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Rule of Law and National Autonomy in the European Union: Who Defines the Boundaries?[2]

Abstract: This article examines the evolving tension between national autonomy and the European Union's common concept of the rule of law, with a particular focus on judicial independence. While Article 2 TEU frames the rule of law as a value common to all Member States, recent jurisprudence—especially involving Poland—has exposed significant divergences between national and EU-level interpretations. The independence of the judiciary has become a key issue, raising questions about the autonomy Member States have when changing their justice systems and the limits of EU intervention. The article analyses how the EU defines and enforces the rule of law and whether a genuinely "common" understanding exists. In this context, the Polish case illustrates the legal and institutional difficulties involved in restoring the rule of law, highlighting the complex interplay between EU legal obligations and national constitutional identity.

Keywords: rule of law, judicial independence, EU law, national autonomy, Poland, Article 2 TEU, constitutional identity, European Court of Justice, judicial reform

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Introduction

Among the EU's values, the rule of law stands out as one of the most contested and dynamic, both legally and politically. It continues to prompt significant debate, particularly in light of disputes between the European Commission and Member States such as Poland and Hungary, as well as emerging concerns over recent developments in Slovakia.[3]

In Poland, a newly elected government is now attempting to restore adherence to rule-of-law standards, but the process is proving to be far from straightforward.[4] These developments illustrate that the rule of law is not merely a static or rhetorical value but a living principle subject to evolving interpretations, power dynamics, and legal challenges.

Within the European Union, the rule of law is enshrined in Article 2 of the Treaty on European Union (TEU), where it is described as a value common to all Member States. Despite this legal recognition, tensions persist between the national and supranational levels—raising the question of *whether a truly "common" understanding of the rule of law exists* and *who holds the authority to interpret it?*

Hungary, for instance, has openly contested the idea of a uniform definition, suggesting instead that Member States retain the right to interpret such values in accordance with their own constitutional traditions.[5]

3 See the European Parliament's resolution denouncing the attacks on the fight against corruption in Slovakia from 17 January 2024. European Parliament, *Resolution of 17 January 2024 on the Planned Dissolution of Key Anti-Corruption Structures in Slovakia and Its Implications for the Rule of Law* (2023/3021(RSP)), P9_TA(2024)0021, OJ C/2024/5712 of 17 October 2024.

4 In February 2024, the Polish government presented an Action Plan to restore the rule of law in Poland: https://www.gov.pl/web/justice/polish-minister-of-justice-presents-action-plan-for-restoring-the-rule-of-law. For debate over its implementation, see: Anna Wójcik, *Restoring the Rule of Law in Poland: An Assessment of the New Government's Progress* (German Marshall Fund of the United States, 2024), https://www.gmfus.org/news/restoring-rule-law-poland-assessment-new-governments-progress; or *Where Are We After a Year of Restoring the Rule of Law? [DEBATE]*, https://ruleoflaw.pl/where-are-we-after-a-year-of-restoring-the-rule-of-law/; Marcin Szwed, "To Void or Not To Void: On the Legal Effect of the Constitutional Tribunal's Rulings," VerfBlog, published 13 October 2023, https://verfassungsblog.de/to-void-or-not-to-void/, https://doi.org/10.59704/2619f6f8193204f1.

5 This position is notably articulated in the Hungarian Constitutional Court's Decision 22/2016 (XII. 5.), which emphasized that Hungary's constitutional identity must be preserved even

This tension is further complicated by the ongoing debate about whether the rule of law is a legal concept at all or rather a political or philosophical ideal.[6] While it certainly has relevance in political science and sociology, this article deliberately approaches the rule of law from a legal perspective, focusing on its normative and institutional implications under EU law.

The central aim of this article is to examine how the common understanding of the rule of law interacts with the autonomy of Member States within the EU legal order. Particular attention is given to the independence of the judiciary—an essential element of the rule of law and the subject of significant recent case-law by the Court of Justice of the European Union (CJEU), especially in relation to Poland.

This issue illustrates the broader tension between EU legal standards and national constitutional identities. The article seeks to clarify how the EU defines and enforces judicial independence, and where the boundaries of such enforcement lie with respect to national sovereignty.

This article does not seek to assess whether the European Union itself consistently upholds the rule of law, nor does it provide an exhaustive analysis of the various instruments available in the EU's rule of law "toolbox."[7] Instead,

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in the face of European Union obligations. See Fruzsina Gárdos-Orosz, "The Reference to Constitutional Traditions in Populist Constitutionalism—The Case of Hungary," *Hungarian Journal of Legal Studies* 61, no. 1 (2021): 23–51, https://doi.org/10.1556/2052.2021.00298. See also public announcements of Hungarian officials: „Note by the Hungarian Government on the Resolution adopted by the European Parliament on 12th of September 2018 on Hungary," About Hungary, published 9 November 2018, https://abouthungary.hu/speeches-and-remarks/note-by-the-hungarian-government-on-the-resolution-adopted-by-the-european-parliament-on-12th-of-september-2018-on-hungary.

6 See, for example, *Stanford Encyclopedia of Philosophy*, which notes that the rule of law is often considered one ideal among others in liberal political morality, such as democracy, human rights, and social justice. This plurality of values indicates that the rule of law does not operate in isolation but interacts with other principles (Jeremy Waldron, "The Rule of Law," *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta and Uri Nodelman (Stanford University, Fall 2023 Edition), published 22 June 2016, https://plato.stanford.edu/archives/fall2023/entries/rule-of-law/). For deeper insights, see also: Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004).

7 The EU's rule of law "toolbox" refers to the mechanisms the EU uses to protect and enforce the rule of law among its Member States. For deeper insights, see, for example: Cris-

the focus rests on the substantive legal interpretation of the rule of law as developed by EU institutions and the Court of Justice of the European Union (CJEU), and its interaction with Member States' autonomy—particularly in the area of judicial independence.

While the article will touch upon the role of the Council of Europe, and the European Court of Human Rights (ECtHR) will be referenced where relevant, the primary emphasis is placed on EU primary and secondary law, the jurisprudence of the CJEU, and relevant academic literature.

By situating the analysis within this legal framework, the article aims to contribute to a clearer understanding of the evolving role of the rule of law within the EU legal order and its implications for the balance between common European values and national autonomy.

Rule of Law as the Value Shared Among the EU States

In discussing the rule of law as a concept of European law, we are referring to one of the core values said to be shared among all Member States, as enshrined in Article 2 of the Treaty on European Union (TEU). Its placement in primary law indicates that today's EU considers the rule of law to be one of its foundational values,[8] derived from the constitutional traditions common to the Member States.

In addition to the rule of law, Article 2 TEU also sets out other shared values,[9] including respect for human dignity, freedom, democracy, equality, and the pro-

tina Fasone et al., eds., *EU Rule of Law Procedures at the Test Bench: Managing Dissensus in the European Constitutional Landscape* (Palgrave Macmillan, 2024), https://doi.org/10.1007/978-3-031-60008-1.

8 According to Pech, even a linguistic interpretation of this article shows that the listed values form the fundamental pillars of the Union. For more, see Laurent Pech, "'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, no. 3 (2010): 359–96, https://doi.org/10.1017/S1574019610300034.

9 In the Maastricht Treaty, the term used was "principles," while the Lisbon Treaty introduced the term "values." This change sparked debate about whether the two should be distinguished. However, the Court of Justice often uses both terms interchangeably in its case-law, indicating that it does not view the distinction as legally significant. See, Tom L. Boekestein, "Making

tection of human rights, particularly the rights of persons belonging to minorities. While these values are closely interconnected,[10] each represents a distinct and independent concept within the EU's legal and political framework.

While these concepts are relatively broad and not further defined in primary law,[11] they cannot be regarded as merely symbolic or non-binding. This is evidenced by the mechanism established under Article 7 TEU, which foresees sanctions in cases of a "serious and persistent breach" of the values enshrined in Article 2 by a Member State.

Even though these values now appear inextricably linked with the European Union, the concept of the rule of law was explicitly mentioned for the first time by the CJEU in its case-law in *Les Verts v. European Parliament* in 1986.[12] The current form of Article 2 TEU largely stems from its formal incorporation into EU law with the Maastricht Treaty. That treaty also introduced Article 49 TEU, which established respect for and promotion of the rule of law as a precondition for applying for EU membership. This demonstrated the rule of law's close connection to the Union's enlargement policy.[13]

We see that the rule of law is firmly embedded in the EU's primary law, but does the EU have a clear and autonomous understanding of what the 'rule of law' entails?

Historically, the concept of the rule of law has evolved within European legal traditions alongside the emergence of the modern state, fundamentally

Do With What We Have: On the Interpretation and Enforcement of the EU's Founding Values," *German Law Journal* 23, no. 4 (2022): 431–51, https://doi.org/10.1017/glj.2022.33.

10 See also UNGA, Res 67/1 (30 November 2012) UN Doc A/RES/67/1, para. 5. In this declaration, the states further affirmed that "human rights, the rule of law and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations."

11 However, as will be shown in the case-law section of this article, Article 19 TEU plays a key role in upholding the rule of law and is often seen as its concrete expression within the EU legal order.

12 Court of Justice of the European Union, Case C-294/83, *Parti Ecologiste 'Les Verts' v. Parliament*, 1986, ECLI:EU:C:1986:166.

13 In 2006, Olli Rehn, then EU Commissioner for Enlargement, stated that "it is values that define the borders of Europe." See Nicholas Watt, "Nappy Mirth Day to EU," Guardian, published 8 November 2006, http://www.guardian.co.uk/world/2006/nov/08/eu.worlddispatch.

serving as a safeguard against absolute or arbitrary forms of government.[14] The basic meaning of the rule of law then comes down to the subordination of the law to another kind of law, which may not be changed at will by the sovereign of that state.[15] Even today, at the supranational level, this concept remains focused on protecting individuals from the arbitrary exercise of state power.

Still, the rule of law is often regarded as a classic example of a notoriously difficult-to-define concept. As scholars have pointed out, a certain amount of disagreement over its precise meaning is likely the price to be paid for the broad consensus on its overall importance.[16]

As Kochenov points out, the European Union, like its Member States and the academic community, has found it difficult to define the concept precisely.[17] However, to engage meaningfully with the rule of law in the context of EU legal debates, it is essential to identify its core elements, which have been largely shaped by the Court of Justice case-law and European Commission documents.

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14 We can see this clearly in the French legal tradition, where the Rule of Law appears as État de droit, and in the German tradition, where it is known as Rechtsstaat. The Anglo-Saxon concept of the Rule of Law also emerged from the tension between governmental power and individual rights, but it was shaped gradually through case law developed by the courts. In other words, it evolved from bottom up, rather than being proclaimed by a central authority. See, for example, in Czech: Emmanuel Sur, "Od nejistého k implicitnímu (Význam principu právního státu a jeho ochrana ve Smlouvě o Evropské unii)," in *Evropský delikt. Porušení základních hodnot Evropské unie členským státem a unijní sankční mechanismus*, ed. Luboš Tichý (Univerzita Karlova, 2017), 44–52.

15 See Gianluigi Palombella, "Principles and Disagreements in International Law (with a View from Dworkin's Legal Theory)," in *General Principles of Law—The Role of the Judiciary*, ed. Laura Pineschi (Springer Cham, 2015), n 2. See also Gianluigi Palombella, "The Rule of Law and Its Core," in *Relocating the Rule of Law*, ed. Gianluigi Palombella and Neil Walker (Hart Publishing, 2009), n 40, 17, at 30.

16 The Rule of Law has been recognised by the Court of Justice of the European Union (CJEU) as a 'constitutional principle of the Union'. See: Joined Cases C-402/05 P and C-415/05 *P Kadi and Al Barakaat International Foundation v. Council and Commission* ECLI:EU:C:2008:461, paras 281 and 285. More also in: Simon Chesterman, "An International Rule of Law?" *American Journal of Comparative Law* 56, no. 2 (2008): 331–61; or Werner Schroeder, "The Rule of Law as a Constitutional Mandate for the EU," *Hague Journal on the Rule of Law* 15, 2023: 1–17, https://doi.org/10.1007/s40803-022-00185-7.

17 Dimitry Kochenov, "EU Law Without the Rule of Law: Is the Veneration of Autonomy Worth It?" *Yearbook of European Law* 34, no. 1 (2015): 74–96, https://doi.org/10.1093/yel/yev009.

In seeking a clear definition of the rule of law and its components, the European Commission proves particularly helpful.[18] The European Commission also draws on the case-law of the ECtHR and the work of the Venice Commission of the Council of Europe.

In its New Rule of Law Framework,[19] the European Commission identified the following elements of the rule of law: "1. Legality, meaning a transparent, accountable, democratic, and pluralistic process of lawmaking. 2. Legal certainty. 3. Prohibiting the arbitrary exercise of executive power. 4. Effective judicial protection by independent and impartial courts. 5. Effective judicial review, including respect for fundamental rights. 6. Separation of powers. 7. Equality before the law."

This definition does not introduce particularly novel elements. In fact, the European Commission largely adopts the six-point rule of law framework developed by the Venice Commission in its Rule of Law Checklist. The influence of Council of Europe mechanisms on the EU's understanding of the rule of law is thus clear.[20] This is logical, given that the activities of these two European international organizations are, to some extent, complementary, and that all EU Member States are also members of the Council of Europe.

The European Commission defines the rule of law as a principle that includes both formal and substantive elements. In other words, its understanding

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18 See also the definition provided in the European Commission's first Rule of Law Report (*2020 Rule of Law Report: The Rule of Law Situation in the European Union*, COM(2020) 580 final, 30 September 2020).

19 Communication from the European Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law, COM(2014)158 final.
In his State of the Union address in September 2012, Commission President Barroso stated that this Communication is significant precisely because it contains a public, comprehensive definition of the rule of law from an EU institution. He emphasized that, in doing so, the Commission contributed to a pan-European understanding of the concept, thereby filling a gap left by the founding treaties, which did not include such a definition.

20 For a comparison of both definitions, see Laurent Pech et al., *Meaning and Scope of the EU Rule of Law: Work Package 7—Deliverable 2* (2020), 39; Venice Commission, *Report on the Rule of Law*, point 55; or Laurent Pech, "The Rule of Law as a Well-Established and Well-Defined Principle of EU Law," *Hague Journal on the Rule of Law* 14, 2022: 107–38, https://doi.org/10.1007/s40803-022-00176-8.

favors the 'thick' (substantive) conception, which goes beyond a mere checklist of institutional features and legal norms emphasized by the 'thin' (formal) view.[21] This substantive approach highlights the law's role in achieving tangible, positive effects for society.[22]

This development partly responds to criticisms of the Court of Justice's early case-law on rule of law issues. In its initial rulings—especially those concerning Hungary—the Court tended to focus on the principle of legality, reflecting a formal or procedural understanding of the rule of law, while giving less attention to its substantive or material dimensions.[23]

However, the Court's stance has evolved. In more recent rulings, the Court of Justice has not only assessed the legality of EU legal acts with direct applicability but has also addressed broader concerns relating to the observance of the Union's foundational values.[24]

Although the EU's primary law does not provide a single overarching definition of the rule of law, most national constitutions of the Member States likewise refrain from offering an explicit or comprehensive definition. Instead, historical legal traditions and a broad international consensus have contributed to shaping a relatively clear understanding of its core elements.[25]

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21 The distinction between the 'thin' and 'thick' concepts of the Rule of Law—also referred to as the formal and substantive approaches—was described by R. Dworkin in his keynote speech at the conference "The Rule of Law as a Practical Concept," held at Lancaster House, London, on 2 March 2012. For different approaches, see also Raz or Hayek. For example: Joseph Raz, "The Rule of Law and Its Virtue," in *The Authority of Law: Essays on Law and Morality* (Clarendon Press, 1979), 210–29.

22 See Martin Evald John Krygier, "Rule of Law (and *Rechtsstaat*)," *UNSW Law Research Paper*, no. 52 (2013). SSRN: https://ssrn.com/abstract=2311874.

23 See Case C-286/12, where the CJEU ruled that Hungary's decision to lower the mandatory retirement age for judges breached EU law. The Court's judgment centered on the principle of non-discrimination and the infringement of EU employment directives without delving into broader concerns about judicial independence or the rule of law.

24 See below. Notable cases include *Commission v. Poland* (Independence of the Supreme Court) (C-791/19 R), *Commission v. Hungary* (C-156/21 and C-157/21) regarding the rule of law and judicial independence, and *Commission v. Poland* (Disciplinary Chamber) (C-487/19).

25 For an alternative perspective, see W. B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56, 1956: 167.

However, within the EU context, this ambiguity is sometimes strategically exploited by certain actors. Some Member States argue that defining the rule of law should not be the prerogative of EU institutions. While they challenge the definitions put forward by the EU, they often fail to offer a clear definition of their own.

The key issue, therefore, is not merely definitional, but institutional: namely, the question of *who* holds the authority to interpret and enforce the rule of law at the EU level, where multiple institutional actors are involved, and national sovereignty claims frequently come into play.

The CJEU has increasingly asserted its role in this domain, particularly through its evolving interpretation of Article 19 TEU, which obliges Member States to ensure effective judicial protection. This provision has served as a legal gateway for the Court to examine national judicial reforms and to articulate substantive components of the rule of law.[26]

However, this judicial expansion continues to raise significant constitutional and political concerns. Some legal scholars contend that the CJEU should take an even more active stance by making the values enshrined in Article 2 TEU fully justiciable.[27] Others caution that the Court is already operating at the outer limits of its institutional mandate, potentially risking judicial overreach and undermining its own legitimacy.[28]

For example, Poland, in its legal arguments, did not propose a comprehensive alternative interpretation of the rule of law. Instead, it primarily challenged the EU's competence to assess and enforce it. Hence, it is necessary to break down the question: When it comes to interpreting the rule of law, does the EU place limits on the autonomy of its Member States?

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26 See below.

27 Kim Lane Scheppele, "EU Commission v. Hungary: The Case for the 'Systemic Infringement Action'," VerfBlog, published 22 November, https://verfassungsblog.de/eu-commission-v-hungary-the-case-for-the-systemic-infringement-action/, https:/doi.org/10.17176/20171006-142028.

28 Dimitry Kochenov, "On Policing Article 2 TEU Compliance—Reverse Solange and Systemic Infringements Analyzed," *Polish Yearbook of International Law* 33, 2013: 163.

Since this article largely focuses on the example of Poland, its scope is deliberately limited to the justice sector and the independence of the judiciary, which is a key element of the broader rule of law concept. It will briefly examine key case-law—especially relating to Poland—that has brought this issue to the forefront.

To address this question meaningfully, it is first necessary to clarify what is meant by the "autonomy" of EU Member States and how this concept interacts with the EU's evolving legal order.[29]

Autonomy in Context: Where EU Law Draws the Line

The question of the limits of Member State autonomy is closely linked to the division of powers between the Union institutions and the national authorities of the Member States, as the EU is based on the coexistence of multiple political entities. The primary issue here is to determine the scope of the EU's competences.[30]

The EU, as an international actor, operates on the basis of the principle of conferred competences, meaning it can act only within the limits of the powers expressly granted to it by the Treaties. This principle is enshrined in Article 5(1) and (2) TEU.[31] The competences conferred upon the EU are further categorized into three types, as outlined in Articles 2 to 6 TFEU: exclusive,

29 At the same time, there is the question of autonomy of EU law. On this, see Koen Lenaerts, "The Autonomy of European Union Law," *Post di Aisdue*, no. 1 (2019), https://www.aisdue.eu/wp-content/uploads/2019/04/001C_Lenaerts.pdf; or Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454.

30 Compétence/Kompetenz/Competenza/Competencia is a traditional continental public law concept which has no proper translation in standard English but has become common in the language of European law through the English version of the European Treaties. See, for example, Loic Azoulai, ed., *The Question of Competence in the European Union* (Oxford University Press, 2014).

31 Article 5(2) TEU: "Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States."

shared, and supporting competences. Consequently, the Union's powers are limited, and as explicitly stated in Article 5(2) TEU, "competences not conferred upon the Union in the Treaties remain with the Member States."

It is therefore undeniable that Member States retain a significant degree of autonomy. This autonomy is evident, firstly, in policy areas where the EU has no competence. Secondly, Member States remain sovereign entities—they possess the capacity to enter international commitments and, importantly, they hold the unilateral right to withdraw from the Union, as established by Article 50 TEU. Also known as *Kompetenz-Kompetenz*, which remains with the Member States (who must, however, comply with the obligations assumed in the EU Treaties).[32]

Autonomy, however, should be distinguished from national sovereignty. While sovereignty refers to the supreme authority of a state over its territory and legal order,[33] autonomy in the EU context reflects the capacity of Member States to exercise self-governance within the limits set by EU law.

Contrary to the claims of some EU critics, national sovereignty remains with the Member States. However, in the context of debates on the European Union and its shared values, the term is often misused or misinterpreted.[34]

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32 The notion of Kompetenz-Kompetenz, originally developed in the late nineteenth century to distinguish a federation from a confederation, refers to the authority to determine the extent of one's own competences. In its Maastricht Judgment (12 October 1993, 2 BvR 2134/92 and 2 BvR 2159/92), the Bundesverfassungsgericht held that the EU does not possess Kompetenz-Kompetenz; only the Member States have the authority to confer competences upon the EU. This position was reaffirmed in the Lisbon Judgment (30 June 2009, 2 BvE 2/08), which emphasized that the EU's powers derive from the Member States, who retain ultimate control over their scope.

33 National sovereignty is largely defined by public international law, notably in the UN Charter (Article 2(1)), which affirms the sovereign equality of states. Additionally, many European countries enshrine sovereignty in their constitutions. For example, Article 20(2) of the German Basic Law (Grundgesetz) states that all state authority emanates from the people, reflecting the principle of popular sovereignty. For a scholarly discussion on sovereignty in the European context, see Armin von Bogdandy and Jürgen Bast, eds., *Principles of European Constitutional Law*, 2nd ed. (Hart Publishing, 2009).

34 See, for example, *The Great Reset: Restoring Member State Sovereignty in the European Union*, co-authored by the Hungarian think tank Mathias Corvinus Collegium (MCC) and the Polish Ordo Iuris Institute for Legal Culture (Rodrigo Ballester et al., *The Great Reset: Restoring Member State Sovereignty in the European Union; A Two Scenario Proposal Through Institutional Reform for a New EU from Mathias Corvinus Collegium And Ordo*

At the same time, using the terminology of the CJEU, the 'transfer of competences' by the Member States to the EU can be described as a 'permanent limitation of their sovereign rights'. This was clearly articulated by the Court in its landmark *Van Gend en Loos* judgment.[35]

Still, the EU is not sovereign under international law, as sovereignty is traditionally attributed only to states—currently the only legal entities recognized as possessing full sovereignty in the international legal order.[36]

The autonomy of Member States cannot be regarded as absolute, being limited by obligations arising from EU membership, the primacy and direct effect of EU law, as well as the duty of sincere cooperation (Article 4(3) TEU).[37] According to this duty, Member States must ensure the effective application of EU law, which necessarily includes maintaining an independent and impartial judiciary capable of providing legal protection in all areas governed by EU law.[38]

At the same time, EU primary law expressly safeguards the preservation of national identities in Article 4(2) TEU,[39] a provision often invoked in debates on the meaning and scope of the rule of law within the Union.[40]

Iuris Institute (Academic Publishing House of the Ordo Iuris Institute for Legal Culture and Mathias Corvinus Collegium, 2025).

35 There the Court stated: "The [European Economic Community] constitutes a new legal order of international law, for the benefit of which the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the Member States but also their nationals." See Judgment of 5 February 1963, *van Gend & Loos*, 26/62, EU:C:1963:1.

36 For the perspective of international law, see Bardo Fassbender, "Are the EU Member States Still Sovereign States?" *The Perspective of International Law. European Papers* 8, no. 3 (2023): 1629–43, https://doi.org/10.15166/2499-8249/733.

37 "Member States shall facilitate the achievement of the Union's tasks and refrain from any measures that could jeopardise the attainment of the Union's objectives. Moreover, the Court of Justice of the European Union recognizes this as a self-standing obligation, meaning that even when Member States exercise their residual competences, they must ensure that their actions do not hinder the EU in fulfilling its tasks. See, for example, Opinion 1/03 Lugano EU:C:2006:81, para 119, C266/03, *Commission v. Luxembourg*, EU:C:2005:341, para 58; C433/03, *Commission v. Germany*, EU:C:2005:462, para 64.

38 See *Commission v. Hungary*, C-78/18.

39 "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government."

40 For the scholarly debate, see Mary Dobbs, "Sovereignty, Article 4(2) TEU and the Respect of National Identities: Swinging the Balance of Power in Favour of the Member States?,"

Still, as Komárek rightly notes,[41] the so-called *national identity clause*[42] of Article 4(2) TEU, which obliges the EU to respect Member States' national identities and constitutional structures, cannot be interpreted as an absolute safeguard of the special role of constitutional courts, as this provision often implies a conflictual rather than a mutually reinforcing relationship between the EU and its Member States.

This tension is not new. Since the landmark Costa v. ENEL ruling by the CJEU in 1964, the principle of the primacy of EU law has required national authorities—including constitutional courts—to set aside domestic provisions that conflict with directly applicable EU law. This development has, in effect, stripped constitutional courts of their exclusive competence to review national legislation.

It is therefore unsurprising that some constitutional courts have attempted to reassert this role.[43] Poland is not the only case in point. As the President of the Czech Constitutional Court once remarked in connection with the CJEU's ruling in the *Landtová* case: "If there is a national authority whose supremacy is most threatened by EU law, it is the Constitutional Court."

Tensions between national constitutional identity and the primacy of EU law are inevitable in a multilevel legal order.[44] However, this does not grant national constitutional courts the authority to disregard EU law—or parts of

Yearbook of European Law 33, no. 1 (2014): 298–334, https://doi.org/10.1093/yel/yeu024. Or Barbara de Witte, "Article 4(2) TEU as a Protection of Institutional Diversity of the Member States," *European Public Law* 27, no. 3 (2021): 559–70.

41 Jan Komárek, "The Place of Constitutional Courts in the EU," *European Constitutional Law Review* 9, no. 3 (2013): 420–50.

42 Also commonly referred to as "constitutional identity clause" or "national constitutional identity clause." The wording of Article 4(2) TEU is as follows: "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government."

43 See, for example, Horatius Dumbravă, "The Effects of Constitutional Court Judgments in the Context of EU Integration: The Case of Romania as an EU Member State," *ERA Forum* 25, 2024: 61–78, https://doi.org/10.1007/s12027-024-00794-9.

44 Monica Claes and Jan-Herman Reestman, "The Protection of National Constitutional Identity and the Limits of European Integration at the Occasion of the *Gauweiler* Case," *German Law Journal* 16, no. 4 (2015): 917–70. https://doi.org/10.1017/S2071832200019957.

it—altogether, as was the case with the judgment of the Polish Constitutional Tribunal in case K 3/21 of 7 October 2021.[45]

It is true that several national constitutional courts have, at various points, challenged or scrutinized the primacy of EU law, especially where they perceived EU institutions as overstepping their competences.[46] However, the Polish Constitutional Tribunal's judgment in case K 3/21 is particularly salient for its scope, tone, and legal implications.

This is precisely why it would not make sense to designate constitutional courts as the ultimate arbiters of the rule of law at the EU level. Constitutional courts themselves may include unlawfully appointed judges or fail to meet fundamental rule of law standards. This creates the risk of a paradoxical situation where a "captured" constitutional court is tasked with ruling on its own independence or on the independence of other courts subject to similar political influence.

Moreover, even if we consider constitutional courts that fully comply with judicial independence criteria, the EU comprises 27 Member States, each with its own constitutional court and potentially divergent interpretations of what the rule of law entails. This diversity risks producing fragmented and inconsistent understandings of a foundational EU value.

The CJEU therefore remains the most logical institution to hold the authority to interpret judicial independence as a core aspect of the rule of law—a common value shared by all Member States. However, the values enshrined in Article 2 TEU are, so far,[47] not directly justiciable. This is primarily due

45 In that ruling, the Tribunal directly challenged the principle of the primacy of EU law, declaring several provisions of EU primary law, as interpreted by the Court of Justice of the European Union (CJEU), to be incompatible with the Polish Constitution. Most notably, the Tribunal rejected the binding effect of Articles 1, 2, and 19(1) TEU, to the extent that they were understood to authorize the EU to assess the structure and independence of Poland's judiciary.

46 For example, in Germany, where the Maastricht and the Lisbon treaties were objects of intense constitutional scrutiny. See BVerfGE 89, 155 (1993); BVerfGE 123, 267 (2009).

47 This may change with the Court's ruling in *Commission v. Hungary* (Case C-769/22, the so-called 'anti-LGBTQ' case), expected in December 2025. In her Opinion delivered on 5 June 2025, Advocate General Ćapeta argued that the justiciability of the values enshrined in Article 2 TEU should be affirmed by the Court. She based her reasoning on

to their open-ended—some would argue vague—formulation, which makes it difficult to meet the traditional criteria for direct effect, namely clarity and unconditionality.[48]

Despite this limitation, the CJEU has developed a robust body of case law operationalizing the rule of law through other Treaty provisions—most notably Article 19(1) TEU (which guarantees judicial independence) and relevant provisions of the Charter of Fundamental Rights. This approach, often triggered by infringement proceedings initiated by the European Commission or preliminary references submitted by national courts, allows the Court to uphold the values of Article 2 TEU indirectly.

In the next section of this article, I will examine this case-law in more detail, focusing on its implications for the Polish judicial system.

Judicial Independence: A Shared Responsibility?

To examine the limits of Member State autonomy, this article uses the example of the judicial reforms in Poland, which unfolded over recent years and led to a significant conflict with the European Union bodies regarding the interpretation of the rule of law. After 2015, the Polish government[49] undertook a series of controversial judicial reforms, invoking national sovereignty and

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a textual, contextual, and historical interpretation of the provision. The Advocate General proposed a test for identifying a violation of these values: in her view, Article 2 TEU is breached when the denial of the values forms the root cause of the infringement of EU law. This determination should be made through a contextual analysis that takes into account the specific circumstances of each case. See the Opinion of Advocate General Ćapeta, delivered on 5 June 2025, Case C-769/22, *European Commission v. Hungary*, ECLI:EU:C:2025:408.

48 See, for example, L. D. Spieker, "Defending Union Values in Judicial Proceedings: On How to Turn Article 2 TEU into a Judicially Applicable Provision," in *Defending Checks and Balances in EU Member States*, ed. Armin von Bogdandy et al. (Springer, 2021), https://doi.org/10.1007/978-3-662-62317-6_10. Also, Armin von Bogdandy and Luke D. Spieker, "Countering the Judicial Silencing of Critics: Article 2 TEU Values, Reverse Solange, and the Responsibilities of National Judges," *European Constitutional Law Review* 15, no. 3 (2019): 391–426. https://doi.org/10.1017/S1574019619000324.

49 Now ex-government, led by PiS (Prawo i Sprawiedliwość), in English 'Law and Justice'.

the need to "cleanse the judiciary of remnants of communist-era structures" as justification.[50]

The key changes included:

- Establishment of the Disciplinary Chamber of the Supreme Court, which was granted powers to discipline, suspend, or remove judges—raising concerns over political control and judicial intimidation.
- Lowering the mandatory retirement age for Supreme Court judges, which allowed the government to prematurely replace a significant number of judges, potentially undermining judicial independence.
- Increasing political influence over the National Council of the Judiciary (Krajowa Rada Sądownictwa – KRS), the body responsible for nominating judges. This shift enabled the executive and legislative branches to exert substantial control over judicial appointments.[51]

The CJEU has repeatedly ruled[52] that these reforms violate EU legal standards on judicial independence, which are integral to the rule of law and protected under Article 2 TEU. The European Commission has launched several infringement procedures against Poland, and in some cases, the CJEU has issued interim measures to suspend the application of the contested laws.

50 See White Paper on the Reform of the Polish Judiciary from 2018, available on-line: https://www.statewatch.org/media/documents/news/2018/mar/pl-judiciary-reform-chanceller-white-paper-3-18.pdf; for a further commentary on this see: Jan van Zyl Smit, "After Poland's Attempted Purge of 'Communist-era' Judges, Do We Need New International Standards for Post-authoritarian Countries Reforming Their Judiciary? (Part I)," United Kingdom Constitutional Law Association, published 15 January 2019, https://ukconstitutionallaw.org/2019/01/15/jan-van-zyl-smit-after-polands-attempted-purge-of-communist-era-judges-do-we-need-new-international-standards-for-post-authoritarian-countries-reforming-their-judiciary.

51 This happened through restructuring the composition of the KRS. After the reform (via the 2017 Law on the National Council of the Judiciary), the 15 judicial members were elected by the Sejm (lower house of Parliament), not by fellow judges. This arguably gave the parliamentary majority direct influence over who sits on the KRS, thus undermining the separation between the judiciary and the legislature/executive.

52 Namely Case C-192/18, *Commission v. Poland*, Joined Cases C-585/18, C-624/18 and C-625/18, *A.K. v. Krajowa Rada Sądownictwa and Others*, Case C-791/19, *Commission v. Poland*, Case C-204/21, *Commission v. Poland*, Case C-216/18 PPU, *Minister for Justice and Equality v. LM*.

This conflict illustrates a broader tension within the EU legal order: the assertion of national sovereignty and autonomy by a Member State versus the Union's commitment to upholding common values—especially the independence of the judiciary as a cornerstone of the rule of law. The Polish case thus serves as a concrete example of how far Member States can go in reforming their judicial systems before breaching their obligations under EU law.

The CJEU's landmark judgment in *Associação Sindical dos Juízes Portugueses* (Case C-64/16, *ASJP*)[53] laid the foundation for its subsequent case-law on the rule of law, particularly in relation to Poland. A brief overview of this case is essential to understanding how the Court's interpretation of the rule of law has evolved, particularly since several legal scholars consider *ASJP* the most significant ruling in defining both the meaning and scope of the rule of law as a general principle of EU law.[54]

The key element of this case lies in the fact that the CJEU assessed judicial independence in a Member State based on the EU principle of effective judicial protection, without relying on specific provisions of secondary legislation.[55]

Instead, the Court grounded its reasoning in Article 19(1) TEU, interpreting it as obliging Member States to ensure that judicial bodies which may

53 Judgment of the Court of Justice of 27 February 2018 in Case C-64/16, *Associação Sindical dos Juízes Portugueses*.

54 Alongside the Case 294/83 *Parti écologiste "Les Verts" v. European Parliament* and C-896/19 – *Repubblika v. Il-Prim Ministru*. See Laurent Pech and Sébastien Platon, "Judicial Independence Under Threat: The Court of Justice to the Rescue in the *ASJP* Case," *Common Market Law Review* 55, no. 6 (2018): 1827, https://doi.org/10.54648/cola2018146. See also Matteo Bonelli and Monica Claes, "Judicial Serendipity: How Portuguese Judges Came to the Rescue of the Polish Judiciary; ECJ 27 February 2018, Case C-64/16, Associação Sindical dos Juízes Portugueses," *European Constitutional Law Review* 14, no. 3 (2018): 622, https://doi.org/10.1017/S1574019618000330.

55 This stands in contrast to earlier judgments, such as the Court of Justice of the European Union, Case C-286/12, *European Commission v. Hungary*, ECLI:EU:C:2012:744. For a more detailed analysis, see: Laurent Pech and Dimitry Kochenov, *Respect for the Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments since the Portuguese Judges Case* (Swedish Institute for European Policy Studies, 2021), available at SSRN: https://ssrn.com/abstract=3850308.

interpret and apply EU law provide effective judicial protection. Crucially, the Court emphasized that such protection presupposes respect for judicial independence, which is a fundamental component of the rule of law.[56]

In this respect, the Court of Justice implied that the organization of national judicial bodies is not exclusively a matter for individual Member States, which instead have an obligation to ensure that their courts and judges are independent "in the fields covered by EU law."[57]

An example of the above-mentioned approach being applied to the scope of EU law within proceedings under Article 258 TFEU[58] is the case of *Commission v. Poland* from 2019 concerning the Law on the Supreme Court.[59]

In this case, the European Commission argued that Poland had breached EU law by lowering the retirement age of Supreme Court judges and granting the President discretionary power to extend their mandate, thereby undermining judicial independence. This was found to violate Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the EU.[60]

Contrary to earlier case-law, the Commission did not rely on the argument of age discrimination but instead focused on the principles of judicial independence and the irremovability of judges as core elements of the rule of law. Moreover, the Court of Justice emphasized the obligation of every Member State to uphold

56 Paragraphs 38–40 of the Judgment of the Court of Justice of 27 February 2018, in Case C64/16, *Associação Sindical dos Juízes Portugueses.*

57 However, this does not automatically mean that the Court of Justice has adopted a similar approach to other elements that make up the definition of the Rule of Law under Article 2 TEU. Within EU law, the principle of effective judicial protection can be considered particularly significant. This was confirmed in the opinion of Advocate General Tanchev in the case *Miasto Łowicz*. See Opinion of Advocate General Tanchev in Case C-558/18, *Miasto Łowicz*, paragraph 92.

58 Infringement proceedings initiated by the European Commission against a Member State that is believed to be failing to fulfill its obligations under EU law.

59 Court of Justice of the European Union, judgment of 24 June 2019, Case C-619/18, ECLI:EU:C:2019:531.

60 Core principles enshrined in Article 47: Right to an Effective Remedy, Right to a Fair Trial and Right to Legal Representation and Legal Aid. We can say that this article mirrors Article 6 and Article 13 of the European Convention on Human Rights (ECHR). The CJEU also held that: "Article 47 of the Charter secures in EU law the protection afforded by Article 6(1) of the ECHR." See Case C-199/11 Otis [2012] ECR 000.

its commitments under EU law and implicitly suggested that Poland did not act in good faith when adopting the national legislation in question.[61]

Poland, on the other hand, argued that the organization of its judiciary falls exclusively within national competence, as the European Union does not have general legislative authority in this area. In support of this position, Poland invoked Articles 4(1), 5(1), and 5(2) TEU, highlighting the principle of conferral.[62]

In this case, the CJEU clearly stated that while Member States may organize their judicial systems, they must do so in compliance with EU law. Under Article 19(1) TEU, they are required to ensure effective legal protection, which includes judicial independence. As courts like Poland's Supreme Court may apply EU law, national measures affecting them fall within the scope of EU law, even if judicial organization is a national competence.

At the same time, this does not mean that it is currently[63] possible to directly invoke a violation of any of the values under Article 2 TEU to initiate this type of proceeding before the CJEU although some scholars and experts have argued in favor of such a possibility.[64]

In the case of *A.K. and Others* (C-625/18), the CJEU examined whether Poland's newly created Disciplinary Chamber of the Supreme Court met the EU's standards of judicial independence. The case focused on Article 47 of the Charter of Fundamental Rights. The Court found that the method of appointing judges to the Chamber raised serious concerns. Judges were appointed by

61 In paragraph 82 of the judgment, the Court expresses its "serious doubts as to whether the reform of the retirement age of Supreme Court judges" was genuinely aimed at achieving the stated objectives, rather than "with the intention of removing a specific group of judges from that court." For more, see: Pech and Kochenov, *Respect for the Rule of Law in the Case Law of the European Court of Justice*.

62 Furthermore, Poland argued that the contested measures did not implement EU law and thus fell outside the scope of Article 47 of the Charter of Fundamental Rights of the European Union, citing Article 51(1) of the Charter. Additionally, Poland maintained that the reform of the retirement age pursued a legitimate objective.

63 See footnote 45.

64 See Spieker, "Defending Union Values in Judicial Proceedings."

the National Council of the Judiciary (KRS), which had been restructured to increase political influence. This, according to the Court, created legitimate doubts about the Chamber's independence and impartiality.

In this case, the CJEU held that judicial bodies must be independent and impartial not only in law but also in practice. It emphasized that systemic threats to judicial independence can undermine the effective judicial protection required by EU law. It concluded that the Disciplinary Chamber's lack of independence could discourage judges from exercising their functions freely, particularly when they risk facing disciplinary sanctions for applying EU law or for referring preliminary questions to the CJEU.[65]

This judgment reaffirmed that judicial independence is an essential component of the rule of law, a foundational value of the European Union enshrined in Article 2 TEU, and that Member States are required to guarantee this independence in accordance with Article 19(1) TEU, which ensures the right to effective judicial protection.

If we then accept that the CJEU has competence to review national judicial reforms on the basis of Article 19(1) TEU, which secures the right to effective judicial protection, *how does the Court determine whether such reforms comply with the principles of the rule of law?*

To determine whether judicial reform complies with the principles of the rule of law, the CJEU applies a substantive test grounded in key elements of judicial independence. This includes institutional autonomy from the executive and legislature, protection from arbitrary disciplinary measures, and the appearance of independence to ensure public trust. These criteria are well rooted in the Court's case-law. In this context, I will refer to two additional relevant judgments.

65 For more, see: Michał Krajewski and Michał Ziółkowski, "EU Judicial Independence Decentralized: *A.K.*," *Common Market Law Review* 57, no. 4 (2020): 1107–38, https://doi.org/10.54648/cola2020717. Or Paweł Filipek, "Only a Court Established by Law Can Be an Independent Court: The ECJ's Independence Test as an Incomplete Tool to Assess the Lawfulness of Domestic Courts," VerfBlog, published 23 January 2020, https://verfassungsblog.de/only-a-court-established-by-law-can-be-an-independent-court/, https://doi.org/10.17176/20200123-181754-0.

In case C-791/19, *Commission v. Poland* (2021), the Court held that the Disciplinary Chamber of the Polish Supreme Court did not offer sufficient guarantees of independence and impartiality, primarily because of the manner in which its members were appointed.[66] The Court emphasized that the body responsible for disciplinary proceedings against judges must be free from external influence, particularly from the executive or legislative branches.[67]

In Case C-204/21, *Commission v. Poland* (2021), the CJEU focused on the disciplinary regime for judges, concluding that the Polish legal framework enabled the imposition of disciplinary liability on judges for the content of their judicial decisions, including for making preliminary references to the CJEU. This had a 'chilling effect' on judicial independence and was incompatible with the right to effective judicial protection.[68]

In the relevant cases, the Court underscored that judicial independence must be assessed both subjectively (impartiality of individual judges) and objectively (structural safeguards to prevent undue influence). Equally important is the perception of independence: even the mere appearance of political influence can erode public trust in the judiciary, which is a fundamental pillar of the rule of law.

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66 The reform in question allowed the Polish President to appoint members of the Disciplinary Chamber based on recommendations from the National Council of the Judiciary (KRS)—a body whose independence was itself compromised due to the premature termination of the mandates of its previous members and the dominant role of Parliament in appointing new ones. This was found to pose a structural threat to judicial independence.

67 For more in-depth analysis, see Laurent Pech, *Protecting Polish Judges from Poland's Disciplinary 'Star Chamber': Commission v Poland. Case C-791/19 R, Order of the Court (Grand Chamber) of 8 April 2020, EU:C:2020:277* (2020), available at SSRN: https://ssrn.com/abstract=3683683 or http://dx.doi.org/10.2139/ssrn.3683683.

68 The Court found that the broad and vague nature of disciplinary offences, coupled with a lack of effective procedural safeguards, enabled disciplinary action to be used as a tool of political control, thereby undermining judicial impartiality. For more, see also Jakub Jaraczewski, "Polexit or Judicial Dialogue?: CJEU and Polish Constitutional Tribunal in July 2021," VerfBlog, published 19 July 2021, https://verfassungsblog.de/polexit-or-judicial-dialogue/, https://doi.org/10.17176/20210720-015954-0. More on the importance of the judicial dialogue: Ruairi O'Neill, "Defending Judicial Independence in Court: A Subjective Right to Independence in EU Law," *Liverpool Law Rev* 46, 2025: 65–84, https://doi.org/10.1007/s10991-024-09376-8.

In summary, the CJEU affirms that judicial independence is a fundamental and non-negotiable component of the rule of law. National reforms must guarantee effective judicial protection for individuals under EU law and comply with EU legal standards, particularly Articles 2 and 19 TEU. Any discretionary powers introduced by such reforms must be shielded from political influence and accompanied by adequate safeguards. Moreover, reforms must pass tests of proportionality and necessity to ensure that they do not unjustifiably undermine judicial independence.

A closer look at the CJEU's reasoning shows that it did not develop in isolation. Judicial independence is a concern shared by other international actors. In its case-law, the Court explicitly referred to judicial independence as a principle also protected under Article 6(1) of the European Convention on Human Rights (ECHR).

The ECtHR similarly interprets this provision as requiring judges to be independent, including from the executive and legislative branches.[69] Although the CJEU is not formally bound by ECtHR rulings, it has referred to them as persuasive authority in support of its interpretation of EU legal obligations.[70]

At the same time, the roles of the CJEU and the ECtHR remain distinct, even in the area of the rule of law. The ECtHR operates under the European Convention on Human Rights, with the main aim of protecting individual human rights. The CJEU, on the other hand, focuses on interpreting and enforcing EU treaties, ensuring the uniform application of EU law across Member States.[71]

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69 In *Campbell and Fell v. the United Kingdom*, judgment of 28 June 1984, the ECtHR interpreted Article 6(1) of the ECHR, emphasizing that: "In determining whether a body can be considered 'independent' … regard must be had inter alia to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence."

70 See, for example, the relevant case-law: *Reczkowicz v. Poland*, Application no. 43447/19, Judgment of 22 July 2021, European Court of Human Rights (First Section), CE:ECHR:2021:0722JUD004344719.

71 There are more aspects which remain distinct. The ECtHR, as an international court under the Council of Europe, issues declaratory judgments—it may find a violation of the European Convention on Human Rights but cannot annul national laws or decisions, nor compel compliance. In contrast, the CJEU, as a supranational court of the European Union, issues

Back to What? Poland's Efforts to Restore the Rule of Law

The response to the main question: *Has Poland's autonomy in judicial matters clashed with the boundaries of EU law?* is affirmative. The CJEU has repeatedly ruled that while Poland, like any EU Member State, has the right to organize its judicial system, this autonomy is limited by its obligations under EU law, particularly regarding judicial independence, which is considered a core principle of the rule of law. Apart from Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights, Polish authorities clearly disregarded the principle of sincere cooperation (Article 4(3) TEU).

Judicial independence is a key part of the common values protected by EU law, and it is up to the CJEU to define what this principle means. National judges play a special role in making sure EU law is applied correctly. They do this through direct effect, the primacy of EU law, and by working with the CJEU through the preliminary ruling procedure in Article 267 TFEU. As O'Neill argues, judges can become targets when the rule of law is undermined, particularly due to political pressure from the government or parliament, precisely because of their crucial role in upholding EU law.[72]

However, in light of the recent shift in Poland's political direction and the new government's declared commitment to rebuilding trust with other EU Member States, a critical question arises: What are the next steps? It is my considered view—though perhaps not widely shared—that even well-intentioned judicial reforms may carry the risk of further distorting the rule of law, rather than restoring it to its proper constitutional balance.[73]

binding judgments with direct effect within EU Member States. National authorities and courts are required to give full effect to CJEU rulings, and under the principle of primacy, must disapply conflicting national law.

72 For more, see O'Neill, "Defending Judicial Independence in Court."

73 For more elaborate analysis, see, for example, Marcin Szwed, "Rebuilding the Rule of Law: Three Guiding Principles," VerfBlog, 29 April 2024, https://verfassungsblog.de/rebuilding-the-rule-of-law/, https://doi.org/10.59704/794ecd417ad8ac53. Sadurski, on the other hand, suggested that elements of transitional justice might be needed to redress the damage done to democratic institutions, especially the judiciary. See Wojciech Sadurski, "Transitional Constitutionalism versus the Rule of Law?," *Hague Journal on the Rule of Law* 8, no. 2 (2016): 337–55, https://doi.org/10.1007/s40803-016-0029-7.

From the perspective of European law, such changes clearly fall within the competence of the Member State, not the EU. Unlike bodies such as the Venice Commission of the Council of Europe,[74] the EU offers limited guidance on such matters.

In this area, the EU typically intervenes only ex post—either through soft-law instruments such as the European Commission's Annual Rule of Law Report, which monitors developments in all Member States and serves as a political and preventive tool, or when specific legal issues arise and are brought before the CJEU, notably through infringement proceedings under Article 258 TFEU.[75]

So far, the European Union has welcomed the new Polish government's declared commitment to restoring the rule of law. However, due to the different stance of the President and the Constitutional Tribunal, no tangible legislative changes to the judiciary have been implemented. The EU had two primary tools at its disposal to address rule of law deficiencies: the Article 7 TEU procedure—often referred to as the "nuclear option" due to its political nature—and the conditionality mechanism linked to EU funds.

The Article 7 procedure was discontinued after several years without Poland providing concrete legal guarantees. Many legal scholars argue this step was premature.[76] Similarly, the EU unfroze previously withheld funds based on the submission of a reform plan by the new government, rather than waiting

74 The Polish government formally requested guidance from the Venice Commission on structuring judicial reforms in compliance with European standards on 10 July 2024. The Commission issued its opinion on 14 October 2024, addressing questions from the Polish Minister of Justice about the constitutionality of judicial appointments, their possible invalidation, and the rights of appointed judges to seek legal recourse. For more, see the full opinion here: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)029-e.

75 In cases of a serious and persistent breach of EU values, the Union may resort to the procedure laid down in Article 7 TEU. However, this requires strong political will and a high degree of consensus among Member States, making its activation and effectiveness particularly challenging.

76 For more, see: Maciej Krogel, "The Closure of the Article 7(1) TEU Procedure Against Poland: The Weight of Intentions and the Risk to Common Values in the Twilight of Illiberalism," *Maastricht Journal of European and Comparative Law* 32, no. 3 (2025): 315–25, https://doi.org/10.1177/1023263X251338198.

for the actual implementation of reforms—another move some critics view as overly optimistic.[77]

The recent presidential election in Poland resulted in the victory of a candidate backed by the former ruling party (PiS), raising concerns that meaningful judicial reforms may continue to be stalled or blocked by presidential vetoes.[78]

This outcome underscores the fragility of the reform process and the challenges that lie ahead in rebuilding judicial independence and restoring the rule of law. Also, had the EU maintained these instruments until more concrete reforms were enacted, it could have played a stronger role in safeguarding the rule of law during this delicate transition.

Conclusion

To conclude this brief exploration of the rule of law as a common European Union value in relation to the national autonomy of Member States, a few final reflections are in order.

It is important to remember that national constitutional orders and the law of European integration are not interchangeable, but rather complementary systems, each grounded in distinct normative foundations. While they often pursue shared values—such as democracy, human rights, and the rule of law—they are grounded in different normative sources: national constitutions on the one hand, and the EU treaties and supranational legal order on the other.

77 Daniel Freund, a Green member of the European Parliament, said the Commission had unfrozen the funds to Poland "prematurely". "The release of the funds was subject to the submission of a plan instead of waiting until the reforms actually take effect," Freund told the FT. See https://www.ft.com/content/a5a62d01-194b-4fca-9783-9217f7a84f3d?accessToken=zwAAAZcwonYWkdOlpi0BGUtPytOXg5IX96hPPQ.MEYCIQCCi8QOdqlTEZ-PL0nVl9DHf-rOol21ARTFZspHz2BvDIAIhAJUARa0cc9d9j9PIrsOWgxM4uXALVx-IlitV5DR5xP0C&segmentId=e95a9ae7-622c-6235-5f87-51e412b47e97&shareType=enterprise&shareId=f44a7abb-a476-49a3-9eac-1707d0c64a84.

78 See, for example, comments by Jaraczewski, an EU lawyer of Polish origin: https://lnkd.in/dVeH4W4f.

The relationship between state sovereignty and international cooperation remains therefore inherently complex. As several scholars have observed, European supranational integration continues to represent a notable exception in a world predominantly structured around nation-states and the principle of national sovereignty.[79]

At the same time, the European Union is deeply rooted in the legal traditions of its Member States, shaped in no small part by their national constitutions and the jurisprudence of their constitutional courts.[80] It must be noted that since the EU's legal foundation derives from the Member States by way of the treaties, this gives national constitutions considerable leeway to "influence" EU law.[81]

The values enshrined in Article 2 TEU can therefore indeed be called *common values*—they are not imposed externally but should reflect the foundational commitments of the Member States.

While Member States' autonomy grants them a degree of discretion in shaping their legal and institutional frameworks, it does not confer absolute freedom. Member States are bound to respect the Union's shared values, including the rule of law, as reaffirmed by the Court of Justice in C-64/16 *Associação Sindical dos Juízes Portugueses*.

Notably, neither national identity nor constitutional traditions—despite being protected under Article 4(2) TEU—can be invoked to justify violations of these fundamental values. Judicial independence, as an essential component of the rule of law, cannot be compromised under the guise of constitutional particularities or domestic legal reforms.

79 Fassbender, "Are the EU Member States Still Sovereign States?".

80 But some critics have argued that in the EU, diversity is acceptable only insofar as it does not jeopardize unity. See Chris Shore, "The Cultural Policies of the European Union and Cultural Diversity," *Council of Europe Research Position Paper*, no. 3 (2003), available at http://www.coe.int/t/dg4/cultureheritage/Completed/Diversity/EN_Diversity_Bennett.pdf.

81 One can also call it a "filter" for primary law. For more, see Dieter Grimm, *The Constitution of European Democracy* (Oxford University Press, 2017).

Although the rule of law in Article 2 TEU is a broad and open-ended concept,[82] its importance is widely acknowledged. While EU primary law does not provide a single definition, a commonly accepted core understanding has developed. This understanding has been shaped mainly by the case law of the CJEU and by various European Commission instruments, such as Rule of Law reports and the Rule of Law Framework.[83]

Such interpretations are not made in a vacuum but draw on historical traditions: the rule of law in the Anglo-American context, the German *Rechtsstaat*, and the French *État de droit*—each shaping the modern European understanding of the rule of law.

In addition, broader European and international standards have complemented this development, particularly through the case-law of the ECtHR, the opinions of the Venice Commission within the Council of Europe, and principles promoted by the United Nations and other international bodies.[84]

The recent dispute is therefore less about *what* the rule of law means[85] and more about *who* has the authority to determine whether a particular situation complies with it.

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82 Some scholars even question whether it imposes any obligations at all. See Jan-Werner Müller, "Should the EU Protect Democracy and the Rule of Law inside Member States?," *European Law Journal* 21, no. 2 (2015): 141, https://doi.org/10.1111/eulj.12124.

83 Furthermore, a definition of the rule of law is provided in Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget ("the Rule of Law Conditionality Regulation"). This legislation, including its definition of the rule of law, was approved by the Council of the European Union, meaning the Member States themselves endorsed the text.

84 For example, the Organization for Security and Co-operation in Europe (OSCE) defined the rule of law in its 1990 Copenhagen Document as more than formal legality. It is described as "justice based on the recognition and full acceptance of the supreme value of the human personality," ensured by institutions that enable its fullest expression. The OSCE also stresses that democracy is an inherent component of the rule of law. See https://www.osce.org/files/f/documents/4/7/103448.pdf.

85 Even though Hungarian officials, including Prime Minister Viktor Orbán, have repeatedly claimed that the EU's interpretation of the rule of law is "ideologically biased" or reflects a liberal-progressive agenda, they themselves have not provided a comprehensive or coherent alternative conception of the rule of law.

In the case of Poland, the deficiencies were relatively clear, as both the CJEU and ECtHR developed substantial case-law outlining the violations—particularly regarding judicial independence. Nevertheless, the Polish government, along with some of the country's highest judicial bodies, including the Constitutional Tribunal, contested these findings and asserted that no violations had occurred.[86]

In this context, the role of the CJEU in interpreting and safeguarding the rule of law acquires particular importance. The absence of a supranational "higher arbiter" over the CJEU raises valid concerns about the limits of judicial authority and the scope of its interpretation. Nonetheless, given the potential for national actors to fail in protecting or even to actively dismantle the rule of law, a centralized judicial interpretation appears to be the only viable option within the EU legal framework.

While it is important that the CJEU stays within its institutional mandate, its case-law offers a necessary common denominator for the application of Article 2 TEU values. Without this legal guidance, the consistency of the EU legal order would be at risk, and the mutual trust upon which many areas of EU cooperation depend—including the functioning of the internal market and the Area of Freedom, Security and Justice—would be difficult to maintain.[87]

The CJEU's broader perspective enables consistent interpretation across the Union and allows comparison with other key international bodies, notably the ECtHR.

The current Polish government's efforts to rebuild trust and legal certainty show how complex judicial reforms are—both in process and substance—and

86 The Polish Constitutional Tribunal (Trybunał Konstytucyjny, TK) has issued several rulings rejecting the CJEU's authority to assess judicial independence in Poland, arguing that the CJEU exceeded its competences and that the Polish Constitution takes precedence over EU law in this area. Key rulings include Cases P 7/20, K 3/21, and K 6/21, where the Tribunal found CJEU interpretations of EU treaties incompatible with the Polish Constitution in national judicial matters.

87 See Court of Justice of the European Union, PPU – *Minister for Justice and Equality v. LM* (*Celmer case*), Case C-216/18, Grand Chamber, 25 July 2018.

how serious their impact is on upholding the rule of law. Even well-intentioned reforms risk falling short of rule-of-law standards if implemented hastily or without sufficient institutional safeguards.

Considering those risks, the Polish government formally requested guidance from the Venice Commission on structuring judicial reforms in compliance with European standards. However, the future of these reforms remains uncertain, as they continue to be stalled due to the veto of the president and the rulings of the Constitutional Court.[88]

On the other hand, the European Union's current ability to influence the restoration of the rule of law in Poland is significantly limited because the EU, largely due to political considerations, prematurely suspended key tools—namely, the Article 7 TEU procedure and the conditionality tied to EU funds.

Although it is not the EU's role to directly comment on judicial reforms in Member States, this approach only delays addressing the problem, as it relies on mechanisms that respond ex post when rule of law breaches may already be serious.

After observing the extensive scholarly debate, the involvement of external legal experts and NGOs in drafting legal proposals,[89] and the request for guidance from the Venice Commission regarding Poland, I must conclude that restoring the rule of law there will, in a sense, "take a village": it is not merely a matter of determining who has the authority to interpret the law—it requires a collective effort from a broad range of actors.

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88 Even after the 2025 election of Karol Nawrocki as Polish president, the prospects for restoring the rule of law remain uncertain. Nawrocki was mainly supported by PiS, the party responsible for the judicial reforms between 2015 and 2023. His comments on the current government raise questions about the future of judicial independence and public trust. For an analysis of how the presidential election may affect judicial reforms, see Maria Skóra, "Poland's Polarised Presidency," VerfBlog, 22 May 2025, https://verfassungsblog.de/polands-polarised-presidency/, https://doi.org/10.59704/c2d7d069b2014393.

89 See *Where are we after a year of restoring the rule of law?*. Or Paul Naumann and Ewelina Lipska, "Two Proposals to Re-Establish the Rule of Law," Heinrich Böll Stiftung, published 21 March 2025, https://pl.boell.org/en/2025/03/21/two-proposals-re-establish-rule-law.

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