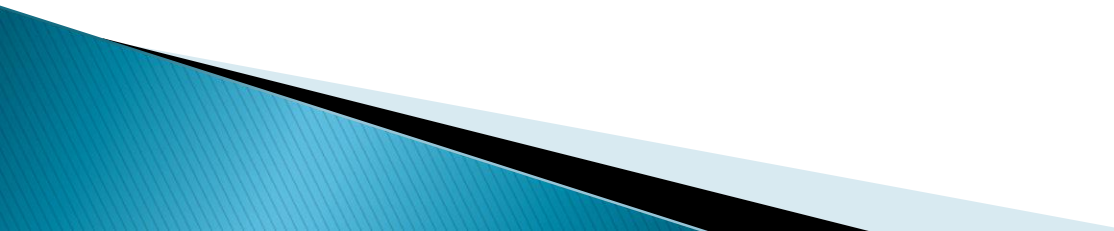



The EU as a Community of values

Articles 2 and 7 TEU

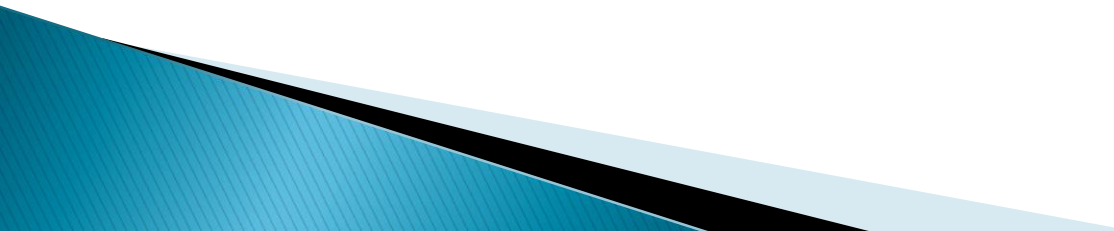
Introduction

- ▶ Values define an important link between law and culture.
 - ▶ Values are **basic attitudes** of society or individuals characterised by a particular strength and conviction of truth.
 - ▶ As such, **they fulfil a normative orientation and ordering function by differentiating between good and bad, between right and wrong.**
- 

Introduction


- ▶ Values are **positioned between law and morality**.
From a legal point of view, values describe the assets recognised by a legal system as given or compulsory.
 - ▶ Values are **vague, complex, subjective and dependent on their contexts**.
 - ▶ Values change with time and adapt to the respective social circumstances, providing historically evolved, culturally influenced, sometimes power-manipulated, and often alterable orientation guidelines and standards.
- 

Introduction

- ▶ Both the Preamble and the Value Clause of Art. 2 TEU point out very clearly that the **Union is a “Community of Values”** with a common socio-ethical and political basis.
 - ▶ Moreover, by stating that, “these values are common to the Member States in a society. . . ,” the TEU presents the EU and its Member States as a **Community of Values in consideration of the Union’s citizens.**
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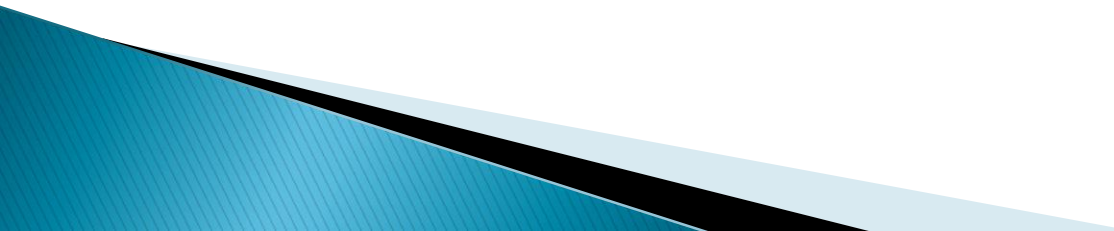
Categories of European Values

Guiding values of the EU: are values which have defined the process of European integration from the beginning. They have provided the fundamental basis of the EU without which it would not have developed into what it is today. Being the basis of the EU they are **virtually essential for its existence**. This category primarily comprises the closely connected three values, **peace, integration and market freedom, as well as solidarity and subsidiarity**.



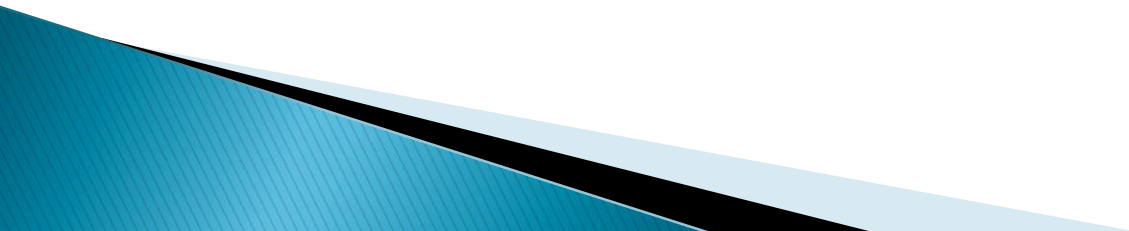
Categories of European Values

Fundamental values, encompass values which based on the shared constitutional traditions of the EU members have developed in the course of progressive integration into structural characteristics of the EU. They are inevitably common to both the EU and its Member States. They are listed in Article 2 TEU.

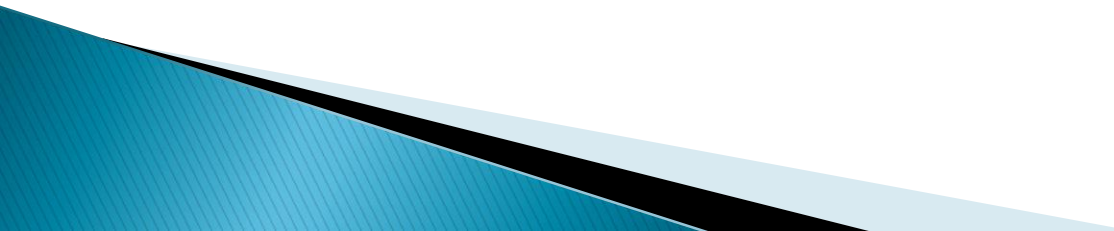


Categories of European Values

Single values concretise partial aspects of the guiding and fundamental values for certain areas.



Essential case law

- ▶ Case C-294/83, *Les Verts*, „The EEC is a Community based on the rule of law”.
 - ▶ Case C-377/98, *Netherlands v. EP and Council*, „Human dignity is a general principle of EU law and a standard of review and a guidance for the interpretation for secondary law”.
 - ▶ Case C- 455/14, *EUPM in Bosnia and Hercegovina*, „ The Union is founded, in particular, on the values of equity and the rule of law”.
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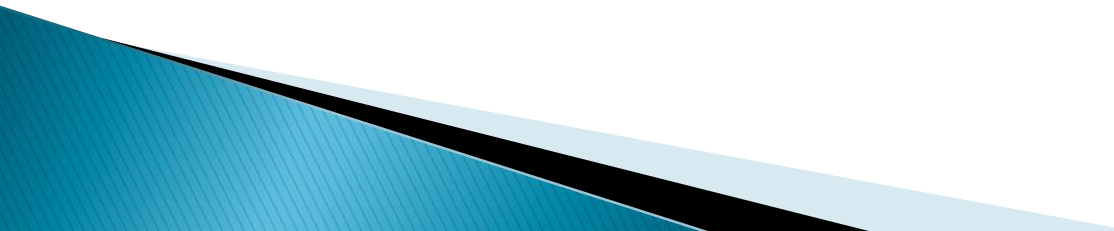
Essential case law

- ▶ **Case C-36/02, Omega**, „Human dignity is a justification for MS obstacle to trade”.
- ▶ **Opinion 2/13**, ECHR II, „the EU legal structure is based on the fundamental premiss that each MS shares with all the other MSs, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the MSs that those values will be recognised and, therefore, that the law of the EU that implements them will be respected”.

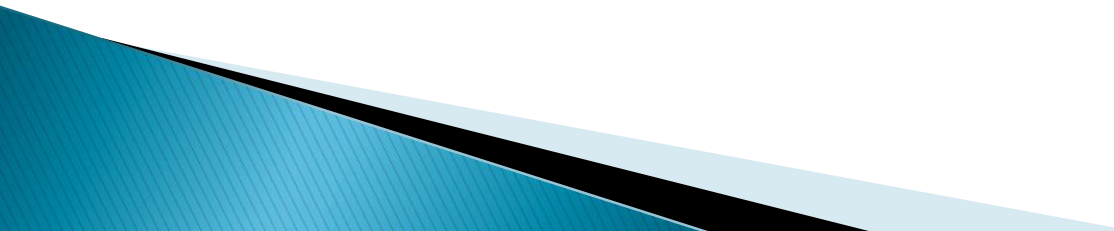
Article 2

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.



Article 2

- ▶ It lays down the fundamental „values” that characterize the self-conception of the EU.
 - ▶ They are part of the European heritage mentioned in the preamble.
 - ▶ They are „untouchable core” of the EU legal order.
 - ▶ Implicitly they assist in defining the „European State” as a member of the EU (Article 49 TEU).
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Article 2

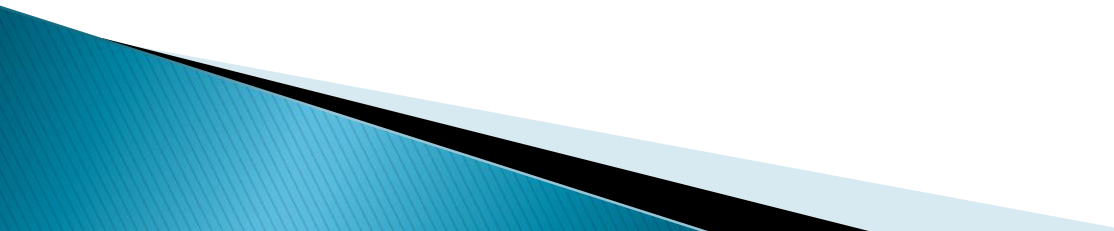
Article 2 lists value principles, which appear on two different levels:

1. the **principles of free democracy**, as they have been developed in the public life of the Member States (MS), and
2. **values** which characterize the **civil societies** which have come into being in those States.

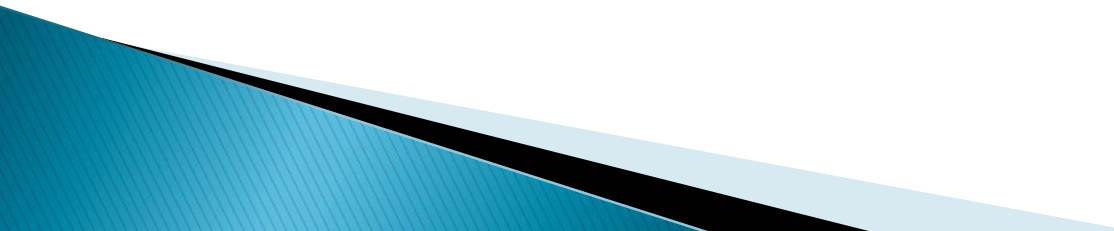
Both groups depend on each other.



Principles of a free democracy

- ▶ Respect for **human dignity**: an autonomous personality which is a constituent quality of every human being and which forms the core of the various elementary rights and state aim.
 - ▶ The principle of **freedom** guarantees the self-determination of man in the framework of a public order founded on the rule of law.
- 

Principles of a free democracy

- ▶ The principle of the **rule of law** may comprise the lawfulness of public administration, legal security, legal certainty, protection of legitimate expectations, non-retroactive effect of penal laws, and the principle of proportionality.
 - ▶ The principle of **democracy** requires the founding of all acts emanating from public authority in the will of the people. The democratic process calls in particular for „free and fair” elections.
- 

Principles of a free democracy

- ▶ The principle of **equality** can be found in numerous examples of prohibiting discrimination in particular cases (Art. 9 TEU, Articles 8, 10, 18 TFEU).
- ▶ The principle of **human rights** in general, accentuating in addition the rights of persons belonging to minorities (Art. 6 the EU Charter of Fundamental Rights).

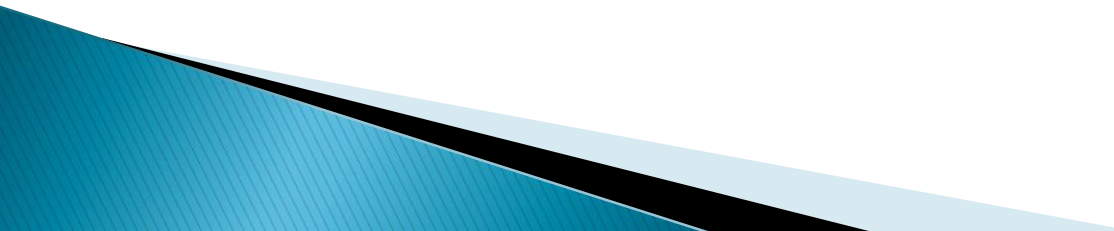
Principle governing civil societies

- ▶ The principles which should govern the civil societies in the MSs are pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.

Obligations of Union and MS

- ▶ Article 2 provides an **obligation of the Union** to **respect** and to **promote** values.
- ▶ The decisive importance of these values for the **activities of Union institutions** generally follow from the aims determined in Article 3 TEU and the assignment defined by Article 13(1) TEU. Special orders can be found for example in Art. 21 TEU and in Article 67 TFEU.

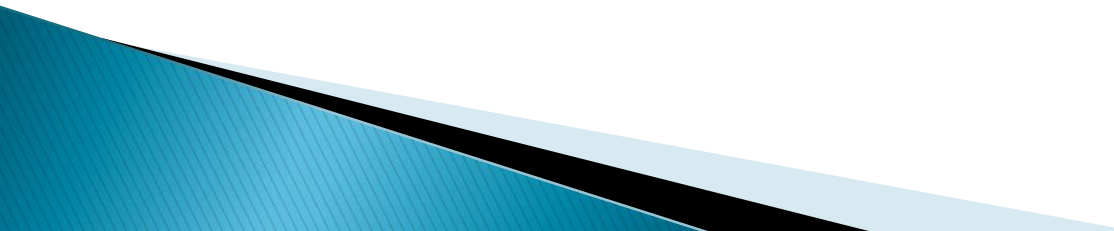
Obligations of Union and MS

- ▶ The MSs are also bound by the Treaty to respect and promote the values.
 - ▶ If a MS seriously and persistently violates these values, the **sanctions** provided for by Article 7 TEU may be imposed on that State.
 - ▶ The **membership** of the EU can be acquire only by the States who respect these values and who are committed to promoting them (Article 49TEU).
- 

Article 7

- ▶ Breach of fundamental values by a Member State

General observations

- ▶ It was inserted into the TEU by the Amsterdam Treaty of 2 October 1997 and explained by adding the new para. 1 by the Treaty of Nice of 26 February 2001.
 - ▶ In paras. 2–4 it contains a **sanctions mechanism against MSs which violate the values listed in Article 2**, complemented by an „**early warning system**” (para.1).
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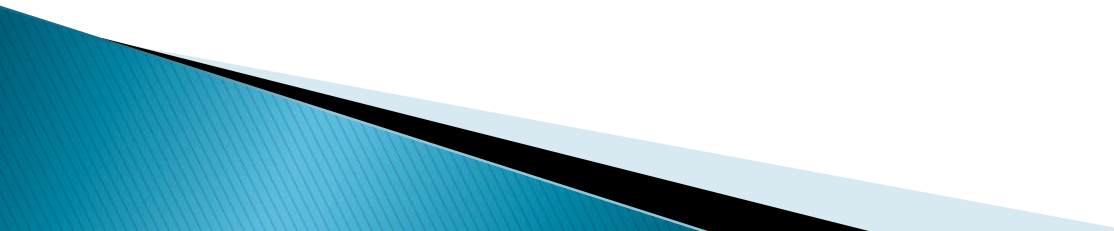
General observations

- ▶ The EU institutions participating in the sanctions mechanism are the European Parliament, the European Commission, the Council.
- ▶ The functions of judicial control by the ECJ are restricted. It ensures only compliance with procedural rules (Art. 269 TFEU).

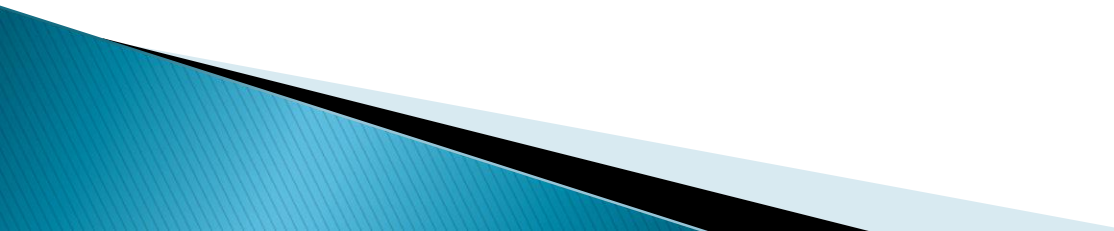
General observations

- ▶ **Article 7 authorizes sanctions** against a MS whose membership remains untouched.
- ▶ However, in cases where return of that State to respecting the values is obviously not to be expected, there remains the **possibility of the exclusion** of that MS from the EU according to the general provisions of the **public international law** (Art. 60 VCLT).

Structure of Article 7 TEU

- ▶ It incorporates **three different procedures** deployable to safeguard the values:
 1. a procedure **declare** the a clear risk of a serious breach by a MS and the adoption of recommendations how to remedy the situation addressed to the MS in breach (para.1)
 2. a procedure to **state** the existence of a serious and persistent breach of values (para.2)
 3. a **sanctioning mechanism** following the statement of a serious and persistent breach of values (para.3).
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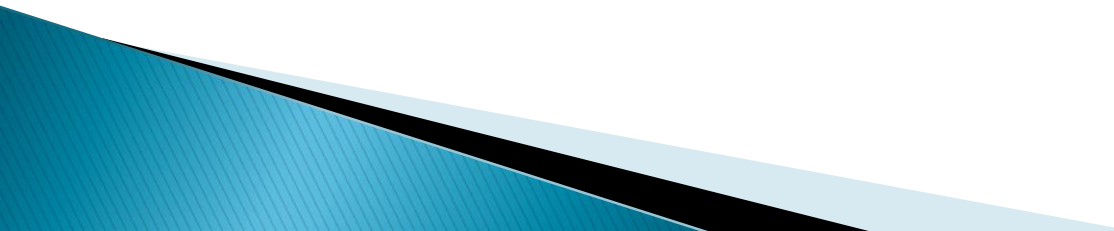
Structure of Article 7 TEU

- ▶ Article 7 does not exclude the possibility of starting the procedure laid down in para. 2 directly: all its three paragraphs are not part of one procedure with three steps!!!
 - ▶ The Commission activated of Article 7(1) against Poland on 20 December 2017 and the same procedure by the EP against Hungary on 12 September 2018.
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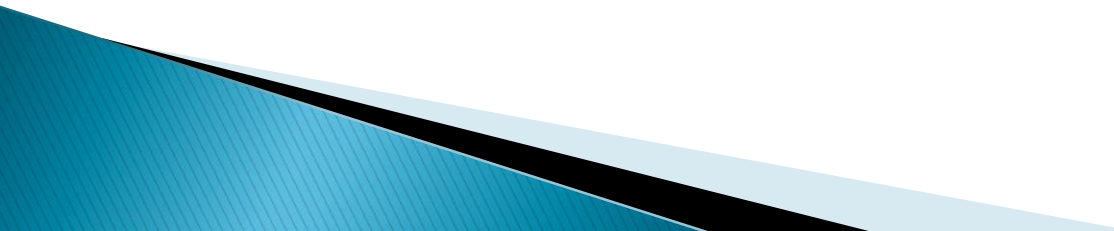
Involvement of the Court of Justice

- ▶ It only has jurisdiction over **procedural issues** (Art. 19 TEU and Art. 269 TFEU). The observance of the voting arrangements applying to the EP, the European Council and the Council, as laid down in Article 354 TFEU.
- ▶ Article 7 remains, foremostly a **political instrument**.

The early warning system (para.1)

- ▶ A formal procedure can be initiated in order to deal with danger of a serious breach of values by a MS.
 - ▶ Procedure starts with the **proposal to the Council** by one third of the MSs, by the European Parliament or by the European Commission. The proposal must be reasoned. For the proposal of the EP a double majority of its component members. Subsequently the **Council hears the MS concerned.**
- 

The early warning system (para.1)

- ▶ In cases where the proposal had not been initiated by the EP, its consent has to be obtained now.
 - ▶ Subsequently the **Council may determine that there is a clear risk** of a serious breach by the MS of the values. It renders its decision by a majority of votes of fourth fifths of its members.
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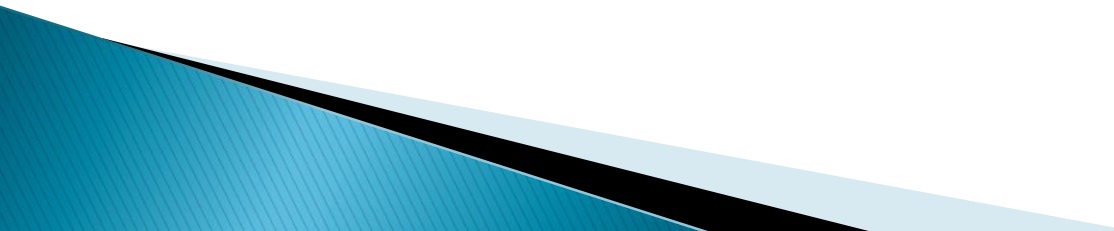
Procedure for sanctions

1. Determining the breach of law (para.2)

The procedure directed against the MS must be **initiated by a proposal** of one third of the Member States or by the Commission.

Then the MS in question is **invited to being heard**.

The **EP** votes on its necessary consent. The representatives of the accused MS are not excluded. Then the MS is afforded the opportunity to be heard. The **European Council takes its decision**. A positive decision must be taken unanimously.



Procedure for sanctions

2. Decision on sanctions (para 3)

On the basis of this unanimous decision of the European Council it is now the **Council** who may **decide on suspension of certain of the rights deriving from the application of the Treaties**. It is taken by a qualified majority.

The **choice of the rights** to be suspended is a matter of the political discretion of the Council.

The **obligations of the MS concerned** are not diminished.



Procedure for sanctions

3. Revoking or varying the sanctions

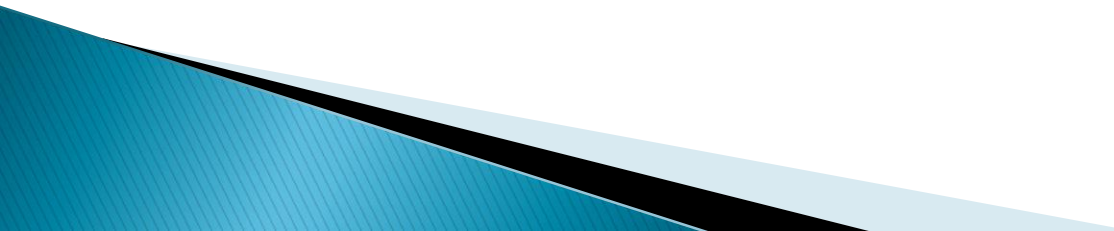
The Council may vary or revoke the sanctions if the situation, in which has led to adopting such measures, has changed. Again the Council takes its decision by a qualified majority.

Treaties does not provide for participation of the EP in this case.



▶ The rule of law as a
foundational principle
of the Union

The rule of law

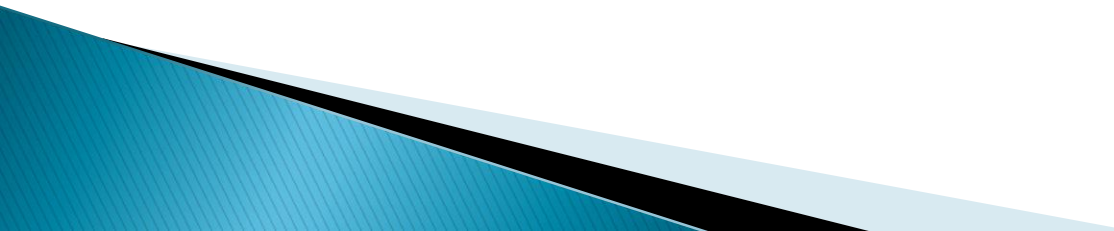
- ▶ The rule of law is a **legally binding constitutional principle**. It is **unanimously recognised** as one of the founding principles inherent in all the constitutional systems of the MSs and the Council of Europe.
 - ▶ Under the **rule of law**, all public powers always act within the confines set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.
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The rule of law

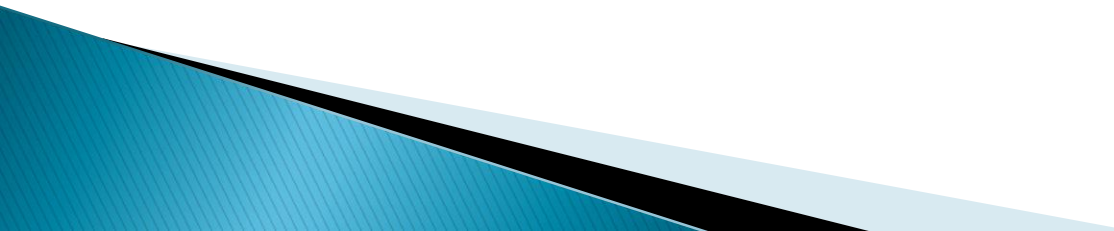
- ▶ The precise **content** of the principles and standards stemming from the rule of law may vary at national level, depending on each MS's constitutional system.
- ▶ Nevertheless, case law of the ECJ and of the European Court of Human Rights, as well as documents drawn up by the Council of Europe, building notably on the expertise of the Venice Commission, provide a non-exhaustive list of these principles and hence define the core meaning of the rule of law as a common value of the EU in accordance with Article 2 TEU.

The rule of law

Those principles 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**.



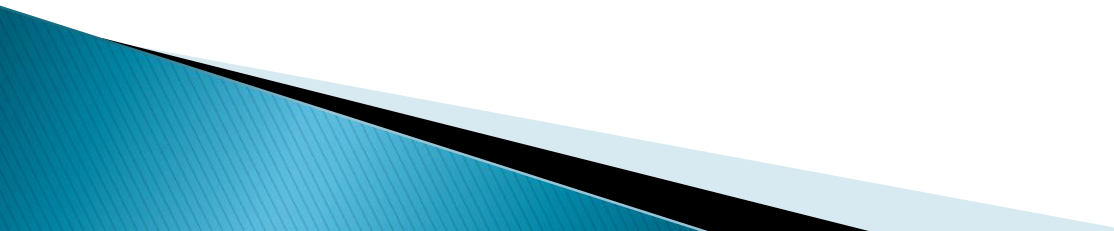
The rule of law

- ▶ The rule of law is a constitutional principle with both formal and substantive components.
 - ▶ This means that respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights: there can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa.
- 

The rule of law

The principle of legality, which in substantial terms includes a transparent, accountable, democratic and pluralistic process for enacting laws.

The Court has confirmed the principle of legality as being a fundamental principle of the Union, by stating that "[...] in a community governed by the rule of law, adherence to legality must be properly ensured".

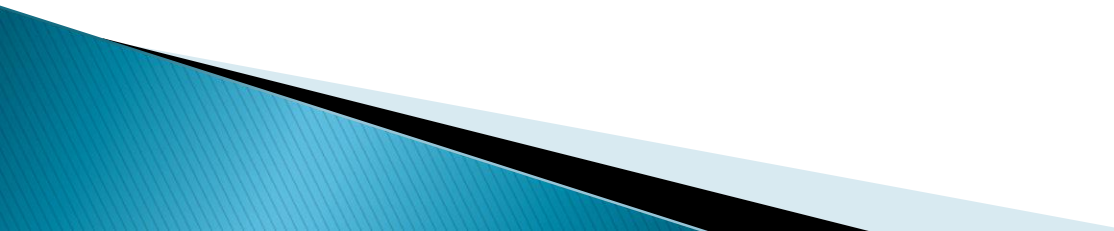


The rule of law

The principle of legal certainty, which requires inter alia that rules are clear and predictable and cannot be retrospectively changed.

The ECJ has emphasised the importance of legal certainty by stating that by virtue of the principles of legal certainty and the protection of legitimate expectation, "[...] the effect of Union legislation must be clear and predictable for those who are subject to it".

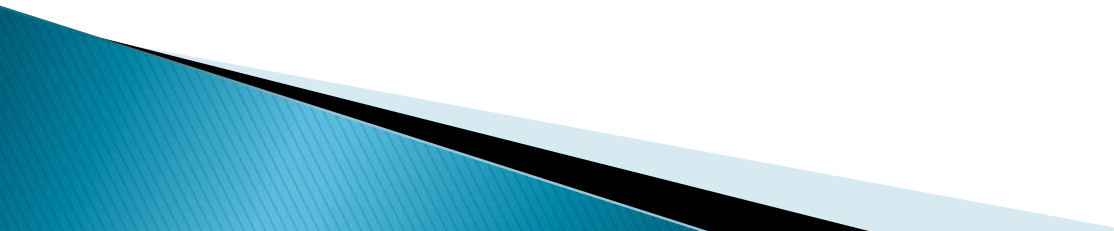
It also stated that "the principle of legal certainty precludes a Union measure from taking effect from a point in time before its publication and that it may be otherwise only exceptionally, where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected".



The rule of law

Prohibition of arbitrariness of the executive powers.

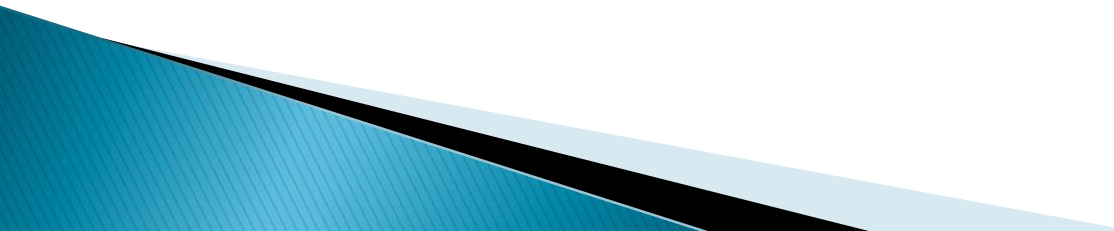
The ECJ has stated: "Nonetheless, in all the legal systems of the Member States, any intervention by the public authorities in the sphere of private activities of any person, whether natural or legal, must have a legal basis and be justified on the grounds laid down by law, and, consequently, those systems provide, albeit in different forms, protection against arbitrary or disproportionate intervention. The need for such protection must be recognized as a general principle of Union law.



The rule of law

The principle of the separation of powers is an important element of ensuring compliance with the principle of rule of law.

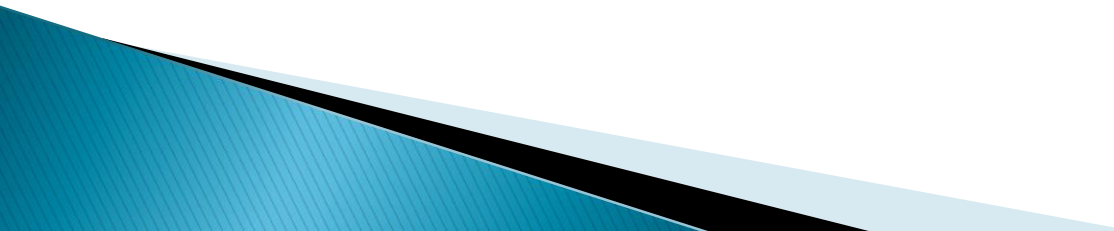
The ECJ specifically stated that "the general principle of Union law under which every person has a right to a fair trial, inspired by Article 6 of the ECHR comprises the right to a tribunal that is independent of the executive power in particular".



The rule of law

Equality before the law.

The ECJ has emphasised the role of equal treatment as a general principle of EU law by stating that "it must be recalled that the principle of equal treatment is a general principle of EU law, enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union".

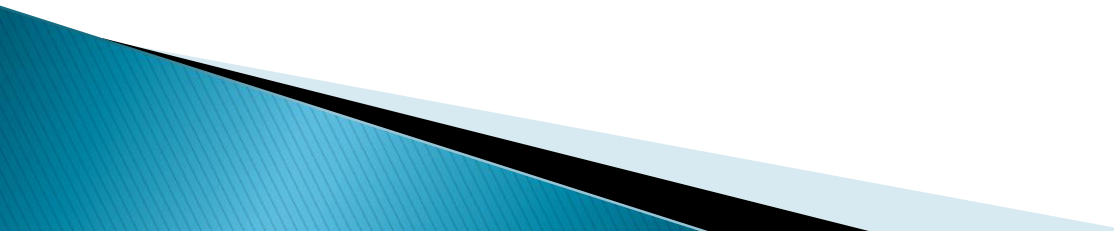


The rule of law

Independent and effective judicial review,
including respect for fundamental rights.

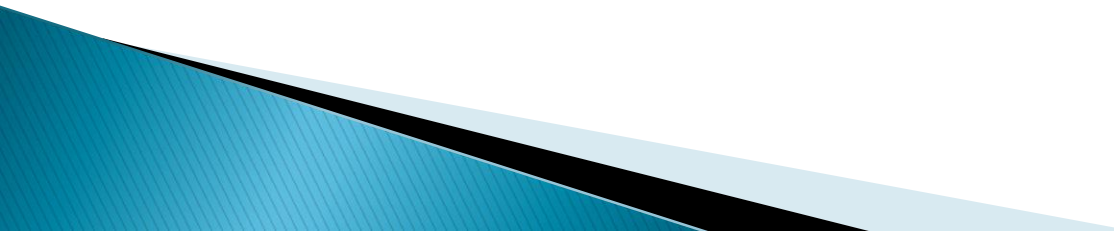
The ECJ specified that "individuals are entitled to effective judicial protection of the rights they derive from the Union legal order".

Moreover, explained that the right to such protection is "one of the general principles of law stemming from the constitutional traditions common to the MSs, which has been enshrined in Articles 6 and 13 of the ECHR".



The rule of law

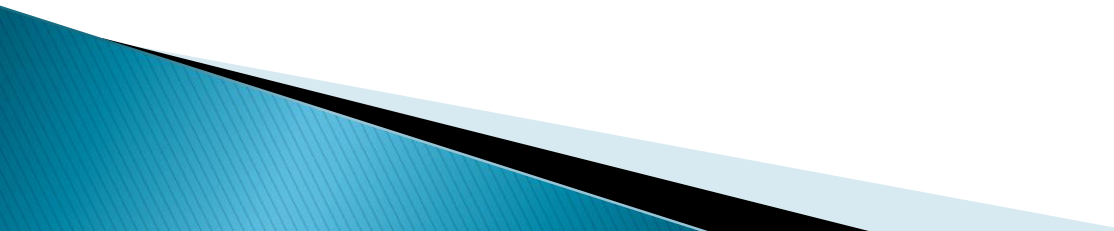
The requirement of judicial independence forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the MSs set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded.



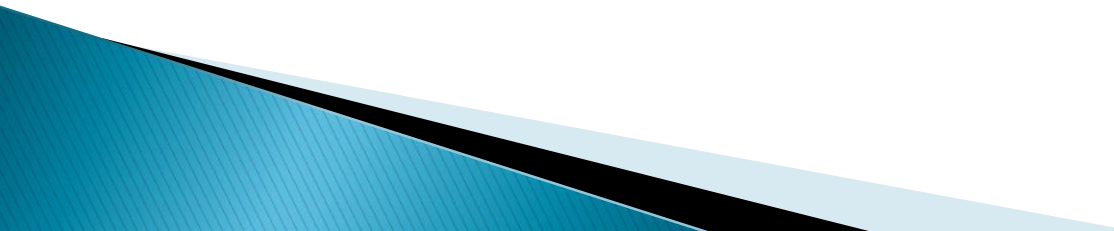
The rule of law

The European Union is a union based on the rule of law in which individuals have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act.

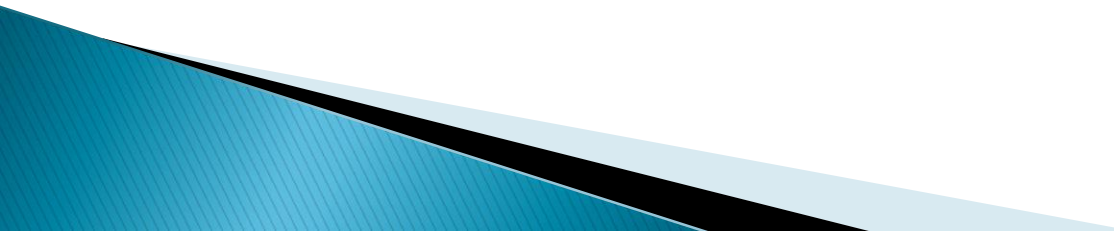
In accordance with [Article 19 TEU](#), which gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, [it is for the national courts and tribunals and the ECJ to ensure the full application of EU law in all MSs and judicial protection of the rights of individuals under that law.](#)



The rule of law

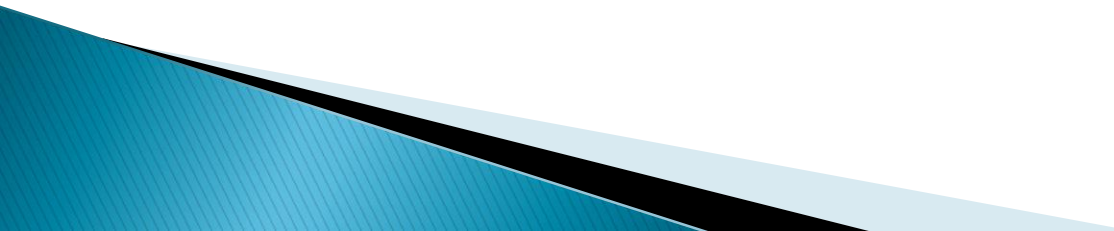
- ▶ The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law.
 - ▶ It follows that every MS must ensure that the bodies which, as ‘**courts or tribunals**’ within the meaning of EU law, come within its judicial system in the fields covered by EU law meet the requirements of effective judicial protection.
- 

The rule of law

- ▶ In order for that protection to be ensured, the Art. 47 of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy.
 - ▶ The second paragraph of Article 47 of the Charter provides that everyone is entitled to a hearing by an independent and impartial tribunal.
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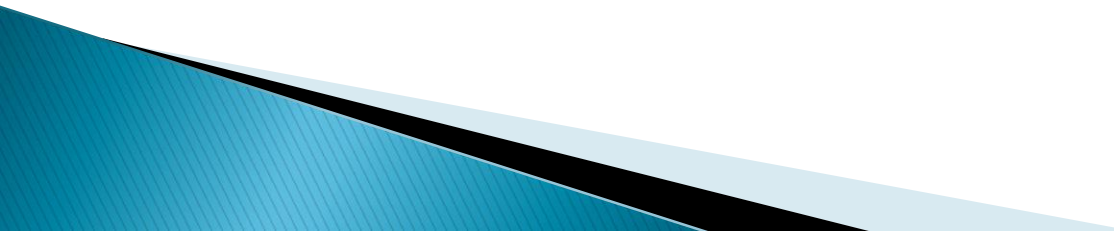
The rule of law

The concept of **independence** has two aspects. The first aspect, which is **external** in nature, requires that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions

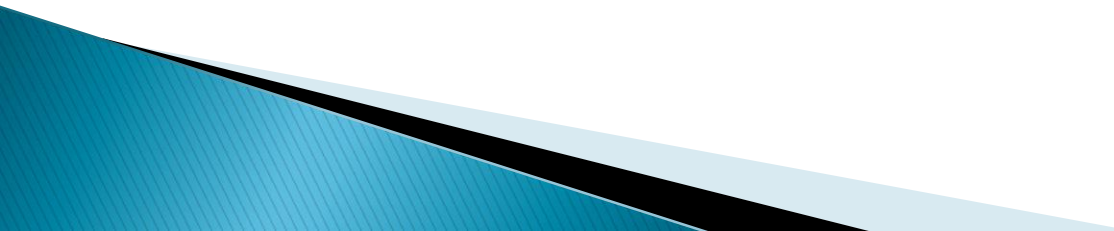


The rule of law

The second aspect, which is **internal** in nature, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law

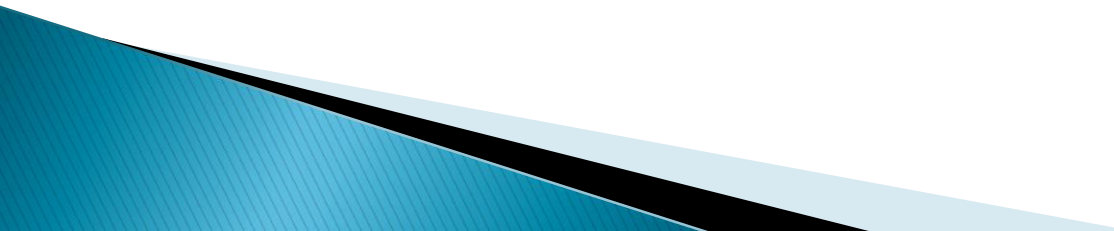


The rule of law

- ▶ Moreover, in accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive.
 - ▶ The courts must be independent of the parties and of the executive and legislature.
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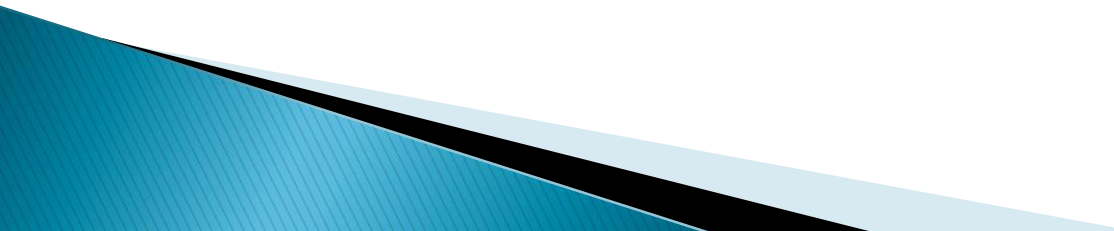
The rule of law

In order to establish whether a tribunal is 'independent', regard must be had, inter alia, to the mode of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body at issue presents an appearance of independence.



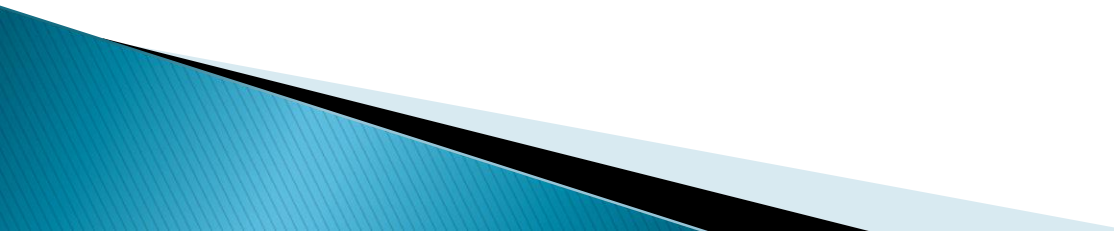
The rule of law

As regards the condition of 'impartiality', it can, be tested in various ways, namely, according to a subjective test where regard must be had to the personal convictions and behaviour of a particular judge, that is, by examining whether the judge gave any indication of personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality.

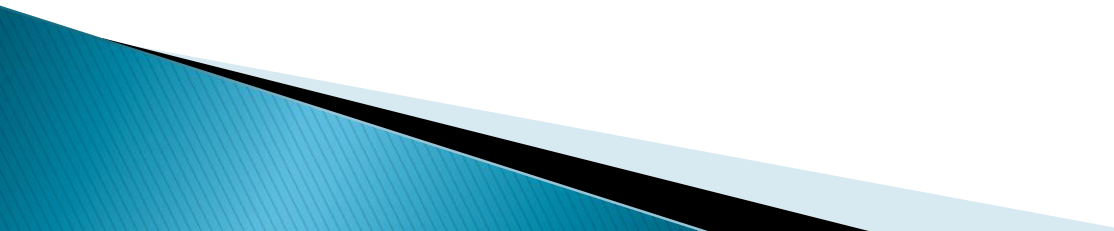


The rule of law

The ECJ held in the judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, that ‘maintaining the independence of national courts and tribunals is essential’ and that ‘the guarantee of independence ... is inherent in the task of adjudication’. In particular, the existence of guarantees concerning the composition of a court or tribunal is the cornerstone of the right to a fair trial.



The rule of law

- ▶ Within the EU, the rule of law is of particular importance.
 - ▶ Compliance with the rule of law is not only a prerequisite for the protection of all fundamental values listed in Article 2 TEU. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and from international law.
- 

The rule of law

The European Court of Human Rights has repeatedly stated that, although the principle of the separation of powers between the executive and the judiciary has assumed growing importance in its case-law, neither Article 6 nor any other provision of the ECHR requires States to adopt a particular constitutional model governing in one way or another the relationship and interaction between the various branches of the State, nor requires those States to comply with any theoretical constitutional concepts regarding the permissible limits of such interaction.

The question is always whether, in a given case, the requirements of the ECHR have been met!!!!!!



The rule of law

Commission communications on strengthening the rule of law

- ▶ On 17 July 2019, the Commission adopted a communication on further strengthening the rule of law within the EU.

In its communication, the Commission sets out a number of concrete initiatives to improve compliance with the rule of law.

