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**LANDMARK DECISIONS OF THE COURT OF JUSTICE: NEW PERSPECTIVES  
FOLLOWING THE ‘VALUES OF THE UNION’ JUDGMENT**

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Distinguished Guests,

Dear Colleagues,

Dear Friends,

It is a great honour and even greater pleasure to stand before you here today, in the Telders auditorium of the prestigious Academy Building of Leiden University. I am truly grateful for the opportunity to deliver the 13<sup>th</sup> Europa Lecture of the Europa Institute of Leiden

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(\*) President of the Court of Justice of the European Union and Professor of European Union Law, Leuven University. All opinions expressed herein are personal to the author. This lecture is largely inspired by a speech given at the occasion of an official visit to the Constitutional Court of the Slovak Republic on 24 April 2026.

Law School and, thus, to follow in the footsteps of twelve distinguished speakers in this meanwhile famous series of lectures.

The title of my lecture is: “Landmark Decisions of the Court of Justice: New Perspectives following the ‘Values of the Union’ Judgment”.

But before entering into the heart of the subject-matter, I would like to open with a question — one I have made something of a habit of putting to the university students who come to visit the Court of Justice of the European Union (the ‘Court of Justice’) from every corner of Europe. A question that is, I should warn you, deliberately provocative.

The question is whether there is room for a dictatorship in Europe, which would censor media outlets, discriminate against minorities, tell women that their only purpose in life is to bear children, and upset the national system of checks and balances by, for example, undermining the independence of the judiciary. Unsurprisingly, university students reply in unison with a resounding ‘no’.

To which I ask: why? Why does the EU care about values? The answers invariably follow a familiar pattern. Some respond almost by reflex — being a Member State is by definition being a democratic one. Others reason that the EU could hardly sustain itself in the company of authoritarian regimes. And then, reliably, inevitably, a

student will arrive at what I have come to regard as the golden sentence: *because we, Europeans share the same values.*

Those three answers are correct, and each finds clear support in the case law of the Court of Justice. There is much to be gained from listening to young minds — for behind their idealism often lies a clarity of thought that we must be careful not to lose sight of with the passing of time.

Respect for the values of human dignity, freedom, democracy, equality, the rule of law, and human rights grants Member States a kind of ‘credentials’; it sustains the momentum of European integration, and defines the very identity of the EU as ‘a common legal order’.<sup>1</sup>

My lecture will explore these three dimensions of EU values. But before doing so, I would like to set out a foundational idea that ties all three together.

The EU is not a State, nor does it intend to become one.<sup>2</sup> It is, as the Court of Justice has consistently held, ‘a common legal order’,<sup>3</sup> which is governed by structural principles and founded in common values, which stem from the constitutional traditions common to the

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<sup>1</sup> See judgments of 16 February 2022, [Hungary v Parliament and Council](#), C-156/21, EU:C:2022:97, para. 127, and [Poland v Parliament and Council](#), C-157/21, EU:C:2022:98, para. 145.

<sup>2</sup> See Opinion 2/13 ([Accession of the European Union to the ECHR](#)) of 18 December 2014, EU:C:2014:2454, para. 156 (holding that ‘the EU is, under international law, precluded by its very nature from being considered a State’).

<sup>3</sup> See judgments in footnote (n 1). See also judgments of 29 July 2024, [Valančius](#), C-119/23, EU:C:2024:653, para. 49; of 29 April 2025, [Commission v Malta \(Citizenship by investment\)](#), C-181/23, EU:C:2025:283, para. 83, and of 18 December 2025, [Commission v Poland \(Ultra vires review of the Court’s case-law – Primacy of EU law\)](#), C-448/23, EU:C:2025:975, para. 108.

Member States. Structurally, the EU operates under the principles of conferral and the principle of institutional balance (separation of powers), whilst the principles of primacy and direct effect define the very nature of EU law. Essentially, the EU is a peace project that puts the human condition centre stage. The Treaties and the Charter, as interpreted by the Court of Justice, have made crystal clear that each and every human being enjoys ‘equal dignity’, regardless of being a man or a woman, rich or poor, young or old, friend or foe.

As a common legal order, the EU operates in a ‘constitutional framework’,<sup>4</sup> within which European integration may move forward. Such a framework is – I quote – ‘based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, the common values contained in Article 2 TEU, on which the European Union is founded... That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the EU law that implements them will be respected’.<sup>5</sup>

In sum, the EU constitutes a common legal order underpinned by its own constitutional framework — one rooted in shared values whose observance forms the bedrock of mutual trust among Member States. Examining the role these values play within the EU legal order

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<sup>4</sup> Opinion 1/17 ([EU-Canada CET Agreement](#)) of 30 April 2019, EU:C:2019:341, para. 110. See, to that effect, Opinion 2/13 ([Accession of the European Union to the ECHR](#)) of 18 December 2014, EU:C:2014:2454, para. 158.

<sup>5</sup> See judgments of 16 February 2022, [Hungary v Parliament and Council](#), C-156/21, EU:C:2022:97, para. 125, and [Poland v Parliament and Council](#), C-157/21, EU:C:2022:98, para. 143.

sheds light on the very foundations upon which European integration rests.

Having established this common thread, I will now examine each dimension in turn, beginning with the first: the role of EU values as the credentials that define Member States and bind them to the European project.

## **I. Values as Credentials**

In *Repubblika*, the Court of Justice held, in essence, that being a Member State equals being a democratic one, where fundamental rights are respected and the rule of law is upheld.<sup>6</sup> It noted that Article 49 TEU, which provides for the possibility for any European State to apply to become a member of the European Union, states that the European Union is composed of States which have freely and voluntarily committed themselves to upholding the common values referred to in Article 2 TEU, by respecting and promoting them.<sup>7</sup>

Accordingly, a European State which applies for EU membership must align its own constitutional order – including its own national identity – with the values referred to in Article 2 TEU. Once EU membership is acquired, the new Member State must refrain from

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<sup>6</sup> Judgment of 20 April 2021, [Repubblika](#), C-896/19, EU:C:2021:311.

<sup>7</sup> *Ibid.*, para. 61.

adopting measures that may bring about a regression in the protection of those values.<sup>8</sup>

As the Court of Justice held in the *Conditionality Judgments*, EU law precludes a Member State from engaging in an authoritarian drift or from falling into a democratic backsliding. ‘Compliance with those values’, the Court of Justice held, ‘cannot be reduced to an obligation which a candidate State must meet in order to accede to the [EU] and which it may disregard after its accession’.<sup>9</sup> The Member States must respect those values ‘at all times’.<sup>10</sup>

The twin principles of constitutional alignment and non-regression in value protection preclude a Member State from invoking Article 4(2) TEU — which obliges the EU to respect Member States’ national identities — as a basis for departing from those values. In *Commission v Hungary (Values of the European Union)*, decided on 21 April of this year, the Court was categorical in that respect, holding that ‘Article 4(2) TEU protects only a view of the national identities referred to therein which is consistent with the values enshrined in Article 2 TEU’.<sup>11</sup>

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<sup>8</sup> Ibid., paras 63 and 64.

<sup>9</sup> See judgments of 16 February 2022, [Hungary v Parliament and Council](#), C-156/21, EU:C:2022:97, para. 126, and [Poland v Parliament and Council](#), C-157/21, EU:C:2022:98, para. 144. See also judgment of 18 December 2025, [Commission v Poland \(Ultra vires review of the Court’s case-law – Primacy of EU law\)](#), C-448/23, EU:C:2025:975, para. 177.

<sup>10</sup> See judgments of 16 February 2022, [Hungary v Parliament and Council](#), C-156/21, EU:C:2022:97, para. 234, and [Poland v Parliament and Council](#), C-157/21, EU:C:2022:98, para. 266. See also judgment of 18 December 2025, [Commission v Poland \(Ultra vires review of the Court’s case-law – Primacy of EU law\)](#), C-448/23, EU:C:2025:975, para. 180.

<sup>11</sup> Judgment of 21 April 2026, [Commission v Hungary \(Values of the European Union\)](#), C-769/22, EU:C:2026:326, para. 562.

For the purposes of that case, this meant that Hungary could not rely on Article 4(2) TEU in order to justify a law that ‘introduced a coordinated series of discriminatory measures reflecting the Hungarian legislature’s view that any content promoting or portraying deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality is detrimental to the physical, mental and moral development of minors, which justifies limiting or prohibiting minors’ access to such content’.<sup>12</sup>

In concrete terms, in 2021, the Hungarian legislature passed a law entitled ‘laying down stricter measures in respect of persons convicted of paedophilia and amending certain laws adopted in the interests of the protection of children’. The amending law introduced changes to the Law on Media Services, the Law on Commercial Advertising, the Law on the Protection of Children, and the Law on Public Education.

Regarding the Law on Media Services, it provided that TV programmes having as a defining element the promotion or portrayal of self-identity other than the sex assigned at birth, of gender reassignment, or of homosexuality could be broadcast between 22:00 and 05:00 only. Those modifications were founded on the premiss that any such portrayal or promotion whatever its specific content, was such as to be detrimental to the best interests of the child. It also revealed a preference for some identities and sexual orientations to the detriment of others, which are stigmatised as a result. The Court found, in that regard, that the modifications to the Law on Media

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<sup>12</sup> *Ibid.*, para. 553.

Services were ‘manifestly contrary to the requirements flowing, in a society in which pluralism prevails, from the prohibition of discrimination on the basis of sex or sexual orientation guaranteed by Article 21(1) of the Charter and, accordingly, undermines the essence of that provision’.

The Court made similar findings in relation to the modifications introduced to the Law on the Protection of Children, to the Law on Commercial Advertising, and to the Law on Public Education inasmuch as they *unconditionally* restricted access, for persons under the age of 18, to media content or commercial communications which promote or portray deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality.

Such a coordinated series of discriminatory measures is repugnant to the values on which the EU is founded, because it results – and I quote one of the key passages of the judgment – ‘in the stigmatisation and marginalisation of non-cisgender or non-heterosexual persons, solely on the ground of their gender identity or sexual orientation’.<sup>13</sup> Worse yet, those consequences were intensified by the fact that the amending law, as its very name indicated, made ‘an association between the fact of not being cisgender or not being heterosexual, on the one hand, and being convicted of paedophilia, on the other, suggesting that non-cisgender or non-heterosexual persons constitute a fundamental threat to Hungarian and European society; an association

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<sup>13</sup> *Ibid.*, para. 554.

capable of encouraging the development of hateful conduct towards those persons'.<sup>14</sup>

No national identity argument could justify such a manifest and particularly serious breach of EU values.

Moreover, it is worth noting that EU law leaves to the Member States 'a degree of discretion in defining the audio-visual media services ... under their jurisdiction which are likely to impair the physical, mental or moral development of minors'.<sup>15</sup> Such discretion goes hand in hand with national diversity, since Member States may hold divergent views on *what* audio-visual content is inappropriate for minors. '[The] measures adopted by a Member State to protect minors against [inappropriate] audio-visual content ... do not necessarily correspond to a conception shared by all Member States as regards the level of protection and the detailed rules relating thereto, as that conception may vary from one Member State to another on the basis of, inter alia, moral or cultural views'.<sup>16</sup> EU law therefore leaves room for such diversity, provided that Member States exercise their discretion in a manner consistent with the Charter.

This means, in essence, that '[the] mere fact that content promotes or portrays deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality is not capable, *as such*, of establishing the potentially harmful nature of such

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, para. 128.

<sup>16</sup> *Ibid.*, para. 127.

content'.<sup>17</sup> Think, for example, of a movie scene where two women walk in a park holding hands, or a TV cooking show where a famous chef bakes a wedding cake for a same-sex couple. Such content does not seem harmful, as we would reach the same findings if we replaced the same-sex couples with a heterosexual one.

The stigmatisation and marginalisation brought about by the amending law had nothing to do with protecting minors against inappropriate audio-visual content. As the Court made crystal clear, 'minors may be adequately protected against programmes which are not age-appropriate without there being direct discrimination in that regard based on sex and sexual orientation such as that resulting from [the amending law]'.<sup>18</sup> Indeed, nothing in the judgment prevents the Member States from restricting minors' access to inappropriate audio-visual content, such as all types of pornography.

## **II. Sustaining the Momentum of European integration**

As to the second dimension of EU values, it is worth noting that neither the proper functioning of the internal market, nor the establishment and maintenance of an area of freedom, security and justice ('AFSJ'), nor judicial dialogue could take place without

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<sup>17</sup> *Ibid.*, para. 145 (emphasis added).

<sup>18</sup> *Ibid.*, para. 146.

respecting those values. Values are what keeps the EU together, by sustaining the momentum of European integration.

As the Court of Justice has consistently ruled, ‘compliance by a Member State with the values contained in Article 2 TEU is a condition for the enjoyment of all the rights deriving from the application of the Treaties to that Member State’.<sup>19</sup>

To describe the Court’s reasoning in the abstract is one thing; to witness it applied is another. Two examples taken from the case law of the Court of Justice may illustrate this point.

The first example relates to the link between free movement of judicial decisions, independent courts and the value of respect for the rule of law. The second explains the link between the EU budget and the values of democracy, the rule of law and solidarity.

#### A. Upholding the rule of law and the free movement of judicial decisions

In the AFSJ, which seeks to establish and maintain an area where citizens may move freely and securely and where national decisions, by virtue of the principle of mutual recognition, acquire a cross-border reach, national courts from one Member State are to recognise and

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<sup>19</sup> See, in this regard, judgments of 16 February 2022, [Hungary v Parliament and Council](#), C-156/21, EU:C:2022:97, para. 126, and [Poland v Parliament and Council](#), C-157/21, EU:C:2022:98, para. 144. See also judgment of 5 June 2023, [Commission v Poland \(Independence and private life of judges\)](#), C-204/21, EU:C:2023:442, para. 68.

enforce judgments from courts of other Member States as if they were their own. The free movement of judicial decisions requires a high level of trust which goes hand-in-hand with both the issuing and the executing judicial authorities being independent.

As the Court has consistently held, ‘[the] requirements that courts be independent and impartial form part of the essence of the right to effective judicial protection and to a fair trial, 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 Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded’.<sup>20</sup>

In *Minister for Justice and Equality (Deficiencies in the system of justice)*, the Court of Justice held that only European Arrest Warrants (EAWs) issued by independent courts may benefit from free movement.<sup>21</sup> Similarly, neither ministers nor police services which are part of the executive may be considered to be ‘issuing judicial authorities’ within the meaning of the EAW Framework Decision.<sup>22</sup> In *OG and PI (Public Prosecutor’s Offices, Lübeck and Zwickau)*, the Court of Justice found that the notion of ‘issuing judicial authority’ must be interpreted as not including public prosecutors’ offices of

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<sup>20</sup> See, to that effect, judgments of 26 March 2020, [Review Simpson v Council and HG v Commission](#), C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, para. 71; of 29 March 2022, [Getin Noble Bank](#) (C-132/20, EU:C:2022:235), para. 94; and of 29 July 2024, [Valančius](#), C-119/23, EU:C:2024:653, paras 46 and 47.

<sup>21</sup> Judgment of 25 July 2018, [Minister for Justice and Equality \(Deficiencies in the system of justice\)](#), C-216/18 PPU, EU:C:2018:586.

<sup>22</sup> See judgments of 10 November 2016, [Poltorak](#), C-452/16 PPU, EU:C:2016:858, and of 10 November 2016, [Kovalkovas](#), C-477/16 PPU, EU:C:2016:861.

Germany which are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue [an EAW].<sup>23</sup> By contrast, in the light of the applicable statutory rules and institutional framework, the Court of Justice found that Lithuanian, French, Swedish and Belgian public prosecutors' offices enjoy the status of 'judicial authority'.<sup>24</sup>

#### B. The link between the EU budget and the values of respect for the rule of law, democracy and solidarity

The other example relates to the EU conditionality mechanism, which allows the EU to suspend, reduce, or restrict access to EU funds if a Member State violates rule-of-law principles in a way that jeopardises the EU budget. That mechanism seeks to protect the EU budget by ensuring observance of the principle of sound financial management and by protecting the financial interests of the EU. For the purposes of that mechanism, and in the light of the case law of the Court, the EU legislature has adopted a definition of the rule of law

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<sup>23</sup> Judgment of 27 May 2019, [OG and PI \(Public Prosecutor's Office in Lübeck and in Zwickau\)](#), C-508/18 and C-82/19 PPU, EU:C:2019:456, para 90. However, those same authorities would be considered to be 'judicial authorities' for the purposes of issuing an EIO. See, in this regard, judgment of 8 December 2020, [Staatsanwaltschaft Wien \(Falsified transfer orders\)](#), C-584/19, EU:C:2020:1002, para 74.

<sup>24</sup> See, in this regard, judgments of 27 May 2019, [PF \(Prosecutor General of Lithuania\)](#), C-509/18, EU:C:2019:457, of 12 December 2019, [Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie \(Public Prosecutors of Lyons and Tours\)](#), C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077; of 12 December 2019, [Openbaar Ministerie \(Swedish Public Prosecutor's Office\)](#), C-625/19 PPU, EU:C:2019:1078, and judgment of 12 December 2019, [Openbaar Ministerie \(Swedish Public Prosecutor's Office\)](#) (C-625/19 PPU, EU:C:2019:1078).

that incorporates elements that protect the value of democracy, such as ‘the principl[e] of legality implying a transparent, accountable, democratic and pluralistic law-making process’. That definition also incorporates elements that relate to judicial independence and to the effective judicial protection of fundamental rights.

In the *Conditionality judgments*, the Court of Justice explained the link between the values of democracy, the rule of law and the principle of solidarity. To begin with, one key element of democracy at EU level is the adoption of the EU budget. Deciding how money is to be collected and spent is the backbone of the democratic process. Where a government fails to pass the budget, it is often doomed to fail and is obliged to call for elections.

Moreover, the EU budget is ‘one of the principal instruments for giving practical effect, in the EU’s policies and activities, to the [value] of solidarity’.<sup>25</sup> Indeed, some Member States are net contributors to the EU budget, whilst others are net receivers. Even within a single Member State, there are sectors of the national economy that receive more EU funds than others. For example, agriculture and rural development are clear beneficiaries of EU funds.

Solidarity and trust go hand-in-hand. That is because Member States must trust each other in ‘the responsible use of the common resources included in the EU budget’. In turn, that mutual trust can only be maintained, if each Member State continues to comply with its

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<sup>25</sup> Judgments of 16 February 2022, [Hungary v Parliament and Council](#), C-156/21, EU:C:2022:97, para. 129, and [Poland v Parliament and Council](#), C-157/21, EU:C:2022:98, para. 147.

obligations under EU law and with the values on which the EU is founded, notably with the rule of law.<sup>26</sup>

Accordingly, public authorities in charge of implementing the EU budget must ‘guarantee that expenditure covered by the [EU] budget satisfies all the financing conditions laid down by EU law and therefore meets the objectives pursued by the European Union when it finances such expenditure’.<sup>27</sup> If that is not the case, then the judiciary of the Member State concerned must be independent in order to provide effective judicial review against any mismanagement of EU funds. In the absence of such review, the EU conditionality mechanism may come into effect in order to protect the EU budget.

This shows that the EU conditionality mechanism operates as an ‘external check’ on the system of democratic governance of the Member State concerned. If that system with its internal checks and balances manages to prevent breaches of the principles of the rule of law – such as the embezzlement of EU funds or VAT fraud – or effectively sanctions such breaches when they nevertheless do occur, then there is no need for the EU institutions to apply the conditionality mechanism. However, if that system fails, then the conditionality mechanism seeks to compel the Member States to go back to the path of respect for democracy, the rule of law and fundamental rights in

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<sup>26</sup> *Ibid.*

<sup>27</sup> Judgments of 16 February 2022, [Hungary v Parliament and Council](#), C-156/21, EU:C:2022:97, para. 131, and [Poland v Parliament and Council](#), C-157/21, EU:C:2022:98, para. 149. See, in this regard, K. Lenaerts and S. Adam, ‘Sink or Swim Together: Solidarity between the Member States as a Foundational Principle of the European Union’, in C. Barnard, A. Łazowski and D. Sarmiento (eds), *Pursuit of Legal Harmony in a Turbulent Europe: Essays in Honour of Eleanor Sharpston* (Oxford, Hart Publishing, 2024).

exchange for EU funds. Put simply, no rule of law, no solidarity, no EU money.<sup>28</sup>

### III. Promoting and Defending the Identity of the EU

So far I have looked at the values contained in Article 2 TEU as being a defining element of EU membership and acting as a moral compass that must underpin the entire body of EU law. They permeate all EU policies and objectives, thereby giving impetus to European integration. Those two dimensions lead, in my view, to the following unavoidable conclusion: values define the very identity of the EU as a common legal order.

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<sup>28</sup> The fight against corruption also illustrates the link between the values of respect for the rule of law, democracy and solidarity. Citizens' trust in the democratic institutions would be called into question if European taxpayers' money was used to fund the interests of corrupt politicians. Put simply, impunity is accountability's worst enemy. From a democratic point of view, this was precisely the context in which the Court of Justice delivered its seminal ruling in *Euro Box Promotion and Others*. In those joined cases, the Court of Justice held that a series of rulings of the Romanian Constitutional Court had to be set aside, since the application of those rulings had the effect of causing 'a systemic risk of offences [concerning VAT fraud and corruption which were committed by high-level officials] going unpunished'. That systemic risk of impunity was at odds with Article 325 TFEU, which requires the Member States to ensure that 'cases of serious fraud and corruption affecting the financial interests of the Union are punishable by criminal penalties that are effective and that act as a deterrent'. See judgment of 21 December 2021, [Euro Box Promotion and Others](#), C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paras 191 and 198. Similarly, the Court of Justice is respectful of the choices made by the Member State concerned in fighting corruption in the light of historical, legal, economic or social considerations specific to it. In *Michaniki*, the Court ruled that a Member State may, in order to safeguard the principles of equal treatment of tenderers and of transparency, adopt measures that seek to prevent tenderers linked to media undertakings from entering public procurement procedures. This was a legitimate objective, since '[a] Member State's desire to prevent the risks of interference of the power of the media in procedures for the award of public contracts is consistent with the public interest objective of maintaining the pluralism and the independence of the media', whilst contributing to fighting fraud and corruption. See judgment of 16 December 2008, [Michaniki](#), C-213/07, EU:C:2008:731, para. 59.

The EU endorses a new type of identity that operates outside the paradigms of the nation-State. The identity of the EU brings all Europeans together, since we can all identify with the values contained in Article 2 TEU, regardless of our national identity.<sup>29</sup> That identity is the bedrock on which to build ‘the process of creating an ever-closer union among the peoples of Europe’.<sup>30</sup> We, Europeans, are diverse in that we may speak a different language, pray to a different god or have a different understanding of family life and yet we are united because we share and cherish those founding values. As a community of values, the EU is ‘united in diversity’. Most importantly, for present purposes, if the EU is not to lose itself, it must defend those values, within the limits of its competences.

The question that then arises is how EU law protects those values. It seems clear that the application of provisions of EU law that give concrete expression to those values serves to promote and protect them. As the Court of Justice held in the *Conditionality Judgments*, ‘Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values which ... are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States’.<sup>31</sup> Those principles are, in turn, implemented by the EU legislature in secondary EU legislation.

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<sup>29</sup> See, in this regard, K Lenaerts and JA Gutiérrez-Fons, ‘Epilogue. High Hopes: Autonomy and the Identity of the EU’ (2023) 8(3) *European Papers* 1495.

<sup>30</sup> Preamble to the Treaty on European Union.

<sup>31</sup> Judgments of 16 February 2022, [Hungary v Parliament and Council](#), C-156/21, EU:C:2022:97, para. 232, and [Poland v Parliament and Council](#), C-157/21, EU:C:2022:98, para. 264.

For example, in *Commission v Hungary (Values of the European Union)*, the Court found that the Audiovisual Media Services Directive contains a provision, Article 9, which states that commercial communications discriminating on grounds of gender or sexual orientation shall be prohibited. This provision gives concrete expression to the prohibition of discrimination enshrined in Article 21 of the Charter, which in turn implements the value of equality. Thus, there is a ‘normative pyramid of protection’ composed of rules (Article 9 of that Directive), principles (Article 21 of the Charter) and values (Article 2 TEU).

But what about Article 2 TEU itself? May that Treaty provision operate as a stand-alone provision that imposes legally binding obligations upon the Member States?

In *Commission v Hungary (Values of the European Union)*, the Court replied in the affirmative, drawing on the wording, the context and the origins of Article 2 TEU. First, in the light of its wording, the Court of Justice found that that Treaty provision ‘delimits the founding values of the [EU] which the Member States ... mutually undertake to respect, maintain and promote’.<sup>32</sup> Second, regarding the context, the Court drew a distinction between the reference to EU values in the Preamble to the EU Treaty and that in the body of that same Treaty. Whilst the former reference lacks binding legal force, the latter supports the finding that Article 2 TEU contains legally binding

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<sup>32</sup> Judgment of 21 April 2026, [Commission v Hungary \(Values of the European Union\)](#), C-769/22, EU:C:2026:326, para. 530.

obligations. Similarly, the twin principles of constitutional alignment and no regression in value protection, grounded in Article 49 TEU, militate in favour of the binding force of Article 2 TEU. The Court added that the same findings can be made in respect of other Treaty provisions, which explicitly refer to the values on which the EU is founded.<sup>33</sup> Third and last, the Court looked at the *travaux préparatoires* of Article 2 TEU, which serve to explain the semantic shift from ‘principles’ to ‘values’ introduced by the Treaty of Lisbon, which, in turn, reproduces the drafting used by the Convention on the Future of Europe. According to the *travaux*, the fundamental European values ‘must have a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom which are subject to sanction’.<sup>34</sup>

Since Article 2 TEU contains legally binding obligations, two additional questions arise relating to its enforcement and the conditions that must be met in order to determine a violation of that Treaty provision.

Regarding the question of enforcement, the Court of Justice rejected the arguments put forward by Hungary, according to which the values contained in Article 2 TEU could only be enforced under Article 7 TEU, which is, in essence, a political tool. The Court held that, since there was no derogation from the general jurisdiction which

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<sup>33</sup> *Ibid.*, paras 532 to 534. Those other Treaty provisions are: Article 3(1) and (5), Article 7(1) and (2), Article 8(1), Article 13(1), Article 21(2)(a), the first paragraph of Article 32, and Article 42(5) TEU.

<sup>34</sup> Judgment of 21 April 2026, [Commission v Hungary \(Values of the European Union\)](#), C-769/22, EU:C:2026:326, para. 535.

the Treaties confer on it to uphold the rule of law, the Commission could bring an infringement action alleging that a Member State has failed to fulfil its obligations under Article 2 TEU. Besides, in the *Conditionality Judgments*, the Court had already rejected that line of argument, holding that numerous Treaty provisions enable the EU institutions to protect and promote the values contained in Article 2 TEU.

Next and perhaps most importantly for present purposes, the Court examined the conditions under which a Member State may commit a violation of Article 2 TEU. In that regard, the Court held – I quote—that ‘only manifest and particularly serious breaches of one or more values common to the Member States may give rise to [a violation of Article 2 TEU]’. But what does a ‘manifest and particularly serious breach’ mean within the meaning of Article 2 TEU?

The judgment of the Court in *Commission v Hungary (Values of the European Union)* provides some useful indications. ‘[A]ny infringement of a provision of EU law which, directly or indirectly, gives concrete expression to those values’ is not automatically a manifest and particularly serious breach of Article 2 TEU. Something more is required to meet the applicability threshold of that Treaty provision.

In *Commission v Hungary (Values of the European Union)*, the amending law met that threshold. This was because the law in

question resulted – I quote – ‘in the stigmatisation and marginalisation of non-cisgender or non-heterosexual persons, solely on the ground of their gender identity or sexual orientation, with those consequences being intensified by the fact that that law also makes an association between the fact of not being cisgender or not being heterosexual, on the one hand, and being convicted of paedophilia, on the other, suggesting that non-cisgender or non-heterosexual persons constitute a fundamental threat to Hungarian and European society; an association capable of encouraging the development of hateful conduct towards those persons’.<sup>35</sup>

That stigmatisation, marginalisation and association brought about by that law made those persons socially invisible; ran counter to the values of human dignity, equality, and respect for human rights, including the rights of persons belonging to minorities, as referred to in Article 2 TEU, and were incompatible with the identity of the EU as a common legal order.

Put simply, the amending law adopted by Hungary was profoundly anti-European.

Moreover, the structure of the judgment of the Court follows an incremental approach. To begin with, the Court found that that law violated several provisions of secondary EU law. Next, it observed that several provisions of the Charter, including the right to private and family life (Article 7), the freedom of expression (Article 11), the

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<sup>35</sup> *Ibid.*, para. 554.

right to non-discrimination (Article 21) and the right to human dignity (Article 1), were also breached. What is more, the amending law, which established a coordinated series of discriminatory measures, stigmatised and marginalised non-cisgender and non-heterosexual persons. Such stigmatisation and marginalisation undermined the essence of the prohibition of discrimination on the basis of sex or sexual orientation guaranteed by Article 21(1) of the Charter.<sup>36</sup> Since the law breached the very essence of Article 21(1) of the Charter, limitations on the exercise of other fundamental rights could not be justified under the same objectives.<sup>37</sup> That stigmatisation and marginalisation coupled with the association between those persons and paedophilia triggered the application of Article 1 of the Charter. These previous findings led, in turn, to the inevitable conclusion that by adopting the amending law, Hungary had failed to fulfil its obligations under Article 2 TEU. Hungary had committed a manifest and particularly serious breach of three of those values: human dignity, equality and human rights.

#### **IV. Concluding Remarks**

The values contained in Article 2 TEU are not merely a statement of policy guidelines or intentions which are confined to the realm of politics. On the contrary, that Treaty provision contains obligations

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<sup>36</sup> *Ibid.*, para. 141.

<sup>37</sup> *Ibid.*, para. 473.

that are legally binding upon the Member States. Indeed, it is the ongoing commitment to protecting and promoting those values that define not only the idea of EU membership but also the very identity of the EU as a common legal order.

Not all violations of provisions of EU law that give concrete expression to those values automatically trigger the application of Article 2 TEU. The applicability threshold of that Treaty provision is much higher, being limited to breaches of a manifest and particularly serious nature.

In my view, Article 2 TEU, as interpreted by the Court of Justice, contributes to solving what the famous philosopher Karl Popper called the ‘tolerance paradox’, according to which ‘[u]nlimited tolerance must lead to the disappearance of tolerance’.<sup>38</sup> He rightly said that ‘[i]f we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them’.

Of course, needless to say, the challenge in applying that paradox is to know where tolerance ends and intolerance begins. This was precisely the challenge with which the Court was confronted in *Commission v Hungary (Values of the European Union)*. Article 2 TEU encapsulates the idea of protecting and promoting European

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<sup>38</sup> K. Popper, *The Open Society and its Enemies* (London, Routledge, 1945).

societies in which pluralism and tolerance prevail. Article 2 TEU leaves room for national identity, provided that such identity aligns with the values on which the EU is founded. National diversity that enriches European integration must grow in harmony with the unifying power of shared values.

Article 2 TEU seeks to hold the waves of intolerance at bay by drawing an indelible line in the sand that Member States must not cross. It sends an unequivocal message to those who hide behind intolerance: the Union's foundational values are not negotiable, and that *enough is enough*. Within the EU, values always come first.

No one should be stigmatised or marginalised for the person they love, or for the person they see when they look in the mirror. Every human being who happens to be different from us is entitled to the same dignity.

Equal dignity is something *quintessentially* European and, as judges of a common legal order, we must stand for it.

This is the unequivocal message which follows from the landmark decisions of the Court of Justice I wanted to discuss with you today. It is, at the same time, the new perspective following *Commission v Hungary (Values of the European Union)*. Not 'new' in the sense of newly developed by the Court of Justice, but 'new' in the sense that, in the context of this case, the Court of Justice was called upon to give, within the limits of its competence as defined in Article 19 TEU,

an in-depth and orientating interpretation of Article 2 TEU, agreed upon by the Member States.

Thank you very much.