

The EU protects itself – from democracy

by Gudula Walterskirchen*



Gudula Walterskirchen.
(Picture www.walterskirchen.cc)

Elon Musk recently criticised the current EU system as a bureaucracy, not a democracy. The European Commission, for its part, has initiated a "shield for democracy" that is intended to guarantee fundamental democratic values and the rule of law. But what about respect for the rule of law and democratic principles within the EU itself? Is Musk right?

It is an issue that is at the top of the current European Commission's agenda: the protection of democracy. Politicians also like to refer to it as "our democracy". A dedicated programme was recently presented: a "*European Shield for Democracy*".¹

According to Ursula von der Leyen, this "will strengthen the key elements that enable citizens to live our common democratic values every day – freedom of expression, independent media, strong institutions and a vibrant civil society."

So much for the fine words. But how does this work in practice? One of the measures to protect democracy is the establishment of a new censorship authority and the Digital Services Act. This is referred to as "preserving the integrity of the information space". Disinformation campaigns are to be combated by means of the new Digital Services Act (DSA). However, what sounds good is highly problematic and the DSA is therefore very controversial. It starts with the question of who decides what constitutes "disinformation"? To this end, a network of "fact



The European Parliament has 720 members who meet at two locations but have little say in matters. Here, voting for more rights for citizens' initiatives in 2014.
(Picture www.europarl.europa.eu)

checkers" is being set up and a "European Digital Media Observatory" is being established.

Anyone who does not comply will be blocked or must pay – like Elon Musk. Facebook has announced that it will withdraw from Europe if this is implemented. It is the end of freedom of expression and radical censorship, because the platforms do not want to risk penalties that threaten their existence. However, online media and blogs are also affected by the DSA – which also means the end of press freedom. Thus, several fundamental democratic rights have been disposed of in one go.

A new EU intelligence service has also been established, reporting directly to Commission President Ursula von der Leyen. Both institutions are to monitor citizens in the member states directly from Brussels to ensure that they do not do anything that could endanger "democracy". This includes actions or statements on the internet that criticise the Brussels authorities and question their actions.

Totalitarian methods

It is remarkable in itself that an institution that advocates for more democracy does so through total surveillance and censorship. This is a contradiction, one might think, since freedom of expression and its guarantee and promotion are essential features of a functioning democracy, as the Commission itself says.

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This raises an essential question that is not often discussed in this context: what is the state of democracy and the rule of law within the EU itself, its institutions and representatives? Does it adhere to the laws and increasingly strict requirements that it imposes on its citizens and member states?

No separation of powers

Let's start with the basics, namely compliance with the EU treaties, responsibilities, competences and legal requirements.

The EU, as it was originally constructed as the EEC, is not a democratic entity. It is not based on the separation of powers that is customary in a democracy and a democratic constitutional state. There is no strict separation between the legislative, executive and judicial branches, either *de jure* or *de facto*. The EU Commission is a purely administrative body; it is an instrument of the nation states, and all its members – right up to the Commission President – are actually their employees. They are also appointed by them.

In reality, however, the administration and, above all, the Commission are assuming more and more powers: for example, it issues a flood of regulations and directives that not only officials in Brussels but also the nation states must comply with. However, these have not been decided by any democratically legitimate body. Now the Commission also wants to collect taxes and take on debt itself – something that the EU Constitution clearly excludes. The list of abuses of power could be extended indefinitely, for example to include the fact that the Commissioner for External Relations speaks on behalf of the EU member states without authorisation. This proved fatal in the Ukraine war, for example.

Parliament is mainly for show

The EU Parliament, on the other hand, cannot introduce legislation like national parliaments, so it has no right of initiative. It must wait for the Commission to propose legislation. This means that the administration rules over the elected parliament. The only right that the EU Parliament has been able to fight for is the confirmation of Commission members after a hearing. The effort involved, however, is enormous, not least because of the travelling circus between the two locations of Brussels and Strasbourg. But what goes on there is only a game of co-determina-

tion and democracy, because the citizens elect representatives who have no say in anything.

The judiciary, in turn, is represented by the *Court of Justice of the European Union* (CJEU), whose judges are appointed by the member states. Its primary task is to ensure compliance with EU law. However, it is increasingly overstepping its powers and interfering with or undermining national law. This is the case, for example, in *consumer law*.²

National law overridden

This is viewed very critically in Germany, but less so in Austria. Here, it is accepted that all *national law is superseded by EU law*,³ even constitutional laws.

At first glance, this sounds logical, but it is becoming increasingly a problem in terms of democratically legitimised law. This is because EU law is not enacted through parliamentary processes, but through mere administrative acts. The EU's "legal acts" also include regulations, directives and decisions of the EU Commission, which is essentially a bureaucratic authority. So, when a member of the Commission issues a directive, it automatically overrides national law – even if the highest national courts see things differently.

In Germany, restrictions apply, for example when it comes to fundamental rights, constitutional identity or exceeding of powers. In such cases, the Federal Constitutional Court examines whether this is permissible.

There is a growing problem that a mere authority is simply overriding national laws enacted by a democratically legitimised parliament and the case law of independent courts based on them. This is by no means democratic.

Fundamental rights are also increasingly affected, such as the right to privacy, freedom of expression and freedom of the press. For example, the planned chat control, which the EU Commission recently made another attempt to introduce, massively interferes with this right. But it goes even further.

Influencing elections

The EU's protective shield is actually intended to prevent external interference in elections, which was also the central argument in *Romania*.⁴ However, the EU itself is increasingly openly attempting to influence elections in member states. For example, Poland, under its conservat-

ive and EU-critical Prime Minister *Mateusz Morawiecki*, was not paid the coronavirus aid funds to which it was entitled. The argument: lack of the rule of law, for example in the appointment of judges and freedom of the press. If this were to change, the funds would be paid out.

After former EU Council President *Donald Tusk* and his friend Ursula von der Leyen were tasked with forming a government following Morawiecki's downfall, the funds suddenly started flowing again. Although Tusk had also massively violated the principles of the rule of law, namely freedom of the press: immediately after taking office, he had the public broadcaster stormed by the police and its employees arrested! They had repeatedly criticised him sharply in the past. He then replaced them with other editors. There were no consequences; the EU found nothing wrong with this.

The same approach is being taken regarding Hungary: elections will be held there in April 2026, which will decide whether *Viktor Orbán* remains in office or is replaced. For years, coronavirus aid funds have not been paid out to Hungary, even though it had fulfilled all the EU's requirements regarding the rule of law. Now they are going even further and threatening Hungary with the withdrawal of its voting rights. However, a decision will only be made after the election. The message to the Hungarian people is: vote Orbán out and vote for *Péter Magyar*, who is acceptable to us, and then the money will flow again, and you will be back in the game. This is a blatant attempt to influence the election from outside.

Finally, there is a lack of transparency and accountability on the part of politicians and authorities, which are essential in a democracy. A prime example of this is the contract worth billions that Ursula von der Leyen negotiated with

Pfizer over the phone. To this day, she refuses to hand over the documents, even to the EU Public Prosecutor's Office. As a result, no one knows what terms and prices she agreed to – even though taxpayers are footing the bill. In any case, it did not become any cheaper, considering the millions of vaccine doses that were ordered, paid for and then thrown away. The reason: Von der Leyen apparently ordered far too many and guaranteed their purchase.

This is in line with the recent scandal involving former EU Foreign Affairs Representative *Federica Mogherini* and the cases of corruption and massive lobbying. Or the billions in cash gifts to Ukraine without checking that they are being used lawfully. In a country that is known to have a massive problem with corruption.

Citizens must disclose everything – see the increasingly absurd money laundering directives issued by the Commission. The Commission itself, however, does not act accordingly, keeps a low profile and acts in a highly non-transparent manner.

Conclusion: the EU is not putting up a protective shield to protect democracy, but to protect its own system from democracy! It is therefore a case of bureaucratic rule that is taking on increasingly totalitarian traits.

Source: <https://libratus.online/cs/die-eu-schuetzt-sich-selbst-vor-demokratie>, 12 December 2025

(Translation "Swiss Standpoint")

¹ https://ec.europa.eu/commission/presscorner/detail/de_ip_25_2660

² [https://www.mohrsiebeck.com/artikel/kompetenz_widrige-eingriffe-des-eugh-in-die-nationalen-civilprozessrechte-101628jz-2023-0028/](https://www.mohrsiebeck.com/artikel/kompetenz-widrige-eingriffe-des-eugh-in-die-nationalen-civilprozessrechte-101628jz-2023-0028/)

³ <https://www.parlament.gv.at/fachinfos/rlw/Der-Anwendungsvorrang-des-Unionsrechts-vor-nationalem-Recht>

⁴ <https://libratus.online/cs/artikel-archiv/will-rumaenien-die-demokratie-vor-den-waehlern-retten>