to solve their problems. Or simply out of resentment of a reality that marginalises them. But still, the culture war is important, wields considerable influence and must be won if we are to stop the serpent before it grows to become truly dangerous.

4. CONTRADICTIONS

As we noted previously, European political parties on the far right are very diverse and their political programmes may even include policies that are contrary to other groups of a similar ideology, despite sharing common ground. This diversity can lead to confrontation. There are no more hostile ideologies than two extreme nationalisms at odds with each other, and extreme right-wingers are above all else radical nationalists – on this there a few differences. For example, territorial and ethnic claims mean that parties championing the idea of a Greater Hungary like the Our Homeland Movement or even Viktor Orbán's Fidesz must inevitably clash with those that defend the idea of a Greater Romania, like the Greater Romania Party or the neofascist The New Right, despite all of them being on the far right.

Political opportunism means that many of these parties champion policies that are in direct contradiction

with their basic tenets, with the general principles of the ideology or with other proposals of theirs. For instance, the anti-immigration policy of RN in France, Vox in Spain, or Brothers of Italy is inconsistent with their support for the agricultural sector, their main source of votes, because in these countries agricultural crops would barely survive without immigrant labour (including irregular immigrants): the seasonal workers who earn a meagre living in precarious conditions and enable their produce to be competitive. On another note, while the dominant ideology in this political field advocates neoliberal policies – pay fewer taxes and cut benefits and subsidies – RN in France champions rolling back the liberal reform that limited pensions and maintaining subsidies for French farms. Some parties support green policies, while others (most) are against any environmental regulation.

In the international field, too, the European far right is a little chaotic. Many of these parties reject backing Ukraine and more or less sympathise with the Russian regime, while others are clearly pro-NATO and anti-Russian. Those that support ending the war in Ukraine in a supposed defence of peace radically contradict themselves with their backing of Israel in the massacre of Palestinian civilians in Gaza. It is, in any case, surprising to the say that least to see how these parties have become vehement advocates of Israel when they defend or have recently defended neo-fascist or neo-Nazi postulates or are the direct descendants of those that defended them at one time.

These divisions and contradictions do not diminish any of these parties in the eyes of their respective electorates, nor will they stop them growing if the conditions are right in each case, which could cause problems in some EU Member States. But they certainly are an almost insurmountable obstacle to creating a united and single group in the European Parliament and even to undertaking joint action, other than perhaps sporadically. Nor do they allow them to consolidate a solid and coherent continent-wide ideological tendency capable of steering the future of Europe in some way. Yet their rise is a solemn warning for the majority political parties, which have failed to meet the expectations of a good part of the population.

5. CONSEQUENCES

It would be unrealistic to think that the support for far-right parties present for several years now is not going to impact European policies. First, we cannot fail to notice that governments of this persuasion are already in power in Italy and Hungary, with an absolute majority in the latter case. In Italy it has negative consequences for the right to abortion and immigration control. In Hungary there is constant objection to European policy, particularly regarding the war in Ukraine, and the separation of powers is in jeopardy. In addition, the Party for Freedom

(PVV), led by Geert Wilders, is the main party in the new Netherlands government – although it has had to accept an independent as prime minister. Other parties with the same ideology form part of the governments of Croatia, Finland and Slovakia, or they provide parliamentary support as in Sweden. Their impact varies, but it is always for the worse. In other words, there are seven EU governments with varying degrees of far-right influence, not counting regional governments in some countries. This translates into the return of policies that are suspicious of immigration, environmental legislation, feminism and diversity, as well as a trend towards renationalisation and Euroscepticism, and thus a weakening of European political convergence.

The cordons sanitaires once erected to isolate these extremist ideologies are a thing of the past. The PVV has the support of the liberal People's Party for Freedom and Democracy and New Social Contract, from the EPP; Brothers of Italy has the support of Forza Italia, which is also part of the EPP. The year 2000, when the far-right Freedom Party of Austria's entry into the government in Vienna was met with a tough response in the EU and a diplomatic blockade lasting seven months, seems a long time ago. Today, many political groups from the democratic arc that back far-right parties or accept their support are whitewashing such parties and therefore their policies. This enhances their image in the eyes of a part of public opinion who may have been wary until now and could lead to an increase in their electoral support in the future.

Yet perhaps the most significant consequence in the long term is the influence that far-right parties are having on those on the democratic right. These find it difficult to withstand the pressure and sometimes adopt similar policies to the extremists to stem the loss of votes to their right. More often than not this proves to be a mistake, as all they do is validate extremist viewpoints and, ultimately, people who are sold on a certain line always prefer to vote for the original over an imitator. But the fact remains, and the consequence is a slide to the right of parties that once passed as moderate, with the resulting difficulty reaching an understanding with parties in the political centre ground. Some have strayed so much from centrist positions and have gone so far in their ideological alignment with the far right that they could be regarded as far-right themselves.

In the European Parliament this situation arose in the last term, with a split in the ranks of the EPP. One section, led by the president of the parliamentary group, Manfred Weber, was more aggressive against certain socialist parties and tended towards tolerance of the far-right groups. The other part, more moderate, whose main figure was European Commission President Ursula von der Leyen, held a quite different view. Yet von der Leyen herself said after the last European elections that she did not rule out cooperating with some parties of that ideology that she considered more moderate,

such as Brothers of Italy, probably with thoughts on securing re-election. Those votes were not necessary in the end, as the Greens joined the traditional coalition of conservatives, social democrats and liberals. But it cannot be ruled out that on some occasions when the Socialist group objects, she may seek the support in the parliament of one or more far-right groups. And that could be a slippery slope, because that ideology is in fact a ticking time bomb that in the medium to long term may blow up the European project that it has cost so much to construct.

6. WHAT TO DO?

There is no point in lamenting now what could have been done in the last decade to block or impede the rise of the far right. That will only lead to melancholy. But it is possible to draw some lessons so as not to make the same mistakes again and – above all – take action to halt that growth and even reverse it if possible.

First, as we said earlier, it is crucial to win the culture war. The rise of the far right is to a large extent down to the neglect or feebleness of governments and democratic parties regarding information policies. It is necessary to win the narrative battle on matters such as the fight against climate change, immigration, racial and sexual diversity, the real equality of women, the social state and protecting the weak. The public must be provided with sufficient and continuous, clear and accessible information, with reliable data, facts and real figures across all media, including social media platforms. And it is also necessary to combat disinformation, fake news and manipulation across all media. The recent entry into force of the European Media Freedom Act could be an effective tool for these purposes, provided that national legislations swiftly and faithfully adapt to European law.

It is also essential to transmit to the public the need to move beyond nationalism towards the EU as the best guarantee of peace, freedom and progress for all. This will be tricky in countries where the hard right or far right is in power, form part of the government or support it with their votes. But even in these countries there will be democratic parties that can take on the task. What democratic parties or governments must not do is try to use the nationalist sentiments that always survive to some degree in society to their advantage. To do so is to help hatch the serpent's egg. We should not be on the defensive on this issue. It is very harmful to portray the European Union as a battlefield where the smartest and strongest politicians secure success and the weakest get nothing. When a leader of a Member State returns from a European Council meeting saying "I got this" for their country, or when a leader of the opposition reproaches them for failing to get it, they are presenting the EU to society as a kind of lottery or supermarket where one goes to vie with other countries to obtain advantages, not to build a common project. This

only compounds the sensation among citizens that the EU institutions are distant and beyond their responsibility, undermining their European identity.

The most important thing, however, is to reinforce social policies and policies that bring distributive justice. As we said earlier, certain sectors in society have turned to extremist parties in search of solutions and future prospects that democratic parties have failed to deliver. Problems such as housing, job insecurity or low salaries relative to the rising cost of living, which particularly affect young people, should be addressed with purpose to provide visible results in a reasonable time frame. Social assistance, especially for young people and the elderly, must be adapted to real needs. The communities most impacted by the arrival and establishment of immigrants must be compensated with a reinforcement of social services proportional to the new situation. Sacrifices deriving from environmental regulations should be compensated too. If that means raising the tax burden on those individuals and companies that can shoulder it, then so be it, clearly explaining what is intended and why. If citizens sense their concerns and needs are taken into account by governments and democratic parties – and there are prospects for improvement – they will feel no need to throw themselves into the arms of clearly anti-establishment alternatives, which will then only attract the most extremist and therefore be a tiny minority.

Lastly, it would be no bad thing if a consensus were to be reached among the EU members – or at least a majority – to promote a joint programme in values education to be taught from primary school spanning all levels. In some Member States it appears this aspect has been somewhat overlooked in favour of scientific and technical training. Societies need trained professionals from every field if they are to prosper, but they also need – and above all – common values and goals to maintain cohesion and be able to function as an organised and effective political body.

7. CONCLUSION

The rise of far-right parties in the Member States of the European Union is a stark reality. They have already entered several European governments, nearly always alongside other parties. And this rise has been ratified in the recent elections to the European Parliament. While in the latter case their success was not as great as feared, they made gains in most countries to become – counting the three parliamentary groups to have formed and non-attached MEPs – the biggest ideological tendency in the parliament, although their diversity and lack of unity prevents joint action that would be very dangerous for the EU. In any event, they are on an upward trend that does not appear to have peaked yet and there is a very clear risk of their support continuing to grow.

With them comes nationalism and a decline in European cohesion. They also bring populism, division and political tension that weaken social cohesion and the internal balance of the European states. The impact on the prospects for European construction and on political stability is still manageable, but it may not be the case in the future if the tendency continues to grow. And the results will be disastrous.

There is no avoiding the fact that this rise is a result of part of the European population's disillusionment with the mainstream democratic parties, which have failed to resolve their problems and – above all – offer reasonable prospects for improvement. This has been artfully exploited by demagogues who have no compunction about misleading people by offering apparently simple – but generally unworkable – solutions. Their rise is also probably a delayed effect of major crises like the Great Recession of 2008-2012 that impoverished broad swathers of the middle class, or the one brought on by the pandemic. And nor should we underestimate the influence of external factors, like Donald Trump's presidency in the United States – and the one to come – or the proactivity of Vladimir Putin's Russia.

The democratic response can be delayed no longer. And it must be firm and constant if we wish to stop this phenomenon from reaching dramatic proportions and getting out of control. European governments that are not yet under their influence must take effective measures to win the culture war – in the name of democratic values – and above all urgently and robustly implement the social and economic measures required to roll back the disaffection of large swathes of society who are not extremist but who have been pushed into supporting this type of party given the lack of solutions to their problems and credible hopes of improvement.

If this is done effectively enough, the present rise of the European far right will probably become a temporary phenomenon and support for it will fall back within the social and electoral boundaries in keeping with – under normal circumstances – its extremism. The European Union will then be able to begin moving forward leaning, undoubtedly, on the parties on the democratic right – which are as respectable as the rest – towards the construction of an ever closer union among its members and in defence of the human, political and social values that led to its inception and which are also the best guarantee of its future.

8. RECOMENDACIONES

1. To combat the rise of the far right in Europe it is necessary to take the culture war to the entire EU in the defence of democratic values, by all available means and with the required funding, including media and social media platforms, providing the public with truthful information

and real data to confront the demagoguery and manipulation of the facts that underpins its success.

2. It would be good for the Member States to agree on a joint values education programme, to be taught from primary school across every level, redressing shortcomings in certain countries or levels of education more concerned with scientific or technical training, which is by no means incompatible with the education in democracy essential for any organised and efficient society.

3. Strengthening social policies is vital to reverse the negative effects that crises like the Great Recession of 2008-2012 or the COVID-19 pandemic caused in broad strata of the middle and working classes. Problems such as housing, job insecurity or low salaries relative to the rising cost of living, which particularly affect young people, should be addressed with purpose to provide visible results in a reasonable time frame and stem the disaffection with democratic governance in increasingly large parts of these sectors.

4. The communities or sectors most impacted by the arrival and establishment of immigrants must be compensated with a reinforcement of social, health and educational services proportional to the new situation. Sacrifices deriving from environmental regulations – as in the agricultural or automotive sectors – should be duly compensated too, even if that means raising the tax burden on those individuals and companies that can afford it, clearly explaining what is intended and why.

Acrónimos

AfD: Alternative for Germany

ECR: European Conservatives and Reformists

ESN: Europe of Sovereign Nations

FdI: Brothers of Italy

Eurostat: European statistical office inside the European Commission

LGBTIQ: Persons who identify as lesbian, gay, bisexual, trans, intersex or queer

MSI: Italian Social Movement

EP: European Parliament

PfE: Patriots for Europe

EPP: European People's Party

RN: France's Rassemblement National (National Rally)

EU: European Union

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3

The *geopolitical position* of the *European Union*

by DOMÈNEC RUIZ DEVESA

1. INTRODUCTION

An analysis of the EU's geopolitical position requires reviewing the space in which it operates and the assets at its disposal to project its power and influence beyond its borders. Projection that should aim to preserve the European social model, namely the world's foremost combination of political freedom and civil rights, social welfare and economic prosperity, to which we should add environmental sustainability.

This is the chief of interest of European foreign policy: to defend and deepen this particular model, which is in keeping with promoting across the world the values that inspire it, along with global governance based on rules and international law.

Economic prosperity through gross product growth, within the planet's ecological limits, enables the redistribution of income and the funding of social policies. In turn, reducing inequality and social justice serve to preserve liberal democracy. The EU's economic and technological might is also necessary to execute its external action effectively (including the maintenance of its extensive network of delegations across the globe) and to develop a strategic autonomy that ensures a certain level of self-sufficiency in a series of essential and strategic goods (including energy, food, medicines, computer systems, particular industrial components, and security and defence).

2. THE GEOPOLITICAL ENVIRONMENT

The most immediate geographical and geopolitical environment in which the EU operates is fraught with threats and therefore the most challenging it has faced since the end of the Cold War. Putin's war of aggression and imperial conquest in Ukraine has wrecked the European security architecture built on the Helsinki Final Act at the end of the 1970s, as well as other agreements signed in the 1990s following the dissolution of the Soviet Union, such as the Budapest Memorandum (by which the Russian Federation vowed to defend the territorial integrity of Ukraine no less) or the Partnership for Peace between NATO and Russia, signed by Presidents Clinton and Yeltsin. The negative influence of Putin's Russia is also being felt inside the EU itself, with constant sabotage or disinformation operations, not to mention it has an ally that sits at the European Council table (Hungarian Prime Minister Orbán, who is also responsible for his country's own slide into authoritarianism).

The departure of the United Kingdom from the EU, clearly more damaging to Great Britain as it cut itself off from its main market, has also reduced Europe's strategic and military depth.

The radicalisation of the Republican Party under Donald Trump raises doubts about the permanency of the transatlantic bond and of NATO itself.

The conflict between Israel and Hamas, along with the toxic role played by the Iran of the ayatollahs, is an obstacle

to the stability and prosperity of the European Union's southern neighbourhood (the Mediterranean and Middle East), where the hopes for democracy the Arab Spring inspired appear to be well and truly forgotten (Egypt, Tunisia, Algeria). Authoritarianism, the action of terrorist groups and Russian interference persist in the Sahel.

Meanwhile, China still cooperates with Putin's Russia, as it bolsters its military and naval power in the Indo-Pacific region and continues to increase investment and loans in sub-Saharan Africa and Latin America. In the wider Global South (Brazil, India, South Africa and so on) the EU is finding it extremely hard to engage. This is exemplified by the initial lack of solidarity with Ukraine and heightened by these countries' perception of a "double standard" in the different treatment the Europeans are giving Russia and Israel.

Along with these geostrategic challenges, the EU needs to address a series of structural phenomena that also impact its geopolitical position, either because of how they relate to its environment (take, for example, the link between irregular immigration and climate change or the situation in the Sahel) or because of their impact on the internal dimension (rising inequality, deindustrialisation, demographic winter, rural depopulation, digitalisation, artificial intelligence, etc).

As a result, the electoral growth of extremist and populist political forces (which tend to be Eurosceptic or Europhobic) sociopolitical polarisation and the instability of government coalitions hamper the EU's internal political cohesion and decision-making, which in turn impacts the effective pursuit of the Common Foreign and Security Policy.

3. THE GEOPOLITICAL ASSETS OF THE EU

What resources does the EU have to navigate this immediate environment? Although it accounts for no more than 5% of the global population, the EU is in possession of important assets with which to sustain its role in the world, which despite the evident decline in respect for international norms and international peace and security, is still an essentially globalised and interdependent planet.

The EU has the largest and most developed internal market, whose rules have become the de facto international standards by which multinational companies abide (Bradford, 2020). Europe is a trading and exporting power. The euro is the world's second reserve currency. It also has the capacity to generate additional gross domestic product (GDP) growth, which is crucial to funding its social model and its external action.

The trajectory of its rate of economic growth and productivity is a matter of debate. On the one hand, it has been noted that in 2007, just before the global financial crisis, the European economy was 10% bigger than America's, while in

2022 "it was 23% smaller" (Política Exterior, 2023). In this period, according to the same source, the EU economy grew by 21%, while the US economy did so by 72% and China's expanded by 290%.

Darvas (2023), however, recalls that these percentages are calculated in dollars and at current prices, which in turn depend on fluctuations in exchange rates and local prices. Using GDP data measured by the Purchasing Power Parity method, the European economy in 2022 was only 4% smaller than America's.

Be that as it may, Europe is still trailing the United States as an economic power, despite comprising an area of greater population. A slow process of convergence with the United States in terms of GDP per capita can be observed. European income stood at 67% of the US figure in 1995 and at 72% in 2022 (Darvas, 2023). According to the same author, this process of convergence can also be seen as of 2005 in terms of GDP per worker, and above all in GDP per hour worked, which shows an improvement in productivity per hour worked in the EU (on average, people in Europe work 79 hours fewer a year than in the United States).

Scientific and technological development is fundamental both to increase productivity, and therefore economic growth, and to boast advanced security and defence capabilities in a geopolitically hostile world. In terms of innovation capacity, Europe is a world leader in the fight against climate change and the development of technologies in this sector, but not only that. According to the Global Innovation Index, in 2023 five European countries (Sweden, Finland, the Netherlands, Germany and Denmark) were among the top ten (all of them from north, however). According to the European Commission's European Innovation Scoreboard (2024), innovation in the EU improved by 10% compared to 2017.

That said, in key fields such as digitalisation or artificial intelligence, the United States and China are formidable rivals. None of the big tech firms is European. One think tank says, "American and Chinese multinationals share the whole cake that goes from electronic components (chips, mobile phones or computers) to app development companies, websites or e-commerce" (Política Exterior, 2023).

Lastly, the EU also has important institutional resources, though they are underdeveloped (a political system of its own, the Common Foreign and Security Policy, the High Representative for Foreign and Security Policy, etc). It also has the military capabilities of each Member State, albeit functionally fragmented into 27 systems, with the resulting problems of interoperability, economies of scale, planning and coordination, and so on.

4. ENRICHING EUROPEAN ASSETS

In view of the above, one can conclude that there is considerable scope for improvement in Europe's economic position compared to the United States. As

far as its technological position is concerned, the challenge is even more pressing in comparison to both the United States and China.

The European economy suffers from a series of weaknesses. Demographic decline has led to an ageing workforce but also a labour shortage in many different sectors. Nor has the EU developed the full potential of its single market (Letta, 2024) owing to factors such as: fragmentation into 27 national research systems; the lack of integration in the three key sectors of finance, telecommunications and energy; persistent barriers to intra-European service provision; smaller sized European companies compared to US and Chinese firms, in a framework of unfavourable application of European competition rules compared to foreign multinationals; different tax rules; and excessive regulation, particularly due to regulatory fragmentation in the context of the multilevel governance that characterises the EU. Other prominent factors adding to Europe's economic problems are related to higher risk aversion when it comes to financing entrepreneurial ventures and less fluid relationships between academia/science and business (Véricourt, 2023) as well as the brain drain to the other side of the Atlantic.

Poor financial integration is a particularly significant problem. The unfinished projects of banking union (there is still no European deposit guarantee fund) and capital markets union constitute a huge disadvantage in comparison to US financial markets. For one thing, private investment is lower in Europe, but also a part of European savings – estimated at €300bn a year – is diverted across the Atlantic (Letta, 2024). The same report proposes creating a true "Savings and Investment Union" and consolidating the European public debt instrument created to fund the European recovery plans. The possibility of issuing Eurobonds on a permanent basis would serve four purposes: reinforcing the euro as a geopolitical asset; funding the economy's and society's green and energy transition (whose annual cost is estimated at no less than €0.5tn), which means completely eradicating our dependence on fossil fuels from Russia; consolidating technological leadership in renewable energy; and the launch of fiscal union, since the repayment of this debt should lead to the introduction of new European taxes.

In the energy field, the war in Ukraine has furthered the goal of reducing reliance on oil and natural gas from Russia by turning instead to renewable energy sources, as well as liquefied gas from the United States and the Middle East. It has also revived the need to push for interconnections between Member States, including new green hydrogen infrastructure. The Green Deal and the Energy Union (and its necessary funding) would therefore appear to be a vital resource/asset for strengthening the EU geopolitically. Europe, as a continent that is poorly endowed with fossil fuel sources of its own, particularly oil and natural gas, has every interest – environmental reasons apart – in increasing investment

in solar and wind power to ensure security of supply.

That is why both the financial and energy/climate dimension are closely linked in the consolidation of a geopolitical Europe. The mobilisation of public and private capital is essential to fund the transition towards climate neutrality of the economy (including industry) and society. The Savings and Investment Union proposal, if it succeeds in retaining in Europe a substantial part of the €300bn a year in private capital that leaves the EU, plus permanent Eurobond issuance, could close the investment gap required to fund the European Green Deal.

The power of US and Chinese multinationals – of continental dimensions and often recipients of state assistance (see the Inflation Reduction Act, or IRA, in the United States) – requires a review of European competition policy and considering a European system of public assistance in place of the current national aid. The previously mentioned report by Enrico Letta also proposes a European Code of Business Law for firms operating in several Member States, as well as approving regulations rather than directives for single market governance, in a format of maximum harmonisation that will prevent states from adding requirements to those laid down in the EU rules. It should be possible to introduce a European version of the IRA, with direct EU subsidies for businesses and consumers that invest in renewable energy, as part of the European Green Deal and funded by Eurobonds.

Lastly, the EU must generate a common market for the defence industry, which is currently fragmented inefficiently into national champions operating in quasi-monopsonies. As a result, 80% of the weapons that Europe has exported to Ukraine were manufactured outside Europe, not to mention the inefficiencies arising from duplication and interoperability issues. It was very a positive step, then, when on 5 March 2024 High Representative for Foreign Affairs and Security Policy Josep Borrell and the European Commission presented the new European Defence Industry Strategy (European Commission and High Representative, 2024).

5. THE EUROPEAN DEFENCE SYSTEM[1]

In specific regard to the military field, enhancement should not be limited to deepening the supply side (the defence industry). While it is necessary to increase the contributions to the European Peace Facility administered by the Commission (depleted by the donations to Ukraine) and to activate the barely operative European Defence Agency (also due in part to insufficient funding and its intergovernmental nature) the consumers of this new "harmonised" weapons output should not only be the national armies, but rather actual European structures, for example the Rapid Deployment Capacity set out in the Strategic Compass.

High Representative for Foreign Affairs and Security Policy Josep Borrell has said that the first phase of European construction was the market, the second was the euro and that now we find ourselves in the third phase, which is foreign and security policy, including defence. For one thing, greater internal political cohesion would enhance our external projection. That is to say, the CFSP and CSDP would benefit in general from more streamlined, efficient and democratic decision-making, particularly in the Council. Any progress in the use of constructive abstention, supermajorities, passerelle clauses to activate qualified majorities in decision-making in the fields of fiscal policy, social policy, the EU's own resources, the MFF, and on CFSP and CSDP matters would strengthen the EU as a supranational political subject and its external projection. At the same time, improved decision-making on fiscal and financial matters is instrumental in obtaining the resources required to develop the European defence system (Eurobonds, following the example of the Recovery Plan, and new own resources necessary to repay them, but also the mobilisation of the European Investment Bank for defence industry projects). For another thing, the CFSP and CSDP are the new levers of European integration, as the single market and the euro once were in the past.

In any case, a war on EU soil, not to mention in our neighbourhood, is unfortunately no longer unimaginable. Given this scenario, and supposing NATO was not in a position to react for whatever reason, it would fall to the EU to do so, not least because there is a mutual assistance clause in the Treaty. But that would require capabilities and effective coordination among the 27 Member States. The problem then is a dual one: of collective action and resources.

We must equip ourselves with strategic and military capabilities of our own, even if we want to think of it as the European pillar of NATO. European military spending, divided into 27 Member States, is extremely inefficient because although it is very high even in comparison with the United States and Russia it poses problems of economies of scale and interoperability of systems. But we must also coordinate common financing and joint defence and intervention plans (strengthening the European Union Military Committee, creating a Headquarters, creating a European Military Academy), develop common standards, and have forces that can be mobilised under a European command such as the previously mentioned (and approved) Rapid Deployment Capacity, the Battlegroups, Eurocorps (even if it does not belong to the EU), and so on. We should therefore consider activating the mechanism in the Treaty to move

1. This section is based on the author's contribution to the report "Europa frente al espejo. Su papel en el mundo". Fundación Avanza Laboratorio de Ideas de Progreso (2024).

from the current phase of "progressive framing of a common defence policy" to "common defence" (namely a truly European defence system). A reform of the Treaties would also be the occasion to make progress on the pooling of capabilities, including modifying the current distribution of competences in favour of the EU (on planning and coordination functions, for example).

The European defence system would be composed of two levels: (1) the Rapid Deployment Capacity as an embryonic European army, which should gradually reach the target of 60,000 troops set at the European Council in Helsinki in 1999, with the possibility of Europeanising Eurocorps through Permanent Structured Cooperation; and (2) it would be complemented where necessary by national armed forces that can be mobilised and likewise integrated into a permanent planning and coordination structure led by the same General Staff. This would also require methodological standardisation, interoperability and so on – with NATO too. On this second level, the Member States would maintain their sovereignty to decide whether they take part in a mission or operation, but they could not block the rest, or the decision relating to level 1.

6. THE GEOPOLITICAL DIMENSION OF THE EUROPEAN INSTITUTIONS

Strengthening the EU's economic, business, industrial, technological and monetary assets is essential to achieve strategic autonomy and pursue an effective foreign and security policy. At the same time, the institutional assets need to be strengthened from a federal perspective, both to enhance internal political cohesion and to streamline decision-making on the Common Foreign and Security Policy.

A requirement of the recovery plan for Europe, in fact, is the establishment of a fiscal union, since the political agreement for its creation at the European Council meeting of July 2020 includes the introduction of new own resources (pan-European taxes) for the repayment of the debt issued. If, in addition, the European debt mechanism becomes permanent and the European Parliament takes part in the approval of the EU's financial incomes and Eurobond issuance, federal union will be a de facto reality, with the resulting consolidation of internal political cohesion.

The figure of the High Representative reached a new dimension in the period 2019-2024 thanks to the character and manner of Josep Borrell. The position has "de facto" become something more akin to a genuine European foreign affairs minister. This has been down to clear and firm stances on every issue (see Ukraine and Palestine), eschewing the lowest common denominator, including recourse to personal statements that represent a broad majority; incessant use of his prerogative of proposal to the Foreign Affairs Council; and a capacity to secure unanimous agreements, such as on sanctions packages on Russia. For

those same reasons, the creation of a defence commissioner would undermine the figure of the quasi-minister for foreign affairs and security.

If the European Parliament confirms her in the position, Kaja Kallas has a great opportunity to continue consolidating the post. Yet there is no greater guarantee than its institutional formalisation and moving beyond the right of veto, which has been particularly misused by non-cooperative partners like Viktor Orbán. In other words, the Treaty should invest the High Representative with the task of devising foreign policy, subject to approval by qualified majority or a new supermajority of four-fifths of the Foreign Affairs Council. Moving towards overcoming the veto is actually already possible in a strict reading of Article 31 of the Treaty on European Union (Ruiz Devesa, 2021), because in fact unanimity is not strictly required for all matters, at least not in the first instance, even if a default culture of consensus has prevailed in the Foreign Affairs Council. Indeed, the first section of the article establishes the general rule of acting unanimously on foreign policy, not counting abstentions unless they exceed the threshold of one third, in which case a decision is not adopted.

Yet the second section of the article – which is not currently applied literally under the culture of unanimity – establishes a qualified majority for defining positions or action relating to the Union's strategic interests and objectives previously defined by the European Council; proposals of the High Representative following a specific request from the European Council; and decisions implementing an action or position adopted by the EU, except for security and defence issues. There is significant room for manoeuvre here then, as there are many previously adopted actions or positions, including if we added the strategic interests and objectives defined by the European Council in accordance with Article 22 TEU. True, any Member State can block a vote for "vital and stated reasons of national policy", an obstacle that can only be surmounted – if the high representative fails to find a solution for the government in question – by, acting by qualified majority, referring the matter the European Council for a decision by unanimity. Ultimately, then, there is no escaping unanimity. But if the procedure of Article 31(2) TEU were followed to the letter, a government that proposes blocking a decision would have to be ready, announce it prior to the corresponding vote, state reasons of "national policy" and be singled out if it resorts to this measure systematically – with the resulting damage to its image.

It would likewise be worth trying to activate the "passerelle"– also provided for in Article 31 – which allows for extending the scope of the qualified majority to other decisions, except those relating to security and defence, but which requires a prior unanimous decision from the European Council. Hence the provision has never been activated, because those who consider themselves "losers" if they renounce the right of veto have no incentive to support it. The definitive solution

will come with a reform of the Treaties, so that moving beyond unanimity could be tied to trade-offs in other fields – a reform that could develop the supermajority mechanism as a compromise solution, as well as strengthen the position of the High Representative in the manner suggested above and invest the European Parliament with new financial and budgetary powers.

7. THE MAIN GEOPOLITICAL CHALLENGES

All these assets and resources – expanded and strengthened – should be placed at the service of a specific European geopolitical agenda. Without intending to be exhaustive, this agenda should include the following priorities:

A. Support for Ukraine. Expand the type of weapons and speed up delivery. Lift any restrictions on their use inside Russia, provided they are employed on military targets.

B. Develop a role as moderator between the United States and China.

C. Strengthen ties with Africa, particularly the African Union, and relaunch the Union for the Mediterranean with a view to creating a common market from Helsinki to Cape Town (possibility of an agreement with the African Continental Free Trade Area).

D. Conclude the agreement with Mercosur, separating the trade component from the rest if necessary.

E. Relaunch the peace process in the Middle East, backing a ceasefire and placing the Palestinian National Authority in Gaza, with a view to reaching a two-state solution.

Acronyms

ASAP: Act in Support of Ammunition Production

CFSP: Common Foreign and Security Policy

CSDP: Common Security and Defence Policy

EDA: European Defence Agency

EDF: European Defence Fund

EDIP: European Defence Industry Programme

EDIRPA: European Defence Industry Reinforcement through Common Procurement Act

EDTIB: European Defence Technological and Industrial Base

EEAS: European External Action Service

EIB: European Investment Bank

EIF: European Investment Fund

EPF: European Peace Facility

ESM: European Stability Mechanism

EU: European Union

EUD: European Union of Defence

HR: High Representative

MFF: Multiannual Financial Framework

MS: Member States

NATO: North Atlantic Treaty Organization

TEU: Treaty on European Union

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4

The next *institutional cycle* in the tenth legislative term (2024-2029)

Road map for future work on internal reforms

by FRANCISCO ALDECOA

OVERVIEW

1. General points: what are the main challenges to be addressed in the next five years?

2. Unfinished business from the ninth legislative term.

3. The results of the elections to the European Parliament of 6-9 June 2024 and their impact on appointments.

4. The political impact of the European elections in the Member States.

5. The European Council of 26 and 27 June and the Strategic Agenda 2024-2029: continuity with previous strategic lines.

6. The programme of the Hungarian presidency and possible surprises.

7. Conclusions: the tenth legislative period picks up where the ninth left off, with support for the need to reform the Treaties.

1. GENERAL POINTS: WHAT ARE THE MAIN CHALLENGES TO BE ADDRESSED IN THE NEXT FIVE YEARS?

We start from the idea that the tenth legislative period (2024-2029) will largely continue to address the main challenges it faced in the previous term, namely deepening and reforming the Treaties; enlargement; how best to defend Ukraine; and advances in global governance. To tackle the issue, we will begin by analysing the unfinished business from the ninth legislative period. Next, we will turn to the results of the elections to the European Parliament, particularly the impact they are already having on appointments, where the far right is not playing a significant role.

We will also cover the political effects of the European elections in the Member States. At one point there was great concern that while the situation had been saved in the European Parliament, the consequences were going to be felt in the Council. And it could transform the legislative term if there were heads of state and government from the far right, particularly in France. This was not the case. The Council will barely change and nor will there be a major impact among the members of the European Commission.

In the fifth section we will analyse the results of the European Council of 26 and 27 June, the last of the Belgian presidency, which, as well as discussing a road map for internal reform, approved the Strategic Agenda 2024-2029. Next, we look at part of the programme of the Hungarian presidency, which began on 1 July, and the possible surprises Viktor Orbán may have in store during his rotating tenure. Lastly, we come to the conclusions, where the key point is that, barring unforeseen events, we believe there will be continuity with the previous term.

2. UNFINISHED BUSINESS FROM THE NINTH LEGISLATIVE TERM

We are hoping the achievements of the ninth legislative period will continue into this tenth term. Primarily, we would like to see further progress towards tackling three major issues: (a) the vital reform of the Treaties via a European Convention or other means to enable federal deepening; (b) the resolution of the enlargement process for nine or ten states (if we include Armenia, whose parliament is presently considering a referendum on seeking accession to the EU); and (c) continued incremental support for Ukraine against Russian aggression. In addition, we should bear in mind how increasing emphasis is being placed on the resolution of the conflict in the Middle East. At the last European Council of June 2024, the possibility was raised of the EU recognising Palestine as a state.

It is important to note that in the ninth term the European Parliament made some extremely important decisions and, above all, took the initiative to address major problems. In the most difficult and awkward decisions, that was possible with 60% of the votes. We can, then, highlight the significance the previous parliament had in the ninth term, which leads us to think there can be a repeat of that in this tenth legislative period. The fear of change appears to be receding.

Particularly since we have not addressed a series of other matters, which we are not going to cover, such as the issue of immigration (with a package of five regulations) artificial intelligence (AI), social conditions and many other topics. We should not forget, however, that there are at least two pieces of unfinished business that must continue to be tackled with equal intensity. One is unquestionably the matter of the structural funds, where it is necessary to pursue vigorous policies that address the economic circumstances and, even more so, the additional difficulties arising from the war.

Second, there must be further, robust policies in support of Ukraine, from a political, economic, financial, humanitarian and diplomatic point of view, as well as others. While I am not among those who believe the war in Ukraine will last for many years, it will, however, continue to require a sustained effort, particularly if the United States continues to delay its support. Even more so should Trump win the US election, although the latest news of Biden withdrawing his candidacy and Kamala Harris's acceptance appears to have dispelled many concerns regarding this matter. The polls are already reflecting a change for the better for the Democrats.

One point on this subject: Trump may well not end up standing in the elections. The way I see it, not only for legal reasons – a democratic system should bar a president who has backed the storming of Congress – but also because his financial situation and a debt of over $500m in judicial penalties are going to make it impossible. We are seeing how the fictitious businesses he has created are plummeting in value. I echo the ob-

servations of some analysts who believe that the American capitalist system, the banks, will not pardon him and will refuse to extend him any more credit.

In any event, in Europe the emphasis is being placed on the dramatic consequences for us and the world if Trump secures the presidency, as it is assumed he would strike a deal with Russia and would not support the European position. I appreciate why this remains a popular argument, as it suits us to foster the development of European foreign policy and a stronger defence policy. The Trump factor helps us, though I do not believe it is a real threat with strong chances of success.

Another key piece of unfinished business is tackling the next enlargement. Over the summer of 2023 in particular it was considered essential to address the accession of six Western Balkan countries (five candidates plus Kosovo) and three from the eastern neighbourhood that have recently been incorporated into this policy. These three could increase to four, as Armenia's new situation since September 2023, in the wake of the total seizure of Nagorno Karabakh by Azerbaijan with Turkey's support, has woken the Armenians up to the realisation that their defensive alliance with Russia has not worked. They are currently considering joining the European Union.

Recently, on 22 July 2024, the European Council authorised €10m through the European Peace Facility – which was already being used in military support of Ukraine and Georgia – for the Armenian armed forces. In addition, visa liberalisation negotiations have restarted, which confirms Armenia's rapprochement and the possible staging of a referendum to facilitate its consideration in EU enlargement policy. On 11 July, at a summer course at the Complutense University of Madrid (UCM) held in San Lorenzo de El Escorial organised by the European Movement, Armenia's ambassador to Spain, Sos Avetisyan, confirmed this possibility and this shift in trend, despite the difficulties.

EU enlargement, which has been at a standstill for nearly ten years, is a hot topic again, particularly since Russia's aggression against Ukraine as of 24 February 2022. The EU gave its full support to Ukraine, which meant that in the European Council of June 2022 it also had to touch on a subject that had been sitting on the back burner: including the eastern neighbours – Ukraine, Moldova and Georgia – in the enlargement process, after the required changes. It goes without saying that Azerbaijan and Belarus have no chance of being included in any enlargement.

It was also necessary to step up the accession process for the Western Balkan countries: Montenegro, Serbia, Kosovo (despite still awaiting recognition from five EU states, Spain included), North Macedonia, Albania, and Bosnia and Herzegovina. Major steps have been taken to that end in the last six months. The aim is to see them join before the end of the decade, which means that the first ones should gain membership

during this tenth legislative term. The ambassadors in Madrid of some of these countries (Georgia, Moldova, North Macedonia and Ukraine) as well as Spanish diplomats assigned to those countries (Albania) confirmed this at the summer course mentioned above.

3. THE RESULTS OF THE ELECTIONS TO THE EUROPEAN PARLIAMENT OF 6-9 JUNE 2024 AND THEIR IMPACT ON APPOINTMENTS

We at the European Movement – both in Spain and internationally – were delighted to see the results of the elections to the European Parliament of 6-9 June, which defied certain media predictions. For one thing, parties that champion the European project held firm, so the chamber's composition in that respect will be similar, though slightly down on the ninth parliamentary term. For another, they confirmed our forecasts, gathered in the articles we published in the months running up to the vote, especially in May and June, in which we said that Ursula von der Leyen could be re-elected for a second term as president of the European Commission, given her good performance.

The first effects of the outcome of the elections can be seen in the proposal for the appointment of the heads of the institutions at the European Council meeting of 26 and 27 June, confirming the pact among the three big groups (centre-right, socialists and liberals). Ursula von der Leyen, whose party made gains, will remain president of the European Commission; the president of the European Council will be Portugal's António Costa, from the socialists. Roberta Metsola, from the European People's Party (EPP) will continue to be president of the parliament, though she will perhaps have to share the post with a socialist in the second half of the legislative period, as was the case in the ninth term. Josep Borell's replacement as high representative for foreign and security policy will be the prime minister of Estonia, Kaja Kallas, who belongs to the liberal group and has considerable prestige.

It is important to remember that alarmist reports and editorials published in the Spanish media about how important the far-right was going to become have proved mistaken. The results of these elections may have had certain national consequences, particularly in France, where legislative elections were called in view of the results, or perhaps in other countries. Ultimately, the elections in France have not had the impact that some had expected; in the second round the far right came third, behind the left and President Macron's party.

In brief, the EPP has risen from 179 to 188 MEPs, bearing in mind that previously there were 703 seats and now there are 720. The Socialists & Democrats (S&D) group lost two seats, falling from 138 to 136. In third place were Patriots for Europe (PfD), with 84 seats, founded by Orbán but which a large

part of the Identity and Democracy (ID) members, such as Le Pen's party, have joined and which Spain's Vox has entered too. Next came the European Conservatives and Reformists (ECR) group, with 78 seats and then the liberals of Renew, which dropped from 98 to 77, a loss of 21 seats.

Meanwhile, the Greens, who had 70 seats and now have 53, a loss of 17, appear to be ready to support von der Leyen's candidacy. Lastly, The Left group, which had 37 MEPs has risen to 46, largely thanks to the incorporation of Italy's Five Star Movement. There is also another new group, Europe of Sovereign Nations (ESN), which did not exist previously and has 25 MEPs; it is led by Alternative for Germany (AfD).

Looking at the makeup of the groups in the European Parliament, we can say that the far right – both the ECR and the successors to ID – will have only limited impact and capacity, as in the previous term perhaps even more so, since it has split into at least three groups, plus those sitting as non-attached Members, like Spain's Alvise Pérez.

In any case, the prevailing outlook in Spanish public opinion, sceptical about von der Leyen's prospects of a second term, which augured badly for the continuation of the work carried out with the support of the three big groups, proved to be incorrect. The election results rule out this possibility by a large majority. As a matter of fact, the EPP made gains and von der Leyen has consolidated her position, by a large margin. She has secured the support of the other two main political forces (socialists and liberals) and perhaps even the Greens. Now there is speculation that the president might win more support than in her previous investiture in the first round of voting in the European Parliament in July, perhaps with the abstention of the ECR, the group of Italy's Meloni.

In the election of the European Parliament president, Roberta Metsola won 90% of the valid votes cast. In the secret ballot to elect the president of the European Commission, meanwhile, von der Leyen won 401 votes, over 40 more than those required. Remember that five years ago she only obtained nine more than an absolute majority. This was possible because, as well as the big three parties (which together amount to 402 seats but there are always losses bearing in mind the ballot is secret), a large part of MEPs from the Greens voted for her, handing her this result. In any case, the majority was well above the one five years ago, defying the predictions of a large part of Spanish media.

The importance Spanish media gave to the role that Meloni might play has proven misguided. Despite good results, her capacity to exert influence over major decisions and, above all, the leaders' appointments has been virtually non-existent, contrary to what was assumed. She may end up designating an influential commissioner, with the rank of vice-president, but nothing more. Even so, the hypothesis that she might go so

far as to put forward an ally as candidate for the presidency of the Commission as an alternative to von der Leyen, like Mario Draghi, has evaporated with the results. Nor has there been the dialogue with the Commission president that some quarters were saying could have political consequences in the shape of an agreement between the EPP and the far right.

4. THE POLITICAL IMPACT OF THE EUROPEAN ELECTIONS IN THE MEMBER STATES

It is important to note that despite the exaggerated confrontation between the big two Spanish parties during the campaign, I believe it is safe to say that on the whole the MEPs, from both the Popular Party (PP) and the Spanish Socialist Workers' Party (PSOE), are voting in unison, and that also includes the one Spanish candidate from the liberals, the Basque Nationalist Party (PNV) MEP Oihane Agirregoitia. This is striking, although this situation is not new. The problem was that in Spain the debate revolved around domestic affairs, not Europe.

The second point to make is that, unquestionably, the elections have had a political impact in France, where the far right beat the government, although in the legislative elections it came third after the second round of voting in July. The appointee to president of the National Assembly is from Macron's party and the nominee to serve as prime minister is a moderate socialist, Lucie Castets. In Germany, while the government coalition took a drubbing, it was not overtaken by the far right. Although the Christian Democratic Union (CDU) won, if we take the three parties that make up what has been dubbed the traffic light coalition together, they would be in second place, ahead of the far right. In short, in some countries the results may impact their respective governments, and this could make the composition of the European Council and the Council of the EU trickier. But I do not believe it is a critical matter.

It is also important to point out that, while overall the far-right groups have grown, they lost clout in countries such as Portugal, Poland, Denmark, Finland and Sweden. On the whole, it must be emphasised that their capacity to exert influence over both appointments and, possibly, future policy will be much more limited than predicted by a good part of the Spanish media. The problem in Spain is that nobody clearly acknowledges that misperception and a good many among their audience have failed to realise that the results are not the ones they expected. It is clear from the appointment of the vice-presidents of the European Parliament and their committees: none have gone to PfE or ESN and only a few to Meloni's group the ECR. This means the cordon sanitaire is functioning.

Meanwhile, there is insistence in the media on the importance of Alvise Pérez as an exceptional and unprecedented phenomenon. This, however, is not the case. In Spain, given there is just one na-

tional constituency, it is relatively easy for these things to happen. There are several previous examples of candidates who, with no political background nor a clear idea of the European Union or the parliamentary initiatives that can be developed in that sphere, stood for election and performed well. I recall the case of the businessman José María Ruiz-Mateos, but there may be more.

The key takeaway, in any case, is the victory of political parties (conservatives, socialists and liberals) that for nearly 70 years have developed and deepened the European project of shared sovereignty, and which have forged solemn agreements in the previous nine legislative periods, spearheading the European project with ever deeper and more federal proposals. This was particularly clear in the ninth legislative term (2019-2024) where the von der Leyen Commission delivered impressive results, managing to tackle the COVID-19 pandemic with the Next Generation Fund – a clear instrument of de facto federalism – as well navigating the United Kingdom's departure and securing almost complete cohesion on Russia's aggression against Ukraine.

Similarly, it is important to note the results of the elections in the United Kingdom in early July, when Labour won nearly two-thirds of the total seats in the House of Commons. The Labour Party is the counterpart of those in the EU that try to advance the welfare state, striking a balance between the market, society and state, which the UK Conservatives were dismantling, largely as a result of distancing themselves from Europe. Apart from the effects this will have on relations with the EU, we can see they have a similar political programme to most of the European parties.

5. THE EUROPEAN COUNCIL OF 26 AND 27 JUNE AND THE STRATEGIC AGENDA 2024-2029: CONTINUING PREVIOUS STRATEGIC LINES

As we have said, the European Council of 26 and 27 June approved the appointments, continued unconditional support for Ukraine and the road map for future work towards internal reforms, among other matters, as well as the Strategic Agenda. The European Council highlights that to make the EU more robust and enhance European sovereignty it needs to lay the necessary internal groundwork and reforms to realise the EU's long-term ambitions and address key questions related to its priorities and policies as well as its capacity to act in the context of a new geopolitical reality and increasingly complex challenges.

According to the European Council, this work should advance in parallel with the enlargement process, since the both the EU and the future Member States must be ready at the time of accession. With this in mind, the Council has adopted the following road map, which should be incorporated into the European Commission communication on pre-enlargement reforms and policy reviews. And it

has made a call for the presentation – no later than spring 2025 – of in-depth policy reviews on four strands of action: (a) values, referring to the processes necessary to safeguard the rule of law; (b) policies to ensure the EU's long-term prosperity, competitiveness and leadership on the global stage and to strengthen its strategic autonomy; (c) the budget, in the context of the negotiations on the new multiannual financial framework, for which a proposal will be submitted by July 2025; and (d) governance.

It should be noted that in the European Council conclusions comment on the need to reform the Treaties was lacking. Similarly, there was no mention in the last European Council held during the Spanish presidency, in December 2023, or in the following meeting in Brussels in March 2024. In other words, this major issue is being sidestepped at present and it is unlikely to be raised in the Council of the EU under the Hungarian presidency.

Meanwhile, the Strategic Agenda 2024-2029 approved in the European Council of 26 and 27 June draws from the imperative of securing peace in Europe, building on cooperation, solidarity and common economic prosperity. These promises, a constant in previous declarations, remain the guide and serve as the basis for the construction of a strong and sovereign Europe. So much so that, throughout, it continues to pursue the goals of previous Strategic Agendas so far. The key points are as follows: (a) upholding European values within the Union, which means living up to our values at global level, and to that end it shall continue to be the strongest supporter of the international legal order; (b) a strong and secure Europe, ensuring a strong and coherent foreign policy, strengthening our security and defence and protecting our citizens; (c) a more prosperous and competitive Europe, strengthening the basis of our long-term competitiveness and improving citizens' economic and social wellbeing with the goal of ensuring the success of the green and digital transitions, promoting an innovation and business friendly environment. The Strategic Agenda ends with: "Our destiny is in our own hands. We have the talent, courage and vision to successfully shape our future. This Strategic Agenda is our joint pledge to unequivocally serve our citizens and fulfil our founding objective of peace and prosperity".

6. THE PRIORITIES OF THE HUNGARIAN PRESIDENCY OF THE COUNCIL OF THE EU AND POSSIBLE SURPRISES

The Hungarian presidency of the Council of the EU began on 1 July 2024. Its programme seeks to "make Europe great again", echoing Trump's motto. To do so, the presidency is guided by the Strategic Agenda 2024-2029, which steers the course of its work. The presidency's priorities are not so different to the Strategic Agenda. It champions reinforcing the common defence policy and advan-

cing a merit-based enlargement policy. It emphasises the need to stem "illegal migration" and the other points differ little from previous presidencies. It also places the emphasis on the organisation of the EU-Western Balkans Summit and on reinforcing the European Political Community, staging this forum's fifth meeting in Budapest in November.

In addition to these priorities, it is striking that in the few days he has held the rotating presidency Viktor Orbán has engaged in intense activity, sometimes quite controversially so. For one thing, he has visited Kyiv, which was a positive step since Orbán was always against assisting Ukraine. It was the first time he had been to Ukraine since the start of the Russian aggression and one of the first times he had greeted President Zelenskyy, taking a message of support.

Three days later, he travelled to Moscow. Little is known about what transpired in his talks with Putin and we can only suppose they touched on seeking peace with Ukraine. Representatives of the European institutions, including European Commission President Ursula von der Leyen, High Representative Josep Borrell and European Council President Charles Michel, reminded him that he had no mandate whatsoever for that journey or to address that subject. On top of that, between trips he attended a summit of the Organisation of Turkic States held in Azerbaijan in the territory of Nagorno Karabakh, where a representative of the Turkish Republic of Northern Cyprus was also present. The European institutions were not very happy about that either. In addition, on the weekend of 7 July, he travelled to China, with an unknown agenda. The following week, after the NATO summit, he had a meeting with Trump in Florida.

Judging by the start of Hungary's presidency we can say it is likely to be quite controversial throughout. On the one hand, it accepts the approved strategic guidelines for the next five years, but on the other, it includes issues and topics outside the agenda, which is characteristic of Orbán's desire for political prominence but for which he lacks the mandate. The question we should ask ourselves is this: will the Hungarian presidency serve to Europeanise Orbán's quite singular positions in the Council of the EU? Or will the opposite occur and lead him to drift towards using the rotating presidency to pursue his own policy?

A key question is whether, given his special relationship with Putin, he can foster the search for a solution to the Russian aggression, facilitating Moscow's withdrawal from Ukraine – though it remains to be seen under what conditions. In other words, will he enable a ceasefire and the pursuit of negotiations that can put an end to the aggression, or will he just add fuel to the fire? For now, one result is that commissioners are skipping presidency meetings and lower ranking European Commission staff are attending instead.

From the European Movement, we should point out that some of the national councils that form part of it, like ours,

called on the European Council President to skip the Hungarian presidency as it did not comply with the precepts of Article 2 of the Treaty on European Union. This, however, was not possible. On the other hand, while Orbán's action may be irritating, because it is happening in the second half of 2024 its impact on the political and legislative process is limited. The European Commission will not be appointed until November or December and therefore the legislative process of the new term will not begin until then. Nor will the president of the European Council take office until November or December.

7. CONCLUSIONS: THE TENTH LEGISLATIVE PERIOD PICKS UP WHERE THE NINTH LEFT OFF, WITH SUPPORT FOR THE NEED TO REFORM THE TREATIES

While there has been much media insistence – particularly from Spain – on a shift to the far right and how it will be hard for the European political project to continue, we do not see it this way. We believe the conditions are there to continue with the European project as a whole over the course of 70 years, especially since the progress made during the ninth legislative period.

Analysis shows that the impact of the far right has been minimal, both in the composition of the European Parliament, as we have seen, and in the appointment of the vice-presidents and committee members. The appointment of the president of the Parliament, Roberta Metsola, also shows there is a broad consensus on her position. Regarding European Commission President Ursula von der Leyen, there were doubts about her securing the required votes. Yet she garnered over 40 more than necessary, with the three mainstream groups and the Greens behind her, which meant she had no need to make any concessions in her investiture address, as some had feared.

For we at the European Movement, it is especially important that in the speech delivered on 18 July 2024 she stated: "We need an ambitious reform agenda to ensure the functioning of a larger Union and to increase democratic legitimacy. While reforms were necessary before, with enlargement they become indispensable.... We will of course focus on what we can already do, of which there is a lot. But we should be more ambitious. I believe we need Treaty change where it can improve our Union. And I want to work on that with this House".

8. RECOMMENDATIONS

1. The results of the election do not affect – or only slightly – the political composition of the institutions.

2. The tenth legislative period will in principle be much like the ninth term from the point of view of political composition, in the understanding that it will steadily change as a result of internal and international factors.

3. Publicise the fact that the impact of the far right on the elections and the composition is very limited, which means it will carry little weight.

4. The Strategic Agenda 2024-2029 is very similar to its predecessor.

5

European defence in a time of war

Advancing strategic autonomy to build a European Defence Union

by MERCEDES GUINEA LLORENTE

1. INTRODUCTION: HOW THE WAR IN UKRAINE HAS MADE EUROPEAN DEFENCE A PRIORITY

Defence is a hot topic in the European Union. In my contribution to the Foundation's Report on the State of the EU in 2023, I examined the impact of the war in Ukraine on the Common Security and Defence Policy (CSDP) and concluded that the direct threat from Russia had made defence a priority on the European political agenda (Guinea Llorente 2023). This is still true today, and is evidenced both at the national policy level within individual Member states and in terms of joint action by European institutions.

The CSDP is unusual in that, according to the Treaty on European Union, it is a competence of Member states but one where countries can decide to undertake joint actions using the intergovernmental method. In recent years, increasing insecurity in the international sphere has led Member states to assign more responsibilities to the EU in this area, breaking traditional taboos (Gros-Verheyde 2024). In this chapter, I will consider: the steps taken to develop the CSDP over the past year; how joint support for Ukraine has progressed; how existing commitments have been implemented; and what new joint decisions have been taken in 2024.[1] For reasons of space, I will focus in particular on the defence aspect of these issues and on new developments.

Russia's invasion of Ukraine has catapulted defence into the forefront of joint political action in the EU. The EU's leaders defined the impact of this aggression on European history as a "tectonic shift" (Heads of State and Government, 2022, p. 1). Since then, the development of a common EU defence policy has gone from being a historically controversial issue, characterised by the gap between ambitious declarations and minimal results (Hill 1993), to being an everyday topic where progress can indeed be seen.

War in eastern Europe has been a dramatic wake-up call for Europeans in a variety of ways. First, it has stirred them from the dream of a happy, peaceful world in which they had been slumbering since the end of the Second World War, which explains the low levels of structural investment in defence. It has made Europeans aware that our countries could fall victim to war again, at the hand of aggressive neighbours, and that we are not adequately prepared to protect ourselves. Second, the military assistance provided to Ukraine by Member states has meant that their own stocks of munitions and arms are at very low levels, endangering their own security. Third, the limitations of European industrial manufacturing capacity, designed for peacetime, have

1. Because last year's report on European defence (Guinea Llorente 2023) covered the period until June 2023, this report will analyse developments in this area from 1 July 2023 to 1 September 2024, to include the programme of the next European Commission due to the importance of defence in the next European legislature.

been exposed, making clear the need to invest in expansion and modernisation. Fourth, the war has exemplified the characteristics of modern warfare, requiring new approaches, systems and technologies, with an emphasis on innovation, and this means we need to be prepared for far more complex conflicts which also require the preparation of wider society. Finally, following the presidential election, it is clear that the United States will increasingly demand that Europeans take responsibility for investing in their own security.

2. AID AND ASSISTANCE FOR UKRAINE: THE GROWING CHALLENGE OF ACHIEVING CONSENSUS

The EU's political institutions have repeatedly affirmed their continuing support for Ukraine in its conflict with Russia, providing whatever is necessary because, "the best investment in European security is investing in the security of Ukraine" (von der Leyen 2024b:13). There are normative reasons, based on the values of the EU (Maurer, Whitman and Wright 2023) and also on the conviction that the conflict in Ukraine is a clash between two models: the liberal-democratic and the imperial-autocratic (Guinea 2024: 54). At the same time, there is an awareness of the importance of European and North American support if Ukraine is to defend its territory, as evidenced by the Russian advances during the winter of 2023, and the example of Avdiivka, at the lowest point of deliveries of arms and munitions by the country's western allies (Security Council 2024). Europeans, particularly in the north-east of the continent, fear that Putin could prevail and be rewarded for his aggression, something which would represent a threat to Europe as a whole. At stake in Ukraine is nothing less than the security of the whole of Europe (European Council 2024b:13).

For all these reasons, in the year under evaluation the EU's support for its Ukrainian partner has been maintained but it has become increasingly difficult to approve new rounds of sanctions against Russia and to allocate more funds to Ukraine, with discussions tending to drag out. In particular, since December 2023, the Hungarian government has repeatedly blocked new proposals, sometimes with the more or less explicit support of the Slovak government of Robert Fico. This is a consequence of the unanimous nature of decision-making on the Common Foreign and Security Policy (CFSP), giving any individual state a right to veto. Orbán has linked his repeated blocking of new sanctions, funds and the accession process to the release of EU funds withheld from Hungary due to violations of the Rule of Law and bilateral issues between Hungary and Ukraine. And Orbán's proximity to Putin raises the fear that he is also acting as a Trojan horse, defending Russian interests within the European decision-making framework. The unease of EU institutions and Member states with Hungary

reached a peak in July 2024 when, at the start of the Hungarian presidency of the Council of the EU, Orbán visited Moscow and Beijing, and also Florida, where he met Donald Trump. The Hungarian president claimed that these discussions were designed to promote the conditions for peace talks (Kovács 2024). However, other Member states refuse to allow him to represent them in foreign policy, not just because the rotating presidency has no function in this sphere from an institutional perspective but also because his position is contrary to the one that has repeatedly been agreed by the EU. In addition to its immediate practical impact, Orbán's actions discredit the international image of the EU, opening up a breach in what is meant to be a compact bloc. And Trump's victory in the US presidential elections will make it increasingly difficult to maintain European unity with respect to the war in Ukraine. Despite these challenges, between July 2023 and September 2024, three more packages of sanctions were approved, all designed to impede the Russian war effort. This might not seem like much compared to the previous year, but it is important to remember that there are fewer sectors left to sanction, and fewer economic relationships to suspend. On 18 December 2023 the twelfth sanctions package was adopted, prohibiting the import, purchase or direct or indirect transfer of diamonds of Russian origin (Decision CFSP 2023/2874). It was a challenge to adopt it due to opposition from the Belgian diamond sector, which was granted a period of time to adapt. This decision also banned the import of chemical products and other industrial goods such as copper and aluminium derivatives, which are vital to Russia's technological effort or represent significant added value for its economy, and added new names of individuals and companies to the list of those sanctioned.

The second anniversary of the invasion was marked by the approval of a thirteenth package of sanctions, although this was largely symbolic (Decision CFSP 2024/746). It added 106 individuals and 88 organisations to the list of those sanctioned, which now exceeds 2,000. For the first time, it included third-party companies due to their links with the Russian military industry and their involvement in sanctions-busting. Those named came from China, India, Kazakhstan, Serbia, Sri Lanka, Thailand and Turkey.

Finally, on 24 June 2024, after three months of work, the fourteenth package of sanctions was approved, aimed at liquefied natural gas, use of the Russian ghost fleet to circumvent oil sanctions, and equipment and technology for the battlefield (Decision CFSP 2024/1738). It also sets out specific legal measures to prevent sanctions busting, particularly through European subsidiaries. In addition, a further 69 individuals and 47 organisations were added to the list of those sanctioned, including people involved in the deportation of children, and companies specialising in evading sanctions.

There has been extensive debate about the effectiveness and appropriateness of

sanctions which is not easy to summarise. The Commission has made a significant effort to fight the evasion of sanctions, harmonising this offence Europe-wide (Directive EU 2024/1226). It is clear that the West's restrictive measures, although they have greatly reduced exchanges with the West and had a significant impact on the Russian economy, have not completely isolated Russia or destroyed its capacity to wage war. Instead, countries in the Global South and other partners in the Middle East and Asia have increased their ties to Russia. And in some cases their ties to the EU have also grown, creating the possibility of the triangulation of certain critical goods. This shows that not all states take the same view of the legitimacy of these restrictive measures, which is indicative of the increasingly fragmented world in which we live (Demertzis 2023). This demonstrates the need for the EU to step up its diplomatic efforts with other countries to explain its vision. And we also need to be realistic: it is very clear that some countries that are supposedly close to the EU, such as China, Turkey or the Central Asian republics, are playing a double game and helping to evade sanctions in more or less blatant ways (Gros-Verheyde 2024: 201-202).

Discussions to approve economic and military aid for Ukraine went on for several months, with final approval only being obtained in February 2024 (European Council 2024a). The negotiations had been very difficult from the start, in the light of the increasing challenge of obtaining resources to support Ukraine, and Hungary's use of its veto in December. Things could hardly have looked bleaker, given the stalemate in the US Congress to approve funds for Ukraine. Finally, the European Council approved a Mechanism for Ukraine with 50 billion euros for the period 2024 to 2027, consisting in 33 billion of loans and 17 billion of grants (European Council 2024a:1). This mechanism, designed to offer stable financial support for the Ukrainian state, could also draw on the profits from Russian assets frozen under the sanctions regime, another of the key decisions to be taken over the course of the past year. Some weeks later, the Council also agreed to raise the ceiling of the European Peace Facility (EPF) – an intergovernmental financial mechanism to fund CSDP actions and finance the arms that the EU supplies to Ukraine – by 5 billion euros (Council of the EU 2024a). This sum constitutes a new Ukraine Assistance Fund to continue supplying lethal and non-lethal military equipment to Ukraine and to fund EU missions. Hungary's approval was finally obtained with some difficulty, although the country continues to block payments by the European Peace Facility to Member states who have already delivered arms, as a form of blackmail to achieve its own goals (Reuters 2024). In total, up to September 2024, the EU offered Ukraine military materiel worth 43.5 billion euros (Borrell 2024).

Despite Hungarian obstruction, European arms continue to reach Ukraine but only very slowly, due both to the exhaustion of national stockpiles and

the incapacity of European industry to produce the munitions and other equipment needed for a war of attrition such as this at the necessary speed. The EU has noted that, of the million artillery shells promised in 2023, only 65 per cent have actually been supplied to Ukraine (Borrell 2024). The period under review has also seen a break with the long-standing reluctance to supply Ukraine with aviation (due to fears that it could be used to attack Russian territory). As a result, F-16s supplied by Member states are now protecting Ukrainians. The debate on the use of Russian assets affected by restrictive measures has been long and complex, and was finally concluded with the decision to use the earnings to support Ukraine without touching the capital, which would have been more problematic with respect to both international and EU law (Webb 2024). In April, an initial decision to allocate 1.4 billion euros of these earnings to the European Peace Facility was approved, allocated to providing Member states with military support, although part of this money goes directly to Ukraine to support its defence industry (Borrell 2024). In September 2024 work was underway on a second tranche of these earnings, to be allocated to funding Ukraine's defence industry.

The events of Summer 2024, with the Ukrainian advance into Russian territory in the Kursk region, has also opened up a new discussion at the European level regarding restrictions on the use of arms provided by EU members. Individual states impose conditions on the use of the materiel they make available to the Ukrainian armed forces, and many have stipulated that the Ukrainian government only use their arms to defend Ukrainian territory and not to attack Russian territory, out of fear of escalating the conflict. This has led to the accusation that the Europeans are forcing Ukraine to fight with one arm tied behind its back. Although the Council of the EU has discussed establishing a common criterion on this question (Borrell 2024), it is not up to the EU to decide on this issue as arms are provided by individual Member states; however, coordinated action is always positive.

With respect to EUMAM Ukraine – the mission to train Ukrainian military personnel – this has been maintained and consolidated, adapting to the challenges of modern warfare. To date, 60,000 military personnel have been trained, with the Council having approved the goal of training 75,000 troops by the end of 2024 (Borrell 2024). And the possibility of participating Member states training Ukrainian forces on Ukrainian soil has been raised. This would save costs and would improve both speed and effectiveness, but it raises the risk that trainers could be attacked by Russian forces. For the moment, a small coordination cell has been opened in Kyiv, with the aim of improving joint work with other bodies that also deliver training, such as NATO.

A new development during 2024 was the signature of treaties on security guarantees with Ukraine, designed to provide long-term support for the country

in its efforts to defend itself and to guarantee its sovereignty and independence in the face of attempts to destabilise it. This new form of support had been agreed previously at the G7, which called for the signature of bilateral agreements between all its members and members of the Euro-Atlantic Community (G7 2023). The aim is to structure bilateral support around shared objectives: military and security assistance, including development of the Ukrainian defence industry; strengthening Ukraine's economic and political resilience; and supporting Ukraine in meeting its immediate needs deriving from the conflict. On 27 June 2024, the EU and Ukraine signed an agreement setting out all the military measures and other types of assistance that the EU is already providing, along with its political commitment to transformation and the future accession of Ukraine to the EU (European Union 2024). Member states, for their part, have continued to negotiate and sign their own security commitments, which include bilateral support, along with the multilateral support agreed at the EU level and in other international bodies. Spain signed its agreement on 27 May 2024 (La Moncloa 2024). These treaties give credibility to the firm, ongoing and long-term commitment of the EU and its Member states to Ukraine by giving legal form to the principles of "how long it takes" and "whatever it takes" so often repeated by European leaders. And this commitment has as its ultimate expression the promise that once the conflict is over Ukraine has a future in which preparation for EU membership is a part. At the same time, there has been criticism of the lack of ambition of these security commitments to enable the effective incorporation of this country and the need for these commitments to be converted into actual guarantees (Blockmans 2024).

The other great political innovation has been the real and effective start in June 2024 of negotiations for Ukraine's accession to the EU along with Moldova. Although the European Council had already granted candidate status to Ukraine in June 2022 (European Council 2022:4), formal approval of the opening of the negotiating process was delayed due primarily to its being blocked by Hungary. Finally, in December 2023 the European Council approved the start of negotiations (European Council 2023:5) after which Chancellor Scholz persuaded Orbán to absent himself while the vote was taking place, so that the Hungarian leader effectively abstained from an otherwise unanimous decision (von der Burchard 2023). However, this does not mean that Hungarian obstruction is over, as all decisions relating to the accession process must be taken on a unanimous basis.

The Intergovernmental Conference on the accession negotiation was formally called at the end of June 2024 (Council of the EU 2024b), starting with the chapter on "fundamentals", that is, the key values and elements of the democratic and economic model that all states must respect if they are to be admitted to the

EU. The negotiating framework approved by the Council places special emphasis on the Rule of Law, fundamental rights, strengthening democratic institutions, reform of the public administration, independence of the judiciary and the fight against corruption, making it clear that "progress on the fundamentals cluster will determine the overall pace of the negotiations" (Council of the EU 2024b). It is absolutely clear that there is no wish to repeat the experience of Hungarian accession, which was based on weak acceptance of European democratic values, and that, despite the pressures of the conflict, the EU is not prepared to incorporate Ukraine at any price, without all the necessary democratic guarantees.

This determination strikes me as positive and, as we concluded previously (Guinea, Rodríguez et al. 2023), I am convinced that Ukrainian accession should not be accelerated as a geopolitical tool to be used against Russia, as this entails the serious risk of weakening the whole European project. Before the expansion can be achieved, Ukraine must undergo profound transformation, including a peace agreement and a framework of coexistence with Russia. And the institutional system of the EU, its finances and its principal policies must also be thoroughly revised, as the current model does not ensure the incorporation of existing candidates. The European Council is aware of this problem, and has established on its strategic agenda for the 10th legislature the objective of undertaking "the internal reforms necessary to ensure that our policies are prepared for the future and funded sustainably, and that EU institutions continue to operate and act effectively" (European Council 2024b:17). Common sense would appear to have won out over calls for fast-track accession.

In its response to Ukraine, the EU has opened a new chapter in European integration by linking the EU's expansion to its capacity to stand up to Russia and its future as a geopolitical actor (Koval and Vachudova 2024). Despite the overriding political will, clear weaknesses are also evident, both in the sphere of defence capacities and with respect to the fragility of the decision-making processes.

3. CONSTRUCTING JOINT CAPACITIES: IMPLEMENTING THE STRATEGIC COMPASS

Both the war and deterioration of the security context explain why the European Council and other EU institutions have dedicated so much time and political effort to developing the CSDP over the course of 2024. In this respect, implementation of the Strategic Compass, adopted in 2022, has made sustained and satisfactory progress, as set out in the annual report (EEAS 2024). It appears that the traditional tendency of the CSDP to formulate grand objectives which it then fails to achieve has been reversed, due to the challenging security panorama in which the EU currently finds itself. In October 2023 the European

Defence Industry Reinforcement through Common Procurement Act (EDIRPA: Regulation (EU) 2023/2418) was finally adopted: this is a short-term instrument to strengthen Europe's defence industry through common procurement. A budget of 300 million euros was created to partially reimburse the common procurement of military equipment and materiel by at least three Member states. This makes it possible to fund a percentage of the total expenditure on the purchase of equipment determined by the Steering Board of the European Defence Agency and produced in the EU, following prior diagnosis of the critical capacities to be prioritised. The objectives are to strengthen the European Defence Technological and Industrial Base (EDTIB), to reduce the equipment deficits of Member states, to promote common procurement, to strengthen internal European demand, and to increase inter-operability between European equipment.

The Council has implemented a new Defence and Security Initiative in support of West African countries (Decision (CFSP) 2023/1599). This security initiative, with an initial duration of two years, establishes an assistance mission to Benin and Ghana to train local security forces, strengthening their capacity to contain terrorism, and training them in other needs such as border management and the fight against organised crime. It is funded through the European Peace Facility.

The Gaza crisis, which began in October 2023, is also at the root of a new military crisis management operation focused on maritime security: EUNAVFOR Operation Aspides. Launched on 19 February 2024, it responds to the need to address the deterioration in shipping conditions in the Red Sea and the Gulf region, due to Houthi attacks on western merchant ships (Decision (CFSP) 2024/583). In cooperation with other international and Member state initiatives, its objective is to maintain a naval presence in the attack zone in order to guarantee the freedom of international shipping. There has been plenty of criticism of the fact that the only joint action of the CSDP with respect to the terrible crisis in Gaza has been one designed to protect European commercial interests. The lack of a shared vision in this area has had a major impact on the external credibility of the EU.

The EU's crisis management operations in the Sahel have been affected by political turbulence in the region and by coups, and this has prompted a rethink of the EU's whole strategy in the region (Marangio 2024). Operations have been wound down in Niger and Mali at the request of the de facto authorities and due also to the departure of other Member state and UN operations. The deteriorating security and stability in the Sahel, often overshadowed by other more violent crises, poses a huge security challenge to the southern region of the EU, and this has not been met with the commensurate determination and sense of urgency.

With respect to joint capacities, 2024 has seen progress in the implementa-

tion of the Rapid Deployment Capacity, designing three operational scenarios, which it is hoped will be fully operational by 2025 (EEAS 2024:12). The first EU Live Military Exercise, a land and sea exercise, was held in Spain in October 2023, with the aim of strengthening the readiness and inter-operability of troops of the 19 participating Member states to implement crisis management operations (EEAS 2023). This builds on the Milex exercises held in Brussels annually to strengthen joint capacities in strategic planning and operations management. The staff and infrastructure of the Military Planning and Conduct Capability, an embryonic European general HQ, have been strengthened. And there has also been work on implementing the Action Plan on Military Mobility, the plan for coordination between European governments to permit the transfer of troops and military materiel throughout EU territory (High Representative-European Commission 2022). During the past year, there has been a focus on strengthening ground infrastructure for transport, investing common funds in the task of creating corridors which support the transfer of heavy military equipment. Also of note is the work being conducted to enable operation of the mutual assistance clause (Article 42.7, TEU) in a scenario of space-related threats (EEAS 2024:12). Member states seem increasingly willing to use this clause to respond to attacks and challenges linked to security in the broad sense, while leaving territorial defence to NATO. It is possible that at some point this wish not to compete with NATO will be revised, if that organisation loses credibility due to a reduced commitment by the United States to European security, as can be inferred from declarations by the US vice president (Vance 2024).

During 2024, the European External Action Service also strengthened the Single Intelligence Analysis Capacity to enable it to conduct threat analysis in 2025 and to build a common strategic culture among Member states (EEAS 2024:14). The EU Satellite Centre in Torrejón, Spain, is also being expanded to provide greater European geospatial information and intelligence. And significant progress has been made in both material and institutional capacities to counter hybrid threats, and to respond to a reality in which threats to and sabotage of critical infrastructure has increased, as have disinformation and interference in domestic political processes. A toolbox and equipment are being developed to support national governments to detect and respond to this type of threat, and there are also programmes to support EU partner states.

At the level of institutional capacities, the new Crisis Response Centre was declared operational, with the mission of providing a permanent crisis analysis and response unit, and to coordinate the necessary responses with Member states and institutions (EEAS 2024: 18). It is also concerned, for example, with the evacuation of European citizens from conflict zones and regions affected

by natural disaster, and played a key role in crises such as Sudan and Gaza. All of the progress reported and analysed in this section comes under the heading of the implementation of the Strategic Compass. It does not, then, constitute political innovation but it does demonstrate the commitment of institutions and Member states to provide themselves with joint defence capabilities. In other words, the EU has been true to its word. It is quite another matter whether the approach set out in the Compass, which was drawn up before the war in Ukraine, is up to the new challenges of today's world. This is why many prominent voices, such as Borrell, have called for that strategy to be revised and updated (Borrell 2024).

4. STRENGTHENING THE EUROPEAN DEFENCE INDUSTRY AND FUNDING COMMON DEFENCE

The period under review has seen the start of the adoption of measures to strengthen the European defence industry in light of its clear incapacity to manufacture the defence materiel and equipment required by Member states within tight timeframes. Not only did the EU fail to manufacture the million artillery shells it had promised to Ukraine; Member states also continued to spend more than 78 per cent of their defence investment outside of the EU, primarily in the United States (Maulny 2023:2). This only increases the EU's strategic dependence, as the party selling the arms reserves the right to authorise the use to which they can be put.

The European Defence Industry Strategy was published in March 2024, with the dual long-term objectives of supporting the competitiveness of European industry in this sector and of strengthening its capacity to respond rapidly to the arms manufacturing requirements exposed by the Ukraine conflict (High Representative-European Commission 2024). The strategy starts by addressing the challenges currently facing the EDTIB, and proposes a set of measures to ensure the availability and supply of competitive defence products. The strategy contemplates a timescale of ten years within which to work around four different and complementary objectives: strengthening the EDTIB through greater collaborative investment by Member states; improving the defence industry's response capacity; promoting a culture of preparation in defence across all European policy and strengthening cooperation with reliable partners. This strategy has been drawn up in a similar way to the Compass, and is the outcome of a lengthy consultation process involving Member states, the industry and other experts. The Commission and the High Representative have thus ensured that it responds to reality, reflecting not just the requirements of the defence industry but also what Member states are prepared to do.

The first step in implementing the strategy is approval of the European De-

fence Industry Programme, for which the legislative initiative was submitted by the Commission (European Commission 2024a) in March 2024, with the hope being that it will be approved by co-legislators in 2025, given the delay caused by the elections. This programme includes various measures proposed in the strategy. It sets out financial support of 1.5 billion euros for the period 2025 to 2027. This money will be allocated to strengthening the competitiveness and response capacity of European industry, ensuring the supply of defence products, and promoting cooperation and the modernisation of the Ukrainian defence industry. Because both the European Defence Industry Reinforcement through Common Procurement Act and the Act in Support of Ammunition Production were designed to be time-limited and to support Ukraine, this programme aims to structurally consolidate European budget support for the defence industry. If, in the 2023 report, we called for guarantees of sufficient support for industry to enable Member states to "buy European" (Guinea Llorente 2023:68) then this strategy is a promising step in the right direction.

When the difficult issue of strengthening the European defence industry is addressed, the question of funding inevitably arises, and here we refer not only to the availability of public funds, whether national or European, but also to private funding aimed at creating or strengthening these industries. That defence is now an absolute priority can be seen from the fact that it was one of only a very small number of areas to be upgraded in the medium-term review of the Multiannual Financial Framework (MFF), which closed on 1 February 2024. The EU has also created the Strategic Technologies for Europe Platform to invest in critical technologies in the defence sector through the European Defence Fund, increasing its allocation by 1.5 billion euros (European Council 2024a:4).

In January 2024, the European Investment Fund and the Commission created the Defence Equity Facility (European Commission 2024b). This instrument will be used to invest in private funds that present investment strategies in European companies developing defence and dual-purpose technologies. A budget of 175 million euros from 2024 to 2027 has been approved to promote private funds that support the European defence industry, in the hope that this initiative will have a multiplier effect, attracting private investment to projects and innovation in the defence sector.

Defence funding is a very delicate question, as investment by financial institutions in this sector is often viewed negatively and penalised by the markets. In recognition of this reality, the European Council asked the European Investment Bank (EIB) to review its policy of lending to the defence sector (European Council 2023:8). This decision led, in May, to a review of the EIB's policy of lending to support investment in dual-use technology (EIB 2024), significantly increasing the flexibility of this concept so that any

civil application makes it possible to categorise a military investment as dual-use. The hope is that this decision will have a significant effect on the rest of the European private financial sector.

However, this policy revision alone is insufficient and the issue of financing remains pressing. As a result, in June the European Council asked the Commission and the High Representative to draw up a document with public and private finance options both to strengthen the industry and to address shortfalls in essential capabilities (European Council 2024b:8). The Commission and the European External Action Service are currently working in this direction, and their initial report was published in March 2024 (European Commission 2024c).

The defence industry is clear that it not only contributes to the security of Europeans but is also a powerful vector of economic competitiveness for the EU, due not just to its capacity to create employment but also because of its innovative potential which can benefit the wider economy. Many key innovations in our daily life have their origin in the military sector, including the internet and GPS. This is why the two technical reports on how to strengthen the European economic model – the Letta report and the Draghi report – have dedicated a significant amount of space to the defence industry. The purpose of these reports is to offer a diagnosis and a roadmap for European policy in the upcoming legislature.

The Letta report, focusing on the internal market, reflects on the reality of defence markets that are completely fragmented, and proposes working towards a single defence market through legislative harmonisation, strategic planning and incentives for cooperation between companies using a gradual, staged approach (Letta 2024:70-73). The report also dedicates a chapter to the fact that endowing the EU with the defensive capacities it needs will require a major financial effort. It advocates exploring new pathways, from Eurobonds to using a special line of the European Stability Mechanism to finance defence spending in Member states, as occurred with health spending during the pandemic, and also to create incentives for private finance (Letta 2024: 74-75).

The Draghi report on the competitiveness of the European economy offers a similar diagnosis, underlining security as one of the three vectors for relaunching European competitiveness (Draghi 2024a:3). It is thus an absolute priority to strengthen the capacity of Europe's defence industry as a way of increasing this security (Draghi 2024a:55). In defence, the diagnosis is similar to Letta's: insufficient public expenditure, difficulties accessing private funding, fragmentation of the industry, a lack of coordination and standardisation, and a high level of dependency on non-EU suppliers (Draghi 2024b: 159-167). The report proposes a set of ten different measures, including the Europeanisation of supply chains to induce specialisation and economies of scale. It also argues for a focus on aggregated demand

by states, with an emphasis on projects of Europe-wide interest and on standardisation and inter-operability. And it advocates creating European champions through merger, specialisation and consolidation. Draghi also addresses the question of funding, but is more conservative than Letta, focusing primarily on strengthening the section on defence in the next MFP, creating a Capital Markets Union to guarantee private funding, completely reviewing the policy of the EIB and, over the long term, discussing the question of Eurobonds for defence (Draghi 2024b: 169). To date, discussion of Eurobonds has foundered on the express veto of countries such as Germany and the Netherlands, but it would not be the first time that the pressure of events led to the breaking of historic taboos. The Defence Industry Strategy is a recent creation and is still to be implemented. It could, however, be strengthened to include some of the elements proposed by these reports.

5. THE PROJECT OF THE 10TH LEGISLATURE: A EUROPEAN DEFENCE UNION

The informal European Council, called by the Spanish Presidency in Granada, began with reflection among European leaders on the future strategic agenda for the 2024–29 legislature (European Council 2023a). The first priority to be discussed was defence, with the objective of "strengthen[ing] our defence readiness" while reiterating support for Ukraine "for as long as it takes".

The strategic agenda, adopted by the European Council in June 2024, establishes as one of its three objectives for the next legislature to develop "a strong and secure Europe". One of the pillars to achieve this objective is to develop the CSDP: "Going forward, we will invest substantially more and better together, reduce our strategic dependencies, scale up our capacities and strengthen the European defence technological and industrial base accordingly" (European Council, 2024b: 16). It also advocates the inter-operability of national armed forces, strengthening European industry through an integrated market and common procurement, continued support for emblematic projects and the defence initiatives of Member states, and improving access to public and private finance. This strengthening of joint defence is complementary to NATO and would make a positive contribution to strengthening that organisation.

As one of the three objectives of the new legislature, it is clear that defence has become a priority, but it is also clear that there has not been a change of model or an innovative vision to open new pathways for cooperation and towards integration. Rather, we can classify the European Council's position as a very conservative one, which limits itself to pursuing the different lines of action adopted over recent years and, in particular, since the outbreak of war in Ukraine. There is, for example, no sign

of consensus among Member states to create a European armed forces, as has been proposed by some European leaders (Chazan and Brunsden 2018).

The strategic agenda of the European Council is the expression of that body's function, which is "to provide the Union with the necessary impetus for its development" and "define the general political directions and priorities thereof" (art. 15.1 TEU). It has to serve, then, as a generic guide for the action of the Commission in the next legislature and this is reflected in the greater ambition of Commission President von der Leyen's agenda with respect to its political priorities. In her re-election speech, she underlined the necessity of protecting Europe, and the need to "construct a true European Defence Union" (von der Leyen 2024). Her proposal is not exactly revolutionary: it involves relying on the framework of defence capacities of individual Member states and a model that is compatible with NATO. It proposes to continue on the route which began in Versailles, increasing defence spending, investing more together, buying European, and strengthening the internal market in defence. It advocates the need for joint projects between Member states, citing the European Sky Shield Initiative as an example. This proposal has already been put forward on several occasions, with different versions and models being sponsored by France, Germany and Poland (Abboud, Pitel and Foy 2023). Von der Leyen rightly says that the Sky Shield is just an example, as projects will only be viable if they come from Member states.

The Political Priorities of the Commission – the written programme – go into the characteristics of this European Defence Union in greater detail (von der Leyen, 2024b). Although there are no innovations in the model, there is an ambition to give greater impulse to existing approaches, reflected in the appointment of Andrius Kubilius as the EU´s first ever Commissioner for Defence and Space on 1 December 2024. This would have the mission of driving the development of the internal defence market, a European defence industry, and promoting innovation and the common procurement of defence capabilities by Member states, areas in which the Commission has competence and which are in line with the proposals of the two reports. The President also proposes approving, during the first 100 days of her mandate, a White Paper on the Future of European Defence (von der Leyen, 2024b:14), which will set out the programme of action for progress in this area. We do not know what this White Paper will contain; it might complement the Defence Industrial Strategy with concrete measures such as those proposed in the Letta and Draghi reports discussed above. The President also announced that she will try to strengthen EU–NATO cooperation, something which depends not only on the Commission and the Member states of the EU but also on the decisions of the Trump administration in the USA. The first priority she identifies is to streng-

then investment in defence to "spend more, spend better and spend together", building up the European Defence Fund (von der Leyen, 2024b:14). This investment will prioritise two objectives: the reconstruction, resupply and transformation of national armed forces; and investment in critical and advanced capabilities in land, air and naval combat, space-based early warning and cyber.

The second task involves industrial policy, strengthening the European Defence Industry Programme, as set out in the Communication for 2024 (European Commission, 2024a) to be adopted in 2025 (von der Leyen 2024b:14). This programme is designed to incentivise common procurement by Member states to address the most critical shortfalls in capabilities and to guarantee a long-term ordering scenario for European manufacturers. At the same time, in order to support European industry, it seeks to establish an internal market in defence for products and services, with the aim of strengthening manufacturing capacity and promoting common procurement.

The third element consists of Projects of Common Interest of the European defence union, which need to focus on the principle cross-border threats and should be designed together with NATO members, with examples being the European Sky Shield and a common cyber defence framework (von der Leyen 2024b:14). These projects would benefit from the regulatory and financial capacities of the EU, with the idea that they could be developed on European soil and using European capabilities as rapidly as possible.

For all these new initiatives, it is necessary to strengthen the EU's funding capacity (von der Leyen 2024b:14). To achieve this, President von der Leyen proposes exploring incentives to generate private investment, combined with working with the EIB to fund and reduce the risk of defence investments. But this priority would need to be debated within the framework of the next MFF, implicitly recognising that until 2028 the spending already approved will have to suffice, with no possibility of mobilising additional funds.

This programme was validated and endorsed by the European Parliament when it re-elected von der Leyen with 401 votes in her favour, 41 more than required (European Parliament 2024). This project embodies continuity rather than revolution, with its sole innovation represented by the Projects of Common Interest, which, as we have seen, depend exclusively on Member states. This caution is logical given that, unlike the previous Commission, von der Leyen will have no additional funding until the end of her mandate, and has to develop the bulk of her project with funds set out in the current MFF. In addition, she has to work within the limitations of the Treaty, which grants the Commission only limited competences in this area. It also makes sense that she has decided to continue with a range of initiatives that have only recently been implemented, as a result of the Versailles Agenda, and

that she is keen to ensure that an excess of objectives does not undermine the ambition of her programme.

6. CONCLUSIONS: EUROPEAN DEFENCE CONTINUES TO MAKE PROGRESS

During 2024, support for Ukraine and the CSDP have been high up the European political agenda. There was no alternative, given the ongoing and accelerating deterioration in the international situation and the high stakes in Ukraine. The war, moreover, puts a question mark against the notion of the EU as a purely civil power, forcing it – whether it wants to or not – to speak the language of power and to embark upon a transformation to add the tools of 'hard power' to its arsenal.

During 2024, the resolution of Europeans to support Ukraine remained firm, although some cracks have started to appear. The first, due to the need for unanimous decision-making, means that a single Member state can veto key decisions and delay support measures that are vital to Ukraine's resistance. In tandem, the depleted military stockpiles of Member states have set alarm bells ringing, as this will make it impossible for them to continue to donate arms to Ukraine. And the incapacity of the European defence industry to produce arms, munitions and equipment for Ukraine and for the national armed forces of Member states at the required speed has been confirmed.

Support for Ukraine during 2024 was evidenced by the approval of three new rounds of sanctions, measures to crack down on evasion, the maintenance of both financial and armaments support, and crisis management operations. New developments came in the form of bilateral and multilateral security commitment treaties, guaranteeing long-term support for Ukraine, cooperation with its defence industry and the opening of accession negotiations. With this, we are telling Ukrainians that, when the war is over, their future belongs with us, but before that moment arrives many issues will have to be resolved and reforms implemented, both in Ukraine and in the EU itself. There is, therefore, no question of a fast-track accession process.

The most significant aspect of the development of the CSDP – something we advocated in the recommendations in last year's report – is the effective implementation of the objectives and steps approved in the Strategic Compass. We have highlighted those steps that contribute to the creation of military and institutional capabilities to enable the EU to act independently and to defend itself. Given the significant deterioration in the security environment since 2022, it might be advisable to revise the Compass and make it more ambitious.

The innovations in 2024 have taken the form of the start of work in two areas that are key to strategic autonomy and common defence: strengthening the European defence industry and the

issue of funding, both from public investment by Member states and private investment. We have a recently approved Strategy for the Defence Industry which will start to be implemented as soon as the first Regulation is approved, and work is underway to identify ways to improve the support for private investment, such as the decision of the EIB. However, much remains to be done in these two areas, as the innovative and reasonable proposals set out in the Letta and Draghi reports show.

Construction of a European Defence Union will continue, as demonstrated both by the strategic agenda of the European Council and the programme of the Commission for the period 2024 to 2029. Defence will inevitably be a key priority for the EU. The majority of the proposals sketched out to date do not represent a radical break with the established model or a shift in the political direction of recent years, and this is positive because it ensures consistency. The most innovative of these are the Projects of European Interest proposed by von der Leyen, but in so far as these require major investment that will have to come from Member states, they will only be successful if states deem them a priority and take the reins of the project.

The incoming Trump Presidency poses a major test for European security and the role of NATO. However, both the winning and losing candidates shared the belief that Europeans should take greater responsibility for our security as US interests are not limited to Europe. We must therefore strive to reduce our existing capability shortcomings and become more capable of protecting ourselves, something that can only be achieved on a collective basis within the framework of the EU. The era of the EU as an exclusively civil power belongs to the past, giving way to a new stage of integration, that of a European Defence Union.

7. RECOMMENDATIONS

- To continue with military, economic and political support for Ukraine for as long as it takes. It is possible that this will require the EU to explore ways of overcoming the requirement for unanimous decision-making to get round the Hungarian veto.

- Although it may prove over-ambitious and unrealistic, seeking to activate 'passerelle clauses' or pursue limited Treaty reform, to shift from unanimous to qualified majority decision-making in the CFSP, thereby guaranteeing the political autonomy of the EU.

- Continuing to analyse and working to improve the framework of joint institutions to implement proposals for an ambitious, inclusive and realistic European Defence Union.

- Sustaining the ambition and commitment of institutions and Member states to continue to implement the Versailles

Agenda and the Strategic Compass, as has been done to date.

- Continuing to maintain an open, productive dialogue with all actors in the defence sector to formulate an ambitious and effective policy which also reflects the effective needs of the sector. This policy will be set out in part in the White Paper announced by President von der Leyen, but will also have to be included in a review of the Strategic Compass.

- Designing political mechanisms to democratise and raise the public profile of the CSDP, involving both the European Parliament and national parliaments in this democratic control.

- Maintaining coordination and cohesion between institutions, through the figure of the High Representative, so that the new Commissioner for Defence is not in competition with the European External Action Service or the European Defence Agency, and there is no duplication or overlapping of roles and responsibilities. Ensuring the alignment and complementarity of the White Paper and the Strategic Compass to strengthen the policy across the board.

- Continuing to strengthen cooperation between NATO and the EU to create beneficial synergies for both parties and to promote the idea that developing a European Defence Union as a European pillar of NATO is to the benefit of both organisations.

- Strengthening the channels of cooperation and understanding between Member states to promote joint planning and common procurement from European industry, with the aim both of strengthening inter-operability and building European manufacturing capacity in order to develop true strategic autonomy.

- Continuing to develop European institutional capabilities in the areas of: planning, command and control; intelligence; logistics; administration and joint training, with a view to conducting joint operations on an autonomous basis conjuntas con autonomía.

- Implementing the European Strategy for the Defence Industry, consolidating its content on the basis of the proposals in the Letta and Draghi reports to integrate the defence market.

- Making progress with respect to defence funding, whether from the public or private sector, to promote innovation and the development of critical technologies, providing Member states with the military capabilities they need and creating or strengthening defence industries.

- Within the framework of EU funding, 2025 should see the consideration of new income paths for European bud-

gets to enable the necessary funding to be found to develop an ambitious European Defence Union, with Eurobonds being our preferred option.

Acrónimos

CFSP: Common Foreign and Security Policy

CSDP: Common Security and Defence Policy

EDTIB: European Defence Technological and Industrial Base

MFF: Multiannual Financial Framework

EIB: European Investment Bank

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6

Rule of Law as a value of the *European Union*

by FRANCISCO FONSECA MORILLO

INTRODUCTION: CHANGE OF STRATEGY IN TERMS OF RESPECTING VALUES?

Since the Treaty of Amsterdam first introduced a mechanism of sanctions due to a "severe and persistent breach" of the values referred to in article 2 of the Treaty on the European Union (EU) in 1997, with symbolic value rather than thinking that it would be actually necessary to activate it, experience demonstrated that there is decline within the EU and among the candidate countries that make it necessary to develop an 'EU-specific toolbox' to promote these values, prevent drifts away from them and respond to breaches in them beyond the (ineffective) mechanism of article 7 TEU. In my two contributions to the Fundación Alternativas reports in 2022 and 2023, I wrote at length about all these instruments and I would refer readers to them (Fonseca Morillo, Francisco: "The Rule of Law Situation in the European Union" and "Situation of the Rule of Law in the EU. The annual mechanism").

At the dawn of a new institutional cycle, there are new elements which

might allow us to believe in a qualitative change regarding the nature and content of the various instruments in terms of respecting the EU Rule of Law, largely due to the deadlock from the procedure in article 7: united we stand.

The on-going enlargement process requires an internal review of the EU's instruments to address institutional attacks on or drifts away from EU values.

Consequently, I believe that the European Council of 27 June 2024 opened the door to this by adopting a roadmap for future works on internal reforms in the Union "to make the EU stronger and enhance European sovereignty" (European Council conclusion EUCO 15/24, p.12).

This Roadmap has four 'lines of action', following the Commission Communication on the reforms and revisions of policies prior to enlargement (COM(2024) 146 final of 20 March 2024), also commissioned by the European Council to present a report with operative elements by spring 2025.

The first block is entitled "the values,

including tools and processes to protect the rule of law", thereby voicing the importance and central role of this question right now in the EU and its Member States.

As the Commission stated in the aforementioned Communication (COM(2024) 146 final, pp. 4 and 5): "Article 2 TEU sets out the values on which the Union is founded, notably democracy, respect for human rights, including rights of minorities, and the rule of law. At times where these values face challenges, from both outside and from within the EU, it is crucial that the EU protects and upholds these values and its democratic principles...

The rule of law is one of those core values. It ensures that democracy, equality and fundamental rights are protected across the Union. It creates the conditions for judicial independence, fair and well-functioning justice systems,

combating corruption, organised crime and state capture, safeguarding fundamental rights, freedom of expression, including media freedom and pluralism, and preserving checks and balances including well-functioning democratic institutions and public administration, a free and empowered civil society and effective engagement of citizens —all of which are at the centre of strong democracies. The prevention of and the fight against corruption are crucial to safeguard the EU values and uphold the rule of law and the trust in those who govern and public institutions. They are also prerequisites for a solid economy, the proper implementation of EU policies and sound use of the EU budget.

Looking forward, the EU will need to reflect on how to further strengthen its tools to ensure the rule of law is truly and consistently upheld across the EU, beyond accession."

This long quote acts as a common thread for this work on the major milestones in respecting the rule of law in 2024 that will doubtlessly be laid down next year in specific proposals from the Commission on how to improve current instruments in terms of respecting the rule of law.

Beyond the rhetoric of the conclusions from any meeting of Heads of State and Government in the EU, it is clear that in the European Council of June 2024, European leaders adopted a strategic agenda 2024–2029 in which, when setting the political priorities of the EU, it was bluntly stated that: "Our values and the rule of law are our compass, both internally and externally. They are the foundation for a stronger, more prosperous and more democratic Union for our citizens" (EUCO 15/24, p. 14). As we saw above, it asked the Commission to present specific proposals to the European Council in spring 2025.

Consequently, it can come as no surprise that this question on how improving the protection of values and respect for the rule of law will be a core part of inter-institutional priorities that will be approved for the institutional cycle that has just begun this autumn, as announced by President Von der Leyen in her inaugural address before the European Parliament on 18th July: "European democracy and economy relies on the rule of law. It makes our society work

and ensures that rights are defended, corruption is punished, and contracts are enforced. The rule of law does not have an end point. Challenges exist right across Europe, at different scales and with different issues." (Europe's Choice. Political guidance for the next European Commission 2024-2029, Strasbourg 18 July 2024, pp. 29 and 30)

These are clearly the priorities for the line of action that will guide the Commission's proposals on this matter in spring 2025, working from the premise that strengthening the rule of law will be core daily work, improving its monitoring, and reinforcing the system of institutional counterpowers. In particular, they state:

- The Rule of Law Report has demonstrated how dialogue can help progress. Now the report must be consolidated, and we must make sure that all questions are considered throughout Europe (including candidate countries) and adding a single market dimension to the report to address questions relating to the rule of law which affect companies.

- The defence of the rule of law using the Union's financial weapons, because respect for the rule of law is imperative for EU funds. EU financing will also be devoted to national measures, such as fighting corruption and protecting the EU's financial interests. In other words, the future long-term budget should be equipped with solid safeguards for the rule of law, including the conditionality regulation, applicable to all EU funds.

- Furthermore, guarantees should continue to be made concerning compliance with the legal principles and rules by means of infringement procedures and the reinforced effective application of the mechanism of article 7 in a future, enlarged Union.

This thereby heralds the perspective of a qualitative change in the EU's action in terms of protecting the rule of law, for the purposes of responding in an effective, proactive and legally binding way to Europe's challenges in this cycle. The Commission is aware of this, as clearly highlighted in its Communication on 20 March 2024.

Firstly, by emphasizing the expansion context: "Compliance with those values and principles is a condition for the enjoyment of all the rights deriving from EU membership. It must continue to be a priority of the EU to ensure a deep-rooted transformation in enlargement countries leading to lasting respect of democracy, equality and non-discrimination, fundamental rights, including children's rights and the rule of law, before and after they join the EU" (*Communication 2024/146, p. 4*).

However, it should not be forgotten that possible new instruments for protecting the rule of law cannot be finalist and focussed only on the candidate countries, because as the Communication states: "the EU has had to deal with significant challenges to the rule of law, including in Member States." (Communication 2024/146, p. 5)

Deep down both cases share a common element: the requirement to respect the values of article 2 TEU to become a member of the EU, as featured in article 49 of the same TEU, this cannot be limited to the 'before', they must also be guaranteed 'during'.

1. THE SITUATION OF THE RULE OF LAW IN THE EU IN 2024

This chapter focuses on the role and importance played by the mechanism as, from 2019 onwards, it introduces

an annual cycle of dialogue on the rule of law situation in the EU Member States and its consolidation as a core element so that there is an attempt from Europe to promote the values of the rule of law, prevent legislative, political and institutional drift that can erode it and, finally, be a key element to assess response measures to infringements of these values.

This does not intend to ignore the qualitative importance of the jurisprudence of the CJEU that has been applying its interpretation of article 19 TEU, according to which its task is to guarantee respect for EU Law and that this is in danger if States do not meet their obligation to guarantee effective judicial custodianship, condemning any States that attack the independence of justice, attempting to control it by the executive branch of power, particularly in Poland and Hungary, although setting a clear line of jurisprudence when faced with shifts of this type in any Member State.

Nor is it possible to ignore the change of the nature of protecting EU values brought about by Regulation 2020/2092 of 16 December on a general regime of conditionality for the protection of the EU budget (DOUE L 433 of 22 December, p. 1) and with the implementation of the national Recovery and Resilience Plans within the framework of the Next Generation-EU (*Regulation 2020/2094 of 14 December, establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis. DO L 433 I of 22.12.2020, p. 23*). Thanks to both these instruments, the EU has been equipped with two powerful mechanisms that allowed the Commission to freeze the payout of subsidies to Poland and Hungary due to lack of reforms that guarantee the independence of judicial power in these countries.

However, I am firmly convinced that, apart from developments in these fields, and what is referred to as the ineffective procedure under article 7 TEU, already mentioned in my contributions to the last two years of this Report on the State of the Union; the most important aspect would be to analyse the next year, which will see specific proposals that the Commission must carry out in compliance with the European Council mandate of June 2024.

Furthermore, I consider that, through the various sections and recommendations in these reports, and much more proactively in this Fifth Report from 2024, it is possible to analyse and assess all the elements that characterise the rule of law concept, understood as sub-principles that organise the relationships between a society and its government institutions, that oblige public powers to act within the framework of the law and submit their actions to effective judicial control. (*Friedrich ERLBACHER and Katarzyna HERRMANN: Fundamental values of the European Union: from principles to legal obligations; in the*

collective work "70 years of EU Law," Publications Office of the EU 2023. p. 46).

Obviously, the rule of law concept emanates from national legal systems, but it can be defined commonly at an EU level as that which "includes the principles of legality, implying a transparent, accountable, democratic and pluralistic, law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law." (*Regulation 2020/2092, article 2.a*)

This perception is not theoretical, it has seeped into European citizens' perception that the instruments available to the Union to guarantee respect for Article 2 TEU and, particularly the rule of law, proactively help to respect these values within each State. According to Eurobarometer, 89 % of citizens consider that respecting common values in the Union is very important, and 72 % consider that the European Union plays an important role in defending its own rule of law at a national level.

The annual rule of law report is the central instrument for this.

Getting to the crux of this chapter, on 24 July 2024 the Commission approved and published its Fifth annual Rule of Law Report 2024, in which it systematically and objectively examines the evolution of the rule of law in all Member States (*Communication by the Commission: 2024 Rule of Law Report. The Rule of Law situation in the European Union. COM(2024) 800 final*).

This Fifth edition, concluding the annual cycle of the Rule of Law 2023–2024, was published almost a month later than in previous years. A few voices, above all in the media and certain political gossip mills, tried to insinuate that this was a manoeuvre to smooth out the start of the EU's five-year political cycle after the European Parliament elections, aiming their barbs at a 'politically correct' stance from the Commission to neither create waves at the start of Hungary's six-month Presidency of the European Council on 1 July 2024 nor alienate the Italian prime minister's own government in Italy when appointing the President of the Commission. In Spain, some have even seen this slight delay as a last chance for 'Europe' to reach an agreement on the renewal of the General Council of the Judiciary.

However, having seen criticism in the Report regarding Italy and Hungary (and also Slovakia), it seems more objective to emphasise that this short delay, beyond possible calculations regarding prudence at the start of a new institutional cycle, was due above all to the complexity of the exercise and its new ambitions.

In this respect, it is important to mention that in this Fifth Report, the qualitative change lies in conceiving

this report, not as a purely procedural mechanism, but as a central element of an annual cycle which thoroughly examines the rule of law as an instrument of prevention, which makes it possible to promote dialogue and joint awareness on all matters relating to the rule of law in the European Union as a whole, with participation from all political, institutional and social players, as analysed subsequently in this text.

This chapter will attempt to comment on the qualitative changes that this Fifth Report provides to the rule of law situation in the EU in 2024:

- The enlargement of its field of study to include the candidate countries;
- New features in its process and methodology;
- Its inter-institutional insertion in activities regarding the European institutions in the field of their respective competences; and
- Analysis of its structure and recommendations.

2. LA AMPLIACIÓN DEL EXAMEN DE LA SITUACIÓN A LOS PAÍSES CANDIDATOS

As announced by president Von der Leyen in her speech on the state of the Union in September 2023, the annual cycle of the rules of law mechanism has been expanded for the first time to include the enlargement countries which have made the most progress in their membership negotiations, in an attempt to further boost their rule of law reforms.

This means that this year, Albania, Montenegro, North Macedonia and Serbia have been scrutinised in the same way as current Member States, because they are the Candidate States which are currently making the most progress in negotiations. These four States are in formal negotiations to join the EU in compliance with the procedure in article 49 TEU and with various open, or even provisionally closed, chapters (Communication from the Commission in 2023 on EU Enlargement Policy of 8 November 2023, COM(2023) 690 final). This report should be used to back up their reforms in matters of democracy and rule of law before becoming members, guaranteeing strict, long-lasting standards after joining.

This is doubtlessly important news in the annual cycle on the rule of law situation and once again foreshadows the need to guarantee 'constitutional' rules that ensure absolute respect for the values of article 2 as conditio sine qua non of accession to the EU. Furthermore, this would be independent of the point in time when they joined the Union.

Of course it is merely a first step, with clear short-term effects: both the EU-27 and the candidates will see themselves reflected in equal conditions in 'the mirror' of respecting the rule of law, also acting as a 'moment of truth' when negotiating the corresponding chapters within the

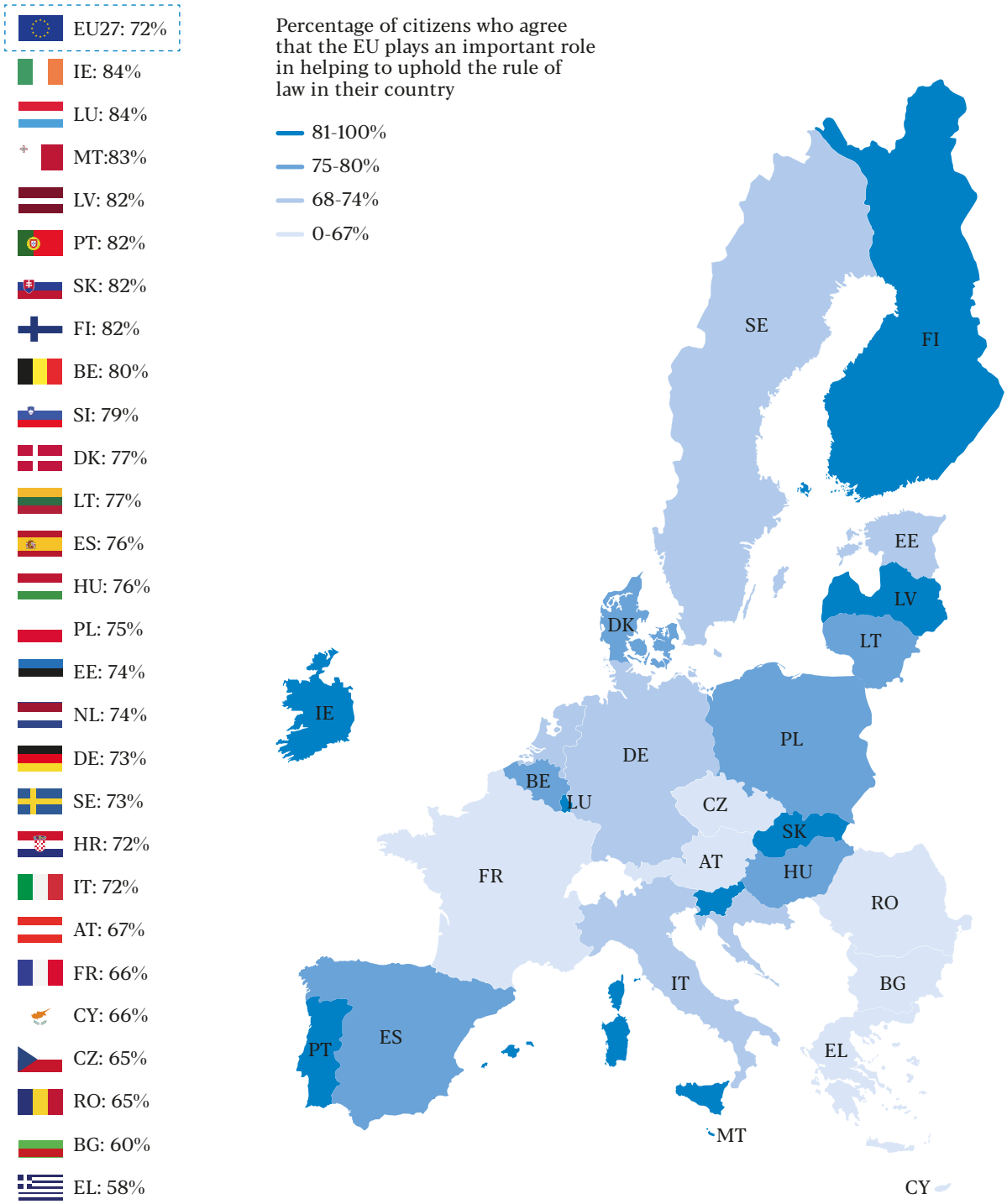


Figura 1: Special Eurobarometer 553, Rule of Law, July 2024.

Fuente: Elaboración propia.

framework of the individual accession negotiations. As we all know, the negotiations on chapter 23, out of 35, into which all the Intergovernmental Conferences on membership are divided: 'Judicial Power and Fundamental Rights', within the first pillar of any negotiation 'Fundamental Questions' are the most problematic, and consequently this 'Fundamental Questions' pillar, comprising 5 chapters, is the first pillar to be opened and the last to be closed in the respective Intergovernmental Conferences.

In the medium-term, this will doubtlessly help to facilitate specific proposals for internal reforms prior to enlargement. It is therefore best to highlight it as a qualitative new item.

In this sense, although respecting the rule of law is an obligation for all States, acquired when they join the European Union, to respect common values in article 2 TEU, the consequence of this commitment, acquired freely and voluntarily, is, as the CJEU has clearly stated in its sentence of 20 April 2021 in the case of "Repubblika v. Il-Prim Ministru", that "a Member State cannot modify its legislation so that it reduces the protection of the value of the rule of law, a value which is required in the terms of article 19 TEU." The Member States are thus required to ensure that, in the light of that value, any regression in their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of judges." (*C-896/19 ECLI:EU:C:2021:311*).

Furthermore, the Court itself has clinched this concept of valid result obligation for all Member States independently of when they joined, in its sentences of 16 February 2022 in the cases of Hungary/Parliament and Council (C-156/21) and Poland/Parliament and Council (C-157/21), by stating that: "Compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession... Whilst they have separate national identities, inherent in their fundamental structures, political and constitutional, which the European Union respects, the Member States adhere to a concept of 'the rule of law' which they share, as a value common to their own constitutional traditions, and which they have undertaken to respect at all times." (*ECLI:EU:C:2022: 97 and 98, respectively*)

Paraphrasing Julio Baquero Cruz, the great qualitative leap here involves guaranteeing that the required legal obligations according to article 49 TEU, to be able to join the European Union, must stand and can be called on as a requirement of constitutionality for the EU itself and *minima moralia* of its legitimacy (*Minima moralia: the Rule of Law, the Community Method and the Union budget, in Revista de Derecho Comunitario Europeo, vol. 72. 2023, pp. 431 and beyond*).

Although clearly stated by the CJEU in the three sentences mentioned here, solidly establishing, in the words of its

President, the principle that these values are the same for everyone —candidates and members— given that no State is more equal than others (*Koen Lenaerts: No Member State is More Equal than Others: the Primacy of EU law and the Principle of the Equality of the Member States before the Treaties. VerfBlog 8 October 2020 (https://verfassungsblog.de/no-member-state-is-more-equal-than-others/*), its declarative effect applied to specific cases submitted to its jurisdiction, must be translated into a clear principle in the actual Treaty and with operational consequences; and this can only be done by the 'owners of the Treaties' in other words, the Member States of the Union through the pertinent reforms of the Treaties.

3. PROCESS AND METHODOLOGY OF THE 2024 REPORT

Coming now to the process which led to the publication of this Report, it should be highlighted that the Rule of Law Report is the result of close collaboration with the national authorities and is based on various sources. As it was being written, all Member States and the enlargement countries were invited to contribute to the process, provide written information and take part in specific visits to the countries between January and March 2024. For these visits, the Commission organised over 640 meetings with national authorities, independent organisations and interested parties, including civil society organisations. Furthermore, the Commission debated the Report at a political level with the national authorities and governments, and with representatives from the national Parliaments. Before adopting this Report, the national authorities were given the chance to provide factual updates from their country's chapter.

The diagram, attached, shows the different stages within this annual cycle and how it represents the signal to start preparing the next Report. (*https://commission.europa.eu/document/download/4497423f-3cb7-4104-a47e-0975d21b3316_en?filename=128_1_58131_rol_cycle_factsheet_en.pdf*)

The 360º approach is also clear here, meaning that the cycle began in July 2023 when the Fourth Report was adopted, as the Commission began to prepare the Fifth Report. Consequently, the work to draw up the Sixth Report and the new annual cycle are already in progress. In autumn 2024, the European Council and Parliament will discuss monitoring on this Fifth Report, including the chapter structure for the next one and recommendations for each State, after which the Commission will begin to consult all the actors involved to prepare the 2025 Report.

It should be highlighted that the assessment in the chapters for each country has been drawn up according to a methodology, last updated in 2022, following wide debate among the Member States with a view to guaranteeing that the recommendations included in the

Report reflect the situation of the rule of law in each country plus how to improve on the weakest points around the four major lines of the Report, analysed further on. The country chapters do not claim to offer an exhaustive description of all matters related to the rule of law in each country but rather present the most significant progress in positive terms.

The assessment refers to the requirements of EU Law, including the results of the CJEU jurisprudence. Furthermore, recommendations and rulings from the Council of Europe provide a useful reference framework for the pertinent norms and best practices. This is not a 'name and shame' exercise, rather more an objective framework that offers clues for the States to improve the situation in terms of respecting the rule of law by following their own constitutionality parameters.

It seems clear that this report has become the central element of the strategy to respect the rule of law at an institutional level. This annual mechanism has become the corner stone to the dialogue with and among Member States, intensifying the contacts to do so, not only with governments, but also with the national parliaments and with representatives from the national judicial authorities and legal professions, and with outstanding representatives among social players and organised civil society at an internal level.

To do this and when applying the principle of loyal cooperation between European states and institutions, an essential role is played by the Rule of Law Network contact points, presided over by the European Commission, used to discuss the report methodology, the annual questionnaire prepared by the Commission, the 'stakeholders' who should be consulted, while constituting the reference forum to share best practices and experiences (*Network of national contact points on the rule of law.europa.eu*). The point of contact in Spain is the Secretary of State for the European Union.

4. THE ANNUAL CYCLE OF DIALOGUEON THE RULE OF LAW AND ITS INTER-INSTITUTIONAL INSERTION

This report, the fifth since it was announced by President Von der Leyen in her programme of priorities in 2019 has earned a central role in the European Union's toolbox for the Rule of Law. As this is an annual mechanism that claims to highlight deviations or policies that endanger respect for the values of article 2 TEU, for an Annual Rule of Law Dialogue acknowledged by all institutional players from the EU "creating a space for constructive political exchanges among Member States and for sharing best practice and lessons learned." (COM(2024 800, p. 4)

This perspective is crucial and implies that Member States and European institutions coordinate to organise an overall 'stock-taking' exercise that encompasses an on-going 'peer review' exercise with a clear time frame. Furthermore, because

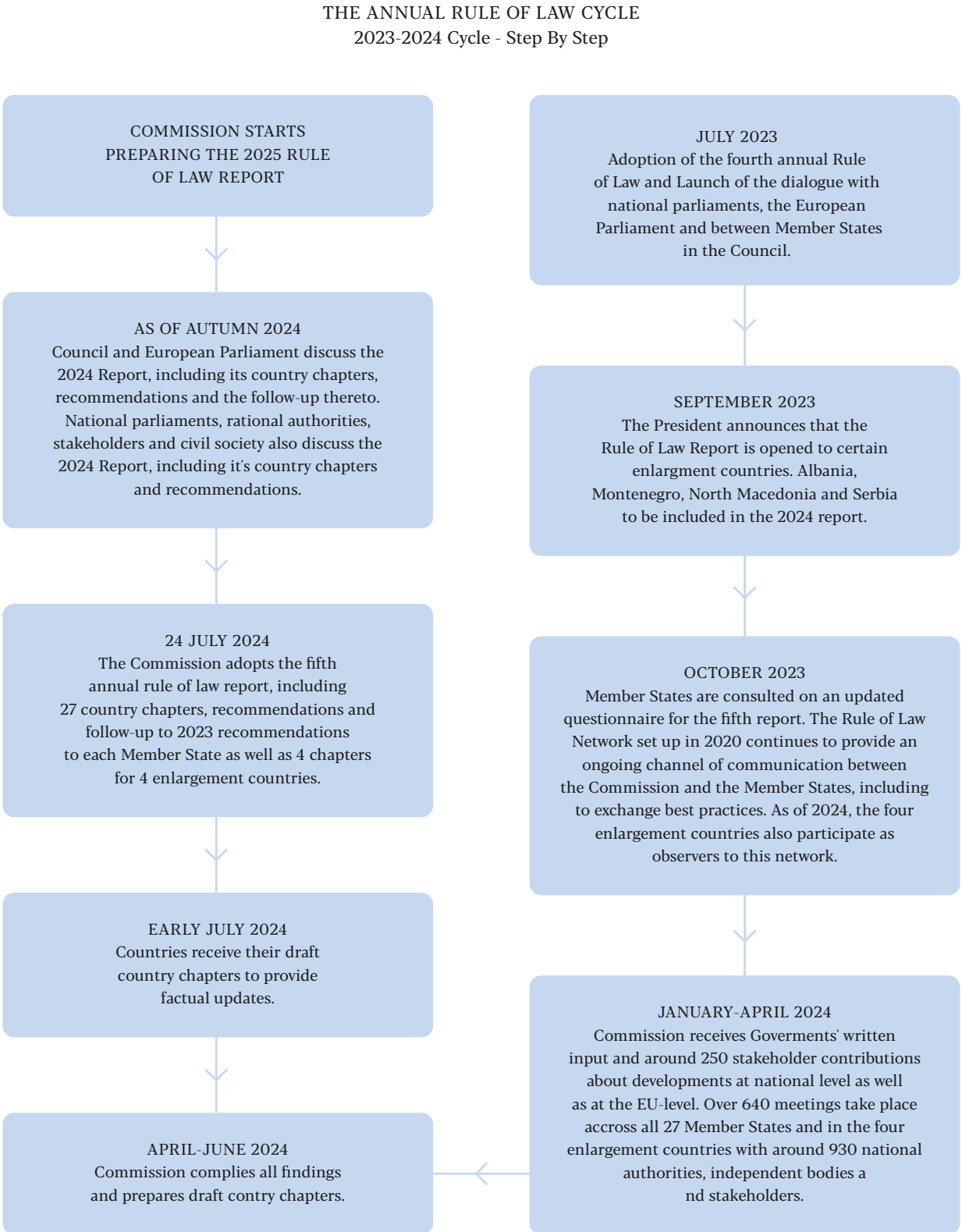


Figura 2: Rule of Law Report 2024.

Fuente: Elaboración propia.

they undergo collective surveillance, this makes it possible to preventively identify any risks of breaches to the rule of law which could prove to be an effective exercise in the 'name and shame' method.

In this respect, political coordination has been extremely important this year between the annual Rule of Law Dialogue in the Council, running since 2014, that claims to be an annual 'peer review' exercise in which groups from States take their turn in a 'horizontal' debate based on the principles of objectivity, non-discrimination, equal, neutral and objective behaviour between States, while respecting national identities.

This dialogue is, in itself, a political priority for the Union's General Affairs Council. In turn, this means that this exercise should be maintained as an important 'name and shame' exercise, coordinating with the Commission's Annual Report, understood as a political examination of 'constitutionality' that guarantees the essence of the European integration process captured in the Constitutive Treaties through recommendations that, while not strictly binding, constitute the basis for the effectiveness of the response instruments.

Ideally, this is used to open the sanctions procedures from article 7 TEU, although this is bound to involve taking steps that imply reviewing the Treaties and, in any case, as a technical and administrative basis to delve deeper into the jurisprudential route through the infringement or prejudicial procedures, and for correct assessment of the budgetary conditionality mechanism from Regulation 2020/2092 on a general regime of conditionality to protect the EU budget (DOUE L 433 of 22 December, p. 1)

In the second semester of 2023, the Spanish Presidency of the Council of the EU took on the responsibility of assessing how well this dialogue was working within the Council and its coordination with the wider Report led by the Commission, according to the conclusions from the Finnish Presidency on 19 November 2019 after a meeting of the General Affairs Council (Presidency note 14173/19 on the basis of the discussion note "Enhancing respect for the Rule of Law in the Union").

This was based on a questionnaire sent to all delegations in the Council (Note 10905/23 of 3 July 2023 "Questionnaire for Member States on the evaluation of the Council's Rule of Law dialogue") and led to a ministerial seminar in Segovia on 4th and 5th December 2023 (Rule of Law in the centre of the EU political and institutional agenda. A reflection on the future. https://spanish-presidency.consilium.europa.eu/es/eventos/).

These two exercises clearly complemented each other, as emphasised in most States' answers to the Presidency's questionnaire and in the aforementioned seminar. Consequently, it seems clear that, regardless of the competences of the two institutions, when taken as a whole, we are faced with a two-headed instrument in which the Annual Dialogue, in the form of the Commission's report, takes centre stage, as the basis

commonly accepted by both institutions and by the European Parliament on the elements to be considered in their assessments and resolutions (COM(2024) 800 final, p. 4).

Both exercises slot into the framework of an annual rule of law cycle which feeds back into itself, focused on monitoring and compliance with recommendations made to the 27 Member States and used by the Council in its own dialogue with groups of countries. They have been brought about alongside the interinstitutional dimension given to the annual rule of law cycle, with an interinstitutional cooperation mechanism through which the European, Council, Parliament and Commission discuss how they have implemented the recommendations in a dialogue which runs through the autumn, in parallel to discussing it at a national level between national governments and parliaments.

The most important task is to consolidate stronger, autonomous added-value from both mechanisms, fully respecting institutional autonomy, while avoiding unnecessary overlaps. The Council's dialogue is effective in terms of its 'peer review' assessment where groups of States rotate, and it thereby provides an excellent basis for the Commission to prepare its questionnaires at the onset of each annual cycle. However, the Mechanism begun by the Commission in 2019 is horizontal, insofar as it evaluated the 27 States (and from this exercise onwards, candidates as well) at the same time as a voluntary mechanism of collective supervision based on treating all States equally, by rigorously applying the EU's own standards and in dialogue and mutual trust with the States, which should be useful to:

- inspire the institutions and the States to promote a legislative agenda with specific proposals guaranteeing a common framework of respect for the values in article 2;
- acilitate use of all possible tools, including the CJEU jurisdiction and application of budgetary conditionality rules;
- promote an in-depth debate on the best way of containing erosional shifts in the European constitutional consensus which do not belong there.

5. ANALYSIS OF THE REPORT STRUCTURE

As in previous years, the report is structured into four major pillars, examined below. Each one examines all the essential elements to be able to run a qualitative assessment, particularly highlighting any points where significant progress has been made in each State and any others where challenges remain.

Accordingly, the report includes 31 chapters (1 per Member State plus Albania, North Macedonia, Montenegro and Serbia) with specific recommendations for each one using four categories from negative to positive:

- areas where there has been no progress;
- areas where there has been some progress;
- areas with significant progress; and,
- areas where recommendations from previous exercises have been implemented.

To draw up this list of recommendations, the report uses a series of consolidated information sources which are described in the annex to this text. The most outstanding of these is the "2024 EU Justice Scoreboard" consolidated since it was introduced by the European Commission in 2013 as an annual information and comparison instrument, with the aim of providing States with objective, reliable and comparable data on a number of useful indicators to assess the efficacy, quality and independence of the justice systems in all Member States (2024 EU Justice Scoreboard, Communication by the Commission 11 June 2024 (COM(2024) 950 final).

Judicial systems

Reforms in the field of justice have continued to occupy a prominent spot on the political agenda over the past year, and many Member States have followed up on the 2023 recommendations and applied reforms in line with the context of the Recovery and Resilience Mechanism (RRM).

The core objective to ensure that good quality for the rule of law in Europe is to guarantee that it is working entirely independently, as a necessary derivative of effective judicial protection for citizens and companies, expressed by article 19 TEU, as reiterated by the CJEU jurisprudence; while it is essential for judicial cooperation to work between States, as neither the Interior Market nor the investment ecosystem can work properly without it.

It is important to highlight, as shown on the 2024 justice scoreboard, that although 75 % of citizens in countries such as Finland, Austria, Sweden, Denmark, Luxemburg or Ireland regard their judicial systems as independent, in others such as Croatia, Poland, Bulgaria or the candidate countries, this percentage barely reaches 30 %.

The extremely positive aspect to highlight is that several Member States (including Poland and, little by little, Hungary), have begun, or made progress in, significant reforms to strengthen judicial independence, having undertaken legislative initiatives to strengthen the independence and efficacy of the Councils of the Judiciary, improve procedures for appointing judges, even regarding the superior courts, or strengthening the autonomy of the public prosecutor's offices. At the same time, some systemic concerns remain relating to judicial independence and specific cases of decline have been observed, particularly in Slovakia,

Lithuania and the candidate countries. It is significant in this area that the Report lays down, decisively although as a warning, specific recommendations for Spain (*"finalise the renewal of the General Council of the Judiciary and drivethe process of adapting the procedure to appoint its member-judges, considering European norms on judicial councils"*).

The Member States have also introduced measures to improve the efficiency and quality of justice, and how to facilitate access to justice and avoid delays in the procedures (this context is most challenging in Malta, Croatia, Greece and Italy). However, in several Member States, salaries for the judges and public prosecutors are worryingly low, leading to difficulties to employ qualified judicial personnel (led by Cyprus, Portugal, Romania and particularly Hungary, plus North Macedonia).

To conclude:

- the report from this year recommends to the Member States, having observed significant improvements, that they continue to tackle challenges such as the need for safeguarding in the judicial appointment procedures, for judges in both the lower and higher courts, the autonomy of the justice ministry or the need to provide the judicial branches with appropriate resources, even regarding salaries.

- Furthermore, in the enlargement countries, although important reforms have taken place, even at a constitutional level, to strengthen judicial independence and the quality of justice systems, there is still much to be done, particularly in fields related to running autonomous judicial councils and in terms of judicial appointments.

Anti-corruption frameworks

It is undeniable that all international indicators place more than half EU States among the top 20 countries in the world in terms of fighting corruption. However, corruption remains a serious concern for citizens and companies in the EU (Eurobarometer 548 on Corruption, and flash Eurobarometer

543 on businesses' attitudes towards corruption in the EU, both from 2024).

The results from the special Eurobarometer show that Europeans remain concerned about the efforts made by national governments to fight corruption: 65 % of citizens believe that high level corruption cases are not prosecuted enough, and only 30 % believe that governments' efforts to fight corruption are effective. In the same way, only 51 % of companies with headquarters in the EU believe that persons or companies that take part in corrupt practices are arrested or reported to the authorities. Out of these companies, around three quarters believe that close bonds between companies and politics lead to corruption (79 %) and that favouritism and corruption undermine fair competition

in business (74 %). In the EU overall, an average of 68 % of citizens and 64 % of companies with headquarters in the EU consider that corruption is too widespread in their Member States.

Since last year, all Member States have improved their legal and institutional framework to fight corruption more effectively, including the candidate countries, and the good news in 2024 in this respect is that Poland and Sweden joined the European Public Prosecutor Office, and that the four candidates have signed or are negotiating work agreements with the Public Prosecutor Office.

Furthermore, this trend in stable frameworks to fight corruption more effectively has been demonstrated by a general increase in resources poured into public security services, authorities and judicial branches in this area. Only Hungary, not a member of the EPPO, deviates from this general trend.

Greater effort is required in adopting measures to strengthen preventive frameworks, used to regulate the activity of pressure groups and conflicts of interests and the standards for declaring goods or regarding the 'revolving doors' phenomenon between politics/public administration and the business world. As a result, it is so important to guarantee the investigation and effective judgement of corruption cases. This is reflected in the recommendations from this year.

Finally, the Report highlights deficiencies in implementing Directive 2019/1937 on protecting people who report breaches of EU Law: the 'Whistleblower' Directive (DOUE L 305 of 26.11.2019). In fact, the Commission currently has infringement procedures open against 12 States for non-transposition or inappropriate transposition of the Directive (*Commission Report of 3 July 2024, COM(2024) 269 final, p. 2*).

This remains one of the greatest obstacles in the fight against corruption. Beyond legal and institutional matters, only 43 % of Europeans know which channels to use to report a case of corruption, and 28 % still think that reporting cases of corruption might make life difficult for them; this means that they mistrust the specific application of the theoretical protection laid down in Directive 2019/1937 (*special Eurobarometer 548*).

Freedom of the Press and pluralism

A free and pluralist press is essential for there to be a real rule of law. This infers that pressure from

political and economic backgrounds to control the media constitutes one of the greatest threats to democracy and this chapter has become one of the core elements of the Annual Rule of Law Report, where the most representative journalist associations have become key players in the Commission's consultations to draw up this chapter.

Since the previous Rule of Law Report, several Member States have adopted specific measures to improve security

and working conditions for journalists, by adopting significant rules at an EU level, such as Regulation 2024/1083 of 11 April 2024 on Freedom of the Press (EMFA) (DOUE series L of 17.04.2024, p. 1) already in force and fully applicable from August 2025; and Directive 2024/1069 on protecting persons who take part in public life against manifestly unfounded demands and abusive judicial procedures (SLAPP) (DOUE L of 16.04.2024, p. 1). These regulations introduce specific transparency regulations among media owners, a transparent and fair distribution of institutional advertising and independent operation of public media; plus rules introducing procedural safeguarding in defamation processes against journalists or media, with countries where application of these rules has stagnated, particularly in Italy and Slovakia.

Furthermore, the tasks and competences of national media regulators have been broadened and extended, also due to enforcement of Regulation 2022/2065 of the EU Digital Services of 19 October (*DOUE L 277 of 27.10.2022, p. 1*), guaranteeing that these regulators are fully independent of governments, and also impartial, transparent and responsible with appropriate economic and human resources.

However, despite these clear, sound rules, concerns remain in several Member States regarding independent governance or financial stability of public service media, the transparency of media ownership, the right to access public documents (with critical references such as Spanish official secrets legislation) and the transparent, fair assignment of State advertising.

The Commission has once again issued several recommendations pertaining to all these fields, also including the safety of journalists (particularly in Hungary, Slovenia, Croatia, Bulgaria and Poland).

The Report comprises important and structural challenges in the expansion countries, particularly regarding transparency of media ownership, independence of regulators or public service media and journalist safety, although reforms have also taken place in some of these countries to address a few of these matters, as a necessary step to move forwards in accession negotiations.

Institutional controls and counterweights

The Member States have continued improving the quality of their legislative processes and getting the interested parties involved in them, a trend which was also observed in the previous reports on Rule of Law. A few Member States have strengthened the statute and the resources of national human rights institutions, ombudsmen and other independent authorities. In several Member States, initiatives have also continued to strengthen the framework and financing of civil society.

However, problems remain in several Member States, such as excessive use of accelerated procedures or the general

quality of drafting laws, and consultation with interested parties (Spain is mentioned in this specific aspect, concerning doubts raising in the report concerning drafting of the Amnesty Law). Civil society and human rights defenders are facing increasing challenges, legal restrictions and attacks, even systemic restrictions on their operations in certain Member States. This is a concerning trend, as mentioned in the previous report.

To address these questions, the Commission has issued recommendations relating to how the legislative process works, setting up and running independent authorities and the right environment for civil society, both for current Member States and candidate countries.

In this section, the Fifth Report is quite incisive insofar as it refers to two questions bound to national security and where all States must strengthen their 'checks and balances' mechanisms, in the light of challenges that on many occasions fall outside the scope of EU Law and whose threat comes from outside the EU.

The report specifically focuses on intrusive use of so-called 'spyware' (such as Pegasus), illegal use of which should be sanctioned and investigated, and the need to watch out for interference from foreign governments seeking to manipulate public opinion and distort democratic debate.

These fields fall outside the EU's formal competences, although from the perspective of respecting fundamental rights, the Court of Justice has opened a line of intervention condemning Hungary regarding its internal legislation on transparency of associations for the purposes of "controlling associations that receive donations from abroad"(!). (*sentence of 18 June of 2020 C-78/18 Commission v.*

6. CONCLUSION

This presentation has attempted to explain the qualitative importance of this Fifth Report, beyond its conception as an instrument of prevention and peer dialogue. Experience shows us that the States take the report's various recommendations very seriously, not only for the purpose of avoiding 'reputational risks', but because they are going to create a common base which encourages regulatory frameworks to be adopted, unthought of just a few years ago, as has been laid out above all in the different pillars of the report and the horizontal work of the Court of Justice of the European Union through the significance that it gave to article 19 TEU and the possibility of invoking articles of the Charter of Fundamental Rights of the European Union, particularly concerning Title VI on 'Justice'.

This is firstly demonstrated from the statistical point of view. Two thirds of the recommendations formulated in the 2023 report (68 %) have been totally or partially implemented in the various States, thereby making this Report a way of driving positive internal reforms for the rule of law in each and every state. What

better demonstration of this incentive aspect is there than the criticism and reactions from the States most often criticised for this?

This extensive report includes criticism from the European Commission regarding Italy, Hungary and Slovakia due to their continuous impairment of democratic standards, that threaten effective persecution of corruption, independence of the judicial system and safety for journalists.

Italy

Consequently, Italy is being urged to do more this year to guarantee appropriate financing of public media, protect journalists' professional secrets and reform its libel laws.

The call went out amongst concern in Italy regarding growing political influence in the media sector, supposed episodes of censoring, harassment of critical voices and the possible purchase of the AGI news agency by a far-right politician.

Hungary

Regarding Hungary, the Commission is demonstrating a complete lack of progress in several fields, such as standards on pressure groups and 'revolving doors', the trials of high-level corruption cases, transparency in State advertising, editorial independence for public media plus hurdles for NGO work.

Over the last few years, the Commission has also begun numerous infringement procedures against Budapest, the last of which was due to the so-called 'Sovereignty Protection Office', authorised to investigate persons and organisations that receive foreign financing and which are suspected of influencing the political debate and the country's electoral processes.

Finally, at the Commission's request, the Council has reacted to a persistent democratic push-back trend by freezing over 30,000 million euro from the part of the cohesion and recovery funds assigned to Hungary, despite furious protests from Prime Minister Viktor Orbán decrying this freeze as "financial blackmail".

Slovakia

Slovakia could see a similar outcome soon. The country has been investigated for months due to a series of legislative changes led by the Prime Minister Robert Fico's government, which put Brussels on red alert. The main issue is the reform of the public radio-television station, RTVS, which was broken up and replaced by a new entity, known as SVTR.

At the root of the criticism, including from the Commission, the Government deleted the most controversial parts of the reform, such as setting up a council to supervise programming, but maintained a stance that allowed the governing majority to control the SVTR Board of Directors.

Furthermore, the report highlights lack of progress regarding the real independence of the members of the Judicial Council who did not come from the non-jurisdictional magistracy and straight-out attacks the attempt to introduce rules of criminal responsibility against judges under the pretext of avoiding "abuses of the law".

What about Spain?

The document is bitter-sweet regarding Spain. On the one hand, the political power is reproached for its criticism of judges or that a president of RTVE was appointed without approval by Congress, although it does highlight the agreement to renew the CGPJ "if it complies" and calls for greater transparency for institutional advertising in the media.

The Commission is concerned about the abuse of emergency procedures to approve some laws, particularly the Amnesty Law, while it recommends guaranteeing some separation in time between the appointment of the general public prosecutors and their previous role in the Government, "following the standards of independence and autonomy for public prosecutors."

It is therefore important to analyse the Commission's assessment, and the recommendations made to Spain, that although situating our country a long way off other states, due to their concerning lack of respect for the values in article 2, this is worth collective reflection.

The recommendations relating to Spain appear in the attached document. I shall let you, the reader, browse them at your leisure, far from the media noise.

7. RECOMMENDATIONS RELATING TO SPAIN

(SWD(2024) 809 final of 24.07.2024
Annex to the Communication
COM(2024 800 final)

Generally, in relation to recommendations from the 2023 Rule of Law Report, Spain:

- has demonstrated some progress regarding reinforcement of the statute of the General State Public Prosecutor, although not regarding how much time should have passed between this figure's mandate and their role in Government, considering European standards on independence and autonomy for the Public Prosecutor.

- Significant progress has been made in terms of prioritising the renewal of the General Council of the Judicial Power and, immediately after the renewal, starting a process to adapt the appointment of its elected spokespersons among judges and magistrates, considering the European standards relating to judicial councils.

- There has been no further progress on the approval of the law on interest

group activity, which includes setting up a mandatory public register of interest groups.

- Efforts have intensified to get over hurdles relating to the duration of the investigations and judgements to

- increase efficiency in substantiating high-level corruption issues, particularly by means of finalising the reform of the Criminal Procedure Act.

- No progress has been made in the task of strengthening standards on conflicts of interest and declarations of patrimony from senior staff in the Administration by means of reinforcing the sanctioning authority of the Office of Conflicts of Interest.

- Nor has progress moved forward in improving access to information, particularly by means of reforming the Official Secrets Act, considering the European standards on access to official documents.

Considering what went before, and other events that took place in the reference period, it is recommended that Spain should:

- continue to strengthen the Chief Prosecutor status, particularly that Chief Public Prosecutor and Government

- mandates should be separated in time, considering the European Standards on independence and autonomy from the Public Prosecutor.

- Based on the agreement of 25 June 2024, finalise the renewal of the General Council of Judicial Power and boost the adaptation process for the appointment procedure

- for its judges-members, considering the European standards on councils for the judiciary.

- Approve the law on interest group activity, which includes setting up a mandatory public register of interest groups.

- Intensify efforts to get over hurdles regarding how long investigations and judgements will last in order to improve efficiency in substantiating matters of high-level corruption, particularly by means of finalising the reform of the Criminal Procedure Act.

- Strengthen standards on conflicts of interest and declarations of patrimony from the senior staff in the Administration by means of reinforcing the independence and sanctioning competence of the Conflicts of Interest Office.

- Progress in improving access to information, particularly by means of reforming the Law on Official Secrets, considering European standards on access to official documents.

8. A MODO DE CODA: Y LA HISTORIA CONTINUARÁ

The Rule of Law Mechanism in the form of the annual cycle on the situation in the Member States has acquired a meta-constitutional value over five years.

It is the central and ritualised moment of collective assessment, analysis and recommendation which all Member States can be required to strictly respect "for the enjoyment of all the rights deriving from the application of the Treaties."

Does this mechanism fully meet these requirements? As I see it, on this matter and regarding the value and applicability of the recommendations contained in the annual reports, we are in a similar situation to the proclamation of the Charter of Fundamental Rights of the European Union at the European Council held in Nice in December 2001. Even though we had to wait until the Treaty of Lisbon came into force in 2010 for the Charter to be legally binding with "the same legal value as the Treaties" (article 6.1 TEU), immediately after its proclamation it was considered by the EU Court of Justice as a key element for interpreting its decisions, when not as General Principles pertaining to EU Law.

From all this, based on the principles of loyal cooperation and obligations of results, we can deduce that both the States and the European institutions have the duty to implement and improve this mechanism that will continue to be preventive and take an exact snapshot of the situation, already of great political use. This Mechanism must act to adopt procedures and rules to give the EU greater capacity to respond to infringements of the values of article 2 TEU, improving its coordination, reinforcing the interinstitutional cooperation and taking a further step towards implementing the Recommendations made by the Commission, similarly to recommendations from the European Semester.

In any case, and while waiting for specific proposals from the Commission in spring 2025, this Mechanism should be the 'instruction' that will make it possible to adapt binding measures before the deviations and infringements of the values from article 2, by expanding the scope of short-term budgetary conditionality plus a modification to article 7 in fine which would make it not an instrument of Public International Law, requiring interstate mutual consent, but an authentic instrument of 'community' Law.

As they said in the old Hollywood movies: *to be continued*!

7

Decarbonisation and European global *competitiveness*

Green industrial policy and carbon pricing in the world

by JOSÉ LUIS ESCARIO

1. INTRODUCTION

In the previous legislature, the EU set itself the target of making Europe the first climate-neutral continent. The European Green Deal (EGD) is the EU's key initiative designed to enable it to achieve this goal by 2050. The EU also established two important milestones on the European roadmap prior to this date: a 55% reduction in emissions by 2030 and a 90% reduction by 2040.

The "Fit for 55" package sets out the legislation associated with the intermediate goal for 2030. The regulations relating to the 2040 target need to be approved in the next legislature.

The recent European and French elections have acted as a stimulus to reaffirm the importance of the EGD, which is now entering a new phase. Both the Strategic Framework approved in the European Council in June 2024 and the guidelines presented to the European Parliament by President von der Leyen in July confirm this. However, because the fight against climate change is subsumed within the priority objective of competitiveness (at the same level as economic security) there is the risk that it will be afforded less priority. Such an approach runs counter to the scientific evidence of the severity of the climate emergency, which points towards the need to intensify action in this field to meet the agreed targets.

With 90% of the legislation associated with "Fit for 55" already approved, including the flagship Nature Restoration Law, the time is right to focus on implementing the new rules and ensuring that Member states transpose them into their domestic legislation.

At the global level and with an eye to the next round of Nationally Determined Contributions (NDCs) at COP30 in Belém, Brazil, in 2025, it will also be necessary to verify whether the commitments entered into by countries in their national plans have been met. And the EU must also submit new joint NDCs with respect to achieving the Paris objectives.

The other priority related to the EGD 2.0 concerns its external dimension. The EU must continue to lead the world with the example of its domestic policies. This proactive attitude of making progress without waiting for everybody to reach agreement (first mover) is important if achievement of the Paris Agreement goals is not to be compromised, even if this strategy can sometimes give rise to tension with those parties who do not want to accelerate progress.

The magnitude of the task requires a joint effort against climate change. However, it should be remembered that the EU only accounts for 7% of global greenhouse gas emissions, while other economies such as China and India continue to increase their emissions. The EU should therefore pursue a strategy of climate diplomacy that promotes green cooperation and dialogue with trade partners. In some cases, this would entail supporting the decarbonisation efforts of third party countries (conditional climate financing).

However, as Mario Draghi argued in his recent report on the future of EU

competitiveness, "the EU must ensure access to critical resources and protect key value chains. This may require securing preferential trade agreements with key partners and guaranteeing critical supplies, including through offtake agreements and direct investment in production facilities abroad."

At the same time, the EU must become a constructive partner, one that is energetic, and capable of convincing other countries and regions of the planet to meet their commitments at the pace required to achieve internationally agreed objectives.

2. A GREEN INDUSTRIAL POLICY

With respect to the green transition, Europe must promote competitiveness and open strategic autonomy. This requires, firstly, a change of productive model to decouple growth from the use of fossil fuels, and secondly, to respond to the massive investment programmes of other powers to develop their own green industries.

Enrico Letta's report on the future of the internal market clearly identifies this when it states that, "faced with strong global competition, the EU must step up its efforts to develop a competitive industrial strategy capable of counteracting instruments recently adopted by other global powers, such as the US Inflation Reduction Act," while the Draghi report highlights the worrying deficit that has built up between the EU and powers such as China and the USA over the last two decades in terms of growth and productivity and, more specifically, with respect to investment in and the manufacture of green technologies. Draghi warns that this burgeoning productivity gap means the EU is poorly positioned to compete as it strives to deal with the transformations of the 21st century.

China leads not only in terms of the magnitude of its investment in green technologies – spending USD 546 billion during 2022 – but also in the production of clean energy. This leadership has undoubtedly been driven by the "Made in China 2025" initiative, approved in 2015.

Chinese climate policies combine massive subsidies, rapid innovation, the control of raw materials and the capacity for large-scale manufacturing. This has created critical dependencies for the EU in key sectors such as renewable energy and rare minerals. The problem has only intensified since the Covid-19 pandemic, and there is a risk that this dependency will give rise to industrial and technological vulnerability and will reduce the EU's weight in value chains. Or, worse still, that China will decide to weaponise its privileged position in green industry and key raw materials for geopolitical ends.

The Draghi report warns that Europe is particularly exposed in this regard. The EU depends on a small number of predominantly Chinese suppliers of critical raw materials. And it should resist the temptation of increasing dependency on China, even if this might offer the cheapest path to achieving its climate goals.

Another major example of national green industrial policy is provided by Japan's GX Policy to promote green transformation. This facilitates the issue of green transition bonds and is funded to the tune of 127 billion euros for a decade, with the potential to attract up to 955 billion euros of investment.

India, the world's third-largest greenhouse gas emitter, has established the objective of creating 50GW of non-fossil fuel capacity by 2030 and has also announced billions of dollars' worth of subsidies for the manufacture of clean technologies.

The USA's Inflation Reduction Act (IRA) merits special mention. The IRA was approved in 2022 with the prime aim of reducing the gap with Chinese manufacturers. It relies primarily on public spending measures, with government incentives for private investment and the production of green technologies and infrastructure. It is the largest legislative package with clean energy programmes in the country's history. According to the Draghi report, it entails spending of almost USD 400 billion over a period of ten years. At the same time, the IRA will release the sum of USD 1.2 trillion by 2032. The IRA once again places industrial policy at the centre of economic strategy. And it also reflects a degree of protectionism, as it seeks to favour local manufacturing through its "local content requirements", an approach that has not been without controversy.

The weaknesses highlighted by the pandemic, and the energy crisis sparked by Russia's war in Ukraine have only heightened the trend among the major powers of implementing industrial policies designed to support strategic sectors of their economy, such as those relating to energy and the climate.

Such industrial policies promote behaviours deemed to be in the general interest such as the fight against Climate Change or the promotion of other public goods. To this end, governments establish tax or other incentives to push the behaviour of operators towards the desired goals. The sectors affected can thus benefit from these policies to reduce their climate action costs. This mechanism provides financial assistance to clean technology alternatives while at the same time disincentivising more carbon-intensive solutions.

In the case of the IRA, these incentives can take the form of subsidies, tax deductions or tax credits. Tax measures have the advantage that they are payable after the work has been performed; in other words, the company receives the money after it has produced the product. One of the strengths of the IRA is its simplicity. In some cases, companies directly apply the tax benefit in the financial year in which the clean energy is produced, thus minimising delays and bureaucracy.

Another advantage of this act, and of industrial policy in general, is that incentive-based approaches are easier to sell politically than other options such as carbon taxes or carbon trading markets. Voters tend to prefer new incentives to additional taxes. However, as we

will see below, industrial policy is not without its limitations as a tool for reducing climate emissions.

3. THE NEED FOR A GENUINE EUROPEAN INDUSTRIAL POLICY

The IRA has had a significant impact on the EU and has provoked a rapid response, even if this has so far been insufficient. It is true that Europe remains a world leader in clean technology innovation in some manufacturing sectors, such as wind power, low-carbon fuels and electrolysers. And the EU also boasts companies that are pioneers in green energy and could provide a basis for scaling up.

But it is also true that approval of the IRA has highlighted a range of shortcomings that must be addressed, along with the need for a thoroughgoing review of industrial policy in the EU. According to the Draghi and Letta reports, one of the causes of European weakness is the lack of public–private collaboration in innovation, in particular with respect to incipient and disruptive technologies, where successful development requires large-scale investment. The fact that capital markets are not genuinely integrated is a major issue, as this means that European savings are often invested in technological projects in the USA or other parts of the world.

Aware of the situation, at the Davos summit in January 2023 President von der Leyen announced the EGD Industrial Plan. The EGD was the axis of the European Commission programme in the past legislature and will continue to enjoy great importance in the upcoming one. In addition to setting out a pathway to climate neutrality, this major initiative seeks to establish the EU's global leadership in the environmental transition. But the fierce competition in green technologies described above means that it is vital that the EGD be supplemented by an Industrial Plan which is on a par with it, so that the two instruments are mutually reinforcing. In this way, the EU strives to reconcile its climate ambition with industrial competitiveness and growth.

This dynamic was confirmed when President von der Leyen announced her commitment to approve a "Clean Industrial Deal" during the first hundred days of her new mandate as part of her presentation of her political guidelines to the European Parliament in July. Along the same lines, one of the most important chapters of the Draghi report is titled "A joint decarbonisation and competitiveness plan".

The challenge is to create an attractive context for green investment that will strengthen the capacity to develop and manufacture clean technology on European soil. This means implementing a comprehensive industrial policy for decarbonisation to generate new employment, guarantee the security of supplies of key raw materials, improve the industrial and technological base, and build exports to the rest of the world.

Several initiatives have been approved to strengthen the EU's industrial

competitiveness. These include reform of the electricity market, designed to ensure that citizens benefit from renewable energy. And there is also the Critical Raw Materials Act, which aims to ensure access to raw materials such as rare earths, lithium and cobalt, which are vital for the manufacture of net zero emissions technology and products.

The most important initiative of all is the Net-Zero Industry Act, which identifies strategic green technologies, including solar and wind power and batteries, and aims to increase their manufacture within the EU by 2030. However, the first initiative implemented under the EGD Industrial Plan was the temporary and selective flexibility of the rules on European state support to enable Member states to support the production of clean energy in the face of the risk of offshoring. Flexibility in the sense that some green incentives could – on certain occasions and under certain conditions (General Block Exemption Regulation) – be deemed compatible with EU competition rules.

This measure aroused considerable unease, as there is a real danger that it would be used primarily by Member states with more fiscal headroom to benefit their companies, something that would exacerbate regional disparities and further fragment the internal market.

To prevent this, it is important that incentives are primarily awarded at the EU level. However, it will not be easy to ensure sufficient European funding in this sphere. In the first place, because industrial policy is at present a national competence and this means that measures are generally implemented by Member states, often in an uncoordinated manner, despite the fact that the challenges outlined above point to the need for a stronger commitment to a European industrial policy supported by EU funds.

Secondly, it is important to note the current limitations of the EU budget. This represents approximately 1% of the EU's GDP, making it far smaller than the US federal budget. In this context, the Draghi report recommends "a minimum annual additional investment of EUR 750 to 800 billion" (4.4 to 4.7% of EU GDP) to meet the objectives the EU has laid out in its principal spheres of actions.

Private investment must also play a vital role, and Draghi has argued for common debt instruments similar to those provided for under NextGeneration EU to support joint investment projects between Member states which generate added value EU-wide. However, it is not clear that Member states will reach agreement on this point.

In any case, it is clear that EU industrial policy should not seek to replicate the IRA model, both because of the different fiscal capacity on either side of the Atlantic and also because the EU should take a less hostile attitude to Chinese clean energy, without being guilty of naivety. More radical solutions would make the green transition in the EU far slower and more costly.

The EU needs to capitalise on its strengths and promote those industries in which it is already well placed. Its

interventions need to be well designed and based on a thorough cost-benefit analysis. Similarly, funding instruments should give greater priority to those investments which are technologically and industrially more strategic, emphasising areas where the EU has an advantage, even if this is threatened by international competition.

The EU also needs to design selective green industrial policies adapted to the circumstances of each sector. For example, the European wind turbine sector has a significant comparative advantage over other parts of the world, and the EU has a successful Wind Power Action Plan. The same is not true of solar panels, where Chinese domination is entrenched.

Another important challenge is to agree on a minimum "Made in Europe" for strategic equipment. In this respect, the Draghi report points out that, "while the Net Zero Industry Act specifies EU manufacturing targets, they are not backed by explicit minimum quotas for local products and components."

Last but not least, sectors that receive support must generate tangible social benefits. This would include companies that are committed to manufacturing processes with a reduced environmental footprint, firms committed to circularity or efficiency improvements, and ones that create employment.

But, as noted, green industrial policy also has its limits and drawbacks. As the IMF noted in its "Fiscal Monitor" report of October 2023, countries "should not rely primarily on industrial policies based on public spending to achieve their climate goals", given the risk that this entails in terms of debt sustainability, particularly in the context of the high interest rates we have seen over recent months (although these now appear to be set to fall) and the ramifications of that for funding costs. This is another of the significant reasons why the EU continues to make use of other types of climate policy in addition to industrial policy.

4. CLIMATE POLICIES AVAILABLE TO COUNTRIES TO ACHIEVE THE NET-ZERO ECONOMY

The EU has a package of diverse climate policies which are mutually coherent and highly cost-effective in terms of reducing emissions, with carbon pricing as the main element. The toolbox chosen by the EU includes regulatory, financial and tax measures and incentives, along with the inclusion of environmental clauses in free trade agreements and other types of green bilateral partnership. In general, each country in the international community strives to find the right "Net Zero policy mix" based on the specific circumstances of its economy and sectors.

As we have seen, in some cases the approach involves incentivising changes to the behaviour of economic actors which are positive from an environmental perspective. In others, it entails modifying behaviours that have a negative impact on the climate. In any event, it is desirable that the intensity of public

action should be proportionate to the objective to be achieved. And this sometimes requires express prohibitions. One example is France's recent proposal to ban short-distance flights when there are rail alternatives. Another frequent measure involves establishing compulsory technical or energy efficiency standards (in construction) or product labelling. In other cases, legislators use taxation as a means of disincentivising behaviour that harms the environment. These are charges designed to compensate for environmental damage or to fund investment in clean energy or technologies. Within the EU, for example, the Commission has presented proposals to update the obsolete regulations on energy taxation. It is also considering new taxes on air travel.

It is also important to note the importance of linking prices to the behaviour to be discouraged. Actors can choose between paying a price for polluting, or introducing cleaner technology and being rewarded financially for doing so. The best known example of a financial instrument is carbon pricing.

5. CARBON PRICING AS A KEY EU CLIMATE POLICY TO REDUCE EMISSIONS

Carbon pricing is the centrepiece of Europe's decarbonisation strategy. In addition to generating significant resources to support the green transition, carbon pricing has shown itself to be one of the most effective means of transmitting information through the economy and of influencing consumer behaviour to reduce emissions.

As a result, international organisations such as the OECD and the IMF see carbon pricing as a key element of the toolbox available to countries to stimulate the transition towards less carbon-intensive energy sources. Carbon pricing involves assigning a monetary cost to emissions, thereby sending both individuals and companies a clear signal that polluting is not cost-free. Instead, polluters have to pay an additional cost for each extra unit of CO2 they emit.

This is an expression of the principle of "the polluter pays", which is written into EU treaties, as it involves increasing the price paid by the polluter for certain goods and activities by internalising the environmental costs of their production. It draws on an approach developed in the 1970s by the economists Pigou and Harding, which argued for pricing economic externalities (environmental pollution, damage to health, etc.).

But carbon pricing does not just involve transferring the environmental costs of negative externalities to those responsible for them. Like industrial policy, it also means incentivising good practice with positive (sustainable) externalities for society as a whole, such as the creation and use of low-carbon technologies. In this context, it is important to note that the Draghi report identifies as one of the key objectives for the EU closing the innovation gap with the USA and ensuring that Europe is not left behind in

the race for green technology, as has occurred with respect to digitalisation.

Ultimately, the goal is to facilitate market access for emerging green technologies, removing entrance barriers, and ensuring a level playing field with carbon-intensive industries, which are normally more mature. Setting a price on CO2 incentivises demand for low-carbon products by reducing their production costs. This in turn encourages the private sector to innovate and to adopt new low-carbon solutions while also fostering new consumption patterns, and carbon pricing converges with green industrial policy as both seek to speed up the production and marketing of green technologies at every stage of development.

6. TYPES OF CARBON PRICING

Carbon pricing can be used to reduce emissions by applying a direct, explicit price to carbon, by taxing greenhouse gas emission or, indirectly, through an emissions trading market. In the first case, the state establishes a tax rate and those affected pay the tax on the basis of each ton produced. The tax payable directly reflects the carbon content of the product.

In the 1990s, the Nordic countries were the first to introduce this kind of taxation. States such as Sweden and Chile introduced it as part of wider tax reforms. More recently, in 2019, Singapore also established a carbon tax to fund its efforts to decarbonise its economy and to help the most vulnerable households and SMEs to cope with the green transition.

One advantage of this approach is that it offers certainty with respect to the price of carbon, as this is explicitly determined by the tax rate. This is in contrast with indirect forms of price setting, in which prices are not directly proportionate to the emissions associated with the production of the goods in question. In emissions trading systems such as the European one, the price varies and depends, among other things, on the supply and demand for carbon credits at any given moment.

The EU tried for a decade to approve a carbon tax at the European level but the requirement for unanimity in tax matters made it impossible to achieve the necessary consensus. Finally, the EU decided to establish an emissions trading market as the keystone of its climate policy. This has been operating successfully since 2005 and has set an example to be followed in other parts of the world. Proof of this is that European emissions have fallen by 47% in the sectors covered by the EU Emissions Trading System (ETS), a carbon market that operates as a platform on which companies buy and sell emissions allowances. In the first instance, the EU establishes an emissions cap for each economic sector, which aligns with the climate goals and the road map for their achievement. It then allows the market to respond. The price at any given moment depends on the supply and demand for emissions allowances

in circulation, which can be exchanged between companies participating in the European market. Companies in each sector have to buy emissions allowances for each ton of emissions they produce. If a company fails to purchase sufficient allowances to cover its emissions, it faces heavy sanctions from the EU. However, companies whose emissions are below the assigned threshold can sell their surplus to companies above the threshold or offset the differences in subsequent years. Moreover, these allowances are exchangeable on a Europe-wide market. This has meant that an internal market in carbon has gradually been established between Member states.

The ETS is a Cap-and-Trade system which establishes an emissions ceiling or cap for each economic sector. This ceiling determines the environmental goal and establishes the economic value of emissions allowances by creating scarcity. Ultimately, this cap is a price signal which means that more emissions allowances in circulation lead to a lower price for CO2, while scarcity increases the price.

The most recent reform of the ETS, in May 2023, saw a tightening up of the European regime, with reductions in the caps of the different sectors. As the phased adjustments are gradually introduced, the price of CO2 is likely to increase across the EU.

7. CARBON PRICES AND EUROPEAN COMPETITIVENESS: THE CARBON BORDER ADJUSTMENT MECHANISM

The operation of the EU carbon pricing system and its intensification following the 2023 reform means that the differential between CO2 prices in the EU and the rest of the world is likely to increase. It is important to note that this is just one of the factors in the price of energy, with others – such as the structure of the electricity market – having a bigger influence.

However, there is a danger that the global competitiveness of European industry could be penalised by its higher carbon prices. While, globally, carbon is taxed at an average rate of less than 5 euros per ton of CO2, in Europe this figure is far higher, with effective rates of 85 euros per ton. Moreover, the ETS covers 40% of total EU emissions, a far higher percentage than is covered by such measures in countries such as China and India. And with effect from 2024 the ETS has been extended to cover 50% of maritime transport.

It is important to take measures to ensure that these differences do not constitute a competitive disadvantage for European industry or give rise to the offshoring of EU production to jurisdictions with lower carbon prices (carbon leakage). Worse still, there is the risk of what US Special Envoy for Climate Diplomacy John Podesta has termed “carbon dumping”, with output leaving the EU only to subsequently enter the internal market, thus evading European regulations.

The main instrument identified by the EGD to tackle this "carbon leakage" is the new Carbon Border Adjustment Mechanism (CBAM). This tariff, currently at a transitional phase and due to come into full force in January 2026, must be paid on entry to the internal market by importers who have not paid a carbon price in their country of origin equivalent to that paid by European producers. The CBAM thus seeks to create a level playing field by ensuring that European and non-European producers pay the same price for CO2.

The CBAM is also designed to create a powerful incentive for the EU's trade partners: to become exempt avoid paying the new tariff, they must accelerate their decarbonisation programmes, in accordance with internationally agreed goals.

8. EXTENDING CARBON PRICING IN THE WORLD: CARBON CLUBS

The mere announcement of the introduction of the CBAM has led several countries to establish domestic carbon pricing. By doing so, not only are they exempt from application of the CBAM; they also generate income from emissions allowances at the national level.

In other words, a European carbon diplomacy has developed, leading to the adoption by other jurisdictions of emissions trading systems or carbon taxes. And an international trade in emissions allowances has also been stimulated. To date, 49 jurisdictions have implemented carbon pricing schemes at the national or subnational level (more than twice the figure of a decade ago) and a further 23 are at different stages of the process of introducing such systems. Asian participants include China, India, South Korea and Japan. In Latin America they are joined by Brazil, host of COP 30 in 2025. Special mention should be made of the EU's dialogue with China, whose economy accounts for more than 30% of total emissions. The country has had its own emissions regime since 2021, and updated it in 2023. It suffers, however, from a number of shortcomings (proliferation of free emissions allowances, small number of sectors covered by the carbon market, and carbon prices far below those of Europe) which mean that the Chinese system is still far from perfect.

Also worth noting is the negotiation between the EU and the USA, the world's second largest emitter. Following initial resistance to the CBAM, the USA is considering introducing a tariff similar to the European one to respond to Chinese overcapacity in green industry, which has put Chinese companies in a dominant position in many green technology supply chains.

Various proposals have been put forward by both Republicans and Democrats ("Fair Transition and Competition Act"). Some of these, in addition to a tariff, impose domestic carbon prices at the federal level in the form of carbon taxes. (Some federal states, such as California, already have carbon pricing.)

In any case, the issue is giving rise to a productive dialogue between the EU and the USA, which could lead to an important agreement between the two blocks, taking as its starting point the negotiations to promote the clean production of steel and aluminium in the two blocks ("GSA agreement"). And this agreement would be designed with the aim of incorporating other countries prepared to decarbonise their steel and aluminium industries. It would also be a good precedent for the creation of a kind of "carbon club".

This idea, launched by Nobel prize-winning economist William D. Nordhaus, entails linking national systems with each other via bilateral agreements. This would lead to the mutual recognition of emissions allowances between systems and, ultimately, to the creation of international carbon markets in which emissions allowances could be exchanged commercially between jurisdictions, and a common carbon price could be established. President von der Leyen has put forward this proposal to the United Nations and the G20.

The EU and Switzerland have already decided to formally link their emissions allowance systems. Taken further, this could see the establishment of the first carbon club, including the USA, Australia and the United Kingdom, which already has its own emissions trading system and its own CBAM. This would be a club with the widest possible membership, so that anyone who remained outside it would feel increasing pressure to reduce their emissions because otherwise their companies would be penalised in global markets by instruments similar to the CBAM.

The EU would thus pursue a more pragmatic strategy in seeking to influence the climate goals of other countries. This strategy would be based on a bottom-up dynamic, which should lead to the establishment of a minimum global price for carbon that would guarantee a level playing field in global trade.

9. RECOMMENDATIONS

With the start of the new legislature, the EGD enters a new phase, in which its external dimension will assume greater importance. The EU must ensure that its traditional leadership in green policies does not lead to its companies losing competitiveness on the international stage.

The EU must therefore urgently introduce a "Clean Industrial Deal", funded primarily at the European level, to create the right conditions for the growth and productivity of green industry in the context of international competition.

In order to avoid becoming the object of carbon dumping, the EU should put in place geopolitical instruments such as the new CBAM, whose aim is to ensure that the EU's climate ambitions are not penalised internationally, by equalising the carbon prices paid by EU and non-EU producers in the internal market.

The CBAM should be complemented by the idea of creating "carbon clubs"

between countries, linking their emissions allowances schemes and, ultimately, establishing a minimum global carbon price. These clubs, in addition to leading to the creation of international carbon markets, would exert pressure on jurisdictions that remained outside to adopt more demanding environmental standards to avoid their companies being penalised in international markets by instruments similar to the CBAM.

Each country's appropriate net zero policy mix will depend on its specific needs and political preferences at any given moment in time. What is important is that this mix should be coherent and cost-effective with regard to achieving the climate goals in the Paris Agreement.

Acronyms

CBAM: Carbon Border Adjustment Mechanism

EGD: European Green Deal

ETS: EU Emissions Trading System

GSA: Global Arrangement on Sustainable Steel and Aluminium

IMF: International Monetary Fund

IRA: US Inflation Reduction Act

NDCs: Nationally Determined Contributions

OECD: Organization for Economic Co-operation and Development

WTO: World Trade Organization

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8

Social progress is moving at a snail's pace

by BJÖRN HACKER

In 2024 the legislative period of the European Parliament ended. Over the past five years, the EU has been rocked by serious crises, notably the Covid-19 pandemic and the Russian war of aggression against Ukraine. Both produced serious consequences in socioeconomic turns, which must be added to the long-lasting effects of precedent economic shocks and new challenges. In this legislative period European institutions and the member states sent signals of unity to tackle the crises, and social progress received a central place on the political agenda with the Action Plan for the Implementation of the European Pillar of Social Rights (EPSR), the short-term work implementation scheme SURE and the Next Generation EU 750 billion common budget.

2023 and 2024 inflation declined constantly, but the cost-of-living crisis remains virulent. While the labour markets are showing positive convergent developments, there is still no sign of a trend reversal in the area of poverty reduction since the last crises. Progress on the 2030 social objectives is slow and accompanied by setbacks. Lately, the EU institutions succeeded in setting further social standards, but consensus between the member states seems to be fading and calls for a new area of austerity and inner competitiveness are getting louder.

1. GROWTH IN THE SOUTH, STAGNATION IN THE NORTH

The growth rate of the gross domestic product (GDP) in the EU in 2023 was almost stagnant at just 0.4 per cent compared to the previous year. For 2024, the European Commission expects an annual growth of 1.0 per cent (eurozone: 0.8 per cent), a forecast that is subject to uncertainty given the weak first quarter of 2024 with 0.3 per cent growth in both the EU and the Eurozone. However, there are signs of a return to growth insofar as ten member states were still recording shrinking economic output in 2023, which only applied to Denmark, Estonia and the Netherlands in the first quarter of 2024. Southern Europe in particular – in a reversal of the situation during the Euro crisis from 2010 to 2015 – is seen as a growth driver. Here, as well as in some countries in Central Eastern Europe, GDP will grow at an above-average rate in 2023 and 2024, while Northern and Western Europe will continue to stagnate or only increase in very small steps (European Commission 2024a). The reasons for this divergence lie on the one hand in the full recovery of the tourism sector following the Covid-19 pandemic and on the other hand in the effects of the 750 billion Next Generation EU reconstruction fund, whose main beneficiaries – measured in terms of their GDP volume –are the countries of Southern and Eastern Europe.

The high inflation rates in 2022 and 2023 led to an increase in private

savings rates, as disposable household income fell noticeably as a result of the price increases. As a result, private consumption in the EU has only seen a modest recovery. Investments are also weak due to the price increases, which have hit the construction industry in particular. At the same time, external demand remains volatile due to international trade conflicts, crises and wars. The continuous decline in inflation in the Eurozone since its peak in October 2022, when prices rose by 10.6% year-on-year, to just 2.5% in June 2024, raises hopes of a normalisation of savings and consumer behaviour. The European Central Bank (ECB) already initiated a turnaround in interest rate policy at the beginning of June 2024 by very cautiously lowering the key interest rate by a quarter of a percentage point from its nine-month high of 4.5 per cent.

In many member states, the high government deficits of the pandemic years have been reduced. In 2023, the average budget deficit in the EU was 3.5 per cent of GDP (Eurozone: 3.6 per cent); the European Commission expects a precision landing at the reference value of 3 per cent in 2024. The background to the decline is not so much the gradual recovery in economic growth, but rather the expiry of state energy subsidies and grants in recent years. For seven member states (Belgium, France, Italy, Hungary, Malta, Poland and Slovakia), the opening of excessive deficit procedures is proposed in 2024 due to budget deficits above the three per cent threshold, with the new rules of the Stability and Growth Pact adopted in spring 2024 as part of the "Economic Governance Review" being applied for the first time. Following the economic shocks of recent years, there has been a decline in macroeconomic imbalances; nine EU member states still have such imbalances, with only Romania being categorised as excessive (European Commission 2024b). Public debt in the EU as a whole fell to 81.7 per cent of GDP by the end of 2023 (Eurozone: 88.6 per cent), with the member states Greece (161.9 per cent), Italy (137.3 per cent), France (110.6 per cent), Spain (107.7 per cent), Belgium (105.2 per cent) and Portugal (99.1 per cent) having far above-average debt ratios.

2. CONTINUOUS COST-OF-LIVING CRISIS

Despite the slow recovery in economic output, the situation on the European labour market remains relatively relaxed: The employment rate for 20 to 64-year-olds reached an all-time high of 75.5 per cent in 2023, bringing it even closer to the reference value of 78% by 2030 set at the 2021 Social Summit in Porto, albeit with lower growth rates than in the previous year. The shortage of skilled labour remains a central problem in many EU countries, especially in view of the requirements of the economic transformation in the course of the digital and ecological transformation. Stable employment is reflected in

a very low unemployment rate in the EU of 6.1 per cent in 2023 (Eurozone: 6.6 per cent); the European Commission expects no change for 2024. The long-lasting differences in unemployment rates between member states have decreased, indicating an upward convergence in favour of the countries that were particularly hard hit by the recent crises (European Commission 2024a; 2024c).

Nevertheless, numerous labour market-related challenges remain. In addition to the shortage of skilled labour, these include in particular the impact on individual social groups and income trends. The risk of becoming unemployed is almost three times higher for young people than for the working population as a whole; the unemployment rate for 15-24-year-olds remains at around 14.5 per cent in spring 2024. The rate of young people aged between 15 and 29 who are not in education, employment or training (NEET) has fallen further to 10.4 per cent in 2023 (Eurozone: 10.1 per cent), although there are significant differences between the Netherlands (4.3 per cent) and Romania (19.3 per cent). The gender-related unemployment rate remains small, with a difference of 0.5 percentage points in both the EU and the Eurozone. The high employment gap of 21.5 per cent in 2023 between people with disabilities and the working population of the EU as a whole is problematic.

Due to the high inflation rates since 2022, we can speak of a cost-of-living crisis. Especially energy and food costs as a result of the Russian war of aggression against Ukraine have acted as price drivers. Although average employee compensation in the Eurozone rose by 5.1 per cent in 2023 (2022: 3.4 per cent), real wages fell by 0.3 per cent. A look at real wage trends since the pre-crisis year of 2019 shows the considerable differences within the currency union: Portugal (up 10.9 per cent), Spain (up 2.7 per cent), Belgium (up 1.9 per cent) and Austria (up 1.3 per cent) saw increases, while real wages fell in Italy (down 8.2 per cent), Germany (down 3.3 per cent), France (down 3.1 per cent) and Greece (down 0.2 per cent) (Herzog-Stein/Stein 2024).

The high nominal wage increases in many countries in 2023 and 2024, and the decline in inflation will gradually lead to a reduction in real wage losses. In addition, minimum increases for lower wage groups or one-off payments have been agreed in collective bargaining in many cases. However, real wage losses compared to the previous year can still be observed in ten EU countries in 2023 (Müller et al. 2024), which restricts consumption opportunities and can contribute to the entrenchment of the risk of poverty and social exclusion.

3. POVERTY REDUCTION PROCEEDS TOO SLOW

The risk of poverty and social exclusion affected 94.6 million people in the EU in 2023, which corresponds to a risk rate of 21.4 per cent of the total population. Due

to the stability of the labour market, the slow recovery of household incomes and the decline in inflation, this figure has fallen slightly (2022: 95.3 million people, that is 21.6% of the population). However, this figure is still a far cry from the target agreed at the 2021 Social Summit in Porto of reducing the risk of poverty and exclusion by 2030 for 15 million people, including at least five million children, compared to the 2019 figure. So far, only a reduction of 793,000 people has been achieved. The differences between the member states also remain considerable, ranging from a risk rate of 12.0 per cent in the Czech Republic to 32.0 per cent in Romania.

Poverty and social exclusion are a particularly high risk for children under the age of 18 in the EU: with an upward trend since 2019, almost a quarter of all children are now affected. Here, too, there are major differences between the EU member states, with Slovenia at 10.7 per cent and Romania at 39.0 per cent.

The analysis of the 16 indicators of the Social Scoreboard as part of the European Semester shows a sharp increase in the second worst category "to watch" in the European Commission's latest analysis from October 2023. While the labour market indicators point in a positive direction in many areas, there are considerable deficits in the education and social sectors. In the education sector, these include a number of member states with school drop-out rates that are still too high despite a slow decline: 9.5 percent of all 18-24-year-olds in 2023 compared to 11.8 percent in 2013. Further, insufficient digital skills for the job requirements of the future are reported as well as a decline in care for children under the age of three. In the social sector, in addition to the slow reduction in the risk of poverty and exclusion, the negative list includes a reduced impact of social transfers to combat poverty in many countries following the expiry of many state support measures due to the pandemic, as well as growing burdens due to rising housing costs and unmet medical care needs.

For the first time, this year's European Employment Report included a detailed analysis of the three social objectives by 2030, as agreed in the Action Plan for the implementation of the EPSR. Using the most recent Eurostat data, these indicators stand as shown in Figure 1.

While the employment target appears to be within reach, much remains to be done in terms of poverty reduction and adult education. This applies not only to the European benchmarks, but also to many member states, which have each committed to quantifiable national targets. While the indicator for measuring progress in adult education is still methodologically controversial, divergences are already evident in the reduction of the risk of poverty and social exclusion, as some member states have even recorded increases in risk rates and are thus moving away from their target values. Most recently, these were France, Germany,

EU social headline objectives for 2030

	2016	2023	2023 target
Employment rate in percent (20-to-64-year-olds)	69,6	75,3	78,0
Participation in continuing education in the last 12 months in percent (16-to-74-year-olds)	43,7	–	60,0
Number of people at risk of poverty or social exclusion in thousands (AROPE)	103.556	94.638	80.431

Figure 1: European Commission (2024c); Eurostat; own calculations. The number of people experiencing poverty or social exclusion is expected to be reduced by at least 15 million until 2030 compared to 2019 levels..

Source: Prepared by the author.

Austria, Finland, the Netherlands, Slovakia, Sweden, Ireland, Estonia, Denmark and Luxembourg (European Commission 2024c).

Looking at the Social Scoreboard change between the 2002 and the 2023 figures a widely known picture can be drawn, albeit with some little variations: (Figure 2).

Many Western, Northern and Central European countries perform in most of the 16 comparable indicators on or better than the EU average, with The Netherlands leading this champ by obtaining an on or better than average score in all measured social fields. But to this group belongs also Portugal, which has a positive change in two indicators and possesses now of 14 indicators on or above the EU average. This success story cannot be told for other countries having been in severe economic crises in the last decade: Spain, Greece and Italy are still members of the group of states with the fewest indicators on or above average, together with Bulgaria and Romania. The good story to tell is that in some of these countries there were slight improvements (Spain, Bulgaria, Romania), and for the others no contrary movements from 2022 to 2023. But in general, the downward movement of having less indicators on or above the EU average clearly outweighs the upward convergence trend from 2022 to 2023. In sum, in nine cases indicators moved in the latter direction, while at the same time in 25 cases indicators have fallen below the average. This trend was the strongest in France (-4), Sweden, Slovakia and Lithuania (each -3).

EU Member State	2022 Number social indicators	2023 Number social indicators	Change between 2022 and 2023
Sweden	15	12	-3
Spain	5	6	+1
Slovenia	14	13	-1
Slovakia	14	11	-3
Romania	3	4	+1
Portugal	12	14	+2
Poland	12	12	0
Netherlands	15	16	+1
Malta	11	12	+1
Luxembourg	13	12	-1
Lithuania	12	9	-3
Latvia	12	11	-1
Italy	4	4	0
Ireland	13	13	0
Hungary	12	10	-2

EU Member State	2022 Number social indicators	2023 Number social indicators	Change between 2022 and 2023
Greece	4	4	0
Germany	12	13	+1
France	15	11	-4
Finland	14	12	-2
Estonia	12	10	-2
Denmark	13	13	0
Czech Republic	13	13	0
Cyprus	11	11	0
Croatia	12	11	-1
Bulgaria	5	6	+1
Belgium	13	14	+1
Austria	14	12	-2

Figure 2: European Commission 2023, 2024e; own calculations. The 2023 indicator "adult participation in learning during the last 12 months" was not comparable to 2022 and therefore not used. No or partly outdated data in some indicators in Bulgaria, France, Italy and Romania.

Source: Prepared by the author.

4. SOCIAL POLICY ACTIVITIES PRIOR TO THE EU ELECTIONS

In the year leading up to the European Parliament elections in June 2024, the European Commission has focussed especially on supporting the Council and Parliament in reaching agreements on dossiers that have not yet been adopted. This was achieved, for example, with an agreement in March 2024 on the directive proposed in 2021 to improve working conditions in platform work, which classifies the status of employees or self-employed workers according to defined criteria to improve workers' rights and social protection in the gig economy, for example. In addition, information and contestation rights for the increasingly widespread personnel management by algorithms were defined. The member states now have two years to integrate this directive into national law.

In the area of industrial relations, the Commission sought to build on the 2022 directive on adequate minimum wages with its target of a high collective bargaining coverage rate of 80% and to take up on the policy of former Commission President Jacques Delors, who died in December 2023, to facilitate and strengthen social dialogue at European level. A Council recommendation to strengthen the social dialogue in June 2023, which encouraged the member states to better involve and consult the social partners, was followed in January 2024 under the Belgian Council Presidency by a tripartite social partner summit in the symbolic Val Duchesse, where Delors invited the heads of the European trade union and employers' associations in 1985 to establish the European social dialogue. In a joint declaration, the social partners, the Commission and the Council emphasised the relevance of social partnership for the future, agreed on a series of further meetings to identify the need for reform and intended to set up a social dialogue officer at the Commission:

> «This Declaration represents a renewed commitment to strengthen social dialogue at EU level and to join forces in addressing the key challenges our economies and labour markets are facing. The objective is to achieve thriving companies of all sizes, services of general interest and public services, quality jobs and improved working conditions" (European Commission 2024d: 2).

Whether these declarations of intent will also bear political fruit could be seen in two dossiers that could not be finalised in the legislative period up to 2024: Firstly, the Commission's proposal for a revision of the European Works Councils Directive, which it presented following a two-stage consultation process with the social partners in January 2024. The European Parliament had requested this in a resolution in February 2023 in order to strengthen the role and capacity for action of European Works Councils. Negotiations between the Parliament and Council on this are not ex-

pected until autumn 2024. Secondly, in the consultation of the social partners on EU measures to ensure fair teleworking and the right to disconnect, which runs from April to June 2024. The European Parliament had already called for action on this at EU level in 2021.

In September 2023, the European Commission presented a proposal for a directive on the introduction of a European disability card and a parking card for people with disabilities. The Parliament and Council reached an agreement on this in February 2024. In future, standardised proof of disability will apply throughout the EU, for example to facilitate access to relevant services.

In the area of gender equality, the Council adopted two directives in May 2024 that strengthen equality bodies in the fight against discrimination and set common standards for their work. It also adopted a directive on combating violence against women and domestic violence, which aims to uniformly name and punish related offences and extend the protection of victims with requirements for the member states. All three proposals were submitted by the Commission in 2022.

The agreement between the Council and Parliament in February 2024 on the Economic Governance Review could become relevant for the importance of social aspects in the political coordination of the European Semester. Under the reformed Stability and Growth Pact, member states can be given more time to reduce excessive government deficits if they are planning public investment in EU goals (such as digitalisation, climate neutrality, but also social resilience). In future, the application of the rules is to be tailored more closely to the individual economic situation of the member states, so that the decision on an excessive deficit procedure and its consequences will be politicised. At the same time, however, very detailed specifications on minimum reduction quotas have been adopted, which could trigger a pro-cyclical effect by forcing member states into austerity (Theodoropoulou 2024: 25-27). The reformed text explicitly refers to the existence of a social convergence framework, whose findings on social imbalances should also be taken into account in economic governance.

A case in point how controversial the implementation of the new economic governance framework with an integrated social responsibility could become, was demonstrated at the conference on the future of the EPSR organised by the Belgian Council Presidency in La Hulpe on 16 April 2024: A declaration adopted there by the participating representatives from the European institutions and the social partners sees the EPSR as a central focus point of European policies, not without mentioning its limitations:

> «After its proclamation by the European Parliament, the Council of the EU and the European Commission in 2017, the European Pillar of Social Rights has been serving as a compass to provide guidance in addressing

common employment, skills and social challenges, and to foster upward convergence in working and living conditions in the Union. At Union level, the European Pillar of Social Rights does not entail an extension of the Union's powers and tasks as conferred by the Treaties. It should be implemented within the limits of those powers" (The Belgian Council Presidency 2024: 3).

Even if the EPSR is seen as a compass, which should help to strengthen social convergence, there is no reference to the social convergence framework. Instead, somewhat coded, the existing social governance tools are listed:

«We reiterate that the European Semester, with its economic and social aspects, should remain a key framework to monitor the implementation of the Pillar, including via the Social Scoreboard, to identify risks to upward social convergence and to monitor the progress achieved towards the 2030 EU and national targets on employment, skills and poverty reduction" (The Belgian Council Presidency 2024: 13).

Interestingly, the final declaration was not signed by Sweden and Austria, and neither by the employers' organisation BusinessEurope, while Hungary and Ireland published accompanying critical statements.

5. CONCLUSION

In the European election campaign, social Europe played a subordinate role compared to geopolitical issues such as the war in Ukraine, enlargement and migration. Whether the social achievements of this legislative period will continue to be built upon is questionable given the shifts in political priorities. Exceptions to the Green Deal, a Janus-faced reform of the Stability and Growth Pact, the emphasis on competitiveness – e.g. in the reports by Enrico Letta on the future of the internal market and by Mario Draghi on the competitiveness of the EU –, and the disagreement in the declaration on Social Europe in La Hulpe indicate that it could once again become more difficult to flank market processes in the EU with progressive social policy (Vanhercke et al. 2024).

On the contrary, EU citizens demand a Social Europe: In a Eurobarometer report from April 2024 88 per cent of the participating citizens stated that a social Europe is important to them, with 43 per cent saying this is even "very important" (European Commission 2024f). Given the manifold socioeconomic challenges ahead, continuing the long and winding road to a European Social Union appears to be indispensable (Hacker 2023).

Acronyms

AROPE - En riesgo de pobreza o exclusión social

BCE - Banco Central Europeo

EPSR - Pilar Europeo de Derechos Sociales

PIB - Producto Interior Bruto

SURE - Apoyo para mitigar los riesgos de desempleo en caso de emergencia

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9

Migration and *Asylum*

by Mª ELENA MUÑOZ MARTÍNEZ

In the final months of the previous legislative cycle, an agreement was finally reached on the main instruments of the European Pact on Migration and Asylum, with major challenges emerging in implementing it (June 2024-June 2026) and applying the new rules from June 2026 onwards.

It was a race against time for the co-legislators as the end of 2023 loomed large in the roadmap drafted in December 2022, as the date set to approve the Pact before the European elections in June 2024. This pressure was reflected in an imbalance of power in the negotiations, demonstrating the political clout of some Member States' positions (CEAR 2024: 7). This was clear in the political agreement reached on 20 December 2023 (EU Council 2023) and ratified in February 2024 by COREPER (EU Council 2024a) and the LIBE Committee of the European Parliament (European Parliament 2024). It was finally endorsed by the European Parliament plenary session in April 2024 and by the EU Council in May (EU Council 2024b).

On 11 June 2024, the ten legislative texts featured in the European Pact on Migration and Asylum came into effect: the Asylum and Migration Management Regulation, two Screening Regulations, the Asylum Procedure Regulation, the Return Border Procedure Regulation, the Qualification for International Protection Regulation, the Reception Conditions Directive, the Crisis and Force Majeure Regulation, the Eurodac Regulation and the Resettlement Framework Regulation (OJEU 22 May 2024).

The reform is based on a new control procedure prior to entry (on identity, health and safety, a preliminary examination of vulnerabilities and storage of biometric data in Eurodac) applied to third country nationals at the EU's external borders, or even already in the territory, who do not meet entry conditions. The next step is to properly channel persons seeking international protection towards border or ordinary asylum procedures, and persons without protection needs —either because they have not applied or because they have been refused international protection— should be channelled towards the return procedure. Before starting to assess an asylum application, the Member State responsible for it must be determined. The criteria have been changed slightly, so in practice most of these procedures mainly fall to the first-country-of-entry in the EU. In cases of crisis or force majeure, the responsible Member State is permitted to relax its obligations, and the other Member States may increase their solidarity contributions for distribution of asylum seekers, by making financial contributions either to other Member States or even to third countries.

This consequently creates complex institutional inner-workings, featuring various bodies and mechanisms for solidarity and cooperation between Member States. Qualified majorities within the Council are often required to activate them, hindering their effectiveness.

This internal dimension is combined with the external dimension of migration, which includes enhanced cooperation with third countries in managing migratory routes of entry to the EU, readmission agreements with those States and technical cooperation agreements with clauses making development aid conditional on cooperation in border control. As the only legal and safe way forward, a Union Resettlement and Humanitarian Admission Framework has been established for the first time, whereby Member States will voluntarily accept the resettlement of refugees from other countries on their territory, or entry on humanitarian grounds.

1. INITIAL OBJECTIVES AND FINAL RESULTS

While the objective of the reform, announced in 2016 and ratified in 2020, was to achieve greater harmonisation of regulations, a fairer distribution of collective responsibilities between Member States, more flexible and efficient procedures for accessing protection and greater resilience in the face of the crisis, it does not appear likely that these new texts will achieve this.

Exceptionality as the norm

Firstly, because it establishes a series of exceptions and derogations to the rules common to all Member States in the event of crises, instrumentalisation, force majeure, and to solidarity rules in the event of migratory pressure, although these concepts are not necessarily well defined, and there are even overlaps in their definition.

Migratory pressure is defined as a situation caused by an influx of third-country nationals so large that it creates disproportionate obligations for even well-prepared Member States that require immediate action, including recurrent disembarkations following search and rescue operations.

A crisis situation is defined as a situation involving a massive influx of third-country nationals on such a scale that the asylum, reception and return system of a Member State can no longer function properly. This may occur due to a local or regional situation, with serious consequences for the Common European Asylum System (CEAS).

Furthermore, migration is instrumentalised when a hostile third country or non-state actor encourages or facilitates the movement of third-country nationals and stateless persons towards the external borders of a Member State precisely to destabilise the Union or a Member State, endangering essential functions such as maintaining public order or national security.

Finally, a situation of force majeure refers to abnormal and unforeseeable circumstances beyond the Member State's control, with unavoidable consequences despite exercising all due diligence, which prevent the Member State from compl-

ying with the obligations set out in the Migration and Asylum Management Regulation and the Procedural Regulation.

In the implementation phase, which runs until June 2026, the terms "well-prepared state" and what "abnormal and unforeseeable circumstances outside a Member State's control" need to be defined, as well as how the objective of the "destabilisation of the Union or a Member State" is determined, and what "putting at risk essential functions such as the maintenance of public order or national security" means.

This vagueness can lead to broad interpretations that result in exceptions being the norm, with a significant number of Member States maintaining a quasi-permanent state of exception vis-à-vis asylum rules and a sub-standard regime of rights for people seeking protection in the EU. The result would hinder the construction of a CEAS, due to lack of harmonisation and widespread non-compliance with common rules.

Imbalance between solidarity and shared responsibilities.

Secondly, because in practice new obligations are created for first-entry Member States without relieving them of their responsibilities using effective solidarity measures. This pushes back the goal to balance solidarity and shared responsibilities among Member States.

A new pre-entry screening procedure is being introduced which, by definition, will fall mostly to the border Member States. This procedure applies to any person who, without fulfilling entry requirements, (a) has irregularly crossed an external border (even if they are already irregularly present on the territory), (b) applies for asylum during border checks, or (c) is disembarked following a search and rescue operation.

If a person applies for asylum, after the screening procedure, their application must be processed through the border procedure in circumstances that affect a great many asylum seekers (any who intentionally submit false information or conceal information), considering that the lack of legal access pathways drives people in need of international protection to approach border areas without documentation to prove their nationality and identity. It is also mandatory to apply this procedure based on indeterminate legal concepts such as "threat to internal security, and public order", as well as introducing discriminatory criteria based on nationality (a recognition rate of less than 20%) for its application. These criteria are contrary to Article 3 of the 1951 Geneva Convention and jeopardise individualised assessment of the risk of violation of Articles 2 and 3 of the European Convention on Human Rights established in the case-law of the European Court of Human Rights.

The changes to criteria for determining which Member State is responsible for assessing each asylum application will not, in most cases, prevent the Member State of first entry from being

responsible for assessing each asylum application, even if it is much lower down the criteria hierarchy. The extension in the time limits to responsibility for a State that has issued a visa or residence permit, and the inclusion of diplomas or qualifications as a criterion for linkage to a Member State, will have a limited practical impact, as few persons in need of international protection will be eligible for these visas, residence and study permits.

Changes in the procedure for determining the responsible Member State may also have an impact on the assumption of responsibility by border or first-entry countries. Initiating the procedure for determining the Member State responsible for registering the application when not all relevant information or documentation is always available to assess the application of the criteria, combined with shorter deadlines for to take charge of procedures (dropping from three months from application submission in the previous legislation to two months from registration now) and the simplification of the readmission procedure, may increase the responsibility of the Member States of first registration, which, in many cases, are the first entry countries.

Given this increase in responsibilities, the proposed solidarity mechanism does not appear to satisfy the principle enshrined in Article 80 of the Treaty on the Functioning of the EU. This creates a sort of à la carte solidarity and many exceptions (deductions and compensations) to the solidarity contribution.

The main instrument is the Solidarity Pool, to which each Member State contributes based on its GDP and population, choosing freely between relocating persons seeking —or benefiting from— international protection from other Member States under migratory pressure, contributing financially by supporting those Member States or even third countries, or through operational, technical and personnel support measures in the field of asylum and migration. Following a proposal from the Commission, every year the Council will set the number of relocations and financial contributions, with an annual minimum of 30,000 relocations and EUR 600 million in financial contributions for all 27 Member States.

Member States benefiting from this Solidarity Pool must be declared to be under migratory pressure by the Commission, or in a situation of crisis or force majeure. The Council will approve the type of solidarity measure the Member State receives. They may also choose to contribute less to the Solidarity Pool (deductions) or request that, instead of relocations, the contributing Member States assume the burden of examining the applications that would fall to the beneficiary Member State (compensations).

The complexity of this mechanism hinders the flexibility of the Solidarity Pool to really meet the needs of the Member States, because it allows solidarity contributions to be deducted and exceptions for non-contribution or de-

ferral of contributions. Countries historically unwilling to contribute to the Solidarity Pool may continue to do so. Therefore, if a sufficient annual amount is not guaranteed, it may not be effective.

A complex system for responding to crises that is not person-focused

Thirdly, because a parallel asylum system is created for situations of crisis, force majeure or instrumentalisation, with fewer guarantees and serious risks to people's fundamental rights. This does not represent a more resilient response, but rather a complex system that generates overlaps, and thus becomes less operable in practice.

If a Member State considers itself to be in a crisis situation (including instrumentalisation) or force majeure circumstances, it has to submit a request to the Commission, which has two weeks to assess the situation and propose measures to the Council that the Member State concerned, and the other Member States should take to support it. The Council, in turn, has two weeks to come to a decision. If the Solidarity Pool is not sufficient, additional commitments will be agreed.

If the EU's response to forced displacement from Ukraine has demonstrated anything, it is that a resilient and effective response to crises is all about ensuring rights and access to protection, swiftly and effectively. However, the Crisis Regulation works to the contrary, widening the range of cases where Member States can apply the border asylum procedure, with the consequent detention of applicants. In crisis situations of mass influx or force majeure, a discriminatory criterion based on nationality is applied that is contrary to Article 3 of the 1951 Geneva Convention. Member States are given the discretion to channel asylum applications to the border procedure based on a recognition rate of less than 50%, or to decide not to apply it. In the event of an instrumentalisation crisis, it can be applied to all persons who find themselves in a situation of instrumentalisation, i.e. instead of protecting the 'victims' of this supposed instrumentalisation their rights are limited by subjecting all of them to the border procedure, thereby providing fewer guarantees. Among other things, these persons may be detained for longer and receive an automatic return decision under border proceedings without sufficient safeguards against refoulement, as in most cases an appeal against their application rejection does not trigger the automatic suspensive effect.

Instead of the prima facie recognition initially proposed to ensure rapid protection for persons in clear need of international protection, for example from a country at war, an 'expedited' procedure is introduced that simply cuts red tape, eliminating the personal interview and the time limits to resolve well-founded applications. However, this will not bring a more resilient or effective response for persons in need of international protection.

Difficulties to access the procedure and recognition of protection

Fourth, because various measures have been introduced that imply, de facto, a delay in access to the international protection procedure and procedural guarantees, most of which start when registering the application. These include the right to information, access to employment, the right to an interpreter for registration and formalisation, legal advice before formalising the asylum application, and issuing documentation which accredits the applicant as an asylum seeker after registration.

The deadline for this registration is extended to five days (currently three), and to fifteen days in the event of a very high number of applications. In cases of crisis, instrumentalisation and force majeure, it can even be extended up to four weeks, and this derogation can be applied even before it has been authorised by the Council. Bringing in pre-entry screening for third-country nationals intercepted in an irregular border crossing or coming from a disembarkation following a rescue operation at sea, regardless of whether they have applied for asylum, entails a further delay in access to guarantees, as their application will not be registered until this check has been completed. In the meantime, anyone being screened is presumed not to have entered the territory of the European Union, regardless of whether the person is physically in the transit zone of an airport, in a port after being disembarked in a maritime rescue operation, or even at locations within the territory.

However, beyond this attempt to introduce the concept of "legal fiction of non-entry", the case-law of the European Court of Human Rights is clear on the obligation to guarantee the rights of the European Convention on Human Rights whenever a State party exercises jurisdiction, even when it is extraterritorial, so that persons subject to control must be guaranteed all rights (inter alia, Hirsii Jamaa v. Italy).

Although the criteria for assessing international protection needs have remained practically unchanged, certain procedural changes have been introduced that make it more difficult for a person in need of international protection to have this status recognised.

By extending the grounds of inadmissibility that a Member State can use, it becomes more difficult to accept applications for processing, leading to rejection of subsequent applications that do not contain new elements and prohibiting positive silence for admissibility. The mandatory application of accelerated procedures in broadened cases involving a large number of applicants (e.g. lack of documentation) or by nationality (depending on the recognition rate or someone arriving from a country considered safe) will hinder individualised analysis within ordinary time limits and undermine procedural guarantees, such as the automatic suspensive effect of appeals.

Placing the burden of proof on applicants, even though they encounter great

difficulties in gathering all the required documentation because they have had to flee, contravenes CJEU case law on the shared burden of proof, which states that the determining authority must "cooperate actively with the applicant so that all elements needed be assembled. Moreover, The Court acknowledges that sometimes a Member State may be better placed than an applicant to gain access to certain types of documents" (Case C-277/11).

The obligation to assess the alternative of internal flight (previously left as an option to Member States), or to assess the intentionality of an applicant who has created new circumstances for the sole purpose of justifying a sur place application, may lead to restrictive interpretations of international protection.

'Safe country' concepts give rise to shorter procedures because, as in Directive 2013/32/EU, they can be grounds for inadmissibility (safe country of origin, safe third country and first country of asylum), they can be assessed under the border procedure (safe third country and safe country of origin) and, as a novelty, involve the mandatory application of the accelerated procedure (safe third country and safe country of origin). Given that the burden of proof is reversed in these cases, the applicant has to justify, within the short time limits of the admissibility procedure (two months, and in some cases of second applications, seven days), the accelerated procedure (three months), or the EU state border procedure (twelve weeks), that that country is not safe for them, or that they do not have sufficient links with it to assume that they can return there. Furthermore, there is an iuris tantum presumption that a country is a safe country if it is included in national or EU lists, or if the EU has signed a bilateral agreement to protect migrants while respecting the principle of non-refoulement. In the case of a safe country of origin, the different treatment of applications for international protection based on nationality may come into conflict with the prohibition of discriminatory treatment of refugees based on their country of origin, as stated in Article 3 of the 1951 Geneva Convention on the Status of Refugees.

This curtails the right to an effective remedy, as defined by the case law of the European Court of Human Rights and the Court of Justice of the European Union.

Not all transfer decisions to the responsible Member State can be appealed, which may violate the case law of the CJEU, which has established that the applicant must have an effective and prompt remedy available against the transfer under the Dublin Regulation, based on a challenge to applying any criterion (C-63/15, C-155/15) and on the grounds of exceeding the time limits for implementing the transfer (C201/16, C-323/21). In the same way, this does not envisage an appeal against the form that terminates the screening procedure and refers the person concerned to one procedure or another, despite the serious implications this involves.

The automatic suspensive effect in appeals against transfers to the responsible Member State, plus refusals under accelerated procedures, has been abolished. Its application has been extended, also in border procedures, for implicit withdrawal and cessation of international protection. In addition to the short period for lodging and resolving appeals, and the fact that the negative decision of the asylum procedure is accompanied by a return decision, there is a risk of violating the principle of non-refoulement and the individual assessment required by Art. 2 and 3 of the European Convention on Human Rights, plus the right to an effective remedy as defined by the ECHR in AC v. Spain: "with regard to expulsion from the territory, an effective remedy within the meaning of Article 13 requires the possibility of suspending the enforcement of a removal procedure."

2. IMPLEMENTATION PLANS

Given the significant change that this implies for asylum and migration management at EU and national level, a two-year implementation period has been established during which time the European institutions and, above all, the Member States must prepare for the effective application of this new regulatory framework as of June 2026.

To this end, on 12 June 2024 the Commission presented the EU's Common Implementation Plan (European Commission 2024), divided into ten interdependent blocks:

A. **Eurodac and common information systems** where Member States and the Commission must work together to implement all the new function features of Eurodac, which will store and process biometric, identity and other data from applicants for international protection, persons disembarked following search and rescue operations, and persons apprehended in connection with irregular border crossings or illegal presence on the territory of a Member State.

B. **A new system for managing migration flows at the external borders**, to manage the arrival of third country nationals at those borders and ensure their rapid access to asylum or return through mandatory checks (screening) and a border asylum and return procedure. Member States should adapt their procedures and workflows to this new model of arrival management by providing adequate places for persons to undergo screening and border procedures, defining alternatives to detention and protocols to avoid the risk of absconding.

C. **Reception systems**, to ensure sufficient reception capacity appropriate to the new procedures, including access to physical and mental health, access to the labour market within six months of registering the applica-

tion, and other integration measures. Member States should also provide mechanisms to only ensure these measures when the applicants are in the Member State where they are required to be present, and to restrict reception conditions to those who are not in the assigned territory.

D. **Fair, efficient and convergent asylum procedures**. Member States will have to adapt their procedures to the new cases which require application of border and accelerated procedures and the new deadlines for registration (five days), formalisation (21 days), admission (ten days-two months), assessment of the application (three-six months), and judicial appeals against asylum and return decisions.

E. **Fair and efficient return procedures**, where Member States should speed up and increase removals of those who do not deserve protection through a single asylum and return procedure, the digitalisation of return management and the incentivization of voluntary return through Frontex readmission and reintegration programmes.

F. **A fair and efficient system: making the new responsibility rules work**, with the aim of improving the efficiency of the system for determining the Member State responsible for examining an asylum application, with new criteria such as prioritisation of family links or educational diplomas and qualifications; streamlined procedures and shorter deadlines; and new obligations and sanctions for applicants in an attempt to avoid secondary movements.

G. **Making solidarity work** by establishing a solidarity mechanism that guarantees the minimum thresholds of 30,000 relocations and EUR 600 million in financial support per year at a European Union level. The Commission will launch the 'first annual migration management cycle' in 2024 so that the first solidarity decisions can be taken in 2025. By 1 June 2025, Member States should report on the migration and asylum situation at national level, plus possible situations of migratory pressure they are facing, and the financial contributions they will make to the Solidarity Pool.

H. **Contingency, planning and crisis response measures** to ensure that Member States are 'well prepared' to respond to crises and have a contingency planning system in place.

I. **New safeguards in asylum procedures, care for vulnerable persons and a mechanism for monitoring fundamental rights**, a cross-cutting building block that brings together rights and guarantees for persons seeking international protection and persons with specific needs, particularly unaccompanied minors and families

with children or single women and mothers. This includes setting up an independent mechanism for monitoring fundamental rights during the screening phase and the asylum border procedures.

J. **Resettlement, inclusion and integration**, with the aim of expanding legal and safe pathways for seeking protection (resettlement) and promoting access to rights and social inclusion of persons benefiting from international protection.

For each of these building blocks, Member States should review their national legislative frameworks and make the necessary adjustments to regulatory and administrative rules; review and adjust current organisational structures, including coordination structures within directorates general and ministerial departments, and at inter-ministerial level; review and adjust, as necessary, administrative work flows, standard operating procedures and protocols; review and adjust human resource capacity and identify recruitment and training needs; identify which activities will be carried out by relevant stakeholders or organisations (bar associations, NGOs, private entities) and mechanisms to ensure monitoring and quality control; review and adjust infrastructure and equipment capacity, and identify needs, including physical infrastructure for reception and detention on the territory and at borders, and technological and security infrastructure.

The objective of this Common Plan is to support and guide Member States in preparing their respective National Implementation Plans, which should be ready by 12 December 2024. The Commission will monitor compliance with the National Implementation Plans but will convene and maintain a Pact Coordination Platform that brings together the national coordinators of Member States and EU agencies to regularly monitor the implementation process with reports every six months.

Member States must submit a first draft of the National Plan to the Commission by October 2024. It will be a key factor in reducing difficulties in implementation, particularly in terms of ensuring the highest standards of protection and a human rights-based approach. Although most of the Pact instruments are regulations which are directly applicable without requiring transposition, in some cases they leave room for the Member States while in others, they represent improvements to our national legislation. Spain needs to explore its legislation to maximise the options provided by these regulations, always applying the most favourable interpretation of the norm.

One initial key issue will be to determine in which 'appropriate locations' screening and border procedures will take place, meeting the minimum reception standards of the Directive and ensuring that the person is available to the authorities without increasing detention times beyond 72 hours. Spain

must determine alternative measures to detention such as accommodation tracking, regular signatures, etc. during the seven days of screening and twelve weeks of border procedures.

Here, the establishment of national mechanisms to monitor respect for the fundamental rights provided for in the Regulations is an opportunity to ensure compliance with obligations in the light of the EU Charter of Fundamental Rights and the European Convention on Human Rights. It is important that Spain equips itself with a strong, independent mechanism, including participation from specialist organisations in the fields of asylum, migration and human rights.

It will also be essential to maximise the basic procedural guarantees, which are an improvement on previous Directives, allowing Spain not only to lower its standards but to raise them.

In the case of free legal aid, Spain must guarantee it in all administrative and judicial procedures. The regulations limit the obligatory nature of free legal aid to appeal procedures against asylum decisions and transfers to the responsible Member State, although they do allow States to provide for it in their national legislation for these administrative procedures, as is currently the case in Spain.

The right to a free interpreter is extended to registering the application, formalisation and the personal interview, and Spain must provide a quality interpretation system from the moment that the application is registered, currently limited to formalisation in our domestic legislation. This safeguard can only be implemented correctly if interpreting quality can be ensured, requiring specialised training and covering applicants' native languages.

The right to information is more rights-based in all procedures (screening, determination of the Member State responsible, asylum procedure, return at the border and reception), with greater detail regarding the content of the information to be provided to applicants, plus how this information is provided, writing in simple and intelligible language, and a clear deadline, provided at the time of registration of the application for international protection at the latest. This will improve the current administrative practice of providing this information only after the application has been formalised.

The right to be heard is also strengthened by regulating the personal interview in greater detail in both the asylum procedure and the procedure for determining the responsible Member State, and by giving Member States the possibility of bringing in a cultural mediator, as well as requiring trained interviewers.

Another area for improvement that Spain should implement is assessment of specific needs in the procedure and in the reception of vulnerable persons, establishing protocols and mechanisms for early detection, assessment and adaptation to these needs that comply with the new obligations established in the Regulations and Directive. This

detection must be envisaged from the screening stage onwards and reflected in the form sent to the authorities processing the asylum procedure. These authorities should assess special needs from the moment in which the wish to apply for international protection is expressed, based on visible, verbal, behavioural, documentary or other evidence. This is a continuous process to be completed within 30 days, with the possibility of review should new indicators arise. These screening and assessment mechanisms should include referral to doctors, psychologists and other specialists, as permitted by the Regulations. These specialists will issue reports to be considered when assessing specific needs and required support. If this support cannot be offered in accelerated or border procedures, the person will be referred to the regular asylum procedure.

The treatment of accompanied and unaccompanied children must also be reviewed in the light of new obligations to be assumed by the Member States, including the child's perspective in interviews and in the information provided to them, plus weighing up the child's best interests in all procedures, especially when they are to be transferred to another Member State, with a view to ensuring that they will receive adequate protection and assistance there. Reception centres must also be adapted to children's needs, especially any facilities intended to accommodate families during border and fast-track procedures, and Spain should provide for flexible mechanisms to refer these cases to the ordinary procedure, in the event that the reception does not meet minimum standards.

In the case of unaccompanied children, Spain must adapt its age determination and guardianship procedures to the new fifteen-day maximum time limit for appointing a representative for unaccompanied children and, while this is being done, they should be provisionally assisted by a qualified person. Multidisciplinary tests are prioritised to determine age, leaving medical testing as a last resort.

Another aspect that will undoubtedly undergo changes is the system of appeals against international protection and return decisions, in order to adapt the Spanish contentious-administrative process to the short time limits for taking action (depending on the case, from seven days to one month), and to contemplate the automatic suspensive effect, not only in cases provided for in the Procedural Regulation but also in the case-law of the ECHR, which has already established that "the ECHR has in fact held that in matters of removal from the territory, an appeal without automatic suspensive effect does not fulfil the conditions of effectiveness required by Article 13 of the Convention" (AC. v. Spain) with regard to the Spanish border procedure.

To comply with all these provisions, Spain, as a border Member State, will have to resize its administrative and judicial structures, reception systems and procedures according to the new res-

ponsibilities that it will assume with this reform, with the aim of ensuring that the rights of persons seeking international protection are not diminished.

The first two years of this new legislature will be crucial in laying the foundations for a new asylum and migration management system. How these National Implementation Plans are developed and implemented will determine whether the European Union and its Member States might guarantee or threaten the right to asylum.

3. RECOMMENDATIONS

CEAR presents ten recommendations addressed to the Spanish government to ensure that the **Implementation Plan of the European Pact on Migration and Asylum in Spain** is drawn up from an approach based on safeguards, solidarity, and full observance of international law and human rights:

A. Promote legal and safe avenues for persons in need of protection, including compliance with Article 38 of the Asylum Law to apply for asylum in Spanish embassies and consulates abroad, and to take on more ambitious resettlement commitments that are complementary to those of the European Resettlement Framework.

B. Regardless of the legal fiction concept of 'non-entry', Spain is obliged to guarantee the rights of all persons under the responsibility of the Spanish authorities, including the right to seek international protection and respect for the principle of non-refoulement.

C. Ensure the safeguards provided for in the Spanish legal system in all international protection procedures. These include an individualised assessment of applications without discrimination based on nationality, the right to free legal aid at all stages and to an interpreter for their language, the right to information and to be heard, as well as to an effective remedy.

D. Ensure that no deprivation of liberty occurs during screening and border procedures for asylum and return. Detention should be an exceptional, last-resort measure, provided that no alternative measures are available.

E. Establish measures to identify and assess the specific needs and vulnerability situations of asylum seekers during screening, in the international protection procedure and at reception, as set out in the Screening and Procedure Regulations and the Reception Conditions Directive. Ensure that these measures are observed in accelerated and border procedures and that requests are channelled through the regular procedure when there are indications of vulnerability.

F. Respect the principle of non-refoulement by guaranteeing the right to an effective remedy with suspensive effect in all asylum and return procedures. To this end, the current system for requesting interim measures should be reformed by ensuring the automatic suspensive effect and the minimum five-day time limit for submissions set out in the Asylum Procedure Regulation.

G. Transpose the new Reception Conditions Directive, guaranteeing all the rights recognised in it, and in any event ensure an adequate standard of living as defined by the case-law of the CJEU, covering at least basic needs such as housing, food, clothing or personal hygiene, and without harming their mental and physical health or violating their human dignity. Spain should not use the denial of the right to reception as a sanctioning measure during the procedure.

H. Ensure the existence of a stable and formulated system with a network of reception centres sufficiently equipped to respond to crisis situations, ensuring coordination between all administrations and civil society organisations to guarantee fast, effective access to protection without resorting to exceptions or derogations of asylum rules.

I. Contribute to solidarity with measures focusing on the protection of people by relocating them to other Member States. In the event of Spain receiving financial contributions, these should be used to strengthen the international protection system and never to externalise borders in third countries.

J. Establish an independent mechanism for monitoring respect for fundamental rights provided for in the regulations on screening and the asylum procedure, for all surveillance and control activities at external borders, involving the Ombudsman, the European Agency for Fundamental Rights, the UNHCR and civil society organisations in its operation, with a mandate to investigate and propose sanctions in the event of breaches of fundamental rights at borders.

Acronyms

COREPER: Committee of Permanent Representatives of the Governments of the Member States of the European Union .

OJEU: Official Journal of the European Union

EUAA: European Union Agency for Asylum

EURODAC: European Biometric Database

FRONTEX: European Border and Coast Guard Agency

LIBE: Parliamentary Committee on Civil Liberties, Justice and Home Affairs

CEAS: Common European Asylum System

NGO: Non-Governmental Organisation

ECHR: European Court of Human Rights

CJEU: Court of Justice of the European Union

EU: European Union

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