

Understanding the EU Rule of Law mechanisms

SUMMARY

The European Union is founded on values common to all Member States. These are supposed to ensure a level of homogeneity among Member States, while respecting their national identities, and so facilitate the development of a European identity and their integration based on mutual trust. Article 7 of the Treaty on European Union (TEU) provides mechanisms to enforce EU values, based on a decision by the Council with the participation of the Commission and Parliament.

The current instruments are said to be unusable due to the high thresholds needed for a decision in the Council, as well as Member States' political unwillingness to use them. Various new approaches have been proposed by academics and by political actors, from a new independent monitoring body – the 'Copenhagen Commission', through extending the mandate of the EU Fundamental Rights Agency (FRA), to introducing the possibility for the EU to suspend national measures suspected of infringing EU law.

In 2014, the Commission adopted a new 'Rule of Law Framework' featuring a structured dialogue between the Commission and the Member State concerned and Commission recommendations and follow-up. On 13 January 2016, the Commission decided for the first time to initiate such an assessment of the situation in a Member State, with regard to two Polish laws – on the powers of the constitutional court and on the management of state TV and radio broadcasters.

The European Parliament launched the idea of a 'European fundamental rights policy cycle' with the cooperation of the EU institutions, Member States and the FRA, as a 'new Copenhagen mechanism' to monitor the situation in Member States. At present, Parliament's Civil Liberties and Justice Committee is drafting a legislative own-initiative report on an EU mechanism on democracy, the rule of law and fundamental rights, relying on common and objective indicators.



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- The Article 7 TEU mechanisms
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Key events regarding the EU rule of law

1997, Amsterdam Treaty: Article 7 sanctioning mechanism for violation of rule of law, fundamental rights and other basic principles is established.

2000: Bilateral sanctions against Austria in response to the arrival in government of the Freedom Party (FPÖ).

2009, Lisbon Treaty: EU values are introduced into the Treaties, replacing the previous 'principles'.

2010-2012: Several Member States under scrutiny for possible rule of law violations: France for collective expulsions of Roma, Romania for non-compliance with Constitutional Court decisions, Hungary for measures affecting the independence of its judiciary.

March 2013: Commission presented the EU Justice Scoreboard, including statistics on the justice systems in the Member States and data on the relationship between compliance with the rule of law and the functioning of the internal market.

March 2013: Letter from the Foreign Affairs Ministers of Denmark, Finland, Germany and the Netherlands to the Commission President, calling for a new mechanism to safeguard fundamental values in the EU.

March 2014: Commission adopts a Communication on a Rule of Law Framework as an earlier phase, complementary to the Article 7 TEU mechanisms.

December 2014: Council decides to hold an annual 'dialogue' in the General Affairs Council on the 'rule of law' in Member States.

2015/2016: EP legislative own-initiative report 'EU mechanism on Democracy, the Rule of Law and Fundamental Rights' (LIBE Committee).

13 January 2016: European Commission launches structured dialogue with Poland under the Rule of Law Framework.

A Union of values**EU values and national identity**

The EU 'values' were enshrined in the Treaties only with the Treaty of Lisbon, replacing the previous, less extensive 'principles'. However, it has been clear from the very beginnings of the Communities that, to succeed, the European integration process needs a common basis of values to secure a degree of homogeneity amongst the Member States.¹ The EU values are supposed to be the basis for a common European 'way of life', facilitating integration towards a political, not just 'market', Union. They support the development of a European identity, while ensuring the legitimacy of the EU as founded on democratic values.

The EU values enjoy two-fold protection. First, since the 1993 Copenhagen European Council, they form part of the **accession criteria** for candidates for EU membership ([Article 49\(1\) TEU](#)). Second, Member States must, following their accession, observe and promote the EU values. [Article 7](#) TEU establishes a procedure to sanction a Member State which does not uphold the values, through the suspension of membership rights. Moreover, the Union exports its values outside its territory, with the EU values underlying the international relations of the EU (Articles 21, 3(5), and 8 TEU).

On the other side of the coin are the **national constitutional identities** of Member States. According to [Article 4\(2\) TEU](#), the Union must respect Member States' national identities. This provision sets out a vision of a Union founded on values common to all

Member States but which preserves the diversity of Member States' political and organisational systems. This so called 'constitutional individuality' of the Member States can be reflected inter alia in state-organisational, cultural, including language, and historical heritage aspects.² Hence, the common EU values represent limits to the diversity of Member States, reflected in their constitutional identities; limits that Member States have agreed in order to forge **mutual trust** among themselves and in their legal systems, for which the observance of the rule of law is of utmost importance.

Rule of law challenges in practice

Although the Article 7 sanctions mechanism was introduced with the Amsterdam Treaty, as a precursor to the Union's enlargement, it has never been activated. However, use of the procedure was first considered well before the 2004 enlargement, in the case of Austria, in response to the arrival in government of the Freedom Party (FPÖ) of Jörg Haider in 2000. In the end, however, bilateral sanctions were imposed on Austria by the other 14 Member States, outside the EU framework, rather than using Article 7.³ More recently, in 2010, the expulsion of Roma to their Member State of origin by the French authorities was discussed as a possible violation of the EU values. Since then, Hungary's constitutional reforms as well as the impeachment procedure against the former Romanian President have been subject to scrutiny based on the rule of law principle.

Two recent Polish laws have again sparked the discussion on the upholding of the rule of law in the Member States, prompting the European Commission to [trigger](#), for the first time, its 'Rule of Law Framework' procedure, consisting of structured dialogue with Polish authorities, as a prior phase in advance of any future action under Article 7 TEU.

The Article 7 TEU mechanisms

Legal vs political approach

The difficulty in ensuring that national constitutional identities respect the EU values derives, inter alia, from the fact that political choices are seen by some as the legitimate result of a democratic debate, whereas others regard them as a breach of EU values. Some commentators and [political actors](#) tend to see the outrage of other Member States or EU institutions over specific developments in a given Member State as ideologically motivated, as the battle between left-wing and right-wing convictions, or as a battle between different cultures (*Kulturkampf*). Some argue that there is no single model of liberal democracy, common to all Member States, which can be used to decide whether Member States fall below a common standard, and therefore they call for greater respect for the plurality of political values in the EU.⁴

In this context, it has been argued that possible EU intervention needs to be based on a legally founded decision subject to review by the Court of Justice of the EU (CJEU). This would reduce the risk of, on the one hand, discretionary and opportunistic decisions, and on the other, Member States refusing to act against each other. Others claim that legal criteria alone cannot determine whether there is a breach of values, so legitimising EU intervention, and see the more political approach as a step towards democratisation of the Union through its long-demanded politicisation.⁵

EU values

According to Article 2 TEU, 'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.' The preamble to the Treaties recalls that these values have developed from the cultural, religious and humanist inheritance of Europe.

The **political approach was chosen in the EU**, with proposals to involve the Court of Justice in the sanctions procedure of Article 7 TEU being discarded during discussions on the Amsterdam Treaty, and the Council instead taking centre stage.⁶

The CJEU has a very limited role in Article 7 procedures. According to Article 269 TFEU, it can be called upon by the Member State concerned to review only the procedural requirements stipulated in Article 7 TEU.

Procedure and requirements

Preventive mechanism

While the sanctions procedure was introduced by the Amsterdam Treaty, it was not until the Treaty of Nice that the preventive mechanism was added. This type of mechanism, allowing action before a country has breached the values, is unprecedented in international practice.

Under the preventive mechanism (Article 7(1) TEU), the Council may determine that there is a **clear risk of a serious breach** of the EU values by a Member State. Before making such a determination, the Member State concerned can address the Council, which may also issue **recommendations**. The preventive mechanism can be triggered by one third of Member States, by Parliament or by the Commission. The Council has to adopt a decision by a majority of **four fifths** of its members after having received **Parliament's consent**. Parliament's consent requires a two-thirds majority of the votes cast and an absolute majority of all Members (Article 354(4) TFEU).

Sanctions mechanism

The sanctions mechanism is independent of the preventive one, meaning that it is not necessary for a Member State to be subject first to a decision under the preventive mechanism in order to be sanctioned for a persistent breach of EU values. In contrast to the preventive mechanism, it may be triggered by one third of Member States or the Commission, but not by the EP.

The sanctions procedure has **two phases** (Article 7(2) and (3) TEU). In a first step, the **European Council** determines by **unanimity** and after obtaining **Parliament's consent** (by a two-thirds majority of the votes cast and an absolute majority of Members) the **existence of a serious and persistent breach** of EU values by a Member State. Prior to this determination, the Member State concerned has the opportunity to submit observations to the Council. In a second step, the Council can **suspend** certain **membership rights** of the Member State concerned, including voting rights in the Council. This decision is adopted by **qualified majority**. The Treaties award a two-fold discretion to the Council, regarding the decision to determine the existence of a breach of values as well as regarding the sanction to be imposed on the Member State in question. It should be noted that Parliament's consent is necessary only for the first phase of the sanctions mechanism (determination of the existence of a breach), but not for a decision on the suspension of membership rights (second phase).

The representatives of the Member State concerned do not take part in the votes in the Council and European Council, and are not counted in calculating the majorities necessary to trigger sanctions or a preventive determination, or to adopt other decisions (Article 354(1) TFEU).

There is no unanimity as to what membership rights can be suspended under Article 7 TEU, besides voting rights in the Council and the European Council. Some argue that not only rights deriving directly from the Treaties but also rights established in secondary law could be suspended, which would also cover rights under cohesion and regional development programmes, as well as agricultural and other subsidies.⁷ However, it

should be noted that, in suspending certain membership rights, the Council needs to take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons (Article 7(3)2 TEU), which is an expression of the principle of proportionality.

The breach of values, necessary in order to apply the Article 7 sanctions mechanism, must be **systematic and persistent**, and must therefore go beyond individual violations of fundamental rights, the principle of the rule of law or of other EU values. For individual breaches of these principles, remedy may be sought before national courts, as well as the European Court of Human Rights (ECtHR) and, through the infringement and preliminary ruling procedure, the CJEU. The political response under Article 7 TEU addresses, as a last resort only, systematic violations.⁸ The seriousness of a breach of values can, according to the Commission, be based on the vulnerability of the social group affected (immigrants, ethnic groups, etc.) or the range of EU values affected (fundamental rights, rule of law, democracy, liberty). Moreover, failure of a Member State to act can also constitute a serious and persistent breach.⁹

Sources of EU values

The Treaties offer no definition of the EU values but they result from the constitutional traditions common to the Member States ([Article 6\(3\) TEU](#)) as well as through the case law of the CJEU on the general principles of EU law. A further source of EU values is the [EU Charter of Fundamental Rights](#). The mechanisms established in Article 7 TEU constitute an exception to the rule that the Charter applies only within the scope of EU law, giving the EU institutions the power to intervene in areas of exclusive Member State competence. The Charter itself refers to the European Convention on Human Rights and Fundamental Freedoms. The judgments of the ECtHR, as well as reports of the Council of Europe's [Venice Commission](#) (European Commission for Democracy through Law) and the UN Commissioner for Human Rights, can provide evidence of a clear risk or the existence of a serious breach of EU values.

Effects and usability of Article 7

Some commentators regard any intervention against a Member State on the grounds of breach of values as counter-productive, since it is likely to increase internal support for the government in question and increase levels of euroscepticism in the population. This is because Article 7 measures are often understood by citizens as sanctions against them more than against their government. The report by three 'wise men' on the Austrian situation in 2000 confirms that both effects were observed in Austria. However, the [report](#) also concluded that the sanctions imposed by the other 14 Member States intensified the government's efforts to ensure compliance with the EU values, and prompted Austrian civil society to defend these values.

Furthermore, the Article 7 sanctions mechanism has been described as unusable due to the large majorities needed in the Council and in Parliament, Member States' governments' general reluctance to take action against each other is driven by the fear of having themselves to face an assessment of their compliance with EU values.

The Commission Rule of Law Framework

The Framework

In response to calls for a less formal and more usable mechanism to address rule of law violations in Member States, in March 2014, the Commission adopted a [Communication](#) on 'A new EU framework to strengthen the Rule of Law'. The 'framework' is designed as a 'pre-Article 7 tool' to address and resolve situations of systemic threat to the rule of law, thus acting prior to, and **complementing the Article 7 mechanisms**. It consists of a

structured dialogue between the Commission and the Member State concerned, including a Commission **assessment**, a Commission **recommendation** and a **follow-up** to the recommendation.

In a first stage, the Commission would conduct a preliminary assessment and if there is concern that there is a **systemic threat to the rule of law**, it would initiate a dialogue with the Member State concerned, by sending a 'rule of law opinion' and giving the Member State the possibility to respond. The content of these exchanges at this **first stage** would be kept confidential. During the assessment, the Commission may seek external expertise, including from the FRA, in particular to compare rules and practices in Member States and in this way ensure their equal treatment. In a **second stage**, the Commission would issue a public 'rule of law recommendation', if it finds objective evidence of a systemic threat and that the authorities of the Member State concerned are not taking appropriate action to redress it. For this the Commission will consult experts such as the FRA, the EU Network of the Presidents of the Supreme Judicial Courts and the Council of Europe Venice Commission. In a **third stage**, the Commission would monitor the Member State's follow-up to the recommendation. If there is no satisfactory follow-up by the Member State within the time limit set, the Commission would assess the possibility of activating one of the mechanisms set out in Article 7 TEU. The European Parliament and Council would have a passive role in this process, with the Commission committing merely to inform them of progress made at each stage.

On 13 January 2016, the Commission announced that it will be, for the first time, starting a structured dialogue with a Member State under the Rule of Law Framework. The subject of this procedure is two Polish laws, on limiting the powers of the Constitutional Court and on public broadcasters' management. Parliament had also [called](#) on the Commission in December 2015 to launch the procedure with regard to several anti-migration laws adopted by Hungary in July and September 2015.

Reactions

The new Rule of Law Framework has been criticised for having little, if any legal implications, and for being ineffective where the Member States are not willing to collaborate. The vagueness surrounding the notion of 'systemic threat' has also prompted [concerns](#), although it should be noted that the notion of 'systemic breach' in Article 7 is affected by the same degree of uncertainty.¹⁰

Doubts have been cast over the legality of the new Rule of Law Framework. The Council Legal Service [concluded](#) that it lacks a legal basis in the Treaties, which already contain specific instruments, such as the Article 7 mechanisms and infringement proceedings. It held that Member States could instead establish such a mechanism outside the EU legal framework by means of an international agreement. Academics Dimitry Kochenov and Laurent Pech however argue that to be able to trigger the Article 7 TEU mechanisms (preventive or sanctions),

What is the rule of law?

Based on the common constitutional traditions of the Member States and the case law of the CJEU, the Commission understands the rule of law to include legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; and equality before the law.

The Council

In addition to the Commission Rule of Law Framework, the Council [decided](#) in December 2014 to hold an annual 'dialogue' in the General Affairs Council on the 'rule of law' in Member States. The first such dialogue took place on 17 November 2015. The results of this initiative will be evaluated in late 2016.

the EU institutions and the Member States must be in a position to assess whether the situation in the Member State concerned justifies action under Article 7, so that 'Article 7 implicitly empowers the Commission to investigate any potential risk of a serious breach of the EU's values'.¹¹

Article 7 vs infringement proceedings

As an alternative to the Article 7 mechanisms, use of the infringement procedure (Articles 258 and 259 TFEU) is often suggested. This raises the question of whether only the Article 7 procedure is available to address breaches of EU values, meaning that the EU institutions cannot have recourse to any other mechanisms in such cases. Many argue that the political approach of Article 7 should not be circumvented by applying legal remedies. Conversely, it is noted that while the earlier Treaties kept the EU values out of the jurisdiction of the Court of Justice, the Lisbon Treaty subjects Article 2 TEU to it, which suggests that a breach of EU values could also be addressed through a legal approach.¹² Furthermore, [experts](#) note that sanctions imposed for violation of the EU *acquis* are insufficient to restore compliance with EU values. However, both instruments are largely seen as complementary: while infringement proceedings would take place in the case of non-compliance with EU law, the **Article 7 mechanisms also apply outside the EU realm**, but only when violations are serious enough and persistent.

Proposals for further new instruments

The shortcomings of the existing institutional arrangements to enforce the Union's fundamental values have increasingly been the subject of criticism, with [many](#) demanding more flexible instruments as a middle-ground alternative between the 'soft power' of political persuasion and the 'nuclear option' of Article 7 TEU. Commission First Vice-President, Frans Timmermans, in charge of rule of law within the Commission, has [highlighted](#) that 'there are situations which do not fall under the scope of EU law, and cannot be said to meet the threshold of Article 7, but which do raise concern regarding the respect of the rule of law in a particular Member State'.

The proposed solutions diverge, as they include new or modified procedures for the protection of EU values, take a legal or political approach, favour ex-ante or ex-post actions and entrust their enforcement to EU bodies or to independent experts.¹³ Many of the proposed new approaches would require Treaty amendment, such as lower thresholds for triggering the Article 7 mechanisms, judicial review by the CJEU, extending the powers of the Fundamental Rights Agency (FRA), or abolishing [Article 51](#) of the EU Charter, to make EU fundamental rights [directly applicable](#) in all Member States.

FRA/Copenhagen Commission

The question of a specific expert body at EU level carrying out systematic monitoring of Member States' compliance with the EU values was widely discussed at the time the Agency for Fundamental Rights (FRA) was set up. In the end, the FRA was not [entrusted](#) with systematic monitoring of Member States for the purposes of Article 7. Its [assistance](#) could, however, be sought by the political actors engaged in an Article 7 procedure, to establish whether there is a persistent, serious breach of EU values or a clear risk thereof in a Member State. Alternatively, academic Jan-Werner Müller [proposed](#) setting up a politically independent high-level expert body, to be called the 'Copenhagen Commission', to monitor and investigate the situation of democracy and rule of law in the Member States. Upon the recommendation of the Copenhagen Commission, the European Commission could cut EU funds for the Member State in question or impose fines. Others argue for a stronger involvement of the Council of Europe Venice Commission.¹⁴

Systematic infringements procedures

Assuming that the Article 7 TEU mechanisms are not exclusive when there is a question of breach of EU values, academic Kim Lane Scheppele proposes applying the infringement procedures of Articles 258 and 260 TFEU, by bundling together a group of specific violations. These proceedings could be based either on violations of EU values according to Article 2 TEU or arguing that the systemic violation by a Member State of the EU's basic principles represents a breach of the principle of sincere cooperation (Article 4(3) TEU).¹⁵ Some have proposed in this context that the Court of Justice be able to suspend EU funding instead of imposing a fine or a lump sum to be paid by the Member State in question. According to Scheppele, this should be possible without Treaty change, since Article 260(2) TFEU does not require that a penalty imposed by the Court be paid from the state treasury.

A 'freezing enforcement procedure'

As a complement to existing procedures, scholars have [proposed](#) establishing a new preventive mechanism, which could suspend any contested national policies and practices falling within the remits of EU law. The mechanism would be activated based on evidence provided by the FRA, and would entail accelerated infringement procedures.

Reverse 'Solange' approach and individual action of EU citizens

Inspired by the [Solange doctrine](#) of the German Federal Constitutional Court, a group of scholars proposes to apply a 'reverse *Solange*' approach to a persistent breach of fundamental rights by a Member State, based on the individual action of EU citizens. This means that national courts would protect fundamental rights of EU citizens and no EU intervention would be indicated, as long as ('*solange*') there is no systemic violation of the very essence of fundamental rights. If that was the case, EU citizens would be able to invoke EU fundamental rights even in cases falling outside the EU framework. The promoters of this approach admit that there could be no individual legal action to enforce objective principles like democracy or rule of law.¹⁶

The EP: consistent advocate of protection of the rule of law

Parliament has played an increasingly important role in the enforcement of EU values. It is on an equal footing with the Member States and the Commission as regards triggering the Article 7 preventive mechanism. Moreover, it has oversight over the Council, through the consent procedure, in the determination of whether a serious breach of the common values exists, or there is a clear risk of one. It has adopted several [resolutions](#) (e.g. in 2013 based on the [report](#) by Rui Tavares, Greens/EFA, Portugal) calling on Member States to restore compliance with EU values and for new enforcement mechanisms observing the principle of equality between Member States.

Since the early 1990s, Parliament has demanded stricter monitoring of Member States' compliance with human rights and the other EU values. Its [annual report](#) on the situation of the fundamental rights in the EU is recognised by the Commission as providing a diagnosis of the situation in the Member States. Parliament's [Committee on](#)

State-vs-state actions, Article 259 TFEU

Due to the high thresholds for the EU institutions to trigger the existing mechanisms, academic [Dimitry Kochenov](#) proposes to use Article 259 TFEU, giving Member States the power to bring another Member State, after consulting the Commission, before the Court of Justice for non-compliance with an obligation under the Treaties ('**horizontal enforcement of values among Member States**').

Kochenov argues that the federal nature of the EU values, stemming from national constitutional traditions on the one hand and building the very foundations of the EU on the other, makes it necessary to enable individual Member States to act in defence of an EU based on compliance with the common values by all partners.

[Petitions](#) (PETI) also receives individual complaints that are a useful source of information on breaches of EU values in the Member States.

In its [resolution](#) of December 2012 on the situation of fundamental rights in the EU, the EP launched the idea of a '**European fundamental rights policy cycle**' with the cooperation of EU institutions, Member States and the FRA to take joint measures and involve NGOs, citizens and national parliaments in their work. To this end, Parliament called on the Commission to propose a 'clear-cut monitoring mechanism and early warning system'. In 2014, Parliament [repeated](#) (rapporteur Louis Michel, ALDE, Belgium, Committee on Civil Liberties, Justice and Home Affairs) its call to launch a '**new Copenhagen mechanism**' to monitor the situation in individual Member States through a regular and objective process involving the Fundamental Rights Agency, Commission, Council, EP and national parliaments. The new mechanism should incorporate an **early-warning system** with 'formal notices' to Member States where a breach in the rule of law appears likely, before any formal proceedings start under Article 7, and a '**freezing procedure**' for national measures infringing upon EU values. Parliament again called for a greater role for the **Fundamental Rights Agency**, with stronger powers and a wider remit, including in monitoring individual Member States in the field of fundamental rights. It argued that, in the meantime, a '**Copenhagen Commission**' be established, composed of independent high-level experts on fundamental rights, to ensure compliance by all Member States with the common values enshrined in Article 2 TEU, and to advise and report on fundamental rights matters. In its resolution, Parliament also set further avenues to be explored to strengthen the protection of the rule of law and fundamental rights in the EU, including inter alia a revision of Article 7 TEU to:

- separate the 'risk' stage from the 'violation' stage, with different thresholds for the necessary majorities,
- strengthen the technical (not just political) analysis to determine the risk and existence of a serious breach of values,
- enhance dialogue with the Member States' institutions,
- provide for a wider range of detailed and predictable penalties, and
- enable Parliament to launch proceedings on the violation of Article 2 TEU on an equal footing with the Commission and the Council.

In a [resolution](#) of 10 June 2015 on the situation in Hungary, Parliament mandated the LIBE Committee to contribute to the development and elaboration of an EU mechanism on democracy, the rule of law and fundamental rights with a [legislative own-initiative report](#) (rapporteur Sophia In 't Veld, ALDE, the Netherlands). The report should present recommendations to the Commission as regards an EU mechanism as a tool for compliance with and enforcement of the Charter and Treaties, relying on common and objective indicators. Indeed the report might lead to a stronger, binding and more transparent version of the Commission's Rule of Law Framework and annual monitoring of the rule of law, democracy and fundamental rights.

Reflecting Parliament's increased powers after the entry into force of the Lisbon Treaty, and its wish to contribute to better law-making, legislative initiative reports in accordance with Article 225 TFEU are automatically accompanied by a European Added Value Assessment (EAVA) prepared by the European Parliamentary Research Service. EAVAs are aimed at evaluating the potential impact and substantiating the requests of Parliament for legislative action.

Further reading

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Endnote

- ¹ C Callies, *Europa als Wertegemeinschaft- Integration und Identität durch europäisches Verfassungsrecht*, in JZ 2004, 1033.
- ² See case law of the Court of Justice in the [Groener](#), [Sayn-Wittgenstein](#), [Runevic-Vardyn and Wardyn](#) cases.
- ³ B De Witte, G Toggenburg, *Human Rights and Membership of the European Union*, in *The EU Charter of Fundamental Rights*, S Peers, A Ward, Oxford 2004, p. 75.
- ⁴ *Ibidem*, pp. 17-18.
- ⁵ *Ibidem*, p. 15.
- ⁶ W Sadurski, [Adding a Bite to a Bark? A story of Article 7, the EU Enlargement, and Jörg Haider](#), Legal Studies Research Paper No 10/01, Sydney Law School, University of Sydney, January 2010, p. 394.
- ⁷ S Schmahl, [Die Reaktionen auf den Einzug der Freiheitlichen Partei Österreichs in das österreichische Regierungskabinett-Eine europa-und völkerrechtliche Analyse](#), EuR 2000, p. 819, 826.
- ⁸ [Communication from the Commission to the Council and the European Parliament on Article 7 TEU. Respect for and promotion of the values on which the Union is based](#), COM(2003)606 final, 15.10.2003, p. 7.
- ⁹ European Parliament, [Resolution on Commission communication on Article 7 TEU](#) (rapporteur J. Voggenhuber), April 2004, point 3.
- ¹⁰ C Closa, [The EU needs a better and fairer scrutiny over rule of law compliance](#), Policy Brief, Global Governance Programme, European University Institute, Issue 2015/01, May 2015, p. 5.
- ¹¹ D Kochenov and L Pech, [Upholding the Rule of Law in the EU: On the Commission's 'Pre-Article 7 Procedure' as a timid step in the right direction](#), Robert Schuman Centre for Advances Studies, April 2015, p. 11.
- ¹² AV Bogdandy, M Kottmann, C Antpöhler, J Dickschen, S Hentrel, M Smrkolj, [Reverse Solange – protecting the essence of fundamental rights against EU Member States](#), *Common Market Law Review* 49 (2012), p. 516.
- ¹³ C Closa, D Kochenov and JHH Weiler, [Reinforcing Rule of Law Oversight in the European Union](#), EUI working papers, RSCAS 2014/25, March 2014, pp. 14 et. seq.
- ¹⁴ J Nergelius, *The role of the Venice Commission in maintaining the rule of law*, in A. Von Bogdandy, P Sonnevend (eds.), *Constitutional crisis in the European constitutional area: theory, law and politics in Hungary and Romania*, Hart, Oxford 2015, pp. 291 et seq.
- ¹⁵ KL Scheppele, [Enforcing the basic principles of EU law through systemic infringement procedures](#), April 2015.
- ¹⁶ *Ibidem*, p. 502. For further criticism of the proposal, see *Verfassungsblog*, [Rescue Package for Fundamental Rights](#).

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