



DECISION OF THE AUTHORITY FOR EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS

25 October 2023

IMPOSING A SANCTION

ON THE EUROPEAN POLITICAL PARTY 'IDENTITY AND DEMOCRACY PARTY'

(Only the French text is authentic)

THE AUTHORITY FOR EUROPEAN POLITICAL PARTIES AND EUROPEAN
POLITICAL FOUNDATIONS

- having regard to the Treaty on European Union, in particular Article 10(4) thereof,
- having regard to the Treaty on the Functioning of the European Union, in particular Article 224 thereof,
- having regard to Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations, as amended¹ (hereinafter 'Regulation (EU, Euratom) No 1141/2014'), in particular Articles 24, 27 and 29 thereof,
- having regard to Commission Delegated Regulation (EU, Euratom) 2015/2401 of 2 October 2015 on the content and functioning of the Register of European political parties and foundations² (hereinafter 'Delegated Regulation 2015/2401'),

whereas:

FACTS AND PROCEDURE

- (1) The Identity and Democracy Party, with registered office at 75 Boulevard Haussmann, 75008 Paris, France (hereinafter 'the Identity and Democracy Party' or simply 'the Party'), formerly known as the Movement for a Europe of Nations and Freedom, has been registered as a European political party following the decision of the Authority for

¹ OJ L 317, 4.11.2014, p. 1, as amended by Regulation (EU, Euratom) 2018/673 of the European Parliament and of the Council of 3 May 2018, OJ L 114 I, 4.5.2018, p. 1, and Regulation (EU, Euratom) 2019/493 of the European Parliament and of the Council of 25 March 2019 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament, OJ L 85 I, 27.3.2019, p. 7.

² OJ L 333, 19.12.2015, p. 50.

European Political Parties and European Political Foundations (hereinafter ‘the Authority’) of 14 September 2017 (OJ C 84, 6.3.2018, p. 5).

- (2) On 9 March 2022, the Identity and Democracy Party forwarded the Authority a letter from its President, dated 2 March 2022, which contained, *inter alia*, a list of its Bureau members. Several individuals who had previously been registered as members of the Bureau, including [omissis], no longer appeared on that list.
- (3) The Identity and Democracy Party nevertheless continued to refer to [omissis] as being a member of its Bureau, in particular on its website, but also in subsequent social media posts made on the Party’s behalf and with the use of the Party’s logo, for example on 29 March 2022, 24 May 2022, 15 June 2022, 27 October 2022, 30 November 2022 and 17 December 2022. These included statements made in public by Mr [omissis] which featured text superimposed over video images stating that he was a member of the Bureau. These posts (hereinafter ‘social media posts’) have not been altered and can still be accessed.
- (4) Following a request for information from the Authority (communicated by email on 23 March 2023), which had ascertained, in the course of regular checks, that there were discrepancies between the information the Party had communicated to the Authority directly and information in the public domain, the Party replied on 30 March 2023 to confirm that the composition of its Bureau had not changed since its correspondence of 9 March 2022.
- (5) On 31 March 2023, the Authority sent the Party an email to request further information about [omissis], who was listed on the Party’s website as being a member of its Bureau. In particular, the Authority sought a historical record of Mr [omissis]’s status as a Bureau member. The Party replied by email the same day, stating that Mr [omissis] was no longer a member of the Bureau and that the Party was unable to update its website owing to technical issues relating to its service provider. The Party added that the information would be updated as soon as possible. The historical record requested by the Authority was not enclosed in the Party’s response.
- (6) On 3 April 2023, the Authority once again contacted the Party by email, requesting more information about the alleged technical issues and reminding the Party to provide a full historical record of Mr [omissis]’s status as a Bureau member. The Party replied by email the same day, stating that Mr [omissis] had been a member of the Bureau between 20 September 2019 and 16 February 2022, and that he continued to be listed as a Bureau member on its website because of an error, in the first instance, and technical problems, in the second. The Party further stated that as it had terminated its contract with its service provider, it was not possible to make any changes to its website for the time being.

Investigation by the Authority

- (7) On 14 June 2023, the Authority sent the Identity and Democracy Party a letter stating that it would be investigating the Party for disseminating potentially inaccurate information about the composition of its Bureau and setting out the facts of which it was cognisant at that stage. These concerned, in particular, contradictions between the Party’s direct communications with the Authority and information the Authority had

obtained from the Party's website and social media accounts about Mr *[omissis]*'s status as a member of the Bureau since 16 February 2022. The Authority also provided a provisional legal justification for its findings, citing an infringement under Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014, which is liable to give rise to a sanction. The Authority gave the Party the opportunity to submit comments and take corrective measures by 14 July 2023, in accordance with Article 29 of Regulation (EU, Euratom) No 1141/2014.

- (8) On 13 July 2023, the Identity and Democracy Party replied to the Authority, arguing that the information it had submitted to the Authority on 9 March 2022 regarding the composition of its Bureau included an 'unintentional oversight', but that 'so as not to be at odds with the information already sent to the Authority, and with Mr *[omissis]*'s consent', the Party 'no longer regarded him [i.e. Mr *[omissis]*] as being a member of the Bureau' as of 16 February 2022.

As for the information available online, the Party opined that force majeure should apply because its website and social media posts were managed by service providers. On the specific issue of its website, the Party acknowledged that it should have been quicker to remove Mr *[omissis]*'s name from the list of Bureau members, but also pointed out that after the termination of the contract with its service provider, it was 'impossible, technically speaking, to make any changes at the time of the correspondence between the Authority and the Party'. The social media posts, meanwhile, were supposedly not the Party's own work but that of the service provider responsible for its 'community management', which, the Party claims, 'took information from the Party's website and used it in explainers to "embellish" reporting, recordings of speeches and other interventions by Party members'. Finally, the Party argued that 'it was never its intention to mislead the public', as it 'would have gained virtually nothing by doing so'.

As for the corrective measures granted by the Authority, the Party stated it had decided to set up a new website following a meeting held on 13 June 2023. The Party further stated that it had shut down its old website and taken down the social media posts. Furthermore, the Party asserted that the composition of its Bureau had remained unchanged since its original letter, and hence did not include Mr *[omissis]*. It also expressed a willingness to 'professionalise' its operations, including hiring a dedicated professional to systematically check the information communicated by the Party, and proposed that a meeting be held between its President and the director of the Authority.

- (9) On 11 September 2023, the Authority wrote to the Identity and Democracy Party to summarise the facts it had hitherto ascertained, based on the information supplied to it and its own findings. The Authority also informed the Party of its provisional conclusion, namely that no steps had been taken to rectify the conflicting, inaccurate and incomplete information. More specifically, contrary to what the Party had claimed, the social media posts had not been taken down or corrected to reflect the fact that *[omissis]* was no longer a member of the Bureau. On the basis of all of these aspects, the Authority issued a revised provisional legal assessment. In its view, owing to a breach of Article 24(4) of Regulation (EU, Euratom) No 1141/2014, there were sufficient grounds for a sanction to be imposed in accordance with Article 27(2)(a)(iv) of the Regulation. Before arriving at a final decision, the Authority gave the Party the opportunity to submit any relevant comments or material by an initial deadline of 25 September 2023, in accordance with Article 34 of Regulation (EU, Euratom) No 1141/2014.

- (10) On 21 September 2023, the Identity and Democracy Party sent the Authority an email requesting that this deadline be extended. This was duly granted the following day.
- (11) The Identity and Democracy Party then submitted a further email on 21 September 2023, followed by a correction the following day, notifying the Authority that Mr *[omissis]* had re-joined its Bureau on 13 September 2023.
- (12) On 28 September 2023, the Identity and Democracy Party addressed a presidential letter to the Authority, exercising its right to be heard. First and foremost, it enclosed a document entitled ‘Minutes of the ID Party Bureau Meeting’ of 16 February 2022, which was also signed by the President. The minutes read as follows:

‘ [...] 7. New member of the Bureau

The Bureau members were informed of the departure of *[omissis]*, from the ID Party and the resignation of *[omissis]*, from the ID Party Bureau.

[omissis], was unanimously accepted as a member of the Party Bureau. The Bureau is now constituted as follows: [...]’.

[omissis] did not appear among those members described as resigning from the Party or its Bureau, nor did he appear as a member of the Bureau as ‘now constituted’. According to the aforementioned Identity and Democracy Party letter of 28 September 2023, ‘a mistake was made when the minutes were drawn up and not when the information was submitted. The minutes of the Party’s meetings are authentic until proven otherwise’. The Party also referred to the case-law of the Member State of its registered address.

Secondly, the Party claimed that its submissions of 30 March 2023, 31 March 2023 and 3 April 2023 were ‘correct, complete and consistent with the minutes’ [of its Bureau meeting].

Thirdly, with regard to information about the Party in the public domain whereby Mr *[omissis]* continued to be referred to as a member of the Bureau, the Party asserted that ‘at no time was the information submitted to the Authority on request conflicting, inaccurate or incomplete. The Authority could therefore have ignored information in the public domain about the composition of the Bureau, or dismissed it as irrelevant’. The Party went on to assert that ‘since it is particularly important to democracy that European political parties communicate with the public, we decided to keep Mr *[omissis]*’s public statements on our social media accounts, as they deliver considerable added value to the European Public debate, even if he is described as being a member of our Party’s Bureau and not a former member’. The Party also argued that ‘according to the relevant legislation, responsibility for publishing information deemed to be of major interest to the public resides with the European public bodies and not the European political parties. There are no legal requirements arising from Regulation (EU, Euratom) No 1141/2014 regarding information that should be published on their websites. However, Delegated Regulation 2015/2401 does impose requirements regarding the Authority’s website.

Nevertheless, further to the Authority’s request, the Party’s website was corrected as soon as the new one was up and running. Earlier email correspondence to the Authority made it clear that the previous website could not be updated in 2023. The website was

therefore shut down, albeit at the expense of EU citizens, who have a right to be informed about the activities of European political parties’.

Finally, the Party cited Article 24(4) of Regulation (EU, Euratom) No 1141/2014, which refers to ‘information requested’ [by the Authority]. It took the view that one could therefore infer that it would be ‘impossible to be in breach of that article by publishing information on a website or video on social media’.

Under Article 12 of the Party’s statutes, the president is the Party’s full and rightful representative for all administrative, financial and legal representation.

- (13) In this final letter, the Authority took note of another relevant item of information, namely that the Identity and Democracy Party had ‘decided’ to keep the social media posts which referred to *[omissis]* as being a member of the Bureau, even though he was not, as the Party had itself stated, a member of the Bureau at that time. On 11 October 2023, the Authority therefore wrote to the Party and pointed out that it considered this additional fact to be relevant, to the extent that it was liable to incur a sanction pursuant to Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014. However, before a decision would be taken on the matter, the Authority informed the Party that it was entitled to exercise its right to be heard in accordance with Article 34 of Regulation (EU, Euratom) No 1141/2014. The Authority also reminded the Party that its decision(s) would in no way preclude other measures by the Authorising Officer of the European Parliament and/or the competent national authorities.
- (14) On 17 October 2023, the Identity and Democracy Party requested that the deadline for exercising its right to be heard be extended. This was granted by the Authority by email the same day.
- (15) On 18 October 2023, the Identity and Democracy Party submitted a second request for an extension of this deadline until 23 October 2023. The Authority asked the Party to provide a written justification for this request; otherwise it would have to be dismissed as a delaying tactic. The Party replied by email the same day, and substantiated its request by claiming that if the Authority were to contemplate issuing a sanction, such a decision would have repercussions for its application for funding from the European Parliament in 2024, as per Article 18 of Regulation (EU, Euratom) No 1141/2014. The Party stated that it wished to put a draft response to its Bureau for approval. The Authority agreed to the Party’s second request for a deadline extension.
- (16) On 23 October 2023, the Identity and Democracy Party sent the Authority an email invoking its right to be heard once again. The Party argued that only the information directly submitted to the Authority by email should fall within the scope of Article 24(4) and Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014, and that this information had been accurate. The Party further stated that the Authority, upon launching its investigation, could not claim to be misled by the social media posts, ‘[...] which are a means of communicating not with administrations or public bodies, but with [the Party’s] voters’. The Party claimed that the measures it had announced in its letter of 13 July 2023 were simply common sense, and not corrective measures pursuant to Article 29 of Regulation (EU, Euratom) No 1141/2014. Furthermore, the Party believed that it was entitled to say that public statements are protected by freedom of expression and should only be deemed unwarranted in cases provided for by law. In that regard, the Party expressed the view that ‘no such case applied’ to comments made

on its social media accounts, ‘even if they were inaccurate; that information was aimed at the public and not intentionally provided to the Authority’. The Party further stated its conviction that there was no manifest wrongdoing to justify invoking Article 27 of Regulation (EU, Euratom) No 1141/2014.

AUTHORITY’S EXAMINATION OF THE FACTS IN THE LIGHT OF THE LEGAL FRAMEWORK

- (17) Article 24(4) of Regulation (EU, Euratom) No 1141/2014 of 22 October 2014 provides that:

‘European political parties and European political foundations shall provide any information requested by the Authority, the Authorising Officer of the European Parliament, the Court of Auditors, the European Anti-Fraud Office (OLAF) or Member States which is necessary for the purpose of carrying out the controls for which they are responsible under this Regulation’.

- (18) Article 27(2)(a) provides that:

‘The Authority shall impose financial sanctions in the following situations:

a) non-quantifiable infringements:

[...]

iv) where a European political party or a European political foundation has infringed the obligations laid down in Article 23(1) or Article 24(4);

[...]

vi) where the European political party or the European political foundation concerned has at any time intentionally omitted to provide information or has intentionally provided incorrect or misleading information, [...].

- a) Article 24(4) and Article 27(2)(a)(iv) of Regulation (EU, Euratom) No 1141/2014

The need for the Authority to be informed about the composition of the Party Bureau for the purpose of its checks

- (19) The identity and historical records of members of official bodies or individuals who hold posts with powers of administrative, financial and legal representation are germane to the checks that the Authority is empowered to carry out, as evidenced by Article 3(3), Article 7(2)(a), Article 8(3), Article 9(5), Article 10(1) and Article 24(2), first sub-paragraph, of Regulation (EU, Euratom) No 1141/2014 and by Article 1(4)(m) and Article 2 of Commission Delegated Regulation (EU, Euratom) 2015/2401 of 2 October 2015 on the content and functioning of the Register of European political parties and foundations. In the case at issue, all Bureau members of the Identity and Democracy Party are affected, given Article 11(1) of the Party’s statutes, which provides as follows: ‘the Bureau is vested with the broadest possible powers to administer the association, within the limits of the purpose of the Party and subject to the approval of the general assembly. It authorises the President(s) to take legal action. It appoints the President, treasurer and any vice-presidents. In particular, it is responsible for all decisions relating to the use of funds, the leasing of premises and staff management. The Bureau defines the main policies of the Party. It approves the Party’s annual accounts’. The questions the Authority put to the Identity and

Democracy Party on 23 and 31 March 2023 and 3 April 2023 were therefore a necessary part of its checks.

Incomplete answers to the Authority's questions

- (20) In its emails of 30 March, 31 March and 3 April 2023, the Identity and Democracy Party provided incomplete answers to the Authority's questions. Indeed, as the Party confirmed after the investigation was launched, a mistake had been made in failing to include *[omissis]* on the list of Bureau members in the Party letter of 2 March 2022, which was subsequently forwarded to the Authority on 9 March 2022, and then again in the email attachment of 30 March 2023. However, the three aforementioned emails failed to refer to any such mistake or detail relating to the end of Mr *[omissis]*'s term of office as a Bureau member.
- (21) More specifically, the Party's email of 30 March 2023 only stated that the composition of the Bureau had remained unchanged since the letter of 2 March 2022 (also attached to the email); it did not comment at all on the discrepancies between the information communicated to the Authority and the online posts, which the Authority had enquired about on 23 March 2023. Further to the Authority's follow-up questions sent by email on 31 March 2023, relating in particular to Mr *[omissis]* and his historical record as a member of the Bureau of the Identity and Democracy Party, the Party then replied by email the same day, but failed to disclose this information to the Authority. After a reminder from the Authority, the Party's email of 3 April 2023 offered no further clarification and only claimed that Mr *[omissis]*'s term of office had run from 20 September 2019 until 16 February 2022, without referring to any more specific circumstances, such as the supposed error regarding the end of Mr *[omissis]*'s term of office, his 'consent' to no longer be considered a member of the Bureau (as stated in the Party letter of 13 July 2023), or the Party minutes, which were supposedly erroneous yet also authentic, and submitted to the investigation for the first time together with the letter of 28 September 2023.
- (22) Contrary to the position put forward by the Identity and Democracy Party in its letter of 28 September, the minutes of the Bureau meeting offered no clearer information – not even retrospectively – than the Party's patchy responses between 30 March and 3 April 2023. The Party claims that the national law of the Member State of registration provides that the minutes are authentic until proven otherwise. However, under Article 24 of Regulation (EU, Euratom) No 1141/2014, the Authority does not apply national law, and would merely point out that the minutes make no mention of Mr *[omissis]*'s status as an outgoing or current member of the Bureau. While the minutes may give credence to the assertion that Mr *[omissis]* was not a member of the Party Bureau on 16 February 2022, they also cast doubt on his having been a member before that date, which the Party informed the Authority as being the end of his term of office. The minutes of the Party Bureau meeting of 16 February 2022 – or at least an explanation of the relevant circumstances – should therefore have been submitted to the Authority in response to its email of 23 March 2023, and in any case in response to its email of 31 March 2023, wherein the Authority had requested a historical record of Mr *[omissis]*'s status as a Bureau member. However, no such response was forthcoming in the Party's replies of 30 March, 31 March and 3 April 2023.

- (23) Notwithstanding the precise nature of the Authority’s questions, the Identity and Democracy Party then presented an abridged version of the facts, which served partly to pre-empt the examination that the Authority could have conducted into the composition of the Bureau if the particular circumstances of Mr [omissis]’s term of office as a Bureau member had been disclosed during the investigation in response to the Authority’s questions of 23 and 31 March 2023 and 3 April 2023.
- (24) The Party’s replies of 30 and 31 March 2023 and 3 April 2023 were therefore incomplete.

Contradictions between the Party’s replies to the Authority and information online

- (25) Direct correspondence from the Identity and Democracy Party to the Authority between 30 March 2023 and 3 April 2023 regarding the composition of the Party Bureau since 16 February 2022 was further contradicted by a number of relevant posts on the Party’s website and social media accounts over the same period.
- Accountability of the Identity and Democracy Party’s publications
- (26) The Identity and Democracy Party is entirely responsible for its social media posts. In particular, contrary to what the Party claimed in its letter of 13 July 2023, force majeure should not apply. The service providers which were hired by the Party to undertake communication activities on its behalf engaged in actions and committed oversights that were neither unforeseeable nor impossible to rectify.
- (27) Furthermore, the fact that the Identity and Democracy Party later shut down its website shows that it was always in charge and was never in a position where it had to keep misleading information available to the public. As for the social media posts, the Party cannot claim that inaccurate information on its website should render it blameless for mistakes made by social network providers on its behalf. Indeed, the Party could have notified its service providers of changes to the composition of its Bureau, and could have removed misleading posts or had them corrected. The fact that the Party’s service providers had to rely on information from a website that was itself inaccurate, as the Party acknowledged in its letter of 13 July 2023, demonstrates that the Party failed to put in place the right internal checks to ensure that the content that was communicated on its behalf was reliable and correct.
- (28) Moreover, in its email of 23 October 2023, the Identity and Democracy Party confirmed that it was responsible for its own publications by invoking its right to freedom of expression.
- Relevance of the Identity and Democracy Party’s publications
- (29) Article 24(4) of Regulation (EU, Euratom) No 1141/2014 provides that any information shall be provided to the Authority ‘which is necessary for the purpose of carrying out the controls [...]’ [of the Authority]. The regulation therefore implies that responses to questions falling within the Authority’s remit should be accurate, complete and consistent. As such, information ‘which is necessary for the purpose of carrying out the controls’ [of the Authority] means, beyond the strictest terminological sense, that communications should be factually accurate and contain no omissions of manifest

relevance, and should therefore be consistent with other relevant communications over the same period, whatever the method used.

- (30) In addition, public communications are not excluded from the scope of Article 24(4) of Regulation (EU, Euratom) No 1141/2014. Firstly, they fall within the scope of application as a method of communication *erga omnes*, which would therefore include the Authority. Secondly, public communications by European political parties fall within the scope of application as the Authority is obliged to ensure that any response it is directly given is reliable, not least in relation to information available to the public. Thirdly, public communications by European political parties fall within the scope of application because the Party's direct responses to the Authority, which should in any case be factually correct on their own merits, cannot be complete, consistent and useful for the purposes of the Authority's checks if the Party then contradicts that information in public, including after it has replied to the Authority.
- (31) Interpreting Article 24(4) of Regulation (EU, Euratom) No 1141/2014 in a way that disregards the publications of European political parties, as the Identity and Democracy Party suggests, would be at odds with the very purpose of communications to the Authority which, insofar as the Authority uses them to provide transparency, are ultimately beneficial to the public. In fact, communicating information to the public regarding the structure and financing of European Political parties is a particularly important part of democratic life. This is also acknowledged in the Regulation itself, which is designed to safeguard democratic integrity for the benefit of EU citizens. European political parties have a duty to be accurate, complete and consistent, insofar as they are the main source of information for the Authority. This is also established in law as 'democratic accountability' in recital 33 of Regulation (EU, Euratom) No 1141/2014, which specifically relates to 'information considered to be of substantial public interest, relating in particular to their [i.e. the parties'] statutes, membership, financial statements, donors and donations, contributions and grants'. Indeed, the composition of the Bureau is exactly the kind of information that is of substantial public interest and thus entails a requirement for it to be published through the Authority under the Regulation. Contrary to what the Identity and Democracy Party affirms in its letter of 28 September 2023, the Authority cannot, therefore, simply overlook or dismiss as irrelevant, in the light of Article 24(4) of the Regulation, information available to the public regarding the composition of a management body which, over a substantial period of time, is clearly at odds with what the Party directly communicated to the Authority over that same period.
- (32) The position espoused by the Identity and Democracy Party in its letter of 28 September 2023, namely that the Authority is the sole party responsible for meeting the publication requirements, is not relevant to this analysis. More specifically, while a European political party may not be legally required to notify the public of information that is the subject of publication by the Authority pursuant to Article 32 of Regulation (EU, Euratom) No 1141/2014, this does not mean that the party, if it chooses to communicate publicly as the Identity and Democracy Party has done, is authorised to provide the public – and hence the Authority – with inaccurate information, or to render the answers it gives to the Authority inconsistent and unusable, even if those answers are accurate.

Conclusions

(33) In light of the above, a violation of Article 24(4) of Regulation (EU, Euratom) No 1141/2014, in conjunction with Article 27(2)(a)(iv) of the Regulation, may be inferred from the answers provided to the Authority by the Identity and Democracy Party since 30 March 2023 as regards the composition of the Party's Bureau as of 16 February 2022. Those replies, considered both individually and as a whole, were incomplete and included information at odds with that in the public domain.

b) Article 27(2)(a)(vi) of the Regulation

(34) Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014 serves to prohibit European political parties from intentionally providing incorrect or misleading information and to sanction them accordingly.

Introductory remarks

- (35) In this regard, it is important to take account of the wording and intended purpose of Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014.
- (36) The wording makes an important distinction: intentionally providing incorrect information *or* intentionally providing misleading information. Hence, information does not have to be 'misleading' for it to be considered 'incorrect'. The fact that the Authority was not misled, as the Identity and Democracy Party claims, in no way prevents the provision from applying. This does not necessarily entail any particular effect on other parties involved in such communications.
- (37) Furthermore, the wording in no way restricts the scope of the provision concerning direct submissions to the Authority, as 'providing' incorrect information (which is the term used in Regulation (EU, Euratom) No 1141/2014), as opposed to 'submitting it', can consist of communications with the public, namely making information available to voters and interested members of the public, all the more so given that the provision does not refer to any specific recipient of such information.
- (38) This interpretation also accords with the integrity objective under Regulation (EU, Euratom) No 1141/2014, as direct submissions to the Authority are not an end in and of themselves (cf. above under heading (a)). Ultimately, such submissions serve to uphold democratic integrity and inform the public, including the electorate, whereas the Authority's tasks of carrying out checks and registrations and – where appropriate – divulging information pursuant to Article 32 of Regulation (EU, Euratom) No 1141/2014 are merely tools. Therefore, where a European political party provides information directly to the Authority on matters that fall within the latter's remit, regardless of how accurate it is, and that information conflicts with incorrect information put into the public domain by said party, it not only undermines the party's democratic responsibility to account for its structure and financing, which underpins Regulation (EU, Euratom) No 1141/2014 (recital 33 thereof), it also jeopardises the credibility of the information at the Authority's disposal and hence the transparency services it provides.

- (39) Finally, it is worth stressing that Article 10(4) of the Treaty on European Union, much like other Treaty provisions about democracy, places EU citizens at the heart of the institutional structure and political debate, which European political parties take part in through the EU. It is therefore inconceivable that Regulation (EU, Euratom) No 1141/2014 should be interpreted in such a way as to conclude that public communications by European political parties should be exempt from the prohibition of deliberate provision of incorrect information, insofar as it applies to direct submissions to the Authority. In the light of the Treaty objectives of European political parties, namely contributing ‘to forming European political awareness’, such a prohibition should apply *a fortiori* to the public communications of European political parties. This is because the potentially harmful effects of a European political party disseminating factually incorrect information are more immediate to people who do not have the Authority’s control measures at their disposal. Thus, contrary to the position that the Identity and Democracy Party appeared to advocate in its email of 23 October 2023, Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014 prohibits European political parties from disseminating misleading information about their structural organisation or financing, and requires the Authority to impose sanctions accordingly.

Incorrect information

- (40) In the social media posts of the Identity and Democracy Party, the text superimposed over images showing that [omissis] was a member of the Party’s Bureau should be attributed to the Party (in this regard, see section (a) above) and displayed incorrect information to internet users on the dates in question. In fact, it transpired from the minutes of the Bureau meeting of 16 February 2022, which the Authority received after the investigation was launched, that Mr [omissis] was not a member of the Bureau when those posts were made, something the Party does not dispute.
- (41) Although the Identity and Democracy Party did not raise the point itself, the Authority also considered *ex officio* whether these findings should be re-evaluated after being informed on 21 September 2023 that Mr [omissis] had rejoined the Party Bureau on 13 September 2023. That particular development, however, did nothing to alter the facts of the case, as set out above, or the legal assessment. In fact, such an internal personnel change, assuming that it was duly and properly carried out – something which may in itself be the subject of further checks by the Authority – would prove that the information the Party previously made available to the public was at odds with its submissions to the Authority, and that the Party’s online posts were inaccurate. What is more, previous direct communications by the Party to the Authority and to the general public should not be deemed retrospectively accurate or complete, as Mr [omissis] was still not a member of the Bureau when those publications were made, which was still evident even at a later date.

Intentional nature

- (42) Furthermore, at some unknown point in time between 16 February 2022 and 28 September 2023, when the Identity and Democracy Party sent the Authority the letter signed by its President acting on its behalf, the Party decided not to remove the social media posts, despite being aware that the information regarding [omissis]’s membership of the Bureau was inaccurate. One must therefore conclude that the Party

intended to keep the posts online. The fact that this intention may have changed after the original date of publication alters nothing, as the Party's decision to disseminate incorrect information became intentional when it decided to keep it online while knowing that it was inaccurate.

- (43) The intentional nature of inaccurate public communication cannot be framed within the context of a quantitative analysis, as the Identity and Democracy Party attempts to do. In particular, the Authority cannot, for the purposes of its analysis under Regulation (EU, Euratom) No 1141/2014, make allowances for what the Identity and Democracy Party asserts in its letter of 13 July 2023, namely that posting inaccurate information would have little political expediency and the Party would have 'gained virtually nothing' from inaccurate communications to the public regarding the composition of its Bureau. The same applies to the alleged lack of 'damages', as the Party argued in its email of 23 October 2023. This approach is untenable from the outset, as it is incompatible with the democratic obligation to account for the Party's actual decision-making.

Conclusions

- (44) The Identity and Democracy Party intentionally provided incorrect information by failing to take down the social media posts, despite knowing that they contained inaccurate information by purporting that *[omissis]* was still a member of its Bureau. Therefore, the specific elements inherent to Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014 should apply.

c) Insufficiency of the corrective measures the Party had announced or claimed to have taken

(45) Article 29(1) and Article 29(2) of Regulation (EU, Euratom) No 1141/2014 reads as follows:

‘Article 29

Corrective measures and principles of good administration

1. Before taking a final decision relating to any of the sanctions referred to in Article 27, the Authority or the Authorising Officer of the European Parliament shall give the European political party or the European political foundation concerned an opportunity to introduce the measures required to remedy the situation within a reasonable period of time, which shall not normally exceed one month. In particular, the Authority or the Authorising Officer of the European Parliament shall allow the possibility of correcting clerical and arithmetical errors, providing additional documents or information where necessary or correcting minor mistakes.
 2. Where a European political party or a European political foundation has failed to take corrective measures within the period of time referred to in paragraph 1, the appropriate sanctions referred to in Article 27 shall be decided’.
- (46) Despite having no margin of discretion in applying the sanctions provided for by Regulation (EU, Euratom) No 1141/2014, it was nevertheless incumbent upon the Authority, before making the required decision, to ascertain in advance whether the conditions of Article 29(2) of the Regulation had been met. The only case in which the Authority would decide not to apply sanctions would be if the Party had, in accordance with Article 29(1), taken the measures required to remedy the situation within a reasonable period of time, which should not normally exceed one month.
- (47) With its letter of 14 June 2023, the Authority duly gave the Party, in accordance with Article 29(1) of Regulation (EU, Euratom) No 1141/2014, until 14 July 2023 to take the corrective measures to remedy the situation. However, the social media posts remained unchanged, despite the fact that the Party itself directly confirmed that Mr [omissis] was not a member of its Bureau on the date of those posts.
- (48) However, the measures announced by the Identity and Democracy Party in its letter of 13 July 2023 were not sufficiently effective to remedy the situation. Simply by restating the composition of its Bureau on that date, the Party did nothing to remedy the outstanding issue of conflicting information. Moreover, the Party announced that it would be launching a new website and expressed a willingness to professionalise its operations by appointing a person responsible for ensuring that the information it publishes is accurate. These announcements alone, however, with no information concerning when and how the accuracy of the content would be checked, were not sufficient to enable the Authority to conclude that the Party had duly remedied the situation. Lastly, the Party’s proposed meeting with the director of the Authority merely represents a means of bilateral communication with the Authority, and not a remedy for the conflicting information issues across the Party’s numerous communication channels. It therefore contributed nothing to the Party’s right to express its views in writing, which it had been granted the opportunity by the Authority so to do. The Party

failed to address the shortcomings of its corrective measures, which the Authority flagged up in its letter of 11 September 2023.

- (49) Furthermore, except for shutting down its old website, the measures that the Identity and Democracy Party had announced or claimed to have taken were not effectively taken before the deadline had elapsed. In particular, contrary to what it claimed in its letter of 13 July 2023, the party did not take down the social media posts. One of the principal grounds for the Party's infringement of the Regulation therefore remained unchanged. According to its letter of 28 September 2023, it even reached a decision not to remove or correct those posts.
- (50) In view of these circumstances, the Authority could only conclude that the Party had definitively relinquished the opportunity to take the measures required to remedy the situation as per Article 29(1) of Regulation (EU, Euratom) No 1141/2014. Under Article 29(2) of Regulation (EU, Euratom) No 1141/2014, the Authority therefore had to reach the decision to apply sanctions in accordance with Article 27 of the Regulation.

d) No violation of freedom of expression

- (51) The EU's legal order establishes a comprehensive framework of fundamental rights. In particular, the EU Charter of Fundamental Rights applies to the Authority's decisions on European political parties, as stipulated in Article 51(1) thereof. Article 11(1) of the Charter enshrines the right of European political parties to freedom of expression. This right must be respected by the Authority, in accordance with recital 2 of Regulation (EU, Euratom) No 1141/2014. However, under Article 52(1) of the Charter, such protection is subject to limitations, such as those laid down in Article 24(4) and Article 27 of Regulation (EU, Euratom) No 1141/2014. More specifically, freedom of expression does not include inaccurate statements of fact, to the extent that they may be disassociated from political substance that is afforded a high standard of protection. In this case, the claim that Mr [omissis] was a member of the Bureau of the Identity and Democracy Party was superimposed over videos of his speeches, and was therefore not an integral part of those videos. The Party would therefore have been at liberty to continue to publicise Mr [omissis]'s appearances and his substantive remarks without claiming that he was a member of the Bureau on the dates in question. Furthermore, the Authority would reiterate the fact that the Party, by virtue of its letter of 13 July 2023, deemed it appropriate merely to remove the social media and other posts, rather than correcting them; ultimately, however, it did neither. In consequence, the Party's right to freedom of expression was not breached, neither by the procedure followed by the Authority nor by the ensuing sanction.

e) Applicable level of sanction

- (52) Article 27(4)(a) of Regulation (EU, Euratom) No 1141/2014 reads as follows:
- ‘4. For the purposes of paragraphs 2 and 3, the following financial sanctions shall be imposed on a European political party or a European political foundation:
- a) in cases of non-quantifiable infringements, a fixed percentage of the annual budget of the European political party or European political foundation concerned:
- 5%, or
 - 7.5% if there are concurrent infringements, or
 - 20% if the infringement in question is a repeated infringement, or
 - a third of the percentages set out above if the European political party or European political foundation concerned has voluntarily declared the infringement before the Authority has officially opened an investigation, even in the case of a concurrent infringement or a repeated infringement, and the party or foundation concerned has taken the appropriate corrective measures,
 - 50% of the annual budget of the European political party or European political foundation concerned for the preceding year, when it has been found by a judgment having the force of *res judicata* to have engaged in illegal activities detrimental to the financial interests of the Union as defined in Article 106(1) of the Financial Regulation’.
- (53) The scale of and correlations between the sanctions are set down in Regulation (EU, Euratom) No 1141/2014, depending on the particular circumstances. The sanctions are applied directly and in a non-discretionary manner. Accordingly, the principle of proportionality is provided for, as confirmed by recital 31 of the Regulation.
- (54) First and foremost in this case, it should be emphasised, with regard to the correlations between the sanctions applicable under Article 27(2)(a)(iv) and Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014, that the sanction for intentional acts under the latter Article constitutes *lex specialis*. In light of Article 27(5) of the Regulation, this subsumes the sanction that would otherwise have applied under Article 27(2)(a)(iv), as it involves the same facts relating to public communications about the supposed member of the Identity and Democracy Party Bureau.
- (55) As to the sanction that should be applied and the corresponding fixed percentage of the annual budget of the Identity and Democracy Party, it should be noted that, while there have been various cumulative aspects to the submission and publication of Party information since 2 March 2022, this particular case relates to developments concerning the membership of the Party Bureau and an individual member thereof, and hence a single overall issue. In consequence, there are no grounds for ‘concurrent infringements’ as stipulated by Article 2(12) of the Regulation, and the applicable sanction should therefore be 5% of the annual budget of the Party, in accordance with Article 4(a), first indent, of Regulation (EU, Euratom) No 1141/2014, as amended.
- (56) The total sum of this sanction equates to a percentage of the Party’s annual budget, which is defined in Article 2(9) of Regulation (EU, Euratom) No 1141/2014 as ‘the

total amount of expenditure in a given year as reported in the annual financial statements of the European political party [...] concerned'. In accordance with Article 23(1)(a) of Regulation (EU, Euratom) No 1141/2014, European political parties shall submit their annual financial statements to the Authority no later than six months following the end of the financial year. In this case, the annual financial statements for the last completed financial year are those submitted by the Party to the Authority on 30 June 2023 for the previous financial year (2022). As the Identity and Democracy Party reported expenditure of EUR 940 410.97, the financial sanction of 5% therefore amounts to EUR 47 020.54. The arrangements for paying this sum into the general budget of the EU will be the subject of appropriate decisions by the responsible authorising officer and accounting officer pursuant to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018, p. 1).

- (57) The Authorising Officer is responsible for drawing the appropriate consequences of this sanction within its field of activity.
- (58) In accordance with Article 32(1)(g) of Regulation (EU, Euratom) No 1141/2014, the details of and reasons for any final decisions taken by the Authority pursuant to Article 27 of the Regulation shall be made public on a website under its authority, with due regard for Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

HAS ADOPTED THIS DECISION:

Article 1

- I. The Identity and Democracy Party shall receive a financial sanction in accordance with Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014.
- II. The sanction shall equate to 5% of the annual budget of the Identity and Democracy Party. The sanction therefore amounts to EUR 47 020.54

Article 2

This decision is addressed to the Identity and Democracy Party, whose registered address is 75 Boulevard Haussmann, 75008 Paris, France.

Article 3

This decision shall be published on the Authority's website, with the names of the natural persons listed herein removed.

Article 4

This Decision shall take effect on the date of its notification to the Identity and Democracy Party.

Done at Brussels, 25 October 2023.

*For the Authority for European Political Parties and European
Political Foundations
The Director*

Pascal Schonard

The Identity and Democracy Party should take cognisance of Article 35 of Regulation (EU, Euratom) No 1141/2014, which reads as follows:

‘Right of appeal

Decisions taken pursuant to this Regulation may be the subject of court proceedings before the Court of Justice of the European Union, in accordance with the relevant provisions of the TFEU.’