



National Elections in a European Framework

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ARTICLES



ABSTRACT

The Union's democratic legitimacy is contingent upon the proper representation of Member State citizens at the national level. The ongoing deterioration of national democracies, especially pressure on free and fair elections, therefore threatens European democracy more broadly. However, as the extent of the Union's competence in this field is limited, European Union (EU) action to uphold democratic elections is not self-evident. Whereas national elections are traditionally considered outside the scope of EU law, recent developments reveal that the division between EU and national competences is becoming increasingly blurred. This piece examines the emerging EU framework within which national elections operate, outlining developments in policy and jurisprudence which signal a more proactive stance by EU institutions. Yet, supranational involvement to protect democracy, especially by a judicial body, necessitates careful consideration to avoid undermining trust in the system as a whole.

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Representative democratic systems require fair electoral processes that facilitate the free and equal expression of the popular will of the people. In 2024, Romania's Constitutional Court (the Court) determined that the presidential election process had not fulfilled these essential conditions, conditions also enshrined in the Romanian Constitution.¹ The Court found that one candidate, Călin Georgescu, had engaged in an unlawful electoral campaign, marked by manipulative advertising and a lack of transparency in campaign financing. Consequently, the Court annulled the first round of elections. In a subsequent case, the Court prohibited Georgescu from participating in the new elections it had mandated.² Not only are these national judgments significant for Romanian democracy, but they also affect European Union (EU) democracy. The President of Romania serves as the country's representative in the European Council, playing a direct role in shaping the Union's overall political direction. If a national president assumes office through an undemocratic process, they cannot be said to legitimately represent their Member State at the EU level. Accordingly, deficiencies in national electoral integrity can have ripple effects that undermine the democratic legitimacy of the Union.

The Romanian presidential election is just one example of the mounting pressure facing democracy in the EU Member States. Foreign interference and the spread of misinformation have become increasingly prominent threats to the integrity of democratic processes.³ The ongoing deterioration of democracy at the national level, especially these threats in relation to the conduct of free and fair elections, has implications for the health of European democracy more broadly.⁴ In response, national government officials,⁵ scholars⁶ and civil society actors⁷ have called upon the EU to act to protect democracy in the Member States. Yet the EU's ability to act in this domain is constrained by the limited scope of its competences. National elections are closely linked to national identity, and their organisation is competence of the Member States themselves.⁸ However, recent developments suggest that the line between national and EU competences in this area is becoming increasingly blurred. As democratic backsliding intensifies, the legal and political arguments for EU intervention are gaining traction, prompting a reconsideration of the Union's role in upholding core democratic values across its Member States.

This article critically examines the EU's evolving framework within which national elections operate. Its aims are twofold. Firstly, it seeks to illustrate that national elections are not devoid of EU influence by mapping recent developments on this front. This mapping incorporates legal doctrinal reflections. Secondly, it seeks to anticipate future implications of these developments

¹ Constitutional Court Romania, Decision No 32, 6 December 2024 on the annulment of the electoral process regarding the election of the President of Romania in 2024 (Official Gazette no 1231, 6 December 2024).

² Constitutional Court Romania, Decision No 7, 11 March 2025 on the rejection of the registration of the independent candidacy of Mr Călin Georgescu in the elections for the President of Romania in 2025 (Official Gazette no 229, 14 March 2025).

³ According to a 2025 Special Eurobarometer on protecting democracy, EU citizens are concerned about disinformation, cyberattacks and foreign influence on their elections. See European Commission. Directorate-General for Justice and Consumers, 'Protecting and Promoting Democracy' (Publications Office of the European Union 2025) <europea.eu/eurobarometer/surveys/detail/3383> accessed 9 September 2026.

⁴ Roger Daniel Kelemen, 'Europe's Other Democratic Deficit: National Authoritarianism in Europe's Democratic Union' (2017) 52 *Government and Opposition* 211.

⁵ See the letter sent by 11 Ministers for European Affairs to the European Commissioners responsible for the EU's policies related to democracy: 'Letter on Protecting Elections from Foreign Interferences' (2 March 2025) <<https://www.rijksoverheid.nl/documenten/publicaties/2025/02/03/letter-on-protecting-elections-from-foreign-interferences>>.

⁶ See, eg, Luke Dimitrios Spieker, 'Beyond the Rule of Law: How the Court of Justice Can Protect Conditions for Democratic Change in the Member States' (SIEPS 2023); Timothée Ceurremans and Elisabeth David, 'Countering Democratic Backsliding in (Future) EU Member States: Article 10(3) TEU Unlocked' (2024) 30 *ELJ* 515; Yasmine Bouzoraq, 'The Value of Democracy in EU Law and Its Enforcement: A Legal Analysis' (2023) 2023 *8 European Papers* 809; John Morijn, 'The EU's Double Democracy Problem' in Patricia Wadensjö and Bernd Parusel (eds), *Key Concepts for the Future of the EU* (SIEPS 2025); Thomas Verellen, 'Hungary's Lesson for Europe: Democracy is Part of Europe's Constitutional Identity. It should be Justiciable' (*VerfBlog*, 8 April 2022) DOI: [10.17176/20220409-011321-0](https://doi.org/10.17176/20220409-011321-0).

⁷ See, eg, European Civic Forum, 'Hungary: ECF Condemns New Defence of Sovereignty Law and Calls on EU Institutions to Act' (15 December 2023) <<https://civic-forum.eu/statement/hungary-ecf-condemns-new-defence-of-sovereignty-law-and-calls-on-eu-institutions-to-act>> accessed 12 February 2025.

⁸ As recognised also by the Commission, see Commission, 'European Democracy Shield: Empowering Strong and Resilient Democracies' (Joint Communication) JOIN (2025) 791 final, 10.

and normatively assess them. For the first aim, this article outlines the relevant developments in policy and jurisprudence which signal a more proactive stance by EU institutions to safeguard national elections.⁹ The first section traces the Commission's shifting approach to legislative action in this field, as reflected in its recent policy communications. This shift suggests a growing recognition of the Union's potential role in supporting electoral standards across the Member States. Two legal acts, the Political Advertising Regulation¹⁰ and the Recommendation on inclusive and resilient electoral processes,¹¹ exemplify the EU's more active engagement with national electoral matters. Section two discusses recent judgments by the Court of Justice of the European Union (CJEU) that demonstrate willingness to adjudicate matters connected to national elections. While the CJEU acknowledges that 'the organisation of national political life' is an expression of national identity, it nonetheless emphasises that this does not exempt the Member States from complying with requirements derived from the value of democracy.¹² Section three addresses the interplay between the case law and the legal acts, as well as the limitations of both the legislator and the judiciary in establishing a coherent framework on national elections.

For the second aim, evaluating the desirability of these developments beyond a doctrinal perspective, this article takes a forward-looking approach. Section four anticipates the potential of the described emerging framework. It explores whether the CJEU could serve as a court of last instance for certain national electoral matters which have an EU dimension. While scholars have tended to focus on the opportunities for EU intervention to uphold democratic standards within the Member States, it is important to recognise the limitations of and risks posed by a shift towards supranational rules governing national elections. In light of the deep interconnection between national and EU-level democracy, it is vital that such a shift does not result in mutual erosion, but rather contributes to the reinforcement of democratic norms across the Union. This article does not seek to suggest the best course of action to be taken, it rather serves as a call to not underestimate the potential drawbacks of the sketched trajectory.

1. THE EVOLUTION OF DEMOCRACY POLICY

Before delving into the more recently adopted legal acts which concern national electoral systems, it should be noted that EU primary law references Member State democracy. Historically, democracy first appeared in the 1992 Maastricht Treaty where Article F(1), a precursor to Article 2 of the Treaty on European Union (TEU),¹³ noted that the Member States' 'systems of government are founded on the principles of democracy.'¹⁴ Now, Article 2 TEU enshrines democracy as a value which the Union was founded on, as well as a value common to the Member States. This duality comes back in Title II of the TEU, 'Provisions on Democratic Principles', where the first paragraph of Article 10 TEU dictates that the Union's functioning is founded on representative democracy. The second paragraph of Article 10 TEU highlights that the democratic legitimacy of the Union rests upon both direct representation of European citizens through the European Parliament, as well as representation of Member State citizens through the European Council and the Council.¹⁵ In the latter institutions, the Member State representatives are to be 'democratically accountable' to their National Parliaments or directly

⁹ For a broader account of the EU's shift to focusing on the value of democracy, see Matteo Bonelli, 'The European Union's Democratic Turn' (2025) 38 Working Papers, Forum Transregionale Studien DOI: [10.25360/01-2025-00068](https://doi.org/10.25360/01-2025-00068).

¹⁰ Regulation 2024/900 of the European Parliament and of the Council 13 March 2024 on the transparency and targeting of political advertising [2024] OJ L2024/900 (Political Advertising Regulation).

¹¹ Commission Recommendation 2023/2829 of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament [2023] OJ L2023/2829 (Recommendation on inclusive and resilient electoral processes).

¹² Case C-808/21, *Commission v Czech Republic*, EU:C:2024:962, para 154; Case C-814/21, *Commission v Poland*, EU:C:2024:963, para 153.

¹³ Consolidated Version of the Treaty on European Union [2008] OJ C115/13 (TEU).

¹⁴ While the term 'democracy' already appears in the preamble of the 1986 Single European Act, it only appears in the operative articles in the Maastricht Treaty. Treaty on European Union (Maastricht, 7 February 1992, in force 1 November 1993) [1992] OJ C 191/1, art F(1).

¹⁵ Coined as the 'dual structure of democratic legitimacy' by Armin von Bogdandy, 'The European Lesson for International Democracy: The Significance of Articles 9–12 EU Treaty for International Organizations' (2012) 23 EJIL 315.

to their citizens. Free and fair elections in the Member States are therefore crucial to the EU's democratic legitimacy. Beyond the provisions in the TEU, the Treaty on the Functioning of the European Union (TFEU)¹⁶ and the Charter of Fundamental Rights of the European Union (the Charter)¹⁷ codify certain electoral rights for EU citizens. Article 22 TFEU guarantees that EU citizens residing in another Member State can vote in and stand for municipal elections (paragraph 1) and European Parliament elections (paragraph 2) under the same conditions as nationals. These rights are also enshrined in Article 40 Charter and Article 39(1) Charter respectively. National laws on European and municipal elections thus influence the voting rights of EU citizens exercising their right to free movement. Therefore, as recognised by EU primary law, there is an interconnection between EU democracy and Member State democracy. Yet, there is no explicit legal basis for the EU to legislate on matters of democracy in the Member States, let alone national elections. In fact, Article 4(2) TEU guarantees that the EU will respect the political and constitutional structures which form part of the national identity of the Member States. Nevertheless, this limited competence has not prevented the European Commission from prioritising the strengthening of democracy, including free and fair elections, also at the national level.

Over the past decade, the European Commission's attention has moved away from strengthening the internal democratic legitimacy of the EU to ensuring the democratic legitimacy of the Member States. Former Commission President Juncker expressed that he sought to make the 'European Union as a whole more democratic' by improving political dialogue between the European Parliament and the Commission, by ensuring transparency in the legislative process and by bringing the EU closer to its citizens.¹⁸ His successor, Von der Leyen, has also prioritised strengthening democracy. Her 2019 Political Guidelines focused more on EU level democracy – discussing the Conference on the Future of Europe, European Parliament elections and EU transparency – though they recognised the role of the local, regional and national levels in this regard.¹⁹ Her 2023 Political Guidelines do not differentiate between these levels, however, focusing instead on protecting 'our democracy', a phrase that seemingly implies the intertwined nature of the EU and national democracy. These latest Guidelines stress the need to build resilient democratic systems across the Union by tackling foreign interference, countering disinformation, increasing media freedom and protecting civil society.²⁰ These intended aims demonstrate that the current Commission is prioritising the defence and support of democracy across the EU, rather than addressing the Union's 'democratic deficit'.

Safeguarding democracy is inherently complex given the abstract nature of the concept. Over the past years, several measures have been proposed and enacted to do so. This section focuses specifically on measures aimed at ensuring free and fair elections, which the Commission recognises as 'the very core of our democracy'.²¹ The Commission's communication of its legislative plans aiming to protect electoral conveys a change in the rhetoric around discussing the division of competences between the EU and the Member States in the area of national elections. Whereas earlier communication emphasised the limits of EU competence in this area, later communication focused on the limits of Member State competences. In the 2020 European Democracy Action Plan, the Commission stated that the 'organisation of national elections is a Member State competence ... with some issues such as data protection governed by the broader framework of EU law'.²² The Action Plan highlighted that the Commission's planned measures to promote free and fair elections are to be taken 'in full respect of national

¹⁶ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (TFEU).

¹⁷ Charter of Fundamental Rights of the European Union [2012] OJ C326/391 (the Charter).

¹⁸ Jean-Claude Juncker, 'A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change' (European Commission, 15 July 2014) <https://commission.europa.eu/publications/president-junckers-political-guidelines_en> accessed 9 September 2026.

¹⁹ Ursula von der Leyen, 'A Union That Strives For More: My Agenda For Europe' (July 2019) <https://commission.europa.eu/system/files/2020-04/political-guidelines-next-commission_en_0.pdf> accessed 9 September 2026.

²⁰ Ursula von der Leyen 'Europe's Choice' (18 July 2024) <https://commission.europa.eu/document/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en> accessed 9 September 2026.

²¹ Commission, 'Communication on Defence of Democracy' COM (2023) 630, 9.

²² Commission, 'Communication on the European Democracy Action Plan' COM (2020) 790 final, 6.

competences'²³ recognising the 'limits of EU competence in this area'.²⁴ In the 2023 Defence of Democracy package, the Commission's tone appears less circumspect. Though the Commission reiterated that the organisation of elections is a Member State competence, it added the caveat that the organisation is 'governed by this broader framework of EU law'.²⁵ Rather than framing EU powers as limited, the Commission emphasised how EU law constrains national discretion. This section discusses what this 'framework of EU law' entails and the extent to which it constrains Member States' autonomy to decide on national electoral matters. In its latest democracy policy communication, the 2025 European Democracy Shield, the Commission again stresses the importance of strengthened cooperation at EU level to better protect electoral processes in the Member States.²⁶

Two key EU legal acts that touch upon national electoral matters are the Regulation on transparency and targeting of political advertising (the Regulation)²⁷ and the Recommendation on inclusive and resilient electoral processes in the EU (the Recommendation).²⁸ The Regulation concerns national electoral processes since it regulates political advertising that is 'designed to influence to outcome of an election ... at Union, national, regional or local level'.²⁹ Likewise, the Recommendation concerns 'electoral processes in the Union' in the broad sense, meaning national, regional and local elections. Although the Recommendation does not have binding force, as explicated by Article 288 TFEU, these types of 'soft-law' measures still have legal effects.³⁰ Soft-law measures in fields where the EU has limited legislative competence can serve as steering instruments to induce national policy changes.³¹ While these two acts are different in terms of legal nature and material scope, they reveal the perspective of the EU's legislative institutions on what is needed to ensure democratic elections, also at the national level.

A. POLITICAL ADVERTISING REGULATION

The Regulation entered into force in April 2024, though most of its provisions only applied from October 2025 onwards. It harmonises rules on transparency of political advertising in the Member States and restricts targeting and ad-delivery techniques. It seeks to ensure that citizens can identify political adverts and are not being 'micro-targeted' – a practice whereby messages are directed at specific groups deemed susceptible based on assessments of their personal data.³² Hence, the Regulation has a data protection legal basis, Article 16 TFEU, in addition to its internal market legal basis, Article 114 TFEU. Several other (proposed) democracy instruments also have an internal market legal basis,³³ as the EU does not have a clearly identifiable competence to adopt legislation in this field.³⁴ Although the Regulation's Impact Assessment first highlights the act's internal market aim to remove obstacles to

²³ *ibid* 3.

²⁴ *ibid* 5.

²⁵ Commission, 'Communication on Defence of Democracy' (n 20)12.

²⁶ Commission, 'Communication on the European Democracy Shield: Empowering Strong and Resilient Democracies' JOIN (2025) 791 final, 10.

²⁷ Political Advertising Regulation (n 10).

²⁸ Recommendation on inclusive and resilient electoral processes (n 11).

²⁹ Political Advertising Regulation (n 10) art 3(2)(b).

³⁰ Mariolina Eliantonio, Emilia Korkea-aho and Oana Stefan, *EU Soft Law in the Member States: Theoretical Findings and Empirical Evidence* (Bloomsbury Publishing 2021).

³¹ Andreas Hofmann, 'Types of EU Soft Law and Their National Impact' in Mariolina Eliantonio, Emilia Korkea-aho and Oana Ștefan (eds), *EU Soft Law in the Member States: Theoretical Findings and Empirical Evidence* (Hart Publishing 2021) 51.

³² Tom Dobber, Ronan Fahy and Frederik Zuiderveen Borgesius, 'The Regulation of Online Political Micro-Targeting in Europe' (2019) 8 Internet Policy Review.

³³ These other measures include Regulation 2024/1083 of the European Parliament and of the Council 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU [2024] OJ L2024/1083 (European Media Freedom Act); Commission, 'Proposal for a Directive of the European Parliament and of the Council establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937' COM(2023) 637 final.

³⁴ On the use of art 114 TFEU to adopt democracy instruments, see also Bruno De Witte, 'Internal Market Legislation as European Public Policy' [2025] *Revista de Derecho Comunitario Europeo* 11.

political advertising services, it quickly follows up with the act's democratic aim: 'to promote high European standards of transparency in political campaigning and free and fair elections in the EU level, strengthen the resilience of democratic processes in the EU and combat disinformation, information manipulation and interference in elections'.³⁵

The Commission justifies its choice of legal basis by explaining that the internal market provision permits the pursuance of additional objectives.³⁶ This justification of compliance with the principle of conferral demonstrates that EU action in this field is not self-evident. The Regulatory Scrutiny Board was critical in its opinion on the choice of legal basis. It called for the Commission to elaborate on the internal market obstacles and how this legislation would tackle these obstacles.³⁷ Yet, the use of the internal market legal basis to also accomplish other policy goals is not necessarily new. In fact, recognition of other objectives is expected, as the third paragraph of Article 114 TFEU stipulates that internal market legislation must take into account a high level of health, safety, environmental and consumer protection. In addition, several Treaty provisions require the Union to recognise certain non-market aims in all its policies, such as the promotion of equality, social protection, education and non-discrimination.³⁸ These aims in 'mainstreaming clauses' and paragraph 3 helped justify the pursuit of other goals through internal market harmonisation in prior legislation.³⁹ Using Article 114 TFEU as a legal basis to primarily strengthen the resilience of democratic processes is, nevertheless, a novel development and one that seems to be testing the limits of the internal market competence.⁴⁰ At least, it raises the question to what extent the internal market can be used as a tool to regulate national electoral processes.

When assessing compliance with subsidiarity, the Commission clarifies that the action does not 'affect the competence of Member States to organise elections'.⁴¹ This clarification demonstrates that the Commission recognises there is still a division between what the EU can regulate and the exclusive domain of the Member States to organise national elections, albeit difficult to delineate. In any case, the EU legislator accepts that defending democratic processes by guaranteeing the transparency of political campaigns falls within the Union's domain. Given the sensitive nature of the topic, one would expect there to have been hesitation from the Member States. Notably, no reasoned opinions were sent by national Parliaments.⁴² Although four chambers engaged in political dialogue, each of them concluded that the proposal was in line with subsidiarity. Throughout the legislative process, several Member States did highlight issues regarding the proposal's adherence to the principles of conferral, subsidiarity and proportionality. For instance, Hungary questioned the chosen legal bases as well as the proposal's compliance with subsidiarity, and Austria found the measures going beyond what was necessary to achieve the objectives.⁴³ Nevertheless, after two years of discussions and

³⁵ Commission, 'Impact Assessment Report accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising' SWD(2021) 355 final, 3.

³⁶ *ibid* 22–23.

³⁷ Commission, 'Regulatory Scrutiny Board Opinion: Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising' SEC(2021) 575 final.

³⁸ TFEU (n 15) arts 8–12.

³⁹ Bruno De Witte, 'Internal Market Legislation as European Public Policy' [2025] *Revista de Derecho Comunitario Europeo* 11.

⁴⁰ Or, as put by Drunen, Helberger and Fathaigh, 'relying on article 114 TFEU is stretching the internal market competence *ad absurdum*'. See Max Zeno van Drunen, Natalie Helberger and Ronan Ó Fathaigh, 'The Beginning of EU Political Advertising Law: Unifying Democratic Visions through the Internal Market' (2022) 30 *International Journal of Law and Information Technology* 181, 197.

⁴¹ Commission, 'Impact Assessment Report accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising' SWD(2021) 355 final, 24.

⁴² See the relevant dossier on IPEX website: <<https://secure.ipex.eu/IPEXL-WEB/document/COM-2021-0731>> accessed 9 September 2026.

⁴³ Council of the European Union, 'Comments from Delegations: Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising' (30 September 2022) 2021/0381(COD).

revisions, the Council adopted the Regulation with only Hungary voting against, and Estonia and Austria abstaining.⁴⁴

The material scope of the adopted Regulation is both narrow and broad at the same time, and reveals the tension between the national and Union competence on this topic. On the one hand, the Regulation explicitly outlines what it does not affect: the content of political advertisements or rules regulating other aspects of political advertising, such as specified campaign periods.⁴⁵ The preamble additionally indicates that it should neither affect one's right to the freedom of opinion nor the freedom of speech.⁴⁶ These defined limitations reflect the EU legislator caution to avoid impinging on the substantive dimension of political messages. It highlights the limits of using the internal market legal basis for a democratic aim.⁴⁷ On the other hand, the Regulation defines political advertising in broad manner: it includes any message 'liable and designed to influence the outcome of an election or referendum', which is 'by any means' prepared, placed, promoted, published, delivered or disseminated 'by, for or on behalf of a political actor'.⁴⁸ Political actors include, amongst others, political parties or alliances; candidates or holders of elected office; members of national, regional and local government; and political campaign organisations.⁴⁹ Although these definitions of 'political advertising' and 'political actor' are all-encompassing, the preamble notes that they should not affect the national definitions of certain terms, such as political party, or interfere with national rules on political campaigns, such as restricting who can conduct them.⁵⁰ In this way, the impact assessment, the preambulatory clauses and the operative provisions all demonstrate the EU legislator's willingness to regulate political advertising, while sensing the delicate nature of this topic.

B. RECOMMENDATION ON INCLUSIVE AND RESILIENT ELECTORAL PROCESSES

The Recommendation on inclusive and resilient electoral processes, unlike the specific focus of the Regulation, tackles a variety of topics. After an extensive pre-ambble, its operative part can be divided into two main sections: the first covers all elections in the Union, including local, regional and national elections,⁵¹ and the second covers the European Parliament elections.⁵² For the purpose of this article, the analysis will centre on the first section. In point 2 of the Recommendation, the Commission outlines what it considers the 'highest democratic standards' for elections, namely: 'high voter turnout, inclusive participation, easy and equal exercise of electoral rights, resilience of electoral processes, integrity and secrecy of the vote, as well as equality of opportunity'. The Recommendation details how these standards are to be upheld in its subsequent points. They range from measures supporting voter turnout to protecting election-related infrastructure, and from measures promoting election observation to minimising risks of interference from third countries.⁵³ Notably, the Commission does not only address the Member States and what actions they should take, but it also addresses European and national political parties and campaign organisations.⁵⁴ Given the array of topics addressed, the Recommendation does not focus on a single, specific issue; rather, it sets out a wide-ranging vision grounded in key electoral principles such freedom, fairness, resilience, transparency and inclusivity.

The Commission does not shy away from taking a normative stance on defining the aims and principles it outlines. Inclusive participation in an election entails, according to the Commission,

⁴⁴ Council of the European Union, 'Voting Result Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising' (11 March 2024) 2021/0381(COD).

⁴⁵ Political Advertising Regulation (n 10) art 2(2).

⁴⁶ *ibid* recital 14.

⁴⁷ Bonelli (n 8) 26.

⁴⁸ Political Advertising Regulation (n 10) art 3(2).

⁴⁹ *ibid* art 3(4).

⁵⁰ *ibid* recitals 36–37.

⁵¹ Recommendation on inclusive and resilient electoral processes (n 11) points 2–30.

⁵² *ibid* points 31–40.

⁵³ *ibid* points 4–6 (voter turnout), points 19–22 (election-related infrastructure), points 14–17 (election observation) and points 28–30 (minimising risks of interference).

⁵⁴ *ibid* points 10–13, 18, 29 and 37.

the involvement of young citizens (through possibly lowering voting ages), the electoral participation of persons with disabilities (including intellectual disabilities) and measures to support gender equality (such as gendered balanced lists).⁵⁵ By defining inclusive participation in this manner, the Commission takes a distinct standpoint on these politically controversial issues. In fact, these are exactly the issues which the Member States cannot agree on in the context of harmonising European Parliament elections. The Council has been holding up the process to reform the electoral law of the EU, initiated by the European Parliament in 2022, as the Member States have indicated reservations on sensitive provisions of the proposal.⁵⁶ Deemed unacceptable to many Member States is the provision establishing a right to vote from 16 years of age and extending this right to all persons with disabilities.⁵⁷ Another controversial provision, acceptable to only two Member States, calls on political parties to observe gender equality when selecting their candidates.⁵⁸ Therefore, it seems unorthodox for the Commission – an institution with a weaker democratic mandate than the European Parliament and the Council – to take a stance on these politically sensitive issues that do not fall clearly within the scope of the Union's competence.

The points concerning inclusiveness and democratic participation arguably reflect a certain conception of the principle of 'representative democracy'. The Commission indicates that specific groups, such as persons with disabilities, remain *underrepresented* among Members of the European Parliament.⁵⁹ As shown, throughout the Recommendation it proposes measures to mitigate this underrepresentation. By doing so, it seems to place importance on a specific view of representation, namely what Pitkin classifies as 'descriptive representation'.⁶⁰ This view of representation entails that the elected officials resemble the citizens being represented. By adopting this Recommendation, the Commission suggests that the Member States, in their elections, should also adhere to this conception. The Member States can reasonably approach the principle of representative democracy differently, however, placing greater emphasis on formalistic, symbolic or substantive representation. These national views on representation are often embedded in constitutional provisions and are related to the type of electoral system in place.⁶¹

Although Recommendations are non-binding legal instruments, in practice this soft law measure has already acquired a 'hard edge'.⁶² It could even be qualified as a 'directive-like recommendation'⁶³ as it exhibits qualities similar to a directive: it calls on Member States to report annually on their progress of its implementation.⁶⁴ The Commission has already started to include it in its own reports. In the 2024 Rule of Law Report it referenced the Recommendation,⁶⁵ as well as in the country chapter on Italy accompanying the report when discussing the

⁵⁵ *ibid* recitals 18–22 and points 7–9.

⁵⁶ Eleonora Vasques, 'LEAK: Most Countries Hesitant about EU Electoral Law Reform' *Euractiv* (5 July 2023) <<https://www.euractiv.com/section/elections/news/leak-most-countries-hesitant-about-eu-electoral-law-reform/>> accessed 9 September 2026; Council, 'Proposal on EU Electoral law – Statistical report on answers to the survey' (16 June 2023) WK 7750/2023 INIT <https://www.politico.eu/wp-content/uploads/2024/06/03/Council-questionnaire_cleaned.pdf> accessed 9 September 2026.

⁵⁷ European Parliament legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage [2022] P9_TA(2022)0129, art 6(1).

⁵⁸ *ibid* art 10(1).

⁵⁹ Recommendation on inclusive and resilient electoral processes (n 10) recital 17.

⁶⁰ Hanna Fenichel Pitkin, *The Concept of Representation* (University of California Press 1967).

⁶¹ eg art 27 of the French Constitution enshrines the prohibition of an imperative mandate: representatives are not bound by a mandate from their constituents, they should rather represent the more abstract body of the nation. Similarly, art 50 of the Dutch Constitution enshrines that the parliament represents the entire people of the Netherlands, interpreted as MPs should represent the general interest rather than 'their' voters.

⁶² De Witte discusses more generally how soft law instruments can acquire a 'hard edge', see Bruno de Witte, 'Soft Law in European Public Law' in Mariolina Eliantonio, Emilia Korkea-aho and Ulrika Mörh (eds), *Research Handbook on Soft Law* (Edward Elgar Publishing 2023).

⁶³ This is a term coined by Láncoş for recommendations that carry a 'clause on implementation, deadlines and Member State reporting', see Petra Láncoş, 'Piercing the Soft Law Veil? The Hard Truth About Directive-like Recommendations' (Social Science Research Network, 10 August 2019) <<https://papers.ssrn.com/abstract=3670619>> accessed 14 April 2025.

⁶⁴ Recommendation on inclusive and resilient electoral processes (n 10) point 45.

⁶⁵ Commission, '2024 Rule of Law Report: The rule of law situation in the European Union' COM (2024) 800 final, fn 93.

Member State's lack of progress on political party and campaign finance laws.⁶⁶ Moreover, in two instances, the Commission referred to the Recommendation when assessing candidate countries' functioning of democratic institutions. First, in the Commission's 2024 Report on Moldova, it called for the candidate country to 'align its electoral processes with the highest democratic standards, such as the ones highlighted in the Commission Recommendation'.⁶⁷ In particular, it called for alignment on political party funding and campaign finance transparency.⁶⁸ Second, in the Commission's 2024 Report on Ukraine, it urged the candidate country to take into account the Recommendation, specifically by removing electoral rights restrictions for individuals with intellectual or psychosocial disabilities.⁶⁹ These two examples demonstrate that the Recommendation has legal implications, in this case for States wishing to join the Union, as compliance with its standards is presented as a pre-condition for accession.

Alongside the relevance for the candidate countries, these references to the Recommendation also have broader implications for defining the Article 2 TEU values. By referencing the Recommendation in its review of compliance with accession criteria, the Commission used the standards from the measure to elaborate on the content of the value of democracy.⁷⁰ In *Repubblika*, the CJEU explicitly connected accession criteria and Article 2 TEU, holding that States commit themselves to adhering to the common values when joining the Union and that they cannot regress in their protection of these values.⁷¹ The standards elaborated by the Commission during accession procedures thus provide substance to define the Union's common values. The non-regression principle was reiterated in *Commission v Hungary (Valeurs de l'Union)*, where the CJEU established that Article 2 TEU itself contains legally binding obligations for the Member States.⁷² Given this, the Recommendation serves not just as non-binding guidance to the Member States or a set of requirements for candidate countries, it could actually provide insight to the legal obligations stemming from the value of democracy in Article 2 TEU. These cases point to an emerging justiciability of the Commission's recommendations concerning democracy. As a result, the Commission's normative choices are not negligible, they form part of the EU framework governing national elections.

2. JUDICIAL ENFORCEMENT OF DEMOCRATIC PRINCIPLES

Simultaneously to the Commission and EU legislator placing greater focus on safeguarding democracy in the Member States, the CJEU has been adjudicating in cases which touch upon national democracy. The CJEU has become a key actor in upholding the EU's values enshrined in Article 2 TEU. Especially when it comes to the rule of law enforcement in the Member States, the CJEU plays a major role.⁷³ Its interpretation of Article 19(1) TEU, which codifies the principle of effective judicial protection, allows the CJEU to rule on whether the Member States' national judicial systems comply with the rule of law.⁷⁴ In two landmark rulings on the Conditionality Regulation, the CJEU clarified that the values in Article 2 TEU are 'given concrete expression in

⁶⁶ Commission, '2024 Rule of Law Report Country Chapter on the rule of law situation in Italy' SWD (2024) 812 final, fn 167.

⁶⁷ Commission Staff Working Document 'Republic of Moldova 2024 Report' accompanying the document '2024 Communication on EU enlargement policy' (SWD(2024) 698 final), 4.

⁶⁸ *ibid* 20.

⁶⁹ Commission Staff Working Document 'Ukraine 2024 Report' accompanying the document '2024 Communication on EU enlargement policy' (SWD(2024) 699 final), 20.

⁷⁰ On how accession criteria help define the content of art 2 TEU values, see Christophe Hillion, 'Overseeing the Rule of Law in the EU: Legal Mandate and Means' in Carlos Closa and Dimitry Kochenov (eds), *Reinforcing Rule of Law Oversight in the European Union* (CUP 2016); Tom L Boekestein, 'Making Do With What We Have: On the Interpretation and Enforcement of the EU's Founding Values' (2022) 23 German Law Journal 431, 441.

⁷¹ Case C-896/19, *Repubblika v Il-Prim Ministru*, EU:C:2021:311, paras 61–64.

⁷² Case C-769/22, *Commission v Hungary (Valeurs de l'Union)*, EU:C:2026:326, paras 524–36.

⁷³ Dimitry Kochenov and Petra Bård, 'The Last Soldier Standing? Courts Versus Politicians and the Rule of Law Crisis in the New Member States of the EU' in Ernst Hirsch Ballin, Gerhard van der Schyff and Maarten Stremmer (eds), *European Yearbook of Constitutional Law 2019: Judicial Power: Safeguards and Limits in a Democratic Society* (TMC Asser Press 2020).

⁷⁴ For an overview of the CJEU's rule of law case law, see Meijers Committee's 'Rule of Law Dashboard' <<https://euruleoflaw.eu/rule-of-law-dashboard-new/>> accessed 9 September 2026.

principles comprising legally binding obligations for the Member States'.⁷⁵ Now, multiple scholars suggest that the value of democracy can be enforced by the CJEU in a similar manner as the rule of law.⁷⁶ Several judgments provide insight into the principles that give concrete expression to the value of democracy. So far, the CJEU's case law on democratic principles has stemmed mostly from cases related to the European Parliament elections. The CJEU's reasoning in these cases, however, can have implications for national electoral laws. Throughout the rulings, it is possible to identify linkages between various provisions that give expression to the value of democracy. By tracing these connections, this section shows how the judgments contribute to the overarching EU law framework of national elections.

The CJEU has confirmed that both Article 10(1) TEU and Article 22 TFEU give expression to the value of democracy in Article 2 TEU. Within its judgments, Article 10(1) TEU functions as a lynchpin connecting various provisions on electoral rights to the value of democracy. It reads: 'The functioning of the Union shall be founded on representative democracy'. This provision establishes the principle of representative democracy which 'gives concrete form to the value of democracy referred to in Article 2 TEU'.⁷⁷ In two cases concerning European Parliament elections, the CJEU connected representative democracy to the effective exercise of the right to vote and the right to stand for election. In *Delvigne*, it clarified that Article 39(2) Charter, 'Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot', constitutes a self-standing right to vote in the European Parliament elections.⁷⁸ In other words, individuals can rely on this Charter provision in purely internal cases concerning the right to vote for the European Parliament elections. Thereby, the CJEU established that it has jurisdiction to rule on cases where this right is at stake. Although the CJEU did not yet explicitly refer to Article 10(1) TEU in *Delvigne*, in the subsequent *Junqueras Vies* case it connected Article 39(2) Charter to the principle of representative democracy. In *Junqueras Vies*, the CJEU confirmed that the Charter provision also guarantees the 'effectiveness of the right to stand as a candidate at elections'.⁷⁹ It explained that the provision is simply the expression of 'the principle of direct universal suffrage in a free and secret ballot enshrined in Article 14(3) TEU'.⁸⁰ In other words, Article 39(2) Charter 'transforms Article 14(3) TEU into a fundamental right that is addressed to both the Member State of residence and the Member State of nationality'.⁸¹ Thus, electoral rights and free elections are inherently connected to the principle of representative democracy enshrined in Article 10(1) TEU. These two cases demonstrate how electoral rights emanate from the value of democracy in Article 2 TEU.

The other provision giving concrete expression to the value of democracy, Article 22 TFEU,⁸² establishes that mobile EU citizens have the right to vote in and stand for municipal and European elections in their Member State of residence, 'under the same conditions as nationals of that State'. In two infringement cases concerning the right of mobile EU citizens to join political parties, the CJEU ruled that Article 22 TFEU must be interpreted as prohibiting the Member States from restricting political party membership to nationals.⁸³ The CJEU read the provision in light of Article 10(1) TEU and held that it also gives 'concrete expression to the principles of democracy and ... equal treatment'. It stressed that these two principles are 'an integral part of the identity and common values of the European Union, to which the Member States adhere and whose observance they must ensure in their territories'. Therefore, by

⁷⁵ Case C-156/21, *Hungary v Parliament and Council*, EU:C:2022:97, para 232; Case C157/21, *Poland v Parliament and Council*, EU:C:2022:98, para 264.

⁷⁶ See for example Schuler's paper in this Special Edition: Miriam Schuler, 'The Enforcement of the Principle of Democracy against Member States under Article 10 TEU' (2026) *Utrecht Law Review*; also Spieker (n 6); Bouzora (n 6); Ceurremans and David (n 6).

⁷⁷ Case C-502/19, *Junqueras Vies*, EU:C:2019:1115, para 63; reaffirmed in Case C-808/21, *Commission v Czech Republic* (n 12) para 114; Case C-814/21, *Commission v Poland* (n 12) para 112; Case C-181/23, *Commission v Malta*, EU:C:2025:283, para 89.

⁷⁸ Case C-650/13, *Thierry Delvigne v Commune de Lesparre Médoc and Préfet de la Gironde*, EU:C:2015:648.

⁷⁹ Case C-502/19, *Junqueras Vies* (n 77) para 86.

⁸⁰ *ibid.*

⁸¹ Thomas Giegerich, 'The European Union as Exemplary But Imperfect Multilevel Democracy' in Thomas Giegerich (ed), *The Human Right to Democracy in Multilevel Systems at a Time of Democratic Backsliding: Global, Regional and European Union Perspectives* (Springer Nature Switzerland 2026), 182.

⁸² Case C-808/21, *Commission v Czech Republic* (n 12) para 162.

⁸³ Case C-808/21, *Commission v Czech Republic* (n 12); Case C-814/21, *Commission v Poland* (n 12).

allowing EU citizens to join political parties, the Member States are implementing principles of democracy and equal treatment. The CJEU reaffirmed the link between Article 22 TFEU and Article 10 TEU in the *Commission v Malta* case (citizenship by investment), where it held that Article 10 TEU confers political rights on Union citizens, which are ‘given concrete expression’ in Article 22 TFEU.⁸⁴

As indicated, the above cases relate to the elections at the European level, and to a certain extent municipal elections, which are partially regulated by EU law. Nevertheless, their impact is not restricted to just European and municipal elections. The CJEU’s jurisdiction to rule on the right to vote and the right to stand for election has the potential to influence national electoral laws. Often, electoral rights do not relate to a particular elected body.⁸⁵ For instance, if an individual is deprived of their right to vote, they can generally no longer vote in any election – be it local, regional, national or European. Therefore, the CJEU ‘denouncing such a restriction with regard to one particular body might lead to a reform of the whole system’.⁸⁶ Otherwise, the Member States would have to accept that the conception of the right to vote in their legal order is no longer uniform, but differs per elected body. Not only national laws concerning the right to vote, but also the right to stand for election can be brought within the purview of the CJEU, as *Junqueras Vies* confirmed that Article 39(2) Charter additionally guarantees passive suffrage for the European elections. Accordingly, the CJEU has broad jurisdiction to assess cases concerning EU citizens’ electoral rights, which might subsequently cause national legislators to adapt laws applicable also to national elections.

The infringement cases on political party membership demonstrate another spill-over effect of the CJEU’s interpretation of relevant Treaty provisions. After the CJEU held that the electoral rights in Article 22 TFEU include the effective exercise thereof, it determined that not being able to join a political party affects one’s right to stand for election. Although Article 22 TFEU concerns mobile EU citizens’ electoral rights at the European and municipal level, linking these rights to political party membership brings in a national dimension. Political parties do not solely operate at European and municipal level, rather they tend to operate at all levels, including national. The CJEU’s broad interpretation of the right to vote in Article 22 TFEU therefore has implications for the regulation of political parties, which are important actors in national electoral processes and contribute to national political life.⁸⁷

The CJEU seems aware that its conclusion in the political party membership judgments touches upon aspects related to sensitive national constitutional matters. Rejecting the position that its interpretation infringes on national identity, it noted that Article 22 TFEU does not oblige the Member States to grant electoral rights in national elections.⁸⁸ Moreover, it suggested that the Member States could adopt rules that ‘preclude members of the party or movement who are not nationals of that State from taking part’ in decision-making ‘regarding the nomination of candidates in national elections’.⁸⁹ Here we see the CJEU, similarly to the Union’s legislative bodies in their legal acts, acknowledging a divide between national and Union competence in the area of elections. Yet, this divide is difficult to pinpoint. In the same judgments, the CJEU acknowledged that ‘the organisation of national political life ... is part of national identity’, however, it holds that Article 4(2) TEU does not exempt compliance with obligations stemming from the value of democracy and the principles that give expression to it.⁹⁰ The Member States can thus organise national political life, and their national electoral processes, to the extent that their laws do not interfere with obligations stemming from the

⁸⁴ Case C-181/23, *Commission v Malta* (n 77) para 88.

⁸⁵ Although certain Member States impose a different voting age per election, such as Germany and Belgium where the voting age for the European Parliament elections is 16, while the voting age for national parliamentary elections is 18.

⁸⁶ Hanneke van Eijken and Jan Willem van Rossem, ‘Prisoner Disenfranchisement and the Right to Vote in Elections to the European Parliament: Universal Suffrage Key to Unlocking Political Citizenship?’ (2016) 12 *EuConst* 114, 131.

⁸⁷ As recognised by the CJEU in Case C-808/21, *Commission v Czech Republic* (n 12) para 154; Case C-814/21, *Commission v Poland* (n 12) para 153.

⁸⁸ Case C-808/21, *Commission v Czech Republic* (n 12) para 155; Case C-814/21, *Commission v Poland* (n 12) para 154.

⁸⁹ *ibid.*

⁹⁰ Case C-808/21, *Commission v Czech Republic* (n 12) paras 154–58; Case C-814/21, *Commission v Poland* (n 12) paras 153–57.

3. EMERGING EUROPEAN FRAMEWORK

The previous sections separately addressed recent EU policy and legislation related to elections, as well as relevant CJEU judgments. For a more comprehensive picture of the Union's role to uphold democratic national elections, however, one must consider both the legislative and judicial developments in tandem. This is because the institutions do not operate in a vacuum. Together, they give shape to the current, and possibly future, obligations on the Member States. The synergy between the Union's legislator and judiciary in operationalising the values of Article 2 TEU is evident for the rule of law. The Commission's definition of this value in its 2014 Rule of Law Framework and annual Rule of Law Reports build on the case law of the CJEU.⁹¹ In this manner, it codifies the principles established in the CJEU's jurisprudence.⁹² Concurrently, the CJEU's jurisprudence on rule of law instruments, such as the judgments on the Conditionality Regulation, can consolidate their legitimacy.⁹³

The operationalisation of democracy is happening through different institutional modalities. While the EU legislator proactively introduces positive standards aimed to ensure democratic elections, the CJEU primarily operates reactively based on the cases brought before it. For instance, through the adoption of the Political Advertising Regulation, the legislator detailed details the transparency of information needed to support free and fair elections. In the political party membership cases, the CJEU enforces the constitutional minimum. Yet, through its interpretation of values and principles found in EU primary law, the CJEU can also take on a role as norm-setter.⁹⁴

In certain instances, the legislator and judiciary have to work together in order to give shape to the emerging legal framework governing democracy. As discussed, the European Parliament and Council are adopting various instruments aimed at protecting democratic processes, but the CJEU could potentially annul measures due to a lack of legislative competence. The action brought by Hungary against the European Media Freedom Act⁹⁵ gives the CJEU an opportunity to assess the use of Article 114 TFEU as a legal basis to protect democracy.⁹⁶ This case also shows how the CJEU is limited by the cases brought before it. National courts can bring preliminary references under Article 267 TFEU, as they did in *Delvigne* and *Junqueras Vies*, but often national courts might not be inclined to do so.⁹⁷ Additionally, for preliminary references, the CJEU is limited by the facts of the specific case and the questions asked by the referring court, although it can significantly rephrase them. Another way in which the CJEU can rule on electoral matters is if the Commission decides to bring an infringement procedure against a Member State, such as the cases against Poland and the Czech Republic concerning political party membership. In these procedures, however, the CJEU is restricted by the specific claims brought by the Commission. In the infringement procedure against Hungary on the defence of national sovereignty law, the Commission decided to drop the claims concerning democratic principles and electoral rights, meaning the CJEU can no longer consider whether provisions on

⁹¹ Joelle Grogan and Clara van Dam, 'Chapter 25: Soft Law and the Rule of Law Crisis' in Mariolina Eliantonio, Emilia Korkea-aho and Ulrika Mörtz (eds), *Research Handbook on Soft Law* (2023) 392.

⁹² Laurent Pech, 'The Rule of Law as a Well-Established and Well-Defined Principle of EU Law' (2022) 14 *Hague Journal on the Rule of Law* 107, 113.

⁹³ Case C-156/21, *Hungary v Parliament and Council* (n 73); Case C-157/21, *Poland v Parliament and Council* (n 73).

⁹⁴ Similarly to how the CJEU operationalises the rule of law by drawing 'red lines', see Iris Canor and others, 'Guest Editorial: A Potential Constitutional Moment for the European Rule of Law – The Importance of Red Lines' (2018) 55 *CML Rev.* 983.

⁹⁵ European Media Freedom Act (n 33).

⁹⁶ Case C-486/24, *Hungary v European Parliament and Council of the European Union* (Action brought on 10 July 2024).

⁹⁷ Robert Bray and Cristina Fasone, 'The Court of Justice and the European Court of Human Rights on Electoral Matters: Towards a Procedural Conception of Representative Democracy?' in Cristina Fasone, Edmondo Mostacci and Graziella Romeo (eds), *Judicial Review and Electoral Law in a Global Perspective* (1st edn, Hart Publishing 2024) 159.

democracy were violated.⁹⁸ The further development of an EU framework on national elections therefore also depends on whether the CJEU is provided the opportunity to adjudicate on relevant norms.

For the time being, the emerging framework is quite diffuse. Whereas the case law has centred around electoral rights, the Regulation and Recommendation mainly concern the broader electoral process. Both acts emphasise transparency in the process, open and fair political debate, the right to be informed and accountability throughout. What constitutes a democratic electoral process, besides the ability to effectively exercise electoral rights, has not yet been elaborated upon by the CJEU. Notably, both the Commission and the CJEU reference sources beyond EU law that shape democratic standards. The Commission integrates advice from the Venice Commission's 'Code of Good Practice in electoral matters' in its Recommendation.⁹⁹ The CJEU draws inspiration from the Strasbourg court. It has referred to case-law from the European Court of Human Rights (ECtHR) on parliamentary immunity¹⁰⁰ and the freedom of association.¹⁰¹ A comprehensive understanding of what democratic national elections entail, and where those standards come from, is still lacking.

There is one evident commonality that emerges from the legal acts and the relevant case law discussed. It is apparent that the EU regards political parties as crucial actors in electoral processes, which can facilitate or hinder the exercise of democratic rights.¹⁰² The Regulation, Recommendation and the CJEU's rulings all place importance on political parties in this regard. To ensure fairness and transparency in electoral processes, the Regulation seeks to hold political parties accountable, recognising that their advertising can potentially mislead or misinform voters. Although the Regulation's definition of political actors encompasses more than just political parties, they are of course the main sponsors of political campaigns. The legislation demonstrates the perceived need to regulate political parties' actions to enable the exercise of democratic rights. From a more positive perspective, the Recommendation highlights that political parties are 'well-positioned to support genuine political participation'.¹⁰³ It emphasises the 'key role' political parties play in European democracies by 'forming political awareness, promoting political candidates, encouraging voter participation, and expressing the will of the citizens'.¹⁰⁴ These tasks are inherent to facilitate representative democracy, as found in Article 10(1) TEU, a principle also referenced in the Recommendation.¹⁰⁵ The CJEU echoed this sentiment, holding that political parties 'fulfil an essential function in the system of representative democracy, on which the functioning of the European Union is founded, in accordance with Article 10(1) TEU'.¹⁰⁶ In the EU law framework governing national elections, political parties are therefore seen actors that can empower citizens to exercise their rights, on the one hand, and inhibit citizens' right to information, on the other.

4. THE POTENTIAL AND LIMITS OF SUPRANATIONAL OVERSIGHT

The actions of the Union have, so far, not interfered with the core of national elections. The Regulation creates clear legal obligations, but its content is largely deferential to sensitive national matters. The Recommendation, while far-reaching in its content, is not directly legally binding, though its legal effects should not be underestimated. The CJEU's yet limited number of judgments concern European elections, with only indirect implications for national elections. Nevertheless, these actions might prepare the ground for further EU oversight of national

⁹⁸ Opinion of AG Kokott in Case C-829/24, *Commission v Hungary*, EU:C:2026:90, point 27. On this Opinion see Felicie Remlinger, 'A Case for Judicial Caution? Advocate General Kokott's Assessment of Hungary's Law on Sovereignty from a Democratic Standpoint' (9 March 2026) DOI: [10.21428/9885764c.b5e3a692](https://doi.org/10.21428/9885764c.b5e3a692).

⁹⁹ Recommendation on inclusive and resilient electoral processes (n 11) point 3.

¹⁰⁰ Case C-502/19, *Junqueras Vies* (n 77) para 84.

¹⁰¹ Case C-808/21, *Commission v Czech Republic* (n 11) paras 118–121; Case C-814/21, *Commission v Poland* (n 11) paras 116–19.

¹⁰² On the importance placed by the Court on political parties, see also Schuler (n 76).

¹⁰³ Recommendation on inclusive and resilient electoral processes (n 11) recital 23.

¹⁰⁴ *ibid* recital 5.

¹⁰⁵ *ibid* recital 3.

¹⁰⁶ Case C-808/21, *Commission v Czech Republic* (n 12) para 121; Case C-814/21, *Commission v Poland* (n 12) para 119.

elections. This section explores the potential of this emerging framework, and sketches the possible risks posed by growing intervention. Ultimately, it offers a critical perspective of the trajectory emerging from the developments described in the previous sections.

While recognising that the CJEU is constrained by the scope of EU law, Fasone suggests that the CJEU ‘could further exploit the potential of the EU Charter, in particular Article 39, combined with Article 2 TEU ... and Articles 10 and 14 TEU’.¹⁰⁷ This raises the question: what is the potential of these legal provisions? In the political party membership cases, the CJEU held that the Member States cannot restrict political party membership to nationals through legislation. Formulated as a limitation, this conclusion entails a negative obligation on the Member States: they must refrain from taking these measures. An ‘effective right to stand for election’ arguably also imposes positive obligations on the Member States to guarantee that EU citizens can actually join political parties. Because, if all national political parties would impose restrictions, non-national EU citizens would be left in the same position. Therefore, Article 22 TFEU could require actions by the Member States to ensure that mobile EU citizens can make use of their right to join political parties in practice.¹⁰⁸ This importance placed on political parties the electoral process can give rise to more politically sensitive issues, such as the internal organisation of political parties or the banning of a certain political party.¹⁰⁹ Following the line of reasoning set out by the CJEU, one could argue that political parties must be internally democratic to ensure the effective right to stand for election. In these judgments, the CJEU took internal democratic structures almost as a given. When applying its reading of Article 22 TFEU to the facts of the case, it stated that the national legislation is prone to preclude mobile citizens from ‘participating in the decision of that party or movement concerning his or her inclusion and ranking on that list of candidates, or at the very least to limit that participation’.¹¹⁰ It added that ‘it will be for the members of the political party or political movement to choose the candidates to be included on their lists and to decide on the ranking of those candidates thereon’.¹¹¹ The CJEU drew a link between party membership and effectively exercising the right to stand for election precisely because of the internal democratic structures.

If the CJEU were to rule in this manner on the internal organisation of political parties, it would touch upon core national constitutional aspects. Not all the Member States have relevant laws concerning political parties and their internal structures. In fact, within the EU, only a few Member States in addition to the Czech Republic and Poland regulate that the internal functioning of political parties must be democratic.¹¹² While the CJEU, as well as the EU legislator, seem to indicate that they are essential for the functioning of a representative democracy, political parties do not play the same role in the national constitutional orders of each Member State. Their regulation varies greatly across the Union.¹¹³ The EU’s unambiguous stance on the importance of political parties in a representative democracy is difficult to reconcile with certain Member States’ lack of regulation in this field. In the Dutch constitutional tradition, for instance, recognition of political parties has been regarded as an impediment of the freedom of association, as recognition brings about regulation and thus inherently limitations.¹¹⁴ The freedom of association is considered a civil liberty, meaning

¹⁰⁷ Cristina Fasone, ‘Judicial Review of Electoral Rights Between Luxembourg and Strasbourg’, *Judicial Review, Fundamental Rights and Rule of Law* (Routledge 2025) 169.

¹⁰⁸ Peers suggests that art 22 TFEU could even have horizontal direct effect, which would mean an individual could invoke it against a political party. See Steve Peers, ‘EU Citizens’ Right to Join Political Parties’ (*VerfBlog*, 16 December 2024) DOI: [10.59704/dcccefc22ad2b6a4](https://doi.org/10.59704/dcccefc22ad2b6a4).

¹⁰⁹ On the EU law dimension of political party bans see Miriam Schuler, ‘National Party Bans Under EU Law’ (2026) *German Law Journal*.

¹¹⁰ Case C-808/21, *Commission v Czech Republic* (n 12) para 139; Case C-814/21, *Commission v Poland* (n 12) para 135.

¹¹¹ Case C-808/21, *Commission v Czech Republic* (n 12) para 140; Case C-814/21, *Commission v Poland* (n 12) para 136.

¹¹² European Commission for Democracy through Law (Venice Commission), ‘Code of Good Practice in the field of Political Parties’ (3 June 2009), CDL-AD(2009)021, 7.

¹¹³ The Venice Commission’s Code of Good Practice in the Field of Political Parties describes that the Bulgaria and Lithuania constitutionally enshrine the establishment of political parties, France and the Netherlands regulate political parties under general legislation on associations, Spain and Romania have specific legislation on political parties and Italy has no form of regulation of political parties.

¹¹⁴ AM Donner, ‘Object en methode van het staatsrecht’, in: *Object en methode van de staatsrechtwetenschap*, Staatsrechtconferentie 1982, Nijmegen: Ars Aequi 1982, 44.

that state interference must be limited.¹¹⁵ Freedom of association in the Netherlands is thus interpreted as leaving room for political parties to decide how to structure their organisation. So, if the CJEU were to draw an explicit link between the effective exercise of the right to stand for elections and internal democratic processes of political parties, this would conflict with the Dutch conception of the freedom of association. When defending democratic principles, the CJEU is inherently tasked with defining them as well. The CJEU's autonomous definition of these principles could be at odds with the constitutional traditions of the Member States, which – paradoxically – is also supposed to be the source of inspiration for these principles.

Based on the CJEU's judgments, one could also argue that its jurisdiction extends to political party bans.¹¹⁶ The CJEU highlighted that political parties play a crucial role in facilitating electoral rights. Within the Union, many political parties operate at the local, regional, national and European level. Therefore, the banning of a political party has consequences for the effective exercise of the right to stand for election to the European Parliament. Article 39(2) Charter guarantees the exercise of this right even in internal situations. Therefore, national courts deciding whether to ban a political party could or should make a preliminary reference to the CJEU.¹¹⁷ If the CJEU deems these types of cases as admissible, the CJEU would be evaluating whether a party ban is a justified limitation of the right to stand for election, a matter reserved for national (constitutional) courts in many Member States.¹¹⁸ These conceivable cases would require the CJEU to navigate carefully in between a rock – developing its role as a guardian of democracy at the expense of national courts – and a hard place – rejecting jurisdiction over these matters at a time when the EU's democratic legitimacy is being threatened by backsliding in the Member States.

The role of the CJEU in adjudicating on electoral matters is particularly complex due to a combination of factors. Any court, also at the national level, runs the risk of backlash when determining the 'rules of democracy' with the potential to affect the political landscape. As seen in the Romanian Presidential elections, a court can be dismissed as being opposed to 'the will of the people', resulting in rulings that undermine trust in the rule of law.¹¹⁹ Actions intended to defend democracy can be interpreted as meddling and malicious interference. Adding to that, international courts are not embedded in the democratic polity where the elections actually take place. Ruling in these cases as a supranational court is challenging as each of the electoral systems is rooted in historical and political traditions and therefore has its own context-dependent particularities.¹²⁰ Lastly, unlike the ECtHR – also a supranational court ruling on electoral matters – the CJEU was not founded as a human rights court.¹²¹ The ECHR has been ruling on electoral matters since 1987, and when doing so it generally leaves a broad margin of appreciation to the Contracting States.¹²² Taken together, these factors make the

¹¹⁵ R Nehmelman, 'De regulering van politieke partijen in Nederland' in *Tijdschrift voor Constitutioneel Recht* 4 (2013) 130–50; R Nehmelman, 'Regels voor de partij. Het moeizame leerstuk van de regulering van politieke partijen' in JLV Broeksteeg and Tinnevelt (eds), *Politieke partijen als anomalie van het Nederlandse staatsrecht* (Wolters Kluwer 2015) 31–46; Gerrit Voerman, Gohar Karapetian and Sam Maasbommel (eds), *Wie Regelt, Beperkt? De Ontwerp-Wet Op de Politieke Partijen En de Traditie van Het Non-Interventionisme* (Montesquieu Instituut 2023).

¹¹⁶ For a similar argument on the basis of art 10 TEU, see Miriam Schuler, 'Paving the Way for an Enforcement of Democracy under Article 10 TEU? The Court's Judgments in Cases C-808/21 *Commission v Czechia* and C-814/21 *Commission v Poland*' (*European Law Blog*, 20 November 2024) <<https://doi.org/10.21428/9885764c.db908149>>; Schuler 'National Party Bans Under EU Law' (n 109).

¹¹⁷ Arguably, if there is no possibility for appeal, the court must refer a question under art 267 TFEU. A question concerning a party ban as a justified limitation of art 39(2) Charter could not be considered an *acte clair* or *acte éclairé*, given that it has not yet come before the CJEU.

¹¹⁸ For a recent comparative overview of Council of Europe states' approaches to political party bans, see B Bernatskyi, 'Why and When Democracies Ban Political Parties: A Classification of Democratic State Orientations to Party Bans' (2024) 22 *Comparative European Politics* 754.

¹¹⁹ Alina Carrozzini, 'Shooting Democracy in the Foot?' (*VerfBlog*, 13 December 2024) DOI: [10.59704/fe29eb5ae260901f](https://doi.org/10.59704/fe29eb5ae260901f); Csongor Kutí, 'On Means and Ends' (*VerfBlog*, 10 December 2024) DOI: [10.59704/c9c08659ed569160](https://doi.org/10.59704/c9c08659ed569160).

¹²⁰ See Richard H Pildes, 'Supranational Courts and The Law of Democracy: The European Court of Human Rights' (2018) 9 *Journal of International Dispute Settlement* 154.

¹²¹ Robert Bray and Cristina Fasone, 'The Court of Justice and the European Court of Human Rights on Electoral Matters: Towards a Procedural Conception of Representative Democracy?' in Cristina Fasone, Edmondo Mostacci and Graziella Romeo (eds), *Judicial Review and Electoral Law in a Global Perspective* (1st edn, Hart Publishing 2024).

¹²² *Mathieu-Mohin and Clerfayt v Belgium* (Judgment) ECtHR App No 9267/81 (2 March 1987).

CJEU's position precarious and prone to criticism if develops its role in this sensitive field too hastily.

To ensure careful assessment when it comes to electoral matters, the constitutional traditions of the Member States can of course serve as guiding principles for the CJEU. However, the remarkable variance between Member States' constitutional traditions poses a difficulty in this regard. At the abstract level, Member States traditions are generally in agreement on the core elements of democratic elections, but they differ when it comes to the specific interpretation and implementation.¹²³ Freedom of association to ensure political party pluralism is an essential element of democratic elections which aligns with Member States constitutional traditions, yet there is great discrepancy between national regulation of political parties due to the differing interpretations of this freedom.¹²⁴ The expanding role of the CJEU, and the EU more generally, should therefore be examined critically when it comes to matters concerning national elections. Even good faith actions to improve democracy across the Union could have counterproductive consequences. Besides, a vertical division of power, between the EU and the Member States, prevents the consolidation of power at the supranational level. Any expansion of competences should therefore be assessed for the potential harm it could also do if abused. The calls for the EU to safeguard democracy in the Member States are rooted in the assumption that there are autocratic tendencies in certain Member States that the EU can help counter. But defending democracy becomes increasingly difficult if the parties represented in the European institutions themselves have fundamentally different conceptions of democracy.¹²⁵

CONCLUSION

National elections, though fundamental to national constitutional systems and part of the Member States' national identity, are not devoid of EU influence. As Claes and de Witte note aptly, EU law 'permeates all policy fields, including residual areas of national competence as well as matters that according to the Treaties pertain to the "sole responsibility of the Member States"'.¹²⁶ A framework of EU law governing national elections is steadily emerging. Its substance has not yet crystallised fully, and its legal implications remain uncertain. Nevertheless, it is being fleshed out concurrently in EU acts and in CJEU judgments. This article focused on two acts: the Regulation and the Recommendation on inclusive and resilient electoral processes. Both acts specifically concern national elections, introducing measures aimed to strengthen their democratic nature. The CJEU's judgments, while not specifically pertaining to national elections, define principles that give expression to the value of democracy. In doing so, it connects the principle of representative democracy to free and fair elections, electoral rights and their effective exercise. The CJEU's conclusions can have implications for elections beyond the Union level.

In the coming years, the EU is likely to build on this framework governing national elections. It is in the process of adopting additional legislation that seeks to restrict third country interference with elections. Additional cases that concern electoral matters could arise before the CJEU.¹²⁷ At every step in this process, critical assessment of the Union's role is needed. Electoral laws reflect political choices. The conception of representation as expressed in a national constitution and electoral system is based on choices made by democratically accountable bodies. Often, these choices have cultural, historical and societal roots. A framework of EU law that governs national elections also constrains the national legislator's ability to regulate elections. This framework should therefore be grounded in a shared conception of core aspects of democratic electoral processes.

¹²³ The democratic standards outlined by Schuler (n 76) on free and fair elections, citizens' political rights, and political party pluralism do not conflict with the Member States constitutional traditions, but these are by no means concrete.

¹²⁴ European Commission for Democracy through Law (Venice Commission), 'Guidelines on political party regulation' (14 December 2020), CDL-AD(2020)032, 18–22.

¹²⁵ Ramona Coman, Nathalie Brack and Sergiu Mişcoiu, 'Political Parties and Dissensus over Liberal Democracy in the European Parliament' (2026) 24 *Comparative European Politics* 21.

¹²⁶ Monica Claes and Bruno de Witte, 'Chapter 2: Competences: Codification and Contestation' in Adam Lazowski and Steven Blockmans (eds), *Research Handbook on EU Institutional Law* (2016) 77.

¹²⁷ Pending at the time of writing was the preliminary reference by the Estonian Supreme Court in a case concerning the effective exercise of the right to stand for election to the European Parliament, as enshrined in art 39(2) Charter: Case C-438/24, *Erakond Eestimaa Rohelised*, EU:C:2025:895.

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COMPETING INTERESTS

The author has no competing interests to declare.

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