

# Briefing: How to use Article 2 TEU in infringement procedures

Dr. Luke Dimitrios Spieker

Senior Research Fellow, Max Planck Institute for comparative public law and international law, Heidelberg

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The Commission has taken action against Hungary (Case C-769/22) for violating the rights of LGBTIQ people. Their case rests, in part, on Article 2 of the Treaty on European Union (TEU). While the Commission has invoked several other, mostly uncontroversial grounds, the case provides a unique opportunity for the Member States to articulate their position with regard Article 2 TEU as a yardstick in infringement procedures before the Court of Justice.

This short briefing is intended to tackle uncertainties and overcome reservations as far as the judicial application of Article 2 TEU is concerned. It seeks to answer the following four questions: *whether* ([see 1](#)), *how* ([see 2](#)), *when* ([see 3](#)), and under what *limits* ([see 4](#)) can Article 2 TEU be invoked as a ground in infringement proceedings? The briefing also provides possible avenues for Member States to elaborate their own positions in the specific case ([see 5](#)).

## 1. Can Article 2 TEU be invoked in infringement proceedings?

When it comes to invoking Article 2 TEU before the Court of Justice, two objections are commonly raised by the Polish and Hungarian governments. First, they argue that Article 2 TEU contains moral values, not legal obligations. Second, they suggest that the Court lacks jurisdiction to review compliance with these standards. Both misconceptions are hardly convincing.

**Misconception 1: Article 2 TEU is merely a statement of moral values, not legal obligations.**

**Reality: Article 2 TEU contains legal principles that Member States must comply with.**

Even though Article 2 TEU refers to “values”, which are often distinguished in legal theory from “rules” and “principles”, this does not undermine its legal value. Three considerations support such a reading.

1. To start with, relying on the wording is a weak argument since the terminology of the Treaties is often inconsistent and misleading. For instance, the preamble of the Treaties employs the notion of values and principles interchangeably for the same elements.<sup>1</sup>
2. Systematically, the values of Article 2 TEU are laid down in the operative part of a legal text, the Treaty on European Union, and applied in legally determined procedures by public institutions (Articles 7 or 49(1) TEU). Failure to comply with these values may lead to sanctions, which are, again, of legal nature.
3. Historically, there are strong arguments for the legal character of Article 2 TEU values. Its predecessor, Article 6(1) TEU-Nice/Amsterdam referred to them as “principles”. The travaux to the European Convention, which introduced the notion of values in Article 2 TEU, clearly indicate that the drafters did not intend to weaken the provision’s legal force.<sup>2</sup>
4. Third, the Court of Justice has confirmed this interpretation, emphasizing in its rule of law conditionality judgments that “Article 2 TEU is not merely a statement of policy guidelines or intentions but contains ... principles containing legally binding obligations for the Member States”.<sup>3</sup>

**Misconception 2: Article 2 TEU can only be enforced by the Council through Article 7 proceedings.**

**Reality: The Court of Justice has jurisdiction to review compliance with Article 2 TEU.**

The second objection suggests that Article 2 TEU can only be enforced by the Council through the Article 7 TEU procedure. This argument is unconvincing for two reasons.

1. First, the high procedural and substantive thresholds of Article 7 TEU do not exclude parallel procedures before the Court. Both political and judicial procedures are entirely different in logic and consequences.<sup>4</sup> Whereas Article 7 TEU is a political procedure that may lead to the

<sup>1</sup> It refers, on the one hand, to “the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law...” and, on the other hand, to the “principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law...”.

<sup>2</sup> In detail, see Luke D. Spieker, *EU Values Before the Court of Justice* (OUP 2023), pp. 45-47.

<sup>3</sup> Case C-156/21, *Hungary v. Parliament and Council*, EU:C:2021:974, para. 232; Case C-204/21, *Commission v. Poland (Indépendance et vie privée des juges)*, EU:C:2023:442, para. 67.

<sup>4</sup> Opinion of AG Tanchev, Case C-619/18, *Commission v. Poland (Independence of the Supreme Court)*, EU:C:2019:325, para. 50.

suspension of Member State rights, the Court operates in judicial proceedings that may only lead to penalties under Article 260 TFEU.

2. Second, unlike former Treaties, Lisbon does not contain any provision that keeps the EU's foundational principles out of the Court's reach.<sup>5</sup> Instead, the Court of Justice enjoys "jurisdiction by default".<sup>6</sup> The Court has jurisdiction, except for those areas that expressly excluded (such as the CFSP, see e.g. Article 275 TFEU). However, there is no provision excluding the Court's jurisdiction over Article 2 TEU.
3. Third, the Court explicitly stated in its rule of law conditionality judgments that the "argument to the effect that the value of the rule of law can be protected by the European Union *only* under the procedure laid down in Article 7 TEU must be rejected."<sup>7</sup> In particular, it stressed that "numerous provisions of the Treaties ... grant the EU institutions the power to examine, determine the existence of and, where appropriate, to impose penalties for breaches of the values contained in Article 2 TEU committed in a Member State."<sup>8</sup> In particular with regard to the value of the rule of law, the Court noted that that "compliance with that requirement can be reviewed by the Court, inter alia in an action for failure to fulfil obligations brought by the Commission under Article 258 TFEU".<sup>9</sup>

## 2. How can Article 2 TEU be invoked in infringement proceedings?

This leads to the question of Article 2 TEU's justiciability. The Union's values – "democracy", "the rule of law" and "human rights" – are open and indeterminate. However, the criteria for direct effect in domestic proceedings, require a provision of EU law to be clear, precise, and unconditional. From a conceptual standpoint, there are two avenues through which Article 2 TEU could potentially be made justiciable:

- Option 1: Applying the values of Article 2 TEU in combination with more specific Treaty provisions that operationalise and translate these values into concrete legal obligations.
- Option 2: Treating the values in Article 2 TEU as freestanding standards.

### **Option 1: Combined application (established jurisprudence)**

So far, the Court of Justice has chosen this option. With its judgment in *Associação Sindical dos Juizes Portugueses*, it started to operationalise the values in Article 2 TEU through other Treaty provisions – primarily Article 19(1)(2) TEU – that give "concrete expression" to the value at issue.<sup>10</sup> This reasoning can be applied to all Treaty provisions that give specific expression to the values in Article 2 TEU. In its ruling on the conditionality regulation, the Court provided a vast array of possible connections between Article 2 TEU and other Treaty provisions, including:

<sup>5</sup> Under Art. 46(d) TEU-Nice the Court had only jurisdiction over Art. 6(2) but not the "principles" in Art. 6(1).

<sup>6</sup> Opinion of AG Bobek, Case C-650/18, *Hungary v. Parliament*, EU:C:2020:985, para. 35.

<sup>7</sup> Case C-156/21, *Hungary v. Parliament and Council*, EU:C:2021:974, para. 163.

<sup>8</sup> *Ibid.*, para. 159.

<sup>9</sup> *Ibid.*, para. 161.

<sup>10</sup> Case C-64/16, *Associação Sindical dos Juizes Portugueses*, EU:C:2018:117. See also See e.g. Case C-619/18, *Commission v. Poland (Independence of the Supreme Court)*, EU:C:2019:531, para. 47; Case C-192/18, *Commission v. Poland (Independence of ordinary courts)*, EU:C:2019:924, para. 98; Case C-791/19, *Commission v. Poland (Régime disciplinaire des juges)*, EU:C:2021:596, para. 51; Case C-204/21, *Commission v. Poland (Indépendance et vie privée des juges)*, EU:C:2023:442, para. 69. See also Cases C-357, 379, 547, 811, and 840/ 19, *Euro Box Promotion and Others*, EU:C:2021:1034, para. 217; Case C-896/19, *Repubblika*, EU:C:2021:311, para. 63.

- Articles 6, 10 to 13, 15, 16, 20, 21, and 23 of the Charter, which “define the scope” of the values of human dignity, freedom, equality, and respect for human rights, as well as
- Articles 8, 10, 19(1), 153(1), and 157(1) TFEU, which substantiate the values of equality, non-discrimination, and equality between women and men.<sup>11</sup>

Through this approach, Article 2 TEU values are translated into specific legal obligations.

### **Option 2: Freestanding application (new)**

While the operationalisation of Article 2 TEU through specific Treaty provisions is now consolidated practice, its self-standing application has not been tested before the Court yet. Some, like Advocate General Tanchev, argue that Article 2 TEU does not constitute a standalone yardstick for the assessment of national law.<sup>12</sup> Similarly, Advocate General Pikamäe stated that the value of the rule of law “cannot be relied upon on its own.”<sup>13</sup> However, some judges, such as Lucia Rossi and Marek Safjan, have openly considered a freestanding application of Article 2 TEU.<sup>14</sup> In abstract terms, there are two ways the European Commission, the Member States, and eventually the CJEU, could approach Article 2 TEU as a self-standing provision: a negative and a positive approach.

**Negative approach:** Following a negative approach, Article 2 TEU could be interpreted as establishing red lines. Instead of providing a full-blown, positive account of each value (e.g., specifying actions that Member States must take to uphold democracy, rule of law and human rights), the Court would only determine whether a line is crossed in the specific case. In particular, it could ascertain a violation (negative) but not specify the remedy (positive). The responsibility to remedy the respective violation of Article 2 TEU would be then left to the discretion of each Member State.

**Positive approach:** In exploring a positive approach to fleshing out Article 2 TEU, the Court could substantiate these values by recourse to other sources, such as the Copenhagen criteria, the ECHR and the Strasbourg court’s jurisprudence as well as opinions and studies by the Venice Commission. The most likely point of reference are the Member States’ common constitutional traditions. This would require a critical legal comparison to identify prevailing views and growing trends.

Both approaches have advantages and disadvantages. While the negative approach respects the autonomy and diversity of Member States, such a thin reasoning sits uneasy with the principle of legal certainty, which is in itself a part of the rule of law. As such, it limits a judgment’s persuasiveness and predictability. The advantages and disadvantages of the positive approach are placed exactly in the opposite. While the positive approach allows the Court to positively define standards for the Member States – thus creating more certainty as to the content of the values in Article 2 TEU – this obviously places greater limits on their autonomy.

Due to the novelty of applying Article 2 TEU in judicial proceedings, a paced development of this doctrine seems to require negative approach. Eventually, however, it appears almost impossible to maintain a negative standard for a long period of time. Over time, the accumulation of negative

<sup>11</sup> Case C-156/21, *Hungary v. Parliament and Council*, EU:C:2021:974, paras. 193 f.

<sup>12</sup> Opinion of AG Tanchev, Case C-824/18, *A.B. and Others*, EU:C:2020:1053, para. 35.

<sup>13</sup> Opinion of AG Pikamäe, Case C-457/18, *Slovenia v. Croatia*, EU:C: 2019:1067, para. 132-133.

<sup>14</sup> Lucia S. Rossi, ‘La valeur juridique des valeurs. L’article 2’, *Revue trimestrielle de droit européen* (2020), 639, 657; Marek Safjan, ‘On Symmetry: in Search of an appropriate Response to the Crisis of the Democratic State’, *Il diritto dell’Unione europea* (2020), 673, 696.

standards will allow conclusions about the positive content of the values enshrined in Article 2 TEU. As such, the negative approach will – over time – develop naturally into a positive one.

### 3. When can Article 2 TEU be invoked in infringement procedures?

When exploring the applicability of Article 2 TEU in infringement procedures, it is essential to determine the specific situations in which it can be invoked. Article 2 TEU applies “even if the breach took place in the field of the Member State’s autonomous action (not affected by Union law).”<sup>15</sup> The values in Article 2 TEU are restricted neither to the scope of other Union law (unlike the Charter for Fundamental Rights) nor to the areas of competences transferred to the EU.<sup>16</sup>

As such, we can identify three scenarios: Article 2 violations within the scope of EU law ([scenario 1](#)), Article 2 violations within the scope of EU law but beyond EU competences ([scenario 2](#)), and violations outside the scope of EU law ([scenario 3](#)). Each scenario presents distinct considerations and potential approaches to invoking Article 2 TEU.

**It should be stressed that Case C-769/22 is deeply anchored within the scope of EU law (scenario 1 and 2). As such, scenario 3 is only hypothetical and points towards future developments.**

#### ***Scenario 1: Article 2 TEU violations within the scope of other EU law (established jurisprudence)***

In cases where Article 2 TEU violations arise within the framework of other EU law (e.g. fundamental freedoms or secondary legislation) they can often be framed as violations of fundamental rights standards enshrined in the European Charter for Fundamental Rights. To recall, according to its Article 51, the Charter applies to the Member States when they act within the scope of EU law. While the Charter provides more specific provisions, the invocation of Article 2 TEU assumes at least three crucial supportive functions.

1. First, it serves as *signifier*, emphasizing the gravity of the situation, unequivocally signalling that the violation strikes at the very core that holds the European Union together. Consequently, addressing such measures under Article 2 TEU carries exceptional legal significance, reinforcing the profound implications of the breach.
2. *Legally*, invoking Article 2 TEU can be a trigger for higher fines, either in case of daily penalty payments, when the Court’s interim orders are not respected,<sup>17</sup> or in case a Member State does not comply with a judgment by the Court that ascertained a violation of Article 2 TEU (see the procedure under Article 260(2) TFEU). In particular, the Commission fixes the amount of the financial penalties mainly based on the importance of the rules breached and the impact of the infringement on general interests.<sup>18</sup> Infringements of a foundational provision such as Article 2 TEU justify the imposition of exceptional financial penalties.
3. *Politically*, ascertaining a violation of Article 2 TEU in judicial proceedings will have an impact on other procedures as well. For instance, the milestones, which need to be fulfilled in order

<sup>15</sup> This is uncontroversial, see from the drafting process Praesidium, Draft of Articles 1 to 16 of the Constitutional Treaty, CONV 528/03, p. 11.

<sup>16</sup> See only European Commission, A new EU Framework to strengthen the Rule of Law, COM/2014/0158 final, p. 5; Council, Opinion of the Legal Service: Commission’s Communication on a New EU Framework to Strengthen the Rule of Law: Compatibility with the Treaties, 10296/14, para. 17.

<sup>17</sup> See the daily penalty payment of 1.000.000 EUR per day for non-compliance with an interim order by the Court in Case Order of 27 October 2021, C-204/21, Commission v Poland, EU:C:2021:878.

<sup>18</sup> Communication from the Commission - Application of Article 228 of the EC Treaty, SEC/2005/1658, paras 16 ff.

to release EU funds for Poland and Hungary, largely rely on judgments of the Court that ascertained infringements of the rule of law. Accordingly, CJEU judgments based on Article 2 TEU can trigger subsequent action at the political level.

**Scenario 2: Article 2 TEU violations beyond the scope of EU competences (established jurisprudence).**

The Court has consistently maintained that EU law must be observed, even in areas of exclusive and shared Member State competences. This has included matters such as nationality, criminal law, extradition, direct taxation, surnames, social security, civil status, and the organisation of education systems and the judiciary in the Member States.<sup>19</sup>

Despite its uncontroversial nature, this scenario is prone to misconceptions, and it is often conflated with [scenario 3](#). For example, some institutions, like the captured Polish Constitutional Tribunal, suggest that the CJEU can enforce obligations under EU law, including those under Articles 2 and 19(1)(2) TEU, only when the EU has a competence in the respective field.<sup>20</sup>

However, neither the Court, nor the legal literature follows this view. Obligations under EU law and competences, which empower the EU institutions to adopt legal acts, are simply *two different, unconnected categories*. They should not be conflated. For instance, the Court stated that although the organisation of the judiciary in the Member States falls within the competence of the Member States, “the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law”.<sup>21</sup>

***Misconception 3: The CJEU can only enforce EU law, including Article 2 TEU, within the limit of EU competences and not within areas of exclusive Member States competence (e.g. taxation, criminal law or education).***

***Reality: The CJEU’s jurisdiction to review compliance with Article 2 TEU is not limited by the allocation of law-making competences between the EU and its Member States. Member States must comply with EU law when exercising their exclusive competence (e.g. e.g. taxation, criminal law or education)***

**Scenario 3: Article 2 TEU violations beyond the scope of EU law (new)**

Things look different beyond the scope of other EU law. Again, it should be stressed that this is *not* the situation in Case C-769/22, which is firmly anchored within the scope of EU law. In this hypothetical scenario, Article 2 TEU would be the *only standard of review under EU law*. Invoking Article 2 TEU in such situations is highly controversial. Yet, there are two ways in which the Commission could, in the future, realistically invoke Article 2 TEU outside the scope of EU law without compromising Member States’ constitutional autonomy:

<sup>19</sup> See e.g. Case C-221/17, *Tjebbes*, EU:C:2019:189, para. 32 (nationality); Joined Cases C-202 & 238/18, *Rimšėvičs*, EU:C: 2019:139, para. 57 (criminal law); Case C-182/15, *Petruhhin*, EU:C:2016:630, para. 30 (extradition); Case C-279/93, *Schumacker*, EU:C:1995:31, para. 21 (direct taxation); Case C-353/06, *Grunkin and Paul*, EU:C:2008:559, para. 16 (surnames); Case C-158/96, *Kohll*, EU:C:1998:171, para. 18-19 (social security); Case C-673/16, *Coman*, EU:C:2018:385, para. 37 et seq. (civil status); Case C-73/08, *Bressol*, EU:C:2010:181, para. 28 (education); Cases C-585, 624 & 625/18, *A.K. and Others*, Joined EU:C:2019:982, para. 75; Case C-619/18, *Commission v. Poland (Independence of the Supreme Court)*, EU:C:2019:531, para. 52; Case C-896/19, *Repubblika*, EU:C:2021:311, para. 48 (organisation of the judiciary).

<sup>20</sup> See the press release accompanying the Judgment of 7 October 2021, K 3/21, paras. 18 f.

<sup>21</sup> Cases C-585, 624 & 625/18, *A.K. and Others*, Joined EU:C:2019:982, para. 75; Case C-619/18, *Commission v. Poland (Independence of the Supreme Court)*, EU:C:2019:531, para. 52; Case C-896/19, *Repubblika*, EU:C:2021:311, para. 48.

**Option 1 - Freestanding application:** As noted before, the Court of Justice has “jurisdiction by default” (Article 19(1) TEU). This applies to Article 2 TEU as well. Legally, it seems only consistent to invoke Article 2 TEU also in situations beyond the scope of other EU law before the Court. Unlike the EU Charter of Fundamental Rights (see Article 51), the application of Article 2 TEU to the Member States is not limited to situations in which they are implementing other EU law. Risks for the Member States’ constitutional autonomy should then be corrected on a subsequent stage, e.g., by interpreting Article 2 TEU as minimum standards (*see below*).

**Option 2 - Combined application:** Article 2 TEU could be operationalised by another Treaty provision that gives specific expression to a value (e.g. a certain Charter right). Article 2 TEU is part of Union law. As such, it defines the scope of EU law within the sense of Article 51 of the Charter. By implication, Member State violations that reach the demanding thresholds of Article 2 TEU could trigger the Charter’s scope and lead to its application even beyond the scope of other EU law. It should be stressed, though, that this cannot lead to an application of the full fundamental rights acquis. Beyond the Charter’s scope, EU fundamental rights could apply only as far as their essence protected under Article 2 TEU is concerned. In this way, the full fundamental rights acquis would thus remain within the confines of Article 51 of the Charter.

#### 4. How to ensure a measured application of Article 2 TEU?

Applying Article 2 TEU, especially as a freestanding provision beyond the scope of other EU law, requires striking the right balance between upholding the Union’s values and respecting the Member States’ constitutional autonomy and diversity. To achieve this, several techniques can be employed both in interpreting the obligations outlined in Article 2 TEU and in the enforcement of this provision.

At the level of interpreting the obligations in Article 2 TEU, one could understand the provision as containing only minimum obligations. In this sense, Advocate General Kokott noted that “the examination under Article 2 TEU must be limited to observance of the essence of those principles and rights.”<sup>22</sup> In terms of enforcement, several judicial techniques can be utilized to mitigate any unintended consequences of invoking Article 2 TEU and ensure a balanced approach (the four “R”s).

- **Redlines:** The Court could employ a negative red-line approach, only setting boundaries beyond which a violation of Article 2 TEU is deemed to have occurred (negative) without determining the ways to remedy the violation (positive) (see above).
- **Results:** The Court already indicated that Article 2 TEU contains only an “obligation as to the result to be achieved”.<sup>23</sup> Building on this concept, the Court could focus on prescribing certain results, such as terminating infringements of the Union’s values, while leaving the means for remedying violations to the discretion of Member States.
- **Regression-test:** The Court could employ the regression-test established in the *Repubblika* judgment, which prevents a reduction in the protection of the value of the rule of law.<sup>24</sup> This test considers significant regressions from pre-existing national standards, without imposing specific substantive standards. Hence, it is more respectful to the Member States’ autonomy.

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<sup>22</sup> Opinion of AG Kokott, Case C-490/20, *Stolichna obshtina, rayon ‘Pancharevo’*, EU:C:2021:296, para. 118.

<sup>23</sup> Case C-156/21, *Hungary v. Parliament and Council*, EU:C:2022:97, para. 231.

<sup>24</sup> Case C-896/19, *Repubblika*, EU:C:2021:311, para. 63.

- **Reverse Solange:** The Court could also employ a reverse Solange presumption shifting the burden of proof. Beyond the scope of other EU law, Member States remain autonomous “as long as” (Solange) it is proven that there are systemic violations of a value in Article 2 TEU.

Finally, the Court could apply a margin of appreciation technique when it comes to violations of the EU values. Further, this margin of appreciation could become larger, the less a certain action falls within the scope of other EU law.<sup>25</sup>

### 5. How can Member States approach Article 2 TEU in Case C-769/22?

Case C-769/22 is uncontroversial as far as the applicability of Article 2 TEU is concerned. The Commission’s pleading is firmly grounded within the scope of EU law ([scenario 1](#)).<sup>26</sup> Nonetheless, Case C-769/22 provides a unique opportunity for each Member State to express their position on the justiciability of Article 2 TEU and to convey any reservations they may have.

The Commission itself seems to suggest a self-standing application of Article 2 TEU. In its sixth pleading it states: “by adopting the legislation cited in the first paragraph, Hungary has infringed Article 2 TEU.” At the same time, however, the Commission also invokes several fundamental rights, namely Articles 1, 7, 11 and 21 of the Charter of Fundamental Rights of the European Union. While the order of raising the respective grounds suggests only a self-standing application of Article 2 TEU, it does not seem excluded for the Court or the Member States to address these issues following a combined application of Article 2 TEU and the respective Charter rights. Against this backdrop, Member States seeking to support the European Commission’s sixth pleading in Case C-769/22 can elaborate on the justiciability of Article 2 TEU in the following ways:

**Option 1: Combined application (Article 2 TEU + Article 21 of the CFR):** Member States could rely on the essence of Article 21 of the Charter, which prohibits any discrimination based on sexual orientation as “giving specific expression” to the values of “equality” and “human rights”.

**Option 2: Freestanding application + negative approach:** Member States could follow a negative approach, namely ascertaining that the Hungarian legislation violates the essence of equality and human rights without fleshing out these values in a positive manner.

**Option 3: Freestanding application + positive approach (by recourse to other sources):** Finally, Member States could test a freestanding application of Article 2 TEU with a positive approach. That would require them to identify common standards across EU-Member States with regard to the protection of LGTIQ rights. A critical legal comparison will most probably prove that Hungary has departed from the Member States’ common constitutional traditions.

An important point of reference for that exercise can be the case law of the ECtHR. The Strasbourg court unequivocally condemns “propaganda laws”, cases on the application of provisions similar to those contained in the Hungarian law all resulted in finding a violation of Article 10 ECHR. In the 2017 case of *Bayev v. Russia* the ECtHR found that by adopting legislation protecting the morality and health of children from the propaganda of homosexuality “the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and

<sup>25</sup> In much detail, see Luke D. Spieker, *EU Values Before the Court of Justice* (OUP 2023), pp. 283 ff.

<sup>26</sup> Directive 2010/13/EU on audiovisual media service and Directive 2000/31/EC on electronic commerce apply to the case.

tolerance inherent in a democratic society.”<sup>27</sup> In *Alekseyev v. Russia* the Court underlined: “(t)here is no scientific evidence or sociological data at the Court’s disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities’ social status, would adversely affect children or ‘vulnerable adults’. On the contrary, it is only through fair and public debate that society may address such complex issues as the one raised in the present case. Such debate, backed up by academic research, would benefit social cohesion by ensuring that representatives of all views are heard, including the individuals concerned.”<sup>28</sup> In *Macaté v. Lithuania*, concerning the censoring of content on same-sex relationship, the Grand Chamber not only upheld the above case-law but further emphasized: “the Court is firmly of the view that measures which restrict children’s access to information about same-sex relationships solely on the basis of sexual orientation have wider social implications. Such measures, whether they are directly enshrined in the law or adopted in case-by-case decisions, demonstrate that the authorities have a preference for some types of relationships and families over others – that they see different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions, however limited in their scope and effects, are incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society”.<sup>29</sup>

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<sup>27</sup> Judgment of 20 June 2017, *Bayev and Others v. Russia*, App. nos. 67667/09, 44092/12 and 56717/12, para. 83.

<sup>28</sup> Judgment of 21 October 2010, *Alekseyev v. Russia*, App. nos. 4916/07, 25924/08 and 14599/09, para. 86.

<sup>29</sup> Judgment of 23 January 2023, *Macaté v. Lithuania*, App. no. 61435/19, para. 215.

## 6. Further literature (brief selection)

- Tom L. Boeckstein, 'Making Do With What We Have: On the Interpretation and Enforcement of the EU's Founding Values', *German Law Journal* 23 (2022), 431 ([open access](#))
- Armin von Bogdandy, 'Principles of a Systemic Deficiencies Doctrine', *Common Market Law Review* 57 (2020), 705 ([here](#))
- Dimitry Kochenov and Laurent Pech, *Respect for the Rule of Law in the Case Law of the European Court of Justice* (SIEPS 2021:3) ([open access](#))
- Lucia S. Rossi, 'La valeur juridique des valeurs', *Revue trimestrielle de droit européen* (2020), 639
- Luke D. Spieker, *EU Values Before the Court of Justice. Foundations, Potential, Risks* (OUP 2023) ([here](#))
- Luke D. Spieker, 'Defending Union Values in Judicial Proceedings. On How to Turn Article 2 TEU into a Judicially Applicable Provision', in Armin von Bogdandy et al. (eds.), *Defending Checks and Balances in EU Member States* (Springer 2021), 237 ([open access](#))
- Luke D. Spieker, 'Breathing Life into the Union's Common Values: On the Judicial Application of Article 2 TEU in the EU Value Crisis', *German Law Journal* 20 (2019), 1182 ([open access](#))
- Kim Lane Scheppele et al., 'EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union', *Yearbook of European Law* 39 (2020), 3 ([here](#))

## 7. To contact the author

This briefing has been drafted by Dr. Luke Dimitrios Spieker. He is a senior research fellow at the Max Planck Institute for Comparative Public Law and International Law, where he researches on transversal issues of EU and constitutional law. His work on EU values and Article 2 TEU has been published in leading peer-reviewed journals and has won numerous awards, including the Otto Hahn Medal. His latest monograph "[EU Values Before the Court of Justice](#)" has been published with Oxford University Press in July 2023. His full CV is available [here](#).

Member States can contact him directly at [spieker@mpil.de](mailto:spieker@mpil.de).