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## Second half of the ninth legislature: challenges and potential opportunities for the European Union

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*Quando l'Unione Europea tornerà dopo la pausa estiva (la rentrée), nel settembre 2021, inizierà la seconda metà della nona legislatura e la seconda metà del mandato della Commissione europea presieduta da Ursula von der Leyen: le sfide sono enormi, i progetti in corso sono numerosi e complessi e tutte le istituzioni europee sono chiamate a far fronte a una situazione certo delicata ma ricca di stimoli e potenzialità. Innanzitutto, la Conferenza sul futuro dell'Europa deve essere portata a termine con successo: qui è in gioco non solo la credibilità dell'Unione, ma anche la sua capacità di tenere saldamente il timone nei prossimi anni. Allo stesso tempo, ma sempre strettamente legata alla Conferenza, c'è la questione della difesa dei valori fondanti dell'Unione, in particolare lo stato di diritto e la non discriminazione, che sono oggetto di controversie con alcuni Stati. C'è poi la necessità di far partire l'operazione Next Generation EU - una delle più importanti iniziative politiche ed economiche della storia del continente - e, con essa, far uscire l'Europa dalla crisi pandemica, che coinvolge diverse questioni oltre a quella, evidente, della salute. I prossimi anni saranno decisivi anche per valutare la validità e la solidità dell'accordo sulla Brexit, delicato come le tensioni sulla libera circolazione determinate dall'emergenze. Infine, c'è l'immenso cantiere della digitalizzazione con i suoi vari temi (intelligenza artificiale, servizi digitali, telelavoro, cyber sicurezza). Vale quindi la pena di fare rapidamente il punto della situazione in corso.*

*When the European Union will come back after the summer break (la rentrée) in September 2021, the second half of the ninth legislature will begin, along with the second half of the term of office of the European Commission presided over by Ursula von der Leyen: the challenges are huge and the projects and unfinished business under way are numerous and complex and all the European institutions are being called*

*upon to cope with a situation which is admittedly delicate yet full of stimuli and potential. First of all, the Conference on the Future of Europe must be brought to a successful conclusion: here not only is the Union's credibility at stake but also the question of its ability to keep a steady hand on the tiller in the years ahead. At the same time, but still closely linked to the Conference, there is the question of defending the founding values of the Union, in particular the rule of law and non-discrimination, which are the subject of disputes with some States. Then there is the need to get the Next Generation EU operation - one of the most important political and economic initiatives in the continent's history - off on the right track and, with it, get Europe out of the pandemic crisis, which has a variety of aspects in addition to the obvious one of health. The next few years will also be decisive for assessing the validity and solidity of the agreement on Brexit, which is as sensitive as the pressures on free movement brought about by emergencies. Lastly, there is the immense construction site of digitalisation with its various themes (artificial intelligence, Digital Service, teleworking, cybersecurity). It is therefore worth quickly taking stock of where we stand.*

## **1. The Conference on the Future of Europe**

The Conference on the Future of Europe was officially launched in Strasbourg on 9 May 2021, Europe Day, much later than originally planned on account not only of the pandemic but also of the gruelling negotiations. The French President, Emmanuel Macron, opened the proceedings with a highly significant speech. He stressed the Union's chief weakness of lacking the capacity to decide quickly and resolutely, while pointing to the defeatism, lassitude and careless impatience to which Covid-19 had given rise. He went on to recall the need for determination to defend the sovereignty of the European space: something that is achieved by the existence of creators and producers in Europe. On the other hand, he recalled that Europe is a model in various regions of the world on account of its solidarity. Macron drew attention to the fact that, during the pandemic, Europe, more than in any other region of the world, had prioritised life and guaranteed the functioning of democracy in the face of all the sirens of authoritarianism.

At this point, it is worth giving a very brief account of how the “formal” debate

unfolded over time: after the idea had been launched by President Macron,<sup>[1]</sup> Ursula von der Leyen took up the proposal in her speech on the guidelines for the European Commission made to the European Parliament on 16 July 2019 before her election as President.<sup>[2]</sup> Subsequently, the European Parliament adopted a first resolution on the topic on 15 January 2020,<sup>[3]</sup> which was followed by the Commission's Communication of 22 January 2020.<sup>[4]</sup> Parliament returned to the subject with a resolution on 18 June 2020<sup>[5]</sup> and finally the Council adopted a common position on 24 June 2020.<sup>[6]</sup> On this basis, the practicalities could be negotiated and the conference launched.

The Conference Plenary (433 members) is scheduled to work for a year with a mandate to take into account the contributions of the citizens, who are to be consulted on a large scale, and then hand over the results to Macron himself, who was the first promoter of the initiative, in March 2022 during the French Presidency of the Council. The official presidency of the conference is made up of the presidents of the three institutions, but there is an *Executive Board* chaired by representatives of the three institutions which is take care of the practical management of the whole machine on a permanent footing. The first meeting of the Conference Plenary took place on 19 June 2021, and thereafter the programme envisages at least one meeting per month. The Plenary also divided up the work by forming 9 working groups.

A digital platform had already been opened on 19 April, receiving a large number of contributions from the outset: the declared aim was to prevent the discussion from being taken over by "the usual suspects" repeating their already familiar positions. According to the first internal "activity report" of the Conference, prepared and circulated in July 2021,<sup>[7]</sup> the citizen participation aspect, the supreme objective of the Conference, got off to a good start with 19,000 participants registered on the platform, 5,000 ideas, over 10,000 comments and more than 29,000 "endorsements of ideas", with almost 1 million people having visited the platform. This was considered a good start, but it was clear that more citizens should be reached. In terms of the content of the first online debates, the words most closely associated with today's Union were *solidarity, unity and cooperation*, while the words associated with tomorrow's Union were *hope and challenges*.

## 2. Rule of law

The Commission's first Report on the Rule of Law in the European Union was presented in September 2020,<sup>[8]</sup> focusing on the processes of democratic backsliding, together with the concept of the European "way of life": rule of law, democracy, and fundamental rights. The report addresses four areas that are examined for each EU member country: the justice system, the anti-corruption framework, media pluralism, and institutional issues related to checks and balances. On top of this, the emergency measures adopted for the pandemic are considered.

The Commission has adopted a participatory and consultative method: discussion with the Member States (network of national contact points) and written contributions from stakeholders and civil society. The evaluations are made on the basis of a consistent and comparable approach for all States: in addition to the general communication, specific reports are presented for each State.

A major dispute has long been going on between the Commission, on the one hand, and Hungary and Poland, on the other.<sup>[9]</sup> After a hearing in December 2018 on the situation in Poland and a hearing in December 2019 on the situation in Hungary, the Council of Ministers did not return to the subject until much later in June 2021: the Commission considered it absolutely necessary to continue with the Article 7 procedure because (Commissioner Jourová argued) the things that had happened in the meantime had only increased concerns. In addition, there was concern about the governments' wait-and-see attitude.

After an intense debate on these issues; the Commission proposed introducing the principle that access to EU funds should be conditional on respect for the rule of law. In November 2020, Hungary and Poland vetoed making access to resources for economic growth (Next Generation EU) conditional on respect for the principle of the rule of law: the veto opposed the budget, as it could not be used against the specific legislative act.<sup>[10]</sup> The European Parliament voted for conditionality in December 2020, accepting what has been called the "Merkel compromise", the German presidency's mediation proposal: the Commission must first find that the principles of the rule of law have been violated and then propose cutting or freezing EU funds. After that, however, it is the Council that

votes by a qualified majority on the proposals made by the Commission. Although some have referred to this as giving in, in truth this provision is a major revolution in the history of the EU. As expected (it was part of the compromise), Poland and Hungary raised the question of the legitimacy of the principle of conditionality before the Court of Justice,<sup>[11]</sup> with not only the result that the implementation of the regulation was blocked<sup>[12]</sup>, but also the risk identified by many that the Court's judicial activity would be "politicised".

As a matter of fact, this risk is actually already present in the pending proceedings on the application of the Article 7 procedure and other aspects concerning mainly Poland: this country is accused in various quarters of turning its democratic system into an authoritarian "democracy" because of interventions with respect to the Constitutional Court, the independence of the judicial system, public companies and media, and private media. The CJEU rejected Poland's new rules on Supreme Court judges in July 2021 and ordered changes to their provisions, but the Polish Constitutional Court questioned the primacy of EU law, arguing that the CJEU had no competence in the matter. For its part, the Commission formally called on Poland to comply with the CJEU's ruling: otherwise, infringement proceedings would once again be initiated. It should not be forgotten that in June 2021 the Commission had brought infringement proceedings against Germany on account of the well-known ruling of the German Constitutional Court which called in question the CJEU's ruling on the powers of the European Central Bank.<sup>[13]</sup> The Commission challenged the failure to respect the principle of the primacy of Union law and asked Germany to find a solution. In addition to posing legal problems, the ruling of the Court in Karlsruhe has set a catastrophic precedent in the context of the ongoing proceedings against Poland and Hungary.

A very relevant incident took place in June 2021 on the occasion of the adoption of a proposal for a law in Hungary for the protection of children, explicitly designed to curtail or eliminate the rights of homosexuals and other sexual orientations: in a widely circulated official statement,<sup>[14]</sup> the President of the Commission called the Hungarian bill "a shame" on the ground that it was contrary to the fundamental rights enshrined in the European Charter and the Treaties, and announced that the Commission had sent a formal letter warning of legal proceedings should the bill be enacted. The Hungarian government

officially responded<sup>[15]</sup> by saying that it was President Van der Leyen's statement that was a shame because it was based on false allegations and by claiming that the law was inspired by the Charter of Fundamental Rights and that von der Leyen's remarks constituted a political opinion without a previously conducted, impartial inquiry. This incident between the Commission and Hungary led to a serious debate among Member States. The vast majority of the members of the European Council openly criticised the proposed Hungarian legislation as contrary to Community values, some even went so far as to say that Hungary was now outside the Union: however, it must be noted that support for this view was not unanimous and margins of uncertainty remained.

The Vice-President of the Commission responsible for "promoting our European way of life", Margaritis Schinas saw fit to intervene in an important interview<sup>[16]</sup> to underline the relevance of the "open and clear" debate that had taken place at the European Council: it was, according to Schinas, the first time that these issues had been addressed at the highest level in such a direct way and therefore that the problem had been laid on the table. For Schinas, there is a *corpus europeum* which is the soul of European values and the foundation for our way of life. The President of the European Parliament, David Maria Sassoli, also reacted by sending a long and detailed letter to the President of the Commission, which was made public.<sup>[17]</sup> Although this letter does not actually refer to the new Hungarian legislation, it does stress the fact that respect for the rule of law has deteriorated in some European countries. The objective of the letter was to urge the Commission, in relatively strong terms, to act for the immediate application of the regulation on the conditionality of financial flows on respect for the principles of the rule of law. Recalling the official positions of the European Parliament,<sup>[18]</sup> the letter denounces the fact that no action has been taken several months after the regulation's entry into force notwithstanding the obvious problems of non-compliance with European principles. Lastly, in July 2021, the Commission initiated infringement proceedings against Poland and Hungary<sup>[19]</sup> for their anti-LGBTIQ measures because, the Commission claims, they discriminate against citizens on the basis of their sexual orientation. At the end of July, the Hungarian Prime Minister Viktor Orbán announced a series of referendums on the contested provisions and announced that he would renounce Recovery Plan funds (€7.2 billion) if they were conditional on the abolition of

the controversial LGBTIQ law.

In short, the conflict on the importance and the conception of the founding values of the EU and liberal democracy, both of which are opposed by Hungary and Poland, and likewise Slovenia (which took over the Council Presidency in July 2021), is becoming very serious: I do not believe that this issue can be sidestepped during the Conference on the Future of Europe.

### **3. Recovery (Next Generation EU)**

The emergence of Covid-19 affected the activity of the EU as a whole, since everything is interconnected: when it was realised that, because of the measures being taken (including the lockdown), the problem was no longer only one of health, but was becoming a colossal economic problem, the Member States showed that they could not agree, or in any event had no method for reaching agreement quickly, whilst, in contrast, the supranational institutions exhibited a great capacity to react and decide<sup>[20]</sup>. The President of the Commission, Ursula von der Leyen, presented her proposals to the Plenary of the European Parliament on 27 May 2020, after the European Council meeting by videoconference on 23 April 2020 had instructed her to prepare a plan “also using innovative instruments”. The Commission’s plan had various aspects,<sup>[21]</sup> the central one being the creation of a fund to boost the economy called “Next Generation EU”: this is a €750 billion fund financed by recourse to the financial markets, to be repaid over 30 years through the Community budget, which is to be reinforced. It is important to stress that this measure more than “innovative” is really revolutionary in the EU approach, because it reverse and cancel the fundamental principle of no-debt is accepted in the EU finances. Other parallel actions, such as a new European health programme, will accompany the “Next Generation EU” fund. Obviously, the adoption of the MFF (Multiannual Financial Framework) for the period 2021-27,<sup>[22]</sup> with a ceiling of €1074.3 billion, was decisive in order to be able to add the €750 billion of the recovery plan. The ratification process by all EU Member States was completed at the end of May 2021 (by which time 19 national recovery plans had already been delivered, including the Italian<sup>[23]</sup>). The national plans are obviously an essential prerequisite for the activation of the funds (which in 2021 became €807 billion



after adjustment for inflation). In the second half of June, the Commission had already approved a large proportion of the plans and, in order to underline the historical importance of the event, President von der Leyen went in person to the capitals of the countries concerned to present the approved plan together with the (analytical) point of view of the Commission. In the meantime, on 15 June 2021, the Commission had issued its first bonds on the market, for a total of €20 billion, in a fully successful operation: it was the first time in the history of the EU.

The Commission will launch its bonds on the markets to finance the recovery plans and repay the loan by 2050 from the European budget, which should either be reinforced by the Member States or be given the benefit of new own taxes on the environment, financial transactions or web enterprises. The funds are to be disbursed in the form of either loans or grants, but according to the guidelines must do no harm to the environment, but rather invest in climate protection, and invest in digitalisation. In any case, what is involved must be predominantly investment and not current expenditure. In addition, the Commission requires some structural reforms relating to the situation of individual countries: for example, Italy is required to do the following: complete the reform of its public administration; strengthen the “spending review”; reform its justice system; adjust mechanisms for managing insolvencies; reform public procurement; undertake digital training and interventions on the labour market, including support for the employment of young people and women; make interventions in the energy and tourism sectors; combat corruption and tax evasion. The Italian plan was also approved by the Commission in June 2021, with a very positive assessment, apart from the cost analysis (an observation which applies to almost all the national plans approved). What must be clear is that the funding responds to a strategic plan of the Union designed to change the European economy and society to make them more efficient, fairer and more sustainable.

At this point, however, a new chapter opens up, or rather calls to be opened! The many measures taken at European level include the suspension of the Stability Pact on budgetary equilibrium decided autonomously by the European Commission, together with the greater flexibility granted, again by the Commission, to state aid policy. And to think that in February 2020, just before the outbreak of the pandemic, the Commission had launched a debate on the

rules of financial rigour in state budgets.<sup>[24]</sup> The debate is now in the freezer: the suspension of strict budgetary rules for the Member States owing to the pandemic was probably the decision that prevented the collapse of the European economies;<sup>[25]</sup> however, this opened the way to a huge problem for the near future, namely public debt of enormous proportions which will have to be dealt with in order not to have a dramatic downside: obviously the situations will not be the same, but in some countries they will be really difficult. If we take Italy once again, its public debt as a percentage of GDP has progressed as follows: 2017, 134.1%; 2018, 134.4; 2019, 134.6; 2020: 155.8! These figures are not simply worrying, looking forward, they are frightening: just think that, Italy's public debt reached a new record of 2.7 trillion euros in June 2021 and was about to exceed the threshold of 160% of GDP by the end of the year.

#### **4. Brexit**

Then there is Brexit. The negotiations were pursued in a very negative climate, with great difficulties and times which seemed to constitute a breaking point: I believe that it was the goodwill of the EU and its negotiator, Michel Barnier, which saved the situation, even if at a certain point the Commission was obliged to bring proceedings against the United Kingdom for "breach" of the withdrawal agreement, accusing it of bad faith in October 2020<sup>[26]</sup>. An insightful observation was made by J. Ziller,<sup>[27]</sup> who, after making a thorough appraisal of the text of the agreement, found that there is a clear lack of trust between the two parties, while on the part of the UK there is "a dramatic obsession with the European Court of Justice": in this context, Ziller finds, both sides are losers with the main losers being the citizens. The UK has insisted on totally withdrawing from any kind of cooperation in foreign, defence and development policy, and has also emblematically withdrawn from the Erasmus programme. The EU, on the other hand, sought to guarantee maintenance of the principle of non-regression on social issues and the principle of fair competition in trade relations, without social or fiscal dumping: for the EU these are inalienable principles which could trigger withdrawal from the agreement.

The European Parliament took more time before giving the green light to the agreement and the period of provisional application was (unusually) extended:

but then ratification arrived, with 660 votes in favour, 5 against and 32 abstentions. Yet the start of the new agreements was not the most peaceful, especially with regard to the movement of persons, residents' rights and fishing, not to mention Northern Ireland. As for the reactions of economic actors, in particular those in the City, at the time of ratification in April 2021, 440 financial institutions were to be transferred (in whole or in part) to European financial centres (Dublin, Paris, Frankfurt, Luxembourg) for a total of £1 trillion and 7,400 jobs: but the figures were incomplete and the game is still on.

## **5. Pressures on freedom of movement**

The pandemic, illegal immigration and terrorism (including “home-grown” terrorism by individuals) are constantly bringing pressure to bear on the regime of free movement at the internal borders: there have been repeated incidents of border closures or threats of closures. Cooperation between Member States in controlling internal borders is considered to fall far short of needs and plans and is proceeding too slowly.

As far as the pandemic is concerned, Covid-19 caused real “shocks” to the EU, because once again the Member States went it alone in combating an epidemic that later became a pandemic, only to discover that there was a real need for at least EU coordination, which was initially left aside. The EU has no powers of its own in the field of health, but may play a very important coordinating and harmonising role, provided that there is cooperation and consensus on the part of the Member States. The fact is, however, that the Member States initially took measures that should not have been unilateral, such as closing borders or bans on the export of medical equipment: these are areas where the Union has strong powers.

With regard to immigration, according to the Commissioner responsible, Ylva Johansson, 3 million legal immigrants and only 140,000 illegal immigrants arrive in Europe every year, whilst 1.5 million leave Europe every year: basically, this would be a fairly balanced situation,<sup>[28]</sup> even if the public perception is totally different.<sup>[29]</sup> However, it is clear that the need to focus on illegal immigrants and, more generally, on knowing who is entering European territory remains fundamental: the real issue on the table today is how to improve cooperation

between Member States<sup>[30]</sup> and, even better, which principles should underpin immigration policy, in particular whether we should move beyond the principle of the responsibility of the State of arrival in favour of the concept of asylum seekers or immigration to Europe (which would revolutionise organisation and procedures).<sup>[31]</sup>

Lastly, terrorism,<sup>[32]</sup> despite the fact that it has slowed down, has continued to strike with dramatic and worrying episodes, also in the form of “home-grown” terrorism.<sup>[33]</sup> This has pushed the problem much further and has meant that freedoms and fundamental rights are now largely sacrificed. The alarm raised by various actors is very high and people are beginning to wonder whether the restrictive measures adopted from time to time should not be called in question: increasingly, recourse is being made to the courts to try to suppress these measures. Some argue that it is also the fault of parliaments which do not adequately scrutinise the rules that are then adopted: the threefold criterion related to the proportionality assessment (suitability, necessity and proportionality in the strict sense) is not paid due attention. Among the many restrictions, there is also the restriction on moving freely within Europe.

The Schengen System<sup>[34]</sup> is the predestined victim of this: that is why in June 2021 the Commission relaunched a process of reform, while announcing the guiding principles underlying its proposal. These are essentially the strengthening of external borders and police cooperation with exchanges of information, with a view to eliminating all the internal border controls that have multiplied since 2015 and remain substantial in some States. The situation, however, was complicated by the fact that Frontex (the European border control agency) was at that time under pressing criticism even for “violating the fundamental rights” of migrants, not to mention, of course, the divergent positions of the Member States, which prevent compromise and solidarity.

## **6. Digitalisation (and democracy)**

This brings me to the chapter on digitalisation, which is very broad and multidimensional. Already in her inaugural speech to the European Parliament, President von der Leyen had stressed that the Union is proud of its values and the rule of law, which are the basis for all action, and that the new Commission

intended to relaunch and strengthen European democracy also through the use of all the tools made available by digital democracy: the Commission considers digital democracy to be an essential part of the strengthening of democracy *tout court*. But digitisation is also regarded as a pillar for relaunching the economy and as a sensitive area in the matter of the protection of rights. The new Commission has translated all these aspects into a communication, “Shaping Europe’s Digital Future”, in which we find the strategy that the Commission intends to follow in the process of the digitisation of Europe, a strategy that develops along three major axes: a technology that works for people; a fair and competitive economy; an open, democratic and sustainable society. The Communication thus offers the strategic framework for complex action which is already under way with the Digital Agenda for Europe, the Digital Internal Market, data protection, copyright protection, taxation of big tech, participatory platforms and electronic money. These are all issues which I have already addressed in depth<sup>[35]</sup> and will be central to the European Union’s action in the years to come. Here, however, I want to highlight only the most recent new aspects that have emerged in a consistent manner, including (but not only) as a result of the pandemic emergency. These are the issues that the European Union has launched in recent times.

The first, which is certainly related to the Covid-19 emergency, is cybersecurity. 2020 saw a boom in cybercrimes in the form of ransomware. In August 2021 in Italy, the case of the hacker attack on the Lazio Region with the blocking of data and a demand for ransom (ransomware) broke out: the event gave rise to much emotion everywhere in Europe, but it has been an obvious risk for a long time for the entire Italian administration and beyond. There was talk of terrorism or foreign incursions. The attack is said to have originated from the PC of a smart working employee, which drew attention to the fact that at least one in six hacker attacks originates from remote PCs, shedding light on the fragility of smart working in its current state. Dramatic figures emerged of the ongoing phenomenon, also in private households: in total, there was a 40% increase in 2020 compared with the previous year, but already in the first half of 2021 the increase was 400% when it comes to national IT systems. All this has accelerated the establishment of a Cyber Security Agency in Italy, but it remains clear that the only effective way forward is action at EU level, even if the EU is still

struggling compared with China and the US. But the phenomenon has a much larger scope: during the first summit between US President Biden and Russian President Putin (June 2021), the topic of cybersecurity was one of the two main discussion points. Or rather, to be precise, the theme was the cyber-war that is now being fought silently with economic, political and strategic consequences: Russia seems to have developed more advanced techniques than the US, probably through the use of pirates and privateers, which constitute a barrier to going straight to the institutional level. Propaganda interference, “classical” espionage by computer, ransom demands in various sectors with enormous damage are attributable, according to experts, directly or indirectly to Russia. It is no longer a question of cybercrime, but of national security problems, with operations being handled by large professional criminal organisations, based not only in Russia, but also in African countries or EU Member States.

The second aspect is also linked to the pandemic emergency because it concerns the structural transformations resulting from teleworking to which resort was made in order not to be paralysed by the pandemic. On the basis of the experience gained during the Covid-19 emergency, the Commission has launched a plan to reduce its office buildings by 50% in ten years (by 2030) by reorganising work through teleworking. This will also reduce the institution’s carbon footprint. Belgium, like the Commission, has also launched a plan make a drastic reduction in office space for civil servants: the federal level has envisaged the possibility of working two days a week in teleworking and creating coworking spaces for civil servants in order to reduce office space by 200,000 square metres by 2030. The European Parliament has also adopted a system of teleworking, that is very well ruling structured and organised: it foresees three modes of teleworking: standard (one day per week on an average monthly basis), moderate (two days) and maxi (three days). Data protection, health and safety at work outside the Parliament’s premises are also taken into account in the decision setting up the teleworking in the EP<sup>[36]</sup>.

Reorganisation of space and reorganisation of the way we work clearly go hand in hand: the issue has been on the table for years, ever since the launch of the so-called NWOW (new way of working), which slowly progressed up to the point of when pandemic broke out. Today we speak of a new normal, which completely changes the old, to which no return can be made. One of the most

important consequences is that we have to rethink personnel management, a decisive aspect which adds to the ruling spatial and temporal flexibility: staff can no longer be regarded simply as a resource or human capital, they will need more attention in the new context. It will be necessary to guarantee individual satisfaction, to guarantee empathy in the organisation and to guarantee an appropriate lifestyle: hence, it is the role of the manager which will have to be revisited. But there are also other essential aspects, such as ergonomics, for which new rules on compensation for workers will have to be secured, as is already the case in some countries such as Belgium.

The third aspect I want to mention is not directly related to the pandemic, but has been largely influenced by the growing importance of large IT companies in the pandemic emergency. It was in December 2020 that the Commission, after an extensive consultation process with national, regional and local levels, presented its draft Digital Service Act, by which it aims to regulate the obligations of IT services (GAFAM, above all, and others) that play an intermediary role between the provision of goods or services or content and consumers. The Commission wants to indicate how interested parties can identify and report illegal content, on the one hand, and how companies can take compulsory action to suppress it, on the other. However, this is not only about the obvious incitements to hatred, terrorism, child pornography and so on but also about the reasons why a site comes up first or one company rather than another as a result of a search, that is to say, it is about the way the algorithms of service platforms work. In addition, the traceability of counterfeit and illegal products is taken into account.<sup>[37]</sup> What underlies the Commission's initiative is the principle that "what is forbidden in analogue must be forbidden online", in addition to the stated aim of wanting to take in hand the evolution of what has become the "normality" of our daily lives. All this is not left isolated in the economic and legal dimension but is included in an "Action Plan for Democracy": democracy should not only be supported but also defended against the distortions caused by the imposition of algorithms. Vice-President Vera Jourová announced this in early December 2020.

The last aspect, can be considered as the jewel in the crown: it is the new proposal for the regulation of artificial intelligence (AI) presented by the Commission in April 2021<sup>[38]</sup> to start the legislative process: the intention is not, of course, as has

been repeatedly emphasised, to oppose the development of AI and its use, but to regulate those aspects that have an impact on the fundamental rights of citizens. Thus, the EC proposes to *ban* AI which produces “social scoring” (examining behaviours so as to prevent certain accesses), AI which manipulates human behaviour (through subliminal influences), AI which identifies people in real time through biometrics (except in exceptional and precisely indicated situations). Instead, the Commission intends to *regulate* AI involving a “high risk” with decisions that directly affect citizens’ lives: for example, access to a loan, recruitment, dismissal, admission to university, entitlement to social benefits, but also border controls, asylum applications, autonomous driving of cars, and so on. It is true that the definition of “high risk” will give rise to discussions and differences, as will the assessment of conformity. Moreover, the acceptance or not of such a regulatory framework by international markets may lead to economic problems. In any event, the Commission also proposes the creation of a European AI Council, which could issue opinions, update the list of risks, or simply advise.

## **7. Conclusions**

At this point, it seems that the time has come to conclude this examination of the challenges and potential opportunities which lie ahead for the European Union in the second half of the ninth parliamentary term: indeed, these are issues that will determine what the future of the Union will be for a long time to come. Before summarising the various topics discussed, however, I believe that attention should be drawn to two recent events which cannot merely be brushed aside as annoying incidents since they are likely to have a major influence on the future. The first one is the so-called “Sofagate” incident: it is in my opinion much more than an unpleasant event and a “protocol accident” caused by Turkey’s President Erdogan during an official EU visit to that country and, from our point of view, even more than the gender inequality affront to a woman. It shows that there is something wrong at the institutional level in the EU: an unhealthy rivalry between the presidents of the two institutions, the Commission and European Council, which raises questions: is there a difference in rank? Are they equivalent? Is there a defined protocol? It is difficult to say. According to



Turkey, in fact, the protocol solution adopted - which gave rise to the incident - was agreed upon by (someone in) Brussels. The second episode is one of governance: in August 2020, a European Commissioner, Phil Hogan, had to resign on the ground that he had not worn a mask and not respected social distancing (imposed by Covid) at a party of eighty people in his country (Ireland), without, moreover, placing himself in quarantine afterwards. Some analysts claimed that the new Irish government wanted to get rid of the Commissioner appointed by the previous government. That might be plausible, but, seen from the point of view of the EU, this is the first time that a European Commissioner has resigned under pressure from the government of his own country: this weakens the EU approach contains in the Code of conduct for Commissioners<sup>[39]</sup> where only the President of the European Commission can ask for resignation.

To conclude<sup>[40]</sup>, it seems clear to me that the second half of the current legislature will be a decisive period, with the possibility of major work in prospect for the European Union. This is first because there is a Conference on the Future of Europe which will have to produce results: the words emerging by the open online debate, closely associated to the Union are *solidarity, unity and cooperation*, and for the future *hope and challenges*. Second, also because the ongoing battle to defend the founding values of the EU will leave its mark: the conflict on the importance and the conception of the founding values of the EU and liberal democracy, is becoming very serious and cannot be sidestepped during the Conference on the Future of Europe. Third, because there is historic action in the economy which is tending towards a structural change in European society: it must be clear that the funding responds to a strategic plan of the Union designed to change the European economy and society to make them more efficient, fairer and more sustainable. Forth, because the great achievement of free movement will have to be developed: that is essentially the strengthening of external borders and police cooperation with exchanges of information, with a view to eliminating all the internal border controls. And at the end, because the digital innovation progress is a big opportunity: we need to relaunch and strengthen European democracy also through the use of all the tools made available by digitalisation, digital democracy is an essential part of the strengthening of democracy *tout court*.

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1. Immediately after his election, on several occasions and most notably during a keynote speech in Berlin.
2. Opening Statement in the European Parliament Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission (europa.eu)
3. European Parliament resolution of 15 January 2020 on the position of the European Parliament on the Conference on the Future of Europe, P9\_TA(2020)0010, [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0010\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0010_EN.html).
4. Communication from the Commission to the European Parliament and the Council shaping the Conference on the Future of Europe, 22.1.2020, COM(2020) 27 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0027>.
5. European Parliament resolution of 18 June 2020 on the European Parliament's position on the Conference on the Future of Europe, P9\_TA(2020)0153, [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0153\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0153_EN.html).
6. Presidency of the Council of the European Union, Conference on the Future of Europe, AG32 INST120, Brussels, 24 June 2020, setting out in detail the Council position as agreed at the Permanent Representative Committee, <https://www.consilium.europa.eu/media/44679/st09102-en20.pdf>.
7. POLITICO Brussels Playbook, 30 July 2021, <https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-time-to-say-goodbye-no-eulogies-though-over-and-out/>.
8. 2020 Rule of law report - Communication and country chapters, [https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters\\_en](https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en). However, it is important to remind that the process for the application of art. 7 to Hungary has been opened by the European Parliament.
9. Even for Romania, at one point, the issue of legislative interventions not respecting the rule of law had been raised with regard to projects to reform the judiciary and the Criminal Code, including the downsizing of the Anti-Corruption Agency: see *Le Soir*, 14-15 August 2018. But after protests in the country and remonstrances by Commissioner Jourová, no more came of the matter.
10. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1.
11. Case C-156/21 *Hungary v. European Parliament and Council*, OJ C 138, 19.4.2021, p. 24; Case C-157/21 *Poland v. European Parliament and Council*, OJ 138, 19.4.2021, p. 26.
12. Indeed ; in this way the EC cannot adopt the “guidelines” until the end of the judicial process.
13. For an in-depth analysis, see Diana-Urania Galetta, *Karlsruhe über alles? The reasoning on the principle of proportionality in the judgment of 5 May 2020 of the German BVerfG and its consequences*, and Jacques Ziller, *The unbearable heaviness of the German constitutional judge. On the judgment of the Second Chamber of the German Federal Constitutional Court of 5 May 2020 concerning the European Central Bank's PSPP programme*, both in

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CERIDAP 2/2020, at <https://ceridap.eu/>.

14. European Commission, Statement by European Commission President on the new Hungarian bill that discriminates against people based on their sexual orientation, Brussels, 23 June 2021, [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_21\\_3164](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_3164).
15. See *Hungary's anti-LGBT law is a "shame" says Ursula von der Leyen*, Euronews, 23 June 2021, <https://www.euronews.com/2021/06/23/hungary-s-anti-lgbt-law-is-a-shame-says-ursula-von-der-leyen>.
16. *Notre mode de vie est le meilleur bouclier contre les dérives*, *Le Soir*, 30 June 2021.
17. The letter can be accessed here: <https://cdn.g4media.ro/wp-content/uploads/2021/06/Sassoli-Letter-EC-230621.pdf>
18. Resolution of 17 December 2020, P9\_TA(2020)0360; Resolution of 25 March 2021, P9\_TA(2021)0103; and Resolution of 10 June 2021, P9\_TA(2021)0287.
19. The Commission also brought proceedings against Hungary in the CJEU for unlawfully restricting access to the asylum procedure. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3424](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3424)
20. Many are the concrete and urgent measures adopted at the EU level, but the most emblematic (a real victory) is the Green Pass harmonised for all the Member States.
21. See *European Recovery Plan*, [https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/recovery-plan-europe\\_it](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/recovery-plan-europe_it)
22. The interinstitutional agreement (EP, Council, EC) was reached in November 2020 after long and arduous negotiations. The first budget of the new MFF, for 2021, amounts to just over €166 billion, or 1.19% of EU GDP.
23. The references to Italy are not made because of the author's nationality, but in consideration of the fact that Italy is defined as the essential fulcrum and supporting pillar of the whole operation of relaunching the European economy: this statement has been repeated several times by the President of the Commission.
24. According to the Commission, the Stability Pact could be assessed as generally positive at that time, as there had been a substantial improvement in the financial situation of the member countries.
25. It is true that the average recession recorded in 2020 for the European Union was -6.1% with peaks for countries such as Spain (-10.8), Italy (-8.9) and France (-8.7), but already in 2021 growth should be considerable.
26. The criticism of the UK's handling of Brexit has not only come from the European Commission or other EU institutions, but also from many observers; who have focused on the domestic factors which culminated in the fall of Prime Minister Theresa May, ousted by her own party. But from our point of view it is important to recall the story of the "advice" given by the new Prime Minister Johnson to the Queen that led to the prorogation of the British Parliament for a few weeks: an abnormal measure (!) which was

- declared to be null and void by the Supreme Court, which held the “advice” to be unlawful because it contained no reasonable justification, and invited Parliament to resume its activities: *R (on the application of Miller) v. Prime Minister* [2019] UKSC 41.
27. Jacques Ziller, *Brexit: to have or not to have a deal? (first episode) - The New Brexit Deal: Predictable Outcome of a Lose-Lose Negotiation. A First Glance Assessment of the EU-UK Trade Agreement 24.12.2020 (second episode)* CERIDAP, 4/2020.
  28. According to the UNHCR, the years of real crisis were 2015 and 2016, already in 2017 arrivals of migrants in Europe decreased five-fold, and further substantial declines were recorded in the following years.
  29. The case of Italy is very emblematic: the book Istituto Cattaneo, *Immigrazione in Italia: tra realtà e percezione*, Bologna, 2019, shows that 70% of Italians believe that immigrants in Italy account for 25% of the population whilst the true figure is 7%.
  30. The urgency of this aspect emerged once again with the dramatic events of Afghanistan, in august 2021.
  31. The former president of the Italian Constitutional Court, Valerio Onida, came out strongly in favour of this change of approach in *Corriere della Sera* of 29 August 2019.
  32. Again, there is a problem of cooperation between Member States: for example, an infringement procedure has been initiated by the Commission against Italy for deficiencies in information sharing to combat terrorism and crime.
  33. I would mention here, albeit in passing, two interventions that have touched my sensibilities in this regard: one is by Sabino Cassese, in *Corriere della Sera* of 22 August 2017, who points out that a decisive reaction on the part of the Islamic communities to defeat of this terrorism is still lacking; the other is by the French philosopher Elisabeth Badinter, in *Corriere della Sera* of 4 January 2018, who finds that politicians, because of their anxiety about attracting trouble and their fear of violence, are abandoning our essential principles of the fight against terrorism.
  34. It is redundant but eventually useful to remind that at the beginning it was the Schengen Treaty, which has been integrated in the EU legal system later.
  35. Allow me to refer to G. Vilella, *E-Democracy. Dove ci porta la democrazia digitale*, Pendragon, Bologna, 2020, *passim*, so as not to go back over things already said. For the Commission’s “digital philosophy”, see the recent study, *Exploring Digital Government Transformation in the EU - Understanding public sector innovation in a data-driven society*, Misuraca, G., Barcevičius, E. and Codagnone, C. editor(s), EUR 30333 EN, Publications Office of the European Union, Luxembourg, 2020, the final recommendations of which include the need: to build human capacity to ensure a successful Digital Government Transformation, to take advantage of predictive analytics in order to improve policy making and service delivery, and to create a culture of digital transformation within the public sector.
  36. 2021.07.16 - SG Decision - New teleworking rules 01.09.2021
  37. As regards market distortions essentially due to so-called “gatekeepers”, regulation is handed over to a Digital Market Act, which is intended to prevent rather than punish

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actions of abuse of a dominant position. A Data Governance Act is also planned (but in preparation).

38. You can find the document, the explanations and comments in [https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/excellence-trust-artificial-intelligence\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/excellence-trust-artificial-intelligence_en)
39. The latest and most comprehensive version came into force on 1 February 2018. See EUR-Lex - 32018D0221(02) - EN - EUR-Lex (europa.eu)
40. I am aware of the absence in this analysis of the dossier concerning environment and the related initiative known as Green Deal launched by the Commission as one of (or even “the”) most important priorities: it is not a forgetfulness, it is because this topic deserves a specific treatment.