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## Neo-militant Democracy and (Un)fulfilled Destination of Consolidated Democracies? The Inner Six in Comparative Perspective\*

**Nowa demokracja opancerzona i (nie)spełnione przeznaczenie skonsolidowanych demokracji? Analiza porównawcza państw założycielskich Unii Europejskiej**

### • Abstract •

Drawing upon the methods of qualitative source analysis and process tracing, the study addresses the following research questions: How was the national legislation of consolidated democracies positioned to neo-militant democracy measures during the recovery from the great financial crisis (2007–2009)? To what extent was democracy prone to authoritarian abuse depending on a neo-militant democracy rule implementation? It advances arguments to reject Carlo Invernizzi Accetti's and Ian Zuckerman's hypothesis that if the freedom of political actors is restricted through militant democracy measures, democracy becomes more prone to authoritarian abuse in the long run. In the founding states of the EU, neo-militant democracy measures functioned in the legal structures long before the outbreak of the great financial crisis, during the crisis (2007–2009),

### • Abstrakt •

Wykorzystując metody jakościowej analizy źródeł i śledzenia procesu, w badaniu podjęto próbę odpowiedzi na pytania badawcze: Jakie było miejsce środków nowej demokracji opancerzonej w ustawodawstwach państwowych w czasie wychodzenia z wielkiego kryzysu finansowego (2007–2009)? W jakim stopniu demokracja była podatna na autorytarne nadużycia w zależności od poziomu stosowania zasad nowej demokracji opancerzonej? Badanie dostarcza argumentów za odrzuceniem hipotezy Carla Invernizziego Accettiego i Iana Zuckermana, że jeśli wolność aktorów politycznych jest ograniczana przez środki demokracji opancerzonej, w dłuższej perspektywie demokracja staje się bardziej podatna na autorytarne nadużycia. W państwach założycielskich UE środki te funkcjonowały w strukturach prawnych na długo przed wybuchem wielkiego kryzysu finansowego,

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and in the period of recovery. The states restricted democratic freedoms of speech, the press, association, and assembly. Belgium, Luxembourg, and Germany also limited organization in political parties. Moreover, during the recovery from the crisis, that is, a period of particular vulnerability of democracy to authoritarian abuse, the lists of relevant precautions were extended in France, Italy, and Germany. In these states, strengthening neo-militant democracy measures was neither a factor undermining democracy nor making it prone to drift towards a hybrid or authoritarian regime.

**Keywords:** neo-militant democracy; European Union; Inner Six; anti-democratic legal measures; civic freedoms; political rights

a następnie w czasie jego trwania (2007–2009) i na etapie wychodzenia z niego. Limitowały one demokratyczne wolności słowa, prasy, stowarzyszeń i zgromadzeń. Belgia, Luksemburg i Niemcy ograniczyły również działalność partii politycznych. Co więcej, w czasie wychodzenia z kryzysu, w okresie szczególnej podatności demokracji na nadużycia autorytarne, katalogi środków demokracji opancerzonej zostały rozszerzone we Francji, Włoszech i Niemczech. W tych państwach wzmocnienie nowej demokracji opancerzonej nie było ani czynnikiem podważającym demokrację, ani powodującym jej zmianę w kierunku reżimu hybrydowego lub autorytarnego.

**Słowa kluczowe:** nowa demokracja opancerzona; Unia Europejska; państwa założycielskie UE; antydemokratyczne środki prawne; wolności obywatelskie; prawa polityczne

## Introduction

Students of militant democracy point to the electoral victory of the Nazi Party and the collapse of the Weimar Republic as a classic example of how unrestricted tolerance towards anti-democratic political actors integrated into purely procedural democracy can lead to the self-destruction of democracy (Tyulkina, 2015, p. 1). Drawing on a critical analysis of the Weimar Republic's failure, a German émigré legal scholar Karl Loewenstein argued that democratic fundamentalism as a rule shaping the state structure makes democracy vulnerable to being destroyed from within by subversive political actors embodied by fascists. In the 1930s, the researcher made his famous call for militancy: "If democracy is convinced that it has not yet fulfilled its destination, it must fight on its own plane a technique which serves only the purpose of power. Democracy must become militant" (Loewenstein, 1937, p. 423). Although scholars propose different definitions of militant democracy, they refer to its essential features presented in Loewenstein's works and agree about the essence of the theoretical category. Militant democracy is understood as a set of legal tools legitimately allowing democracy to restrict the rights and freedoms of those who seek to abolish it (Malkopoulou, 2021, p. 180). Restrictions considered anti-democratic measures of militant democracy include, but are not limited to, the limitation of registration and functioning of political parties, freedoms of speech,

the press, association, assembly, and universal suffrage. With the emergence of new threats to democracy, such as cyberterrorism or hybrid interference, the catalog of militant democracy measures has expanded. To distinguish between contemporary and historical phenomena, some researchers use the term “neo-militant democracy” (Rak & Bäcker, 2022). However, the core measures of militant democracy remain unchanged.

Some critics of militant democracy, like Alexander S. Kirshner, assume that its means may be misused, and the ruling may become those against whom democracy ought to be protected (Kirshner, 2014, p. 82). Others make an argument that in the long run, limiting the freedom of political actors considered “enemies” may be counter-effective since, thus, democracy may become more prone to authoritarian abuse (Invernizzi Accetti & Zuckerman, 2017, p. 182). As Carlo Invernizzi Accetti and Ian Zuckerman argue, the designation of an enemy against whom democracy defends itself is an inseparable element of militant democracy. This, in turn, requires an arbitrary decision on what characteristics make the political actor an “enemy” and thus whom and how to exclude from the political game. Such a decision determines the boundaries of the political community, which is beyond any democratic procedure. Accordingly, militant democracy can empower the ruling to arbitrarily eliminate political competitors, which is equivalent to undermining the democratic nature of the system (Invernizzi Accetti & Zuckerman, 2017, pp. 183–184).

The article aims to verify Invernizzi Accetti and Zuckerman’s hypothesis that if the freedom of political actors is restricted through militant democracy measures, democracy becomes more prone to authoritarian abuse in the long run. This is the first study focused on empirical verification of this relationship. Current works have focused mainly on the normative analysis of the acceptability of restrictions of civil rights and freedoms (Müller, 2016). However, some researchers also explored the abuse of militant democracy, leading to a reduction in the sovereignty of the political nation, quasi-militant democracy occurrence (Rak & Bäcker, 2022), and de-democratization (Invernizzi Accetti & Zuckerman, 2019). Finally, recent works deal with the obsolescence of classic Loewenstein’s tools and reflect on new threats to democracy posed by anti-democratic actors (e.g., electoral meddling) and the impact of legal measures to combating them on the dynamics of political regimes (Chen, 2021; Horder, 2021). This study contributes theoretically and empirically to studies on contemporary militant democracy by solving the theory-grounded research problem of the relation between the use of neo-militant democracy measures and political regimes’ vulnerability to authoritarian abuse.

## Methodological assumptions

The article answers the following research questions: How was the national legislation of consolidated democracies positioned to neo-militant democracy measures during the recovery from the great financial crisis (2007–2009)? To what extent was democracy prone to authoritarian abuse depending on a neo-militant democracy rule implementation? The study covers the period from 2008 to 2019. The peak of the financial crisis that took place in 2008 began the crisis-driven de-democratization in Europe. As a result of implementing austerity measures by the European Union (EU) and state governments, anti-democratic actors distributing populist and anti-austerity ideas managed to gain broad social support (Kreuder-Sonnen, 2018, p. 453). The decrease in private and public resources resulted in a common deterioration of the rule of law (Morlino & Quaranta, 2016). At the beginning of 2020, the outbreak of the coronavirus pandemic triggered a new de-democratization phase in Europe. Restrictions on civil rights and freedoms, introduced in the name of protecting public health, safety, and order, shaped the trajectories of changes in contemporary political regimes in an unprecedented way (Engler et al., 2021). The period 2008–2019 covers the entire phase of European political structures' continuance. This phase was marked by the effects of the financial crisis and the experiences of recovery.

The set of cases includes the Inner Six, i.e., the founding states of the EU. Western European consolidated democracies have social and political structures homogenous in terms of historical experience with European integration, the rule of law, and economic development (Pech, 2010).

In order to spot whether – and if yes, to what extent – the political regimes of the Inner Six became prone to authoritarian abuse during the crisis, the study draws on Gero Erdmann's (2011) conceptual approach towards democratic regression and democratic breakdown operationalized by Luca Tomini and Claudius Wagemann (2018). When democracy becomes vulnerable to authoritarian abuse, one can observe "loss of quality", defined as "a negative process concerning democracy and resulting in a change within a democratic regime" (Tomini & Wagemann, 2018, p. 7). The second stage is "hybridization", understood as a drift from a democratic to a hybrid regime. The last stage is the "breakdown of democracy", considered a drift from democracy to authoritarianism (Tomini & Wagemann, 2018, p. 7). Following Tomini and Wagemann, this paper adopts the Freedom in the World index by Freedom House since it accurately mirrors the stages of the regime's change from liberal and procedural democracy to authoritarianism. It rests upon a universalist definition of the values of freedom and the role of civil and political rights in

a political system. The index covers the period under analysis by offering an annual evaluation of political rights and civil liberties. The scale ranges from 1 (most free) to 7 (least free). Individual regimes are categorized as free (between 1 and 2.5) – democracies, partly free (2.51–5.5) – hybrid, or not free (5.51–7) – authoritarian regimes (Tomini & Wagemann, 2018, p. 7). Political rights encompass the electoral process, political pluralism, participation, and functioning of government. In turn, the category of civil liberties includes freedom of expression and belief, associational and organizational rights, the rule of law, personal autonomy, and individual rights (Freedom in the World, 2021).

Using a qualitative source analysis method, data on neo-militant democracy measures in the Inner Six is collected. It rests on the analysis of national legislation. The source selection is theory-determined and deliberate. Accordingly, it concentrates on obtaining information about the limitations of democratic rights of free speech, the press, association, assembly, and organization in political parties. Those details create the data matrix and indicate which neo-militant democracy measures were part of the states' legal structures.

The inclusion of neo-militant democracy measures in national legislation is an indicator explaining the vulnerability of democracy to authoritarian abuse. The relationship is evaluated by using a method of process tracing which involves identifying the changes in political regimes of the Inner Six as the variables to be explained, determining the scope of neo-militant democracy measures imposition as the explaining variables, documenting the processes between the explaining and explained factors, considering alternative explanation, and evaluating the empirical evidence for and against the hypothesis and alternative explanation.

## **The vulnerability of democracy to authoritarian abuse**

This part of the article deals with the changes in political regimes of the Inner Six. According to the Freedom in the World reports, those states were not prone to authoritarian abuse during the financial crisis and in times of recovery (Freedom in the World, 2021). Political rights rating indicates that democratic regimes were categorized as free and achieved the highest score, i.e., 1, in almost all cases. The only exception was Italy in 2013 with a slightly lower score, i.e., 2, which also classifies its system as free (Table 1). This rating declined from 1 to 2 because of enduring and widespread corruption on all levels, ranging from petty to grand cases, especially in the south of Italy (Freedom in the World, 2013, pp. 16, 21). In 2014, the rating came back to 1 and did not alter in the analyzed period anymore. Apart from this

temporary loss of quality in Italian democracy, no other changes occurred. Most importantly, there were no hybridization processes or breakdowns in democracy.

Table 1. Freedom in the World's Political Rights Rating for the Inner Six

Year State	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Belgium	1	1	1	1	1	1	1	1	1	1	1	1
France	1	1	1	1	1	1	1	1	1	1	1	1
Germany	1	1	1	1	1	1	1	1	1	1	1	1
Italy	1	1	1	1	1	2	1	1	1	1	1	1
Luxembourg	1	1	1	1	1	1	1	1	1	1	1	1
Netherlands	1	1	1	1	1	1	1	1	1	1	1	1

Source: own elaboration based on the Freedom in the World index by Freedom House (Freedom in the World, 2021).

Slightly greater and more numerous changes took place in the field of civil liberties. The rating classifies the Inner Six as free in 2008–2019 (Freedom in the World, 2021). Once again, almost all cases gained the highest score, i.e., 1. However, two exceptions require further discussion (Table 2).

Table 2. Freedom in the World's Civil Liberties Rating for the Inner Six

Year State	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Belgium	1	1	1	1	1	1	1	1	1	1	1	1
France	1	1	1	1	1	1	1	1	1	2	2	2
Germany	1	1	1	1	1	1	1	1	1	1	1	1
Italy	1	2	2	2	1	1	1	1	1	1	1	1
Luxembourg	1	1	1	1	1	1	1	1	1	1	1	1
Netherlands	1	1	1	1	1	1	1	1	1	1	1	1

Source: own elaboration based on the Freedom in the World index by Freedom House (Freedom in the World, 2021).

The first exception is France, with the loss of quality within democracy since 2017. The civil liberties rating decreased from 1 to 2 and remained at this level. It was the implication of the extension of the state of emergency and extraordinary measures taken after the November 2015 attacks in Paris. The latter included numerous raids, detentions, searches, identity checks, and house arrests of suspects

with neither warrants nor judicial oversight. Some police operations marked the use of excessive force. The maneuvers against terrorism-related crimes and precautions taken on the basis of the 2014 counterterrorism law were considered too expansive (Freedom in the World, 2017). The situation did not vary in the following years. The antiterrorism and counterterrorism campaigns were run incessantly, consistently and resulted in the limitation of constitutional protections and empowerment of law enforcement to operate in ways that violated personal freedoms. Noteworthy, discursive legitimation of precautions and delegitimation of terrorists successfully fueled anti-Muslim and anti-immigrant sentiment (Freedom in the World, 2018, 2019). These trends remained unchanged during the pandemic (Freedom in the World, 2021), and there is no indication that they will change.

In France, antiterrorist and counterterrorist measures were a reactive defense mechanism against numerous Islamic terrorist attacks. Although Islamic terrorist attacks took place also in other founding states of the EU in 2008–2019, the most numerous and fatal attacks occurred in France (25 cases). There were seven attacks in Belgium, seven in Germany, three in the Netherlands, and one in Italy (Freedom in the World, 2021). No incident happened in Luxembourg.

The second exception is Italy, where the loss of quality took place from 2009 to 2011. In 2009, the civil liberties rating decreased from 1 to 2 and, after three years, came back to 1. The above list shows that Italy has not been the site of attacks as often as France. The decline resulted from two primary factors, the further concentration of media outlets under Prime Minister Silvio Berlusconi and enduring meddling by organized crime networks in the performance of private companies, property rights, and social services (e.g., trash collection's functioning in Naples was impeded by the local Camorra group) (Freedom in the World, 2009, pp. 366, 369). These trends continued in the following years in Italy.

According to the 2010 Freedom in the World report, the media concentration did not drop in Italy. Instead, Berlusconi controlled up to 90 percent of the state's broadcast media through not only state-owned outlets but also his own private media holdings (Freedom in the World, 2010, p. 334). Nevertheless, the report also uncovered Italy's achievements against organized crime, which were possible thanks to common social consent. The annual anti-Mafia event had one of the largest turnouts in history. Local communities took to the streets to express their objection to organized crime syndicates and show support for fighting Mafia crimes. After protests, 49 members of a Sicilian Mafia crime family were arrested and sentenced for extorting protection money from stores. Those first successful prosecutions arose from the close cooperation of Sicilian businesses and the police. Moreover, the

Camorra's several top leaders and commanders in the Sicilian Mafia were arrested (Freedom in the World, 2010, p. 335).

The 2011 Freedom in the World report drew attention to scandals involving underage women and escorts that continued to undermine Berlusconi's legitimacy. His ability to govern was commonly questioned (Freedom in the World, 2011, p. 338). Nonetheless, the level of the prime minister's control over the state's broadcast media remained high (Freedom in the World, 2011, p. 341). Furthermore, Italy successfully continued to fight organized crime. The police arrested over 300 offenders and seized millions of dollars in weapons, drugs, and property during raids across Italy against the 'Ndrangheta (an Italian Mafia-type organized crime syndicate based in Calabria). The police confiscated assets from a Sicilian entrepreneur, including over 40 wind and solar companies. The basis for the confiscation was the accusation of collaborating with the Mafia. The report also underlined the significance of arresting a major Sicilian Mafia boss, Giuseppe Falsone (Freedom in the World, 2011, p. 341). However, the consistent fight against organized crime was not a decisive factor in a qualitative change in the protection of civil liberties in Italy.

As the 2012 Freedom in the World report revealed, Italy's civil liberties rating grew from 2 to 1 due to a significant decrease in the concentration of state and private media outlets. It was a result of Berlusconi's resignation as prime minister (Freedom in the World, 2012, p. 344). His loss of influence meant an increase in media pluralism and a strengthening of freedom of expression.

To sum up, no democratic regime under scrutiny drifted towards either hybrid or authoritarian regimes. The temporary loss of quality in the civil liberties rating was a variation identified only in French and Italian democracies. A similar alteration also occurred in the political rights rating in the Italian case. The threat of undermining democracy was dismissed in Italy, and the situation in France was stable.

## **Neo-militant democracy measures in national legislation**

This part of the paper discusses how the national legislation of the founding states of the EU was positioned to neo-militant democracy measures. Although the states are signatory to the European Convention on Human Rights, the 1966 International Covenant on Civil and Political Rights (ICCPR), and other relevant international treaties, and those protections are supported by an independent judiciary (Freedom in the World, 2021), they imposed anti-democratic measures at the national level.

Belgium constitutionally protects democratic freedoms but makes essential exceptions. Restrictions of freedoms of speech and the press spring from attempts



to safeguard people from hatred, violence, racial, ethnic, and religious discrimination regulated by Penal Code, Law to suppress certain acts inspired by racism or xenophobia (30 July 1981), and Law to combat certain forms of discrimination (10 May 2007). In Belgium, it is illegal to deny the Holocaust. Since 2003, additional limitations have applied to terrorism-related infringements. The Penal Code offers protection from those who aim to harm a country or an international organization and are intentionally involved in seriously intimidating the population. The list of offenses includes intentional killing and assault, hostage-taking, mass destruction, and degradation. The 2002 Law on non-profit associations, international non-profit associations, and foundations and the 1921 (amended 2017) Law on non-profit organizations, foundations, European political parties, and European political foundations ban associations and political parties whose aims contravene the law or public order. The 2017 amendment did not influence those provisions.

In Belgium, armed and not peaceful assemblies are constitutionally prohibited with Article 26. Open-air gatherings are subject to police regulations. Law on the functioning of the police (5 August 1992) allows the police to search assembly participants who pose a real threat to public order (Article 28) and use firearms to defend the persons, posts, transport of dangerous goods, or places entrusted to their protection (Article 38). Finally, in line with the Law of 15 December 1980 on the entry, stay, permanent residence, and removal of aliens, assemblies cannot be held against a foreign national to justify their return or removal (Article 20). To sum up, in 2008–2019, the Belgian legal structure contained all neo-militant democracy measures under analysis, and they were not susceptible to changes in the law.

Like Belgium, French Constitution from 1958 protects and limits freedoms of speech and the press. Precautions are taken to safeguard the established law and order (Article 10). Penal Code bans non-public provocation to discrimination, hatred, or violence because of origin or affiliation (Article R625–7), public and direct provocation to commit genocide (Article 211–2). Its terrorism-related restrictions are aimed at the exercise of freedoms that seriously disturbs public order by intimidation or terror, including attacks on life, forced hijacking of a means of transport, extortion, destruction, degradation and deterioration, degradation of the environment (Articles 421–1, 421–2 – with amendments on 21 June 2016).

The French Law on the contract of association (1901) restricts freedom of association by stating that any association based on a cause or with a view to an illicit object, contrary to the laws, good morals, or seeking to undermine the integrity of the national territory and the republican form of government cannot exist (Article 3). Since 2012, Internal Security Code bans associations that provoke armed demonstrations in the street, present, by their military form and organization, the

character of armed groups or private militias, seek to undermine the integrity of the national territory or to attack by force the republican form of government, defeat measures concerning the reestablishment of republican legality, bring together individuals who have been the subject of a conviction for collaboration with the enemy, or exalt this collaboration, provoke discrimination, hatred or violence based on people's origin, (non)belonging to a specific ethnic group, nation, race or religion, or propagate ideas or theories tending to justify or encourage such discrimination, hatred or violence, engage, on or from French territory, in acts to provoke acts of terrorism in France or abroad (Article L212–1). However, France does not restrict freedom of organization in political parties.

According to French Penal Code, an assembly violating the public policy is dissolved by the police (Article L211–9). The Law on security orientation and programming (21 January 1995) introduces violation of public order as another reason (Article 23). In 2012, Internal Security Code added that if the circumstances of the assembly raise concerns of serious public order disturbances, the police may prohibit its organization (Article 211–3). In sum, France used neo-militant democracy measures, excluding banning political parties, and expanded its catalog over time.

Also, the Basic Law for the Federal Republic of Germany (23 May 1949) protects and restricts democratic freedoms. Freedoms of speech and the press can be limited to protect young persons and in the right to personal honor (Article 5). Through Penal Code, the dissemination of propaganda material is prohibited, i.e., propaganda materials with content directed against the free democratic basic order, promoting a substitute organization, an association contrary to constitutional order, a banned party (Article 86). Incitement of masses to hatred, national, racial, religious discrimination that may disturb public peace is not allowed (Article 130) as well as terrorism-related activities whose purpose is to seriously intimidate the population, unlawfully influence international authorities or organizations by force or the threat of using force (Article 129a).

As the Basic Law states, associations whose objectives or activities contravene the criminal laws or act against the constitutional order and order established by the international law are prohibited (Article 9). Banned are political parties that, because of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic basic order, principles or endanger the Federal Republic of Germany (Article 21). Not peaceful and armed assemblies are forbidden. This freedom may also be limited for military and alternative service members during their military or alternative service (Article 8).

In Germany, Law on assembly (24 July 1953) prohibits assemblies that are leaderless (Article 7) or have an anonymous leader, disturb public meetings, order,

involve the use of a weapon (Article 2), whose participants wear uniforms during their period (Article 3). The amendment to Law on assembly (29 September 2017) restricted assemblies that serve third-country national political activities and are contrary to internationally recognized legal principles. In conclusion, Germany's national legislation included all neo-militant democracy measures under analysis.

Despite constitutional protections of democratic liberties in Italy, freedoms of speech and the press are restricted with the Law of 26 April 1993 to safeguard democratic society (Article 1). Accordingly, those limitations are legitimized by the need to protect morality, dignity, the right to confidentiality, state, official, investigation, professional and industrial secrets, reputation, honor, and to preclude hatred, racial, ethnic, and religious discrimination. Additional restrictions were implemented in 2015 with Antiterrorism Decree to combat terrorism-related transgressions.

The Constitution of the Republic of Italy from 1947 restricts freedom of association to prevent the creation and existence of clandestine structures, secret associations, and organizations having a military character (Article 18). Furthermore, Article 39 bans trade unions with non-democratic organizations. Law of 11 August 1991 applies a similar limitation to volunteer organizations. However, the organization in political parties is not limited.

Finally, the Italian Constitution (Article 17) and Royal Decree No. 773 of 1931 limit freedom of assembly. Restricted are assemblies unnotified, putting public order, security, safety, morality, public health, the prestige of the authority at risk, and where crimes are committed. In sum, Italy imposed neo-militant democracy measures, excluding bans of organization in political parties. The restrictions were in place throughout the analyzed period. Furthermore, the limitations of freedoms of speech and the press have been extended in the name of the fight against terrorism since 2015.

Luxembourg also constitutionally guarantees democratic freedoms and restricts them legally. Article 24 of the Constitution from 1868 states that the freedoms of speech and the press are limited when offenses are committed on the occasion of exercising these freedoms. According to Penal Code, freedom of speech can be limited when its use contributes to a crime (Article 66), including terrorism-related activities (Article 135 – since 2015). Law on combating terrorism and its financing (12 August 2003) imposed additional terrorism-related restrictions of the exercise of freedoms that aims to intimidate a population, authorities, or to destabilize public order. Law on the fight against money laundering and the financing of terrorism (27 October 2010) added other criteria that legitimate the limitation of freedom of speech and the press. The list included the situation when their use may seriously harm a country, organization, or international body and was committed

to intimidate a population, unduly force public authorities, an international organization or body to act or refrain from performing any act, destabilize or destroy the foundations of a political structure.

According to Law on associations and non-profit foundations (1928, amended 2016), an association can be banned when its activity endangers public order and security, Luxembourg's international relations, international peace, and security (Article 26). Law on the financing of political parties (28 December 2007) limits political parties by their legal definition, indicating that they must observe the fundamental principles of democracy (Article 1). Last but not least, armed and not peaceful assemblies are constitutionally banned (Article 25). In sum, throughout the analyzed period, Luxembourg consistently used neo-militant democracy measures to protect democracy and other values.

The last state under scrutiny is the Netherlands. Not unlike the other founding states of the EU, it safeguards democratic freedoms constitutionally. However, it also takes precautions against their exercise. The Constitution from 1814 limits the freedom of speech when its use violates the rights of others (Article 7). Discrimination based on religion, belief, political opinion, race, sex, or other criteria is banned constitutionally (Article 1). Furthermore, freedoms of speech and the press are regulated by the Penal Code that prohibits the deliberate defamation of the king (Article 111), a member of the government (Article 118), and such an exercise of freedom of speech that aims to harm the honor or reputation of others (Article 261). Its restrictions include also inciting an offense or an act of violence against authorities (Article 131), public, verbal, and an intentional insulting statement about a group of persons because of their race, religion, or beliefs, their hetero or homosexual orientation, or their physical, mental, or intellectual disability (Article 137c). The criminal law also applies to a terrorist offense (Article 4). "Terrorist intent" is an intention of causing fear in the population or a part of the population of a country, or unlawfully compelling a public authority or international organization to act or to refrain from certain acts or to tolerate certain acts (Article 83a).

The Dutch Constitution states that freedom of association may be restricted in the interest of public order (Article 8). Organization in political parties remains unrestricted. In the line of the Constitution, if it is in the interest of public policy to limit the right to assembly, then it is justified (Article 8). Law on public assemblies (20 April 1988, amended 1994) grants powers to limit the right of assembly to government bodies by or under its provisions. It may be restricted for health protection, in the interests of road traffic and during a fight, or to prevent disorder (Article 2). Local authorities may order meeting participants to terminate a gathering and disperse immediately to protect public health, combat, or prevent disorders. To

sum up, the Netherlands included neo-militant democracy measures in its national legislation, except for banning political parties.

Table 3. Neo-militant Democracy Measures in the Legal Structures of the Inner Six

Restricted freedoms State	Freedom of speech	Freedom of the press	Freedom of association	Freedom of organization in political parties	Freedom of assembly
Belgium	R	R	R	R	R
France	R	R	R	NR	R
Germany	R	R	R	R	R
Italy	R	R	R	NR	R
Luxembourg	R	R	R	R	R
Netherlands	R	R	R	NR	R

R – freedom was restricted

NR – freedom was not restricted

Source: own elaboration based on national legislation.

In sum, the Inner Six implemented neo-militant democracy measures (Table 3), which were consistent with the standards introduced by international treaties to which they are signatories. The most important national precautions were restrictions of democratic freedoms imposed in conformity with the law, necessary in a democratic society, in the interests of national security or public safety, order, the protection of public health, morals, rights, and freedoms of others.

## Conclusion

The study advances arguments to reject Invernizzi Accetti and Zuckerman's hypothesis that if the freedom of political actors is restricted through militant democracy measures, democracy becomes more prone to authoritarian abuse in the long run. In the founding states of the EU, neo-militant democracy measures functioned in the legal structures long before the outbreak of the 2007–2009 financial crisis, during the crisis, and in the period of recovery from its consequences. All states restricted democratic freedoms of speech, the press, association, and assembly. Additionally, Belgium, Luxembourg, and Germany limited organization in political parties.

Moreover, during the recovery from the crisis, that is, a period of particular vulnerability of democracy to authoritarian abuse, the lists of relevant precautions

were extended in France, Italy, and Germany. In these states, strengthening neo-militant democracy measures did not make democracy more prone to authoritarian abuse. The 2012 extension of the list of cases when associations and assemblies can be banned, and the new 2016 terrorism-related restrictions in France, the implementation of the 2015 Antiterrorism Decree in Italy, and the bolstering of restrictions of freedom of assembly by the 2017 amendment to Law on assembly in Germany did not result in the decrease in the states' political rights and civil liberties ratings. It shows that the implementation of neo-militant democracy rule was neither a factor undermining democracy nor making it prone to drift towards a hybrid or authoritarian regime.

In the line of Invernizzi Accetti and Zuckerman's approach, the definition of enemies has emerged from the legal definitions of situations in which democratic freedoms may be restricted. However, decisions on what characteristics make the political actor an "enemy" and thus whom and how to exclude from the political game do not go beyond the scope of neo-militant democracy rules established by international treaties. The boundaries of the political communities are determined by the observance and respect for the values of a democratic society, national security, public safety, order, public health, morals, the rights and freedoms of others. The Freedom in the World reveals that those criteria do not serve the Inner Six to take advantage of neo-militant democracy measures, to empower themselves to arbitrarily eliminate political competitors and thus erode the democratic nature of the system.

Invernizzi Accetti and Zuckerman's explanatory framework does not apply to account for the consequences of the inclusion of militant democracy rule in the legal structures of the consolidated democracies. Instead, those anti-democratic measures may be considered efficient precautions taken to safeguard the political regimes. Nonetheless, in future research, it is worth testing this hypothesis on semi-consolidated democracies, transitional, and hybrid regimes to evaluate the impact of militant democracy rule on their dynamics.

## References:

- Chen, K.W. (2021). Dealing with Disinformation from the Perspective of Militant Democracy: A Case Study of Taiwan's Struggle to Regulate Disinformation. In: Ch. Sieber-Gasser, & A. Ghibellini (eds.). *Democracy and Globalization: Legal and Political Analysis on the Eve of the 4<sup>th</sup> Industrial Revolution* (pp. 125–147). Cham: Springer.
- Engler, S., Brunner, P., Loviat, R., Abou-Chadi, T., Leemann, L., Glaser, A., & Kübler, D. (2021). Democracy in Times of the Pandemic: Explaining the Variation of COVID-19

- Policies across European Democracies. *West European Politics*, 44(5–6), 1077–1102. DOI: 10.1080/01402382.2021.1900669.
- Erdmann, G. (2011). Decline of Democracy: Loss of Quality, Hybridisation and Breakdown of Democracy. In: G. Erdmann, & M. Kneuer (eds.). *Regression of Democracy?* (pp. 21–58). Wiesbaden: VS Verlag.
- Freedom in the World (2009). *The Annual Survey of Political Rights & Civil Liberties*. Retrieved from: [https://freedomhouse.org/sites/default/files/2020-02/Freedom\\_in\\_the\\_World\\_2009\\_complete\\_book.pdf](https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2009_complete_book.pdf).
- Freedom in the World (2010). *The Annual Survey of Political Rights & Civil Liberties*. Retrieved from: [https://freedomhouse.org/sites/default/files/2020-03/FIW\\_2010\\_Complete\\_Book\\_Scan.pdf](https://freedomhouse.org/sites/default/files/2020-03/FIW_2010_Complete_Book_Scan.pdf).
- Freedom in the World (2011). *The Annual Survey of Political Rights & Civil Liberties*. Retrieved from: [https://freedomhouse.org/sites/default/files/2020-02/Freedom\\_in\\_the\\_World\\_2011\\_complete\\_book.pdf](https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2011_complete_book.pdf).
- Freedom in the World (2012). *The Annual Survey of Political Rights & Civil Liberties*. Retrieved from: [https://freedomhouse.org/sites/default/files/2020-02/Freedom\\_in\\_the\\_World\\_2012\\_complete\\_book.pdf](https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2012_complete_book.pdf).
- Freedom in the World (2013). *Democratic Breakthroughs in the Balance: Selected Data from Freedom House's Annual Survey of Political Rights and Civil Liberties*. Retrieved from: <https://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet.pdf>.
- Freedom in the World (2017). *France*. Retrieved from: <https://freedomhouse.org/country/france/freedom-world/2017>.
- Freedom in the World (2018). *France*. Retrieved from: <https://freedomhouse.org/country/france/freedom-world/2018>.
- Freedom in the World (2019). *France*. Retrieved from: <https://freedomhouse.org/country/france/freedom-world/2019>.
- Freedom in the World (2021). *Aggregate Category and Subcategory Scores, 2003–2021*. Retrieved from: <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege/countries-and-regions>.
- Horder, J. (2021). Online Free Speech and the Suppression of False Political Claims. *ILSA Journal of International and Comparative Law*, 8(1), 15–52. DOI: 10.2139/ssrn.3827192.
- Invernizzi Accetti, C., & Zuckerman, I. (2017). What's Wrong with Militant Democracy? *Political Studies*, 65(1\_suppl), 182–199. DOI: 10.1177/0032321715614849.
- Invernizzi Accetti, C., & Zuckerman, I. (2019). Militant Democracy as Decisionist Liberalism. In: D. Bessner, & N. Guilhot (eds.). *The Decisionist Imagination: Sovereignty, Social Science and Democracy in the 20<sup>th</sup> Century* (pp. 64–84). New York: Berghahn Books.
- Kirshner, A.S. (2014). *A Theory of Militant Democracy: The Ethics of Combatting Political Extremism*. New Haven, London: Yale University Press.
- Kreuder-Sonnen, C. (2018). An Authoritarian Turn in Europe and European Studies? *Journal of European Public Policy*, 25(3), 452–464. DOI: 10.1080/13501763.2017.1411383.
- Loewenstein, K. (1937). Militant Democracy and Fundamental Rights, I. *The American Political Science Review*, 31(3), 417–432. DOI: 10.2307/1948164.

- Malkopoulou, A. (2021). Greece: A Procedural Defence of Democracy against the Golden Dawn. *European Constitutional Law Review*, 17(2), 177–201. DOI: 10.1017/S1574019621000146.
- Morlino, L., & Quaranta, M. (2016). What is the Impact of the Economic Crisis on Democracy? Evidence from Europe. *International Political Science Review*, 37(5), 618–633. DOI: 10.1177/0192512116639747.
- Müller, J.W. (2016). Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy. *Annual Review of Political Science*, 19, 249–265. DOI: 10.1146/annurev-polisci-043014-124054.
- Pech, L. (2010). ‘A Union Founded on the Rule of Law’: Meaning and Reality of the Rule of Law as a Constitutional Principle of EU Law. *European Constitutional Law Review*, 6(3), 359–396. DOI: 10.1017/S1574019610300034.
- Rak, J., & Bäcker, R. (eds.) (2022). *Neo-militant Democracies in the Post-communist Member States of the European Union*. London, New York: Routledge.
- Tomini, L., & Wagemann, C. (2018). Varieties of Contemporary Democratic Breakdown and Regression: A Comparative Analysis. *European Journal of Political Research*, 57(3), 687–716. DOI: 10.1111/1475-6765.12244.
- Tyulkina, S. (2015). *Militant Democracy: Undemocratic Political Parties and Beyond*. Abingdon, New York: Routledge.