



2025 R-EU-R Jean Monnet Module Intensive course

Rule of Law and Fundamental Rights Protection in the EU

RULE OF LAW AND DEMOCRACY IN THE EU

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Με τη συγχρηματοδότηση
της Ευρωπαϊκής Ένωσης

Co-funded by the Erasmus+ program of the European Commission

PROJECT IDENTIFIER: 101127674



democracy: decisive criterion for EU membership

Preamble to the EEC treaty (1957)

*RESOLVED by thus pooling their resources to **preserve and strengthen peace and liberty**, and calling upon the **other peoples of Europe who share their ideal to join in their efforts***

- block the countries of the soviet bloc

but also

- *Greece* (AA 1962: frozen because of the dictatorship 1967-74)
- *Spain* (initial application ignored because of G. Franco regime)

participation of the EP in the legislative process (-1986)

consultation:

*“reflection
of the fundamental democratic principle
that the people should take part
in the exercise of power
through the intermediary of
a representative assembly”**

from implied principle to founding value

- **Copenhagen criteria for accession (1993)***
 - **codification ToA (1999), Article 6.1 TEU: *principles***
 - ***Laeken European Council (2001): Article I-2***
ConstT (2003)
 - **Article 2 TEU (ToL 2007): *values***
- ≠
- **EUCFR (2007): *principles***

democracy as an EU value

connection with EUCFR freedoms

10 EUCFR : thought, conscience and religion

11 EUCFR : expression and information (media pluralism)

12 EUCFR : assembly and of association

13 EUCFR : arts and sciences

15 EUCFR : choice of occupation and right to engage in work

16 EUCFR : conduct a business

and EUCFR rights

14 (education), 17 (property), 18 (asylum), 19 (protection in the event of removal, expulsion or extradition)

representative democracy as foundation of the EU model of governance

Article 10.1 TEU:

**“The functioning of the Union shall be
founded on representative democracy”**

representative democracy as the reflection of democratic accountability

Article 10.2 TEU:

“Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens”

institutional balance

representation=legitimation of decision-making

exercise of democratic control in the EU

- *direct*: EP (14 TEU)

- *indirect*: elected national governments

- *appointment of the Commission* (17 TEU)

- *represented in the Council* (16 TEU)

- **specific role for national parliaments (legislative process): 12 TEU, Protocols 1, 2**

elements of participatory democracy

the rule of the people (δημοκρατία)

the principle (10.3 TEU):

EU citizens' right to participate in the democratic life of the Union

- EU citizens' initiative (ECI): 11.4 TEU
- right to petition to the EP: 20.2 (d), 24, 227 TFEU
- right to complain to the European Ombudsman: 24 TEU, 228 TFEU
- dialogue with representative associations and civil society: 11.1,2,3
TEU

ECI: an instrument of participatory democracy

Article 11.4 TEU, Regulation No 211/2011:

EU citizens (*one million signatures*, from *at least seven MS*):

- direct invitation addressed to the Commission
 - to submit a legislative proposal
 - in the areas of Union competence
- right of the Commission not to proceed/give reasons

**CJEU 19.12.2019, C-418/18 P, *Puppinck and Others/Commission*,
EU:C:2019:1113, para 64 (*right to undertake an ECI**)**

immunity of MEPs

Article 9 of the Protocol (No 7) on the privileges and immunities of the EU

C-502/19, *Junqueras Vies*, EU:C:2019:1115, paras 83, 84 (concept of a 'MEP'*)

83. In the case of the European Parliament... in accordance with the principle of representative democracy... its composition must reflect faithfully and completely the free expression of choices made by the citizens of the European Union, by direct universal suffrage, as regards the persons by whom they wish to be represented during a given term, but also that the European Parliament must be protected, in the exercise of its tasks, against hindrances or risks to its proper operation.

84. On that twofold basis, the immunities granted to Members of the European Parliament are intended to ensure the independence of that institution in the performance of its tasks, as the European Court of Human Rights noted as regards different forms of parliamentary immunity established in democratic political systems.

Article 10.4 TEU: expression of the EU citizens' will

“Political parties* at European level contribute to forming European political awareness and to expressing the will of citizens of the Union”

*Regulation (EU, Euratom) No 1141/2014 of the EP and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations [2014] OJ

L317/1

Commission Communication on Defence of Democracy COM(2023) 630 final

- Citizens' freedom of expression
- Citizens' participation in democratic life
- Citizens' choice of political representatives
- Citizens' say in their future
- Citizens' ability to form their own opinions in a public space
 - *where different views can be expressed*
 - *where they have a right to disagree and to change governments through elections, free from interference, either foreign or domestic*

RoL intrinsically linked with democracy

REGULATION 2020/2092, *on a general regime of conditionality for the protection of the Union budget*, OJ L 433I, 22.12.2020, p.1

Recital 6:

“While there is no hierarchy among Union values, respect for the rule of law is essential for the protection of the other fundamental values on which the Union is founded, such as freedom, democracy, equality and respect for human rights. 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”.

rule of law and democracy proclaimed by the EU

Preamble to the TEU:

- “**DRAWING INSPIRATION** from... democracy, equality and the rule of law”
- “**CONFIRMING their attachment** to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law”

Articles 2, 19.1, 21.1** and 2*** TEU

Preamble to the EUCFR:

- “the Union... is based on the principles of democracy and the rule of law”

indirect references via the notion of EU values:

- **Articles 3, 7, 8, 49 TEU******
- *but also 258 TFEU (failure to fulfil obligation under the Treaties)*

RoL and democracy promoted by the EU

across the continent

- in the Member States
- within in the EU institutional structure

around the world

- with neighbouring countries
- on the international scene

in the Member States

- **variation** depending on each Member State's constitutional system
 - **respected** by the EU Treaties:

Article 4 para 2 TEU

“The Union shall respect the **equality of Member States before the Treaties** as well as their **national identities**, inherent in their **fundamental structures, political and constitutional**, inclusive of regional and local self-government. It shall respect their **essential State functions**, including ensuring the **territorial integrity** of the State, maintaining **law and order** and safeguarding **national security**. In particular, national security remains the sole responsibility of each Member State”

within in the EU institutional structure
the principle of institutional balance

Article 13 (2) TEU

Each institution shall act **within the limits of the powers conferred on it** in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice **mutual sincere cooperation**.

authoritarian regimes

- undermine the system (sovereignty)
- interfere via propaganda, fake news,

the response: strengthening democratic resilience

European Democracy Action Plan (EDAP)

promotion of election integrity, protection of media freedom and pluralism, strengthening the fight against disinformation, foreign information manipulation and interference, harmonisation of transparency requirements in the internal market

**projection of the EU concept of Rol and
democracy at global level**

Article 8 TEU

1. *The Union shall develop a **special relationship** with **neighbouring countries**, aiming to establish an area of prosperity and good neighbourliness, **founded on the values** of the Union and characterised by close and peaceful relations based on cooperation.*

2. *For the purposes of paragraph 1, the Union may conclude **specific agreements** with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.*

example: enlargement towards Western Balkans

Declaration of Thessaloniki, EU-WB (summit June 2003):

the EU reiterates its “unequivocal support to the European perspective of the Western Balkan countries”, declaring that “the future of the Balkans is within the European Union”

Declaration of Rome (summit October 2003)

enlargement towards WB “constitutes a historical moment which renders the Union richer in terms of identity and culture and extends the possibility of **promoting shared values** and of conferring weight and authority to Europe’s role in world”

Article 3 TFEU

.....

5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

.....

Article 21 TEU

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

....

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- (a) safeguard its values, fundamental interests, security, independence and integrity;*
- (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;*
- (c) (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;.....*

**some examples of measures
in the framework of the EU external action**

positive: international election observation

- **a crucial tool for EU foreign policy**
- **in support to democracy worldwide**
- **deployment of over 160 Election Observation Missions (EOMs) in more than 60 countries since 2000**
 - **enhancement of EU's engagement with partner countries**
 - **support of their efforts to fulfil their international human rights obligations**

negative: Article 215 TFEU

- 1. Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.*
- 2. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.*
- 3. The acts referred to in this Article shall include necessary provisions on legal safeguards.*

restrictive measures against third States

- 2017 (Council Regulation (EU) 2017/2063 and Council Decision (CFSP) 2017/2074): adoption of sanctions in response to the “*deterioration of democracy, the rule of law and human rights*” in Venezuela:
- an **arms embargo**, **travel restrictions** and an **asset freeze** on those responsible for *serious human rights violations* or *abuses* or the *repression of civil society and democratic opposition*, and those whose actions, policies or activities otherwise *undermine democracy or the rule of law* in Venezuela
- still in place (until 14 May 2024)
- CJEU 22.06.2021, *Venezuela/Council* , C-872/19 P, ECLI:EU:T:2019:649
- GC (Grand Chamber) 13.09.2023, *Venezuela/Council* , T-65/18 RENV, EU:T:2023:529