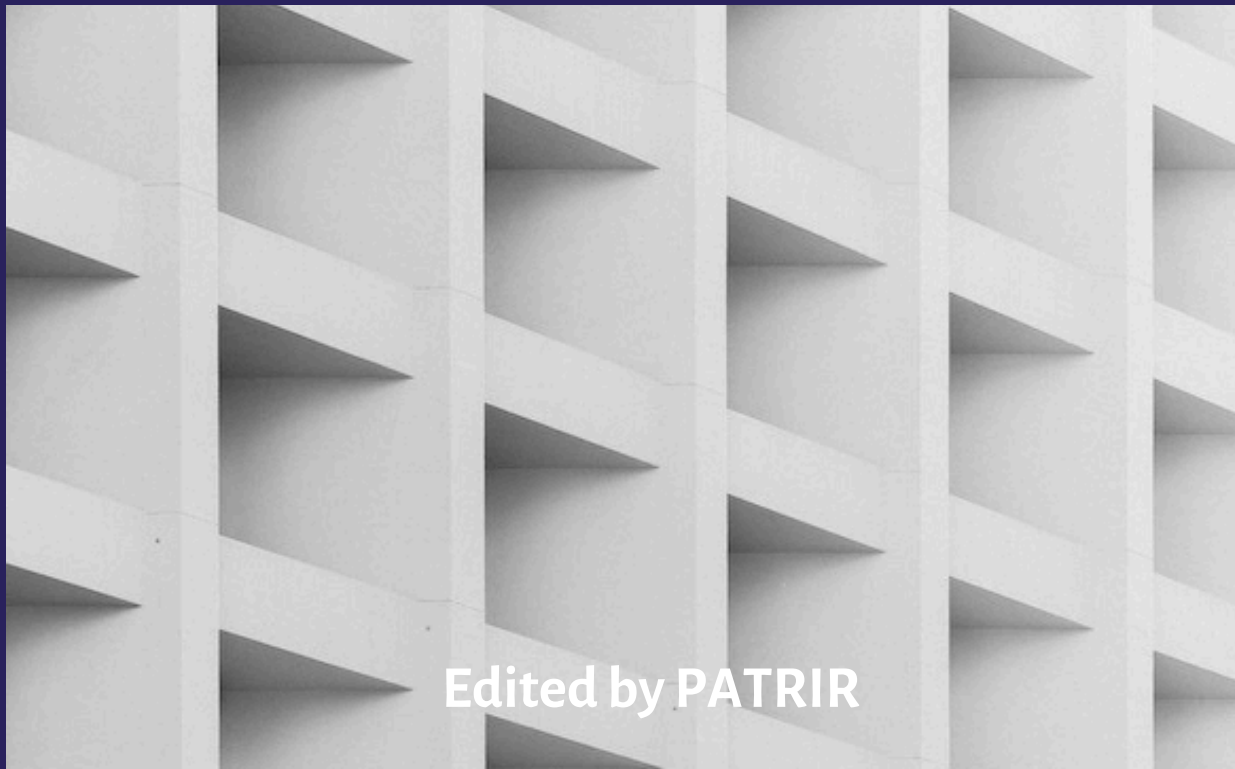


DEFENDING THE RULE OF LAW BY SECURITISING DEMOCRACY? A PARADOX ALREADY THERE

POLICY BRIEF



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Defending the Rule of Law by Securitising Democracy? A Paradox Already There

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Abstract

In light of the new Democracy Shield policy's whole-of-society approach to security and democracy, this policy brief analyses the EU's emerging democracy strategy, focusing on the rule of law. It argues that the prevailing democracy-authoritarian policy narrative is increasingly vulnerable to a vision of democracy (and rule of law) and has underestimated the political, socio-economic, and institutional dynamics reshaping democratic life in Europe. By recoding the rule of law as stabilising enforcement and resilience rather than a contested democratic element, this approach risks transforming dissensus into a legal and security risk and normalising exceptional measures under ordinary governance.

The Democracy Shield

As of November 2025, the European Union policies to "defend" democracy against (authoritarian) contestation have crystallised into a new policy framework, the *Democracy Shield*. The Shield defines the principal threats to Europe's political order as predominantly external and systemic, including foreign interference, corporate control of digital infrastructure, and large-scale misinformation.¹ In response to this democratic erosion, it promotes strengthened collaboration between CSOs, academia, fact-checkers, and digital platforms, it promotes civic tech initiatives for better democratic awareness and participation and allocates substantial resources support for CSOs.² Framed in human-centric security terms, the policy indirectly means that the rule of law is strengthened through enhanced accountability and integrity mechanisms.

The core instruments of the Democracy Shield reflect this securitised diagnosis. Policy priorities emphasise stricter regulation of digital platforms and the major technological actors which now play a decisive role in shaping public discourse and contesting liberal norms. The framework introduces enhanced monitoring of informational flows and strengthened enforcement capacities for responses to "information operations". Renewed emphasis on CSO participation is positioned as essential for democratic resilience. These measure collectively underscore a strong commitment to institutional integrity. Overall, the Shield conceptualises democracy and the rule of law as a defensive infrastructure, a perimeter designed to absorb shocks and maintain institutional stability. In this sense, it reflects the renewed strength of the security- defensive narrative of democracy in times of dissensus.

The policy has faced criticism for its limited interpretation of the threats democracy faces. Multiple commentators contend that it insufficiently addressed for key drivers of democratic disenchantment, including inequality, socio-economic precarity, ideological contestation and deepening political polarisation.³ The focus on CSOs is welcomed, but goes against the reality that these are increasingly vetted based on their policy focuses in the

¹ European Commission. "The EU launches the 'European Democracy Shield' to defend democracy and support civil society." Press release IP/25/2660, November 4, 2025. https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2660

² Civil Society Europe. *Statement on the Democracy Shield*. May 2025. <https://civilsocietyeurope.eu/wp-content/uploads/2025/05/Statement-on-the-Democracy-Shield.pdf>

³ Carl Dolan. "Democracy Shield: Defence or Distraction?" *European Policy Centre*, November 2025. <https://www.epc.eu/publication/democracy-shield-defense-or-distraction/>

funding cycle, under new scrutiny asked for by conservative right wing parties. Even more, the framework engages only marginally with the normative critiques of liberal democracy advanced by illiberal actors across Europe⁴ and largely sidesteps questions of distributive justice and equity.⁵ Fundamentally, the "Democracy shield" advances a technocratic vision of stabilising the rule of law and democracy, centred on regulatory instruments designed to shield elections and public trust from disinformation and interference. Citizen engagement is primarily framed as a functional tool for accountability and transparency rather than an innovative democracy resource.

By prioritizing technical regulation, the Shield overlooks the structural causes of rule-of-law erosion within the EU itself. These include the growing concentration of executive power,⁶ politicisation of judicial pursuits⁷ and the capture of regulatory authorities.⁸ Although the policy aims to address legal vulnerabilities through technical and security-focused measures, it effectively ignores the political economy of legal authority, as well as the distributive conflicts and power struggles that now shape the practical operation of the rule of law. The rule of law has become a site of political contestation and reinvention, resulting in various forms of dissensus. Illiberal movements no longer reject legality outright; instead, they promote alternative conceptions of law based on sovereignty, majoritarianism, and executive discretion. Courts, prosecutors, and constitutional review are increasingly depicted as impediments to the popular will. In this context, the erosion of the rule of law

⁴ Skorić, Vanja, and Florian Irminger. "Europe's Real Security Challenge: Reclaiming Democracy." *European Center for Not-for-Profit Law (ECNL)*, 30 May 2025. <https://ecnl.org/news/europes-real-security-challenge-reclaiming-democracy>

⁵ Democracy for Transition Coalition. *EU Democracy Shield: Why Protective Gear Is Not Enough – D4T Democracy Shield Position Paper*. European Environmental Bureau (EEB), May 2025. <https://eeb.org/wp-content/uploads/2025/05/D4T-Democracy-Shield-Position-Paper.docx-1-1.pdf>

⁶ Schafer, Dean, Seraphine F. Maerz, Carsten Q. Schneider, and Alexandra Krasnokutskaya. "'Strongmen' Don't Redistribute: Illiberal Leaders on the Right and Worsening Economic Inequality." *Politics and Governance* (2025) 13. <https://doi.org/10.17645/pag.9812>

⁷ International Commission of Jurists. *Justice Under Pressure: Strategic Litigation of Judicial Independence in Europe*. Final Mapping Report. Geneva: ICJ, January 2025. https://www.ici.org/wp-content/uploads/2025/01/ICJ-Report_Justice-Under-Pressure_Strategic-Litigation-of-Judicial-Independence-in-Europe.pdf

⁸ Saltelli, Andrea; Dorothy J. Dankel; Monica Di Fiore; Nina Holland; and Martin Pigeon. "Science, the Endless Frontier of Regulatory Capture." *Futures* 135 (2022): 102860. <https://doi.org/10.1016/j.futures.2021.102860>

occurs not only through informal capture but also through explicit ideological redefinition of the purpose of law.⁹

This situation creates a central paradox that frames the analysis in this policy brief. The European Union attempts to defend democracy and the rule of law by strengthening procedural guarantees, such as compliance and regulatory enforcement. However, it largely neglects the identity-based, ideological, and socio-economic grievances that have increased the appeal of non-liberal governance models among significant portions of the electorate. As a result, the EU risks reinforcing perceptions of an 'epistocratic' model of governance, characterized by dominance of experts and regulatory elites and a detachment from broader political contestation.¹⁰

This policy brief analyzes how a securitized interpretation of democracy and the rule of law is transforming the internal European legal order. It explores how issues of justice, accountability, and public order are increasingly managed through exceptional security measures instead of democratic and constitutional deliberation. The brief contends that this trend risks encouraging authoritarian learning among different actors and fails to provide substantive alternatives to critiques of liberal democracy.

Reassessing the Democracy versus Authoritarianism Narrative and Its Limitations

The defense of democracy against authoritarian or illiberal threats has remained central to the European Union's policy narratives, grounded in post-Cold War expectations of democratic convergence.¹¹ This framework has been institutionalised across various policy domains, including anti-corruption ("clean government", often reduced to a moral register¹²), rule of law (where the EU presents itself as the last line of defense against procedural

⁹ Gora, Anna, and Pieter de Wilde. "The Essence of Democratic Backsliding in the European Union: Deliberation and Rule of Law." *Journal of European Public Policy* 29, no. 3 (2022): 342–62. <https://doi.org/10.1080/13501763.2020.1855465>.

¹⁰ Youngs, Richard, and Elene Panchulidze. *EU Strategy to Face Narratives Against Democracy — With a Focus on the External Dimension*. Study PE 754.484. Directorate-General for External Policies, European Parliament, October 2025. [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/754484/EXPO_STU\(2025\)754484_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/754484/EXPO_STU(2025)754484_EN.pdf), pp. 3-4.

¹¹ Smith, Julian. "Rules-Based Order vs. the Defense of Democracy." *Carnegie Endowment for International Peace*, September 2024. <https://carnegieendowment.org/research/2024/09/rules-based-order-vs-the-defense-of-democracy?lang=en>

¹² Lo Piccolo, Alessandra. "Anticorruption Frames: Bridging Accountability." *Journal of Civil Society* 19, no. 3 (2023): 251–70. <https://doi.org/10.1080/17448689.2023.2226247>.

captures)¹³, and security cooperation. In these areas, the EU's agenda operates through a dual logic of defense and pre-emption, aiming to protect democratic institutions from authoritarian influence while also prioritizing stability and security in ongoing relations with certain regimes.¹⁴

A growing body of scholarship now challenges the adequacy of the binary democracy-authoritarian narrative. Critics argue that this framework fails to reflect the complexities of contemporary democratic erosion, where institutional capture and legal contestation are inherently political. ¹⁵ Policy responses have predominantly focused on strengthening institutional aspects of democracy, such as judicial capacity and regulatory oversight, based on the assumption that robust institutions inherently foster participation and counter authoritarian tendencies. This approach exemplifies a focus on “thin justice” ¹⁶, emphasizing formal legality and procedure while neglecting broader issues of power, distribution, and political accountability.

The binary democracy-authoritarian framework consistently overlooks the ideological foundations underlying these debates. This oversight contributes to the consolidation of executive power, elite impunity, growing structural inequality, and intensified political polarization. Illiberal actors often appropriate democratic rhetoric while undermining its substantive content.¹⁷ Governments that do not meet democratic standards increasingly justify non-democratic governance as necessary for safeguarding security, sovereignty, and the values or traditions of a particular country. In this sense, they seek to “maintain a veneer

¹³ Kim Lane Scheppele, Dmitry Vladimirovich Kochenov, Barbara Grabowska-Moroz, 2020. “EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union”, *Yearbook of European Law*, 39, 3–121, <https://doi.org/10.1093/yel/yeaa012>

¹⁴ Bosse, Giselle, and Alena Vieira. “Resilient States vs. Resilient Societies? The ‘Dark Side’ of Resilience Narratives in EU Relations with Authoritarian Regimes: A Case Study of Belarus.” *Journal of Contemporary European Studies* 31, no. 4 (2023): 1058–72. <https://doi.org/10.1080/14782804.2023.2211938>

¹⁵ European News. “EU unveils controversial Democracy Shield with new information monitoring centre.” *EUNews*, November 12, 2025. <https://www.eunews.it/en/2025/11/12/eu-unveils-controversial-democracy-shield-with-new-information-monitoring-centre/>

¹⁶ Van Hullebusch, Jo, and Elia Gómez. *Rethinking EU Support to Rule of Law: Taking a Stand for Sustainable Development*. Briefing Note 154, ECDPM, 2023. <https://ecdpm.org/application/files/2916/7568/4409/Rethinking-EU-support-to-rule-of-law-Taking-stand-for-sustainable-development-Briefing-note-154-ECDPM-2023.pdf>

¹⁷ Flonk, Daniëlle, and Maria J. Debre. “Hollow Multilateralism: How Autocracies Contest the Norms and Procedures of International Organisations.” *International Affairs* 101, no. 4 (July 2025): 1463–1482. <https://doi.org/10.1093/ia/iiaf104>

of democracy while eviscerating its substance”¹⁸, legitimising the concentration of power by invoking through appeals to necessity. Concurrently, there has been a rise in the use of exceptionalism in the application of the rule of law, as well as significant restrictions on spaces for public debate within established liberal democracies.¹⁹ When rule of law and democracy are primarily framed as institutional normalcy and stability, their capacity to mobilize support diminishes, as the lived realities of exclusion, inequality, and unaccountable power remain unaddressed.

The Democracy Shield reflects many of these underlying assumptions. However, the current dissensus necessitates a more thorough conceptual reconsideration of democratic practices. Such rethinking must address specific characteristics of the contemporary autocratic wave, including the legalisation of dissent suppression, the normalisation of a permanent emergency, and the strategic use of law for political control.²⁰ Democracy, presented merely as institutional normalcy and stability, no longer appears sufficiently compelling as a narrative, especially where experiences of inequality, exclusion and unaccountable power remain unaddressed.

A central issue in this critique is the increasing reliance on "epistocratic" governance, defined as the delegation of political authority to independent regulators, expert bodies, and technocratic enforcement mechanisms, often justified by appeals to efficiency, neutrality, and resilience.²¹ Illiberal movements have targeted this trend, characterising it as elitist, unaccountable, and disconnected from popular sovereignty.²² Irrespective of the motivations behind these claims, the outcome is a growing divide between citizens and legal authority,

¹⁸ S. Levitsky and D. Ziblatt, *How Democracies Die*, Broadway Books: New York, USA, 2018, p. 5 in Youngs, Richard, and Elene Panchulidze. *EU Strategy to Face Narratives Against Democracy — With a Focus on the External Dimension*. Study PE 754.484. Directorate-General for External Policies, European Parliament, October 2025.

¹⁹ European Policy Centre. *What Future for Rule-of-Law Protection? Towards a More Effective Use of the EU's Toolbox under the Von der Leyen-20 Commission*. EPC Policy Brief, 2025. <https://www.epc.eu/publication/what-future-for-rule-of-law-protection-towards-a-more-effective-use-of-the-eus-toolbox-under-the-vdl-20-commission/>

²⁰ Fernández Arribas, Julia. *Regulating European Emergency Powers: Towards a State of Emergency of the European Union*. Policy Paper No. 295. Jacques Delors Institute, January 2024. https://institutdelors.eu/content/uploads/2025/04/PP295_Regulating_European_Emergency_Powers_Arribas_EN.pdf

²¹ Youngs, Richard, and Elene Panchulidze. *EU Strategy to Face Narratives Against Democracy — With a Focus on the External Dimension*. Study PE 754.484. Directorate-General for External Policies, European Parliament, October 2025

²² Kiik, Meos Holger. "Epistocracy and Populism: Second-Order Ideologies Challenging Democracy." *Political Research Exchange* 6, no. 1 (2024): 1–19. <https://doi.org/10.1080/2474736X.2024.2385475>

with the rule of law increasingly perceived as imposed from above rather than as a collectively constituted framework.

From Narrative to Practice: Some Implications for the Rule of Law

In practice, this limited democracy-authoritarian framework has led to the increasing classification of dissensus as a legal and security threat. The 2024 Liberties Rule of Law Report documented a significant rise in restrictions on peaceful protests, including blanket bans and administrative measures directed at climate and pro-Palestine demonstrations in multiple Member States. The report also noted the rapid expansion of surveillance technologies, such as facial recognition, predictive policing tools, and drone monitoring, in Belgium, France, and the Netherlands.²³ A 2025 follow-up report, *Silencing dissent*, further demonstrates that new public security laws in several EU states have reinforced the criminalisation of protest, imposing harsher penalties on specific groups.²⁴

National case studies illustrate the manifestation of this dynamic. In Estonia, the Ministry of the Interior proposed an amendment to the Law Enforcement Act that would grant police the authority to preemptively ban protests.²⁵ In Italy, the government enacted Law No. 6/2024 and Bill No. 1660 on public security, both of which substantially weaken the right to protest and introduce new criminal sanctions, particularly targeting environmental activists.²⁶ Similarly, as 2024 saw increasing protests in Germany, the report points to intensified restrictions on freedom of expression and assembly, accompanied by heavy-handed policing of climate and pro-Palestine protesters.²⁷

In France, repression of civic mobilisation has intensified. In 2025, Amnesty International documented systematic repression of climate activism and the use of anti-

²³ Civil Liberties Union for Europe (Liberties). *Liberties Rule of Law Report 2024*. Liberties, March 18, 2024. https://dq4n3btxmr8c9.cloudfront.net/files/oj7hht/Liberties_Rule_Of_Law_Report_2024_FULL.pdf

²⁴ Civil Liberties Union for Europe (Liberties). *Liberties Rule of Law Report 2025*. Berlin: Liberties, 2025. <https://www.liberties.eu/f/vdxw3e>

²⁵ ERR News. 2025. "Ministry Would Allow PPA to Impose Gathering Bans in Lower-Risk Cases." *ERR News*, May 2, 2025. <https://news.err.ee/1609821579/ministry-would-allow-ppa-to-impose-gathering-bans-in-lower-risk-cases>

²⁶ Human Rights Watch. 2025. "Italian Security Bill Seriously Threatens Rights, Freedoms." February 5, 2025. <https://www.hrw.org/news/2025/02/05/italian-security-bill-seriously-threatens-rights-freedoms>

²⁷ Human Rights Institute. "News Report: Restrictions on Civil Liberties in Germany and the Suppression of Protests." HRIUI, March 10, 2025. <https://www.hriui.com/en/news-report-restrictions-on-civil-liberties-in-germany-and-the-suppression-of-protests/>

terror legislation to penalise civic action.²⁸ Judicial proceedings regarding police misconduct during the 2023 protest against a major reservoir remain stalled, as prosecutors have refused to appoint independent investigators.²⁹ Civil society monitoring indicates a harsher legal approach towards dissent, contrasted with greater leniency for crimes committed by economic and political elites. ³⁰ The Netherlands has also been identified for increasing restrictions on peaceful protests, particularly those related to social justice, climate, and pro-Palestinian activism.³¹

The reconfiguration of judicial independence and anti-corruption enforcement further reveals the limitations of the prevailing narrative. In Slovakia, following Robert Fico's return to power in late 2023, the government expedited criminal code reforms that reduced sentences for corruption and financial crimes, shortened limitation periods, including for sexual violence, and abolished the Special Prosecutor's Office responsible for major corruption cases.³² The European Commission criticised these reforms, and the European Parliament's January 2024 resolution explicitly questioned Slovakia's capacity to combat corruption and protect the EU budget.³³ Despite these concerns, in July 2024, Slovakia's Constitutional Court upheld most of the reforms, including the dissolution of the anti-graft

²⁸ Amnesty International condemns repression of environmental and climate activists in France." *Le Monde English Edition*, July 11, 2025. https://www.lemonde.fr/en/environment/article/2025/07/11/amnesty-international-condemns-repression-of-environmental-and-climate-activists-in-france_6743273_114.html.

²⁹ Euractiv. "EU Lawmakers Won't Debate Police Violence in France." *Euractiv*, November 13, 2025. <https://www.euractiv.com/news/eu-lawmakers-wont-debate-police-violence-in-france/>

³⁰ Council of Europe, GRECO. *Ad hoc Report on the Slovak Republic (Rule 34)*. GRECO-AdHocRep (2025) 1, adopted 6 June 2025, published 28 August 2025. Strasbourg: Council of Europe. <https://www.coe.int/en/web/portal/-/anti-corruption-body-greco-evaluates-recent-reforms-in-the-slovak-republic>

³¹ Civil Liberties Union for Europe (Liberties). *Liberties Rule of Law Report 2024*. Liberties, March 18, 2024. https://dq4n3btxmr8c9.cloudfront.net/files/oj7hht/Liberties_Rule_Of_Law_Report_2024_FULL.pdf

³² EU told Slovakia that its reforms risked 'irreparable damage' to rule of law." *The Guardian*, February 14, 2024. <https://www.theguardian.com/world/2024/feb/14/eu-told-slovakia-that-its-reforms-risked-irreparable-damage-to-rule-of-law>.

³³ European Parliament. "Parliament Concerned about the Rule of Law in Slovakia." Press release, January 12, 2024. <https://www.europarl.europa.eu/news/en/press-room/20240112IPR16770/parliament-concerned-about-the-rule-of-law-in-slovakia>.

unit.³⁴ In 2025, the government dismantled the independent whistleblower protection office and replaced it with a body under close political control.³⁵

In Romania, the late 2025 reform of judicial pensions, which sought to raise the retirement age for judges and prosecutors and cap their pensions, has reignited a deeply polarised public debate on judicial accountability. Judges' associations have criticised the reform as undermining institutional safeguards and constituting indirect capture, while public dissatisfaction with the judiciary remains widespread across the political spectrum, largely due to perceptions of privilege. Political affiliations among judges have been extensively documented.³⁶ The pension debate has been repeatedly leveraged by successive governments for political purposes. The fact that the judiciary has repeatedly claimed to be an "exceptional" professional category, exempt, for instance, from equity debates have also intensified debates about a paternalistic power dynamic within society, that needs reforming..³⁷ Civil society discourse highlights a trend towards the normalisation of security-oriented frameworks and the embedding of protest restrictions into ordinary law.³⁸

The digital domain exhibits comparable tensions. The Digital Services Act, fully applicable since 2023, introduced extensive obligations for platforms to remove illegal content and address disinformation, which are classified as systemic risks to public security. The Democracy Shield expands upon these frameworks, incorporating plans for DSA incidents and crisis protocols to manage information threats. While protecting the digital public sphere is a legitimate objective, critics caution that, without robust safeguards, these measures may centralise discretionary authority over online speech among regulators and

³⁴ Scheppele, K. L., & Morijn, J. (2025). Money for nothing? EU institutions' uneven record of freezing EU funds to enforce EU values. *Journal of European Public Policy*, 32(2), 474–497. <https://doi.org/10.1080/13501763.2024.2406275>

³⁵ "Slovak Government's Revamp of Whistleblower Office Draws Criticism." *Reuters*, December 2, 2025. <https://www.reuters.com/world/slovak-governments-revamp-whistleblower-office-draws-criticism-2025-12-02/>.

³⁶ Dragoş Călin and Lucia Zaharia, 'Recent Controversy regarding the Promotion of Judges in Romania: Searching for Meritocracy' (2021) 12(1) *International Journal for Court Administration* 8. DOI: <https://doi.org/10.36745/ijca.350>

³⁷ European Commission. *Strategy for Strengthening the Rule of Law Across the European Union*. COM(2020) 581 final, July 2020. https://commission.europa.eu/document/download/27db4143-58b4-4b61-a021-a215940e19d0_en

³⁸ Amnesty International. *Under-protected and Over-restricted: The State of the Right to Protest in 21 Countries in Europe*. July 2024. <https://www.amnesty.nl/content/uploads/2024/07/Under-protected-and-over-restricted.-The-state-of-the-right-to-protest-in-21-countries-in-Europe-FINAL.pdf>.

security agencies, with inadequate democratic oversight.³⁹ Beyond the controversies surrounding these initiatives, which are widely perceived as detrimental to participation, their effectiveness in addressing critiques of the "rule of law" raised by illiberal actors remains uncertain. The reinforced Code of Practice on Disinformation, which extends requirements for content labelling, demonetisation, and algorithmic adjustments, further entrenches this expert-driven regulatory model, the democratic legitimacy of which continues to be contested.

These developments indicate a broader transformation in the rule of law, which is increasingly regarded as a security perimeter rather than as the political foundation of democracy. The shift towards prioritising stabilisation over democratic contestation risks perpetuating the very legal containment that such measures aim to challenge beyond national borders.

POLICY RECOMMENDATIONS

1. Revise rule-of-law monitoring and enforcement frameworks to recognize the rule of law as a democratic practice based on social power and accountability, not solely as a security tool. Integrate socio-economic inequality, corruption networks, and regulatory capture into Rule of Law Reports and conditionality mechanisms, alongside procedural indicators such as judicial independence and administrative capacity. Supplement the current methodology with political-economy diagnostics to assess how law protects elites, displaces distributive conflict, or suppresses dissent within legal frameworks.

2. Enhance democratic governance of the Digital Services Act and Democracy Shield crisis protocols by establishing public parliamentary oversight of disinformation crisis modes, transparent criteria for classifying security threats, and enforceable protections for lawful political dissent against algorithmic suppression. Grant operational legal force to the European Declaration on Digital Rights and Principles through secondary legislation, ensuring due-process guarantees, transparency in algorithmic moderation, accessible remedies for users, and non-digital alternatives to support the political participation of marginalized groups.

³⁹ Civil Society Europe. *Statement on the Democracy Shield*. 2025. May 2025. <https://civilsocietyeurope.eu/wp-content/uploads/2025/05/Statement-on-the-Democracy-Shield.pdf>

3. Recognize freedom of assembly and protest as a core rule-of-law benchmark. Automatically trigger an EU-level rule-of-law review when Member States impose pre-emptive protest bans, blanket restrictions, disproportionate criminal sanctions, or mass surveillance of assemblies. Adopt a binding European standard on protest policing, including use of force, kettling, preventive detention, and the use of drones and facial recognition. Provide direct funding for fully independent police oversight bodies. Require regulatory or security authorities that restrict civic space to undergo public justification procedures, enhanced judicial scrutiny, and support parallel investment in civic legal literacy and constitutional education to address the epistocracy gap..