CIDOB • Barcelona Centre for International Affairs

documents CIDOB

E-ISSN: 2339-9570
D.L.: B 11.000-2014
nova època

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MAY
2014

EU COMMON VALUES AT STAKE: IS ARTICLE 7 TEU AN EFFECTIVE PROTECTION MECHANISM?

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Introduction

The Treaty on the European Union (TEU) provides for the possibility of a prevention mechanism and remedial action by the European Union (EU) in the event of a *clear risk*, or a *serious and persistent breach* of *common values* by a Member State (MS). Nonetheless, the application of the prevention and sanction mechanisms under Article 7 TEU lacked from effectiveness, mainly due to its extremely political approach. Some relevant cases have emerged in recent years, which show the political unwillingness of EU institutions involved in these mechanisms to act against a MS, which could be in breach of EU values.

This issue is particularly relevant given the anticipated growth of support for extremist and populist parties in the forthcoming elections to the European Parliament (EP) to be held in May 2014. And therefore, the results of these elections will be an important indicator of the subsequent domestic elections in the MS.

The EP composition in the eighth legislature may differ substantially from the current term. Major political changes are expected in the composition of the EP that can significantly affect the European political map. The most pessimistic surveys predict that the new EP could be unmanageable. There are several reasons which may lead to these results, such as: lack of political leadership in Europe, the disaffection of citizens, and the response to the crisis which resulted in severe austerity policies for many EU citizens whilst others were affected by budgetary transfers of the major contributors towards the south.

According to some polls, the eurosceptics could control up to 30% of the EP, while the far right parties could reach around 40 members and form their own group. The eurosceptic and populist fronts, on the one hand, and the extremist parties that are either right or left, on the other hand, constitute a serious threat to the already damaged perception regarding the EU by citizens.

There is a rising tide of radical, populist and eurosceptic parties in several MS. The Front National could be the largest party in France exceeding even the Union pour un Mouvement Populaire (UMP); the Freedom Party of Austria (Freiheitliche Partei Österreichs [FPÖ]) could double its results compared to the 2009 EP elections; Geert Wilders of the Dutch Party for Freedom (Partij voor de Vrijheid [PVV]) has been considered the best rated leader in the Netherlands; whilst the UK Independence Party (UKIP) could obtain the second largest vote in the EP elections in the United Kingdom. Other relevant parties are the Golden Dawn in Greece, and Jobbik in Hun-

Summary: Article 7 of the Treaty on the European Union (TEU) sets up a mechanism to guarantee the protection of EU core values, with an early warning system in case of a risk of breaches, and a sanctions mechanism in the event of a serious and persistent breach by a Member State. Regrettably, this article has never been activated and therefore its objectives are far from being achieved. The main issue lies with the highly political character of this procedure and the fact that it does not envisage any legal or judicial intervention. The main decisions for applying Article 7 TEU are vested in institutions such as the Council and the European Council, composed of MS, which are reluctant to sanction another MS because this may be turned against them. In view of the foreseen growth of extremist and populist parties, it is important to carry out reforms to ensure effective protection of common values and fundamental rights.

Summary: Article 7 TEU, sanction mechanisms, EU common values, democracy, rule of law

gary. The risk is that these parties could gain influence and establish a common front within the EP. A further fragmentation of the EP would lead to difficulties in reaching important decisions in the forthcoming years. Supporters of the new extreme right-wing parties should remember and be aware that similar fascist movements caused a destructive catastrophe in the Second World War. Indeed the proposed creation of the European Economic Community arose to prevent a repeat of history. Probably the EU and the MS assumed that the consolidation of democracy within the EU was irreversible. However, there are certain non-negotiable values that the EU and its MS must and should always safeguard. Consequently, if these parties receive substantial support, it may highlight the need to review and improve the existing mechanisms to protect common values of the EU, and more specifically Article 7 TEU.

Accordingly, this paper will analyse the lack of effectiveness in activating and applying the prevention and sanction mechanisms of Article 7 TEU, as well as the compliance of MS with common EU values, and underline the urgent need to start further reflexion on this mechanism in order to improve the current tools. The first part of this article describes EU mechanisms for the compliance of EU values defined in Article 2 of the Treaty on European Union (TEU), and more specifically the scope, and effectiveness of the process laid down in Article 7 TEU. The second part presents the most relevant cases in which there was an attempt to activate the Article 7 TEU mechanism. Next, in the third section, I state the main issues related to the lack of effectiveness in the application of Article 7 TEU, mainly due to the political nature of the mechanism. The fourth section is a review of some interesting points that have been analysed in the course of the present research; I will also suggest possible changes to this procedure to ensure that these breaches of EU values are effectively addressed. As a conclusion, I would like to highlight the need to improve the existing mechanisms that will have to cope with possible future events or changes within the political framework of MS.

This paper analyses the lack of effectiveness in activating and applying the prevention and sanction mechanisms of Article 7 TEU, the compliance of MS with common EU values, and underline the urgent need to start further reflexion

Context: Scope of Article 7 TEU in reference to Article 2 TEU

Article 7 TEU in reference to Article 2 TEU

«Respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities» are the common values of the MS, enshrined in Article 2 TEU, on which the EU is founded. The article also refers to «a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail». The respect and commitment towards these principles is a condition to become a member of the European Union, as established in Article 49 TEU. Article 7 TEU introduces a mechanism to guarantee the EU protection of the values enshrined in Article 2 TEU with the establishment of an early warning system in case of a risk of breaches, and a sanctions mechanism in the event of an actual breach by a MS. To activate Article 7 TEU the following criteria must be met (COM (2003) 606 final):

– For the prevention mechanism: a *clear risk of a serious breach* of values mentioned in Article 2 TEU.
– For the penalty mechanism: a *serious and persistent breach* of values mentioned in Article 2 TEU. In this case the risk has actually materialised.

Both mechanisms coexist, but the previous activation of the former is not required for the application of the latter. The scope of Article 7 TEU is not just limited to areas covered by EU law. Faced with non-compliance, the EU could act also in the event of a breach in the area where the MS act at a domestic level. It would be contradictory to limit the possibilities for EU action, and to allow the EU to ignore serious breaches that may occur on the ground in the MS (COM (2003) 606 final).

At first, Article 7 TEU was incorporated into EU law by the Amsterdam Treaty as a *sanction mechanism* (current Article 7.2 TEU) in case of breach of EU principles[1]. At the time, the prospect of impending enlargement to Central and Eastern European countries (Sadurski, 2010: 2, 3) played an important role due to a certain mistrust of EU institutions and MS concerning the commitments of these countries to the principles of human rights, democracy and the rule of law. Moreover, there was an intention to create a tool to intervene whenever democratic values are at risk by one of its MS (ibid.: 12). Later, following the «Haider case» in Austria, the Nice Treaty extended the provisions of Article 7 TEU to situations with a clear risk of a serious breach, by a MS, of EU values (ibid.). This *preventive mechanism* was added to answer the need for EU intervention before the breaches occur (current Article 7.1 TEU). Finally, the Lisbon Treaty just introduced certain amendments to the procedure.

The Communication submitted by the European Commission (EC) in 2003 (COM (2003) 606 final) contributed to the debate on Article 7 TEU, as a tool to respect and promote the values on which the EU is based. But the Commission only approaches Article 7 TEU from a preventive perspective and regrettably it does not explore the possible forms of correction or penalties that may be available to the Council against a MS, which is in breach of EU values. However, the Communication provides for a clarification and definition of essential concepts for an eventual and effective application of Article 7 TEU:

1. The reference to «common values» in the current Article 2 TEU were defined as «principles and fundamental rights» in the Amsterdam Treaty (Article 6 [ex Article F]). The concept of «common values» emerged for the first time in the Lisbon Treaty.

– A *clear risk* represents a warning signal to a non-complying MS before the risk occurs. Then, «the institutions must monitor the situation and control whether the risk evolves into a particular policy that may lead to serious breaches».
– A *serious breach* requires the risk to have actually materialised. It could also provide stronger arguments for applying Article 7 TEU, in case of any *systematic repetitions* of individual breaches or if a MS has been condemned several times for the same type of breach by an international court and has not shown any intention of taking a remedial action».

Also, the European Commission for Democracy of the Council of Europe, called «Venice Commission», has provided a widely accepted conceptual framework for the rule of law in Europe (SPEECH/13/677: 4).

Conditions for the application of Article 7 TEU and EU institutions involved

The initiative to activate the process of Article 7 TEU may come from the EC, the EP or one third of the MS, as stated in the prevention mechanism set out in Article 7.1 TEU. It is relevant to remark that Article 7 TEU confers *discretionary power* on the Council and the European Council to determine whether there is a *serious breach* or a *risk of serious breach* of EU common values. These extensive powers of the Council and the European Council underline the political nature of these mechanisms and allow a «diplomatic» solution in case of confirmation of a serious breach. The case of *serious breach* requires unanimity in the European Council. In the second case, the Council, acting by a majority of four fifths of its members, may determine that there is a *risk of serious breach*. According to Article 7.2 TEU, the Council acting by a qualified majority may also decide to apply *sanctions*, such as suspension of voting rights of the representative of the government of that MS in the Council. These powers of the Council and the European Council are subject to democratic control by the European Parliament, which must consent to these decisions.

Role and intervention of the Court of Justice of the EU

Another question that emerges is the role of the Court of Justice of the EU (CJEU). The mechanisms under Article 7 TEU do not provide any role for the CJEU. Regrettably, and despite the suggestions made by the EC over the course of the Intergovernmental Conferences prior to the Amsterdam and Nice treaties, «the current Treaty does not provide the power of judicial review of the decision for the CJEU to determine the existence of a *serious and persistent breach* of common values or a *clear risk* of such a breach». Moreover, the Lisbon Treaty has repealed Article 46 (e) TEU under the Nice Treaty, which let the CJEU review «purely procedural stipulations in Article 7 TEU and allowed the state's rights to be respected».

Nonetheless, this does not mean the total exclusion of the CJEU in case of violation of EU values by a MS. The CJEU can intervene in accordance with *the infringement procedure* under Articles 258-260 of the Treaty on the Functioning of the European Union (TFEU). The EC, as the guardian of the treaties, usually brings the matter before the CJEU (Pinelli: 2012, 10). The CJEU may also act if the sanctioned MS submits an *application for annulment* of the Council decision. The Court could assess the legality of the sanctions imposed, and more specifically it could decide whether any of the common values were violated and on the notion of *serious and persistent violation*. However, it is for institutions involved in the mechanisms to define the existence, severity and persistence of the above mentioned violation. In this regard, it is noteworthy that CJEU case law already exists –in several resolutions– with an appreciation for the concept *serious* and *persistent* violation. Likewise, the CJEU has also ruled on other relevant issues, such as the notion of «state» in relation to breach occurred. In this regard, the CJEU has considered, in several judgments, that the violation may come from the legislative, executive, and judiciary, as well as from the central, federal, local and decentralized authorities (Bribosia *et al.*, 2000: 2). As established in Article 51 of the Charter of Fundamental Rights of the European Union, the CJEU is also competent[2] concerning the provisions of the Charter, but «these provisions are addressed to MS *just when they are implementing Union law*».

Article 7 TEU confers *discretionary power* on the Council and the European Council to determine whether there is a *serious breach or a risk of serious breach* of EU common values

Case studies. Can the attempts to activate Article 7 TEU be considered as a failure?

The EU has attempted to apply the mechanisms of Article 7 TEU on several occasions. The most relevant examples are the «Haider case» in Austria, the Constitutional Reform in Hungary, the Roma expulsions in France, and the political struggle between President Basescu and Prime Minister Ponta in Romania.

The Haider case in Austria: towards an improvement of the mechanism

In October 1999 the Freedom Party of Austria (FPÖ) obtained 27% of the votes in the parliamentary elections (lower chamber). The FPÖ was widely considered by EU countries and by the European Parliament as an extreme right-wing party, with examples of xenophobic propaganda and doubts about its democratic character (Cramér and Wrange, 2000: 28). All 14 EU MS, following the alert of the Prime Minister of Portugal who was then holding the Presidency of the Council, announced they would apply sanctions against any Austrian government including the FPÖ. But, in fact, these sanctions had a diplomatic and bilateral character and were not based on EU provisions. The main measures taken against Austria

2. Except for Poland and United Kingdom. See «62. Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom».

were: lack of support for Austrians in search of positions in international organizations or acknowledgment of ambassadors only on technical level. In reality, the 14 MS acted in the name of European principles, but not on behalf of the EU (Sadurski, 2010: 2). It is also relevant that the Austrian Government claimed that the EU's action «violated «fundamental legal principles and the spirit of European treaties», including the recognition of a Democratic Government committed to the rule of law» (Duxbury, 2000: 3)[3].

Following a plan drafted by the Portuguese Presidency, the 14 MS reached an agreement to create a committee of «Three wise men»[4] to report on Austria's Government commitment to the common values, especially concerning the rights of minorities, refugees and immigrants, and agreed to follow the evolution of the political nature of the FPÖ (Ahtisaari *et al*., 2000: 23).The report established that the mentioned rights were respected and in relation to the protection of minorities the standards were guaranteed to an even greater extent than in many other EU MS. The report even made a specific mention of the fact that Austria was the only EU MS to give full constitutional rank to the ECHR. In sum, Austria was not in breach of any binding legal text in the human rights area, which also included the Treaty on European Union. The report recommended that the measures taken by the 14 EU MS should be lifted since «they could become counterproductive as had already raised up nationalist feelings in the country» (Duxbury, 2000: 4).

Consequently, it could be considered that sanctions towards Austria were addressed against the particular ideology of the FPÖ and not to any concrete action from its government, and depended basically on the political self-interest of the 14 MS (Szczodrowska, 2013: 22). It must also be noted that, at the time, extremist and populist parties were on the rise in other MS, such as in Belgium (VB-Vlaams Blok), the Netherlands (PVV-Partij Voor the Vrijheid), France (Front National) and Italy (Alleanza Nazionale). Politicians like Jacques Chirac and Guy Verhofstadt took advantage of this situation to send a warning message to their own countries on the possible negative consequences of the growing support for extremist parties.

Since Austria did not breach any of the common principles, the sanctions mechanism of Article 7 TEU –the only one in existence at the time– could not be applied. The notion of EU principles was just a useful tool for MS to legitimize their action. The fact that sanctions against Austria were not taken at the EU level is today still seen as a failure. In conclusion, the inability to apply EU tools and the «Report from the «three wise men»» favoured the introduction of a prevention mechanism, aimed at moving forward from a simple reactive approach. This mechanism was introduced later by the Nice Treaty, and corresponds to the current Article 7.1 TEU.

The EU has attempted to activate Article 7 TEU on several occasions, such as the «Haider case» in Austria, the Constitutional Reform in Hungary, the Roma expulsions in France, and the political struggle between President Basescu and Prime Minister Ponta in Romania

Constitutional reform in Hungary

In April 2010 after elections to the National Assembly in Hungary, the Hungarian Party Fidesz joined the Parliament. The Fidesz Government under Victor Orban had the aim of approving a major constitutional reform in Hungary (ibid.: 16). This new constitution came into force on the 1st January 2012 (De Capitani, 2012: 3). Once the constitution was adopted, many EU MS launched strong criticism against Hungary and declared their intention to start the procedure of Article 7 TEU. Reactions also emerged from main European institutions such as the European Parliament, the European Commission, and the European Union Agency for Fundamental Rights (ibid.: 24). The main concerns of constitutional changes were related to the following matters: the lack of consultations, with the opposition and civil society; the speed, lack of adequate transparency and supervision during the reform process; the incompliance with European values and international binding rules on Human Rights protection; the independence of the judiciary; the central bank and the data protection authority; fair conditions for political competition and political alternation; and the plurality of the media.

The first European Institution expressing doubts on the compatibility of the new Hungarian Constitution with EU values was the Council of Europe's Legal Affairs Committee, which asked the Venice Commission[5] to analyse the draft of the Constitution. The Venice Commission identified several legal weaknesses in the new text (Venice Commission, 2011). At the EU level, on the 17th January 2012, the European Commission decided to start infringement procedures against Hungary in regard to the independence of the central bank, the lowering of the mandatory retirement age of judges from 70 to 62 years old, and the independence of the data protection authority. The Commission also asked the Hungarian government for further information on the independence of the judiciary (IP/13/1112). The new Hungarian Constitution was also a source of debates and caused many concerns within the European Parliament. Ac-

3. «Action Programme of the Federal Government for the lifting of Sanctions» (5th May 2000).
4. The Prime Minister of Portugal, Antonio Guterres, asked to the President of the Court of Human Rights, Luzius Wildhaber, to appoint three people for this Committee. The «Three wise man» appointed to that purpose were: Martti Ahtisaari, Former President of Finland; Jochen Frowein, Director of the Max Planck Institute for Comparative Public Law and International Law and Former member and Vice-president of the European Commission of Human Rights, and Marcelino Oreja, Former Spanish Minister for Foreign Affairs, Former Secretary General of the Council of Europe and Former Member of the European Commission.
5. The European Commission for Democracy through Law –better known as the *Venice Commission* as it meets in Venice– is the *Council of Europe's advisory body on constitutional matters*. Its role is to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

cording to a suggestion and debate launched by the Alliance of Liberals and Democrats for Europe (ALDE), the European Parliament adopted a Resolution, which called on the «Hungarian authorities to comply with the recommendations, objections and demands of the European Commission, the Council of Europe and the Venice Commission and amend the laws concerned, respecting the EU's basic values and standards». The EP expressed its «*serious concern* about Hungary with regard to the exercise of democracy, the rule of law, the protection of human and social rights, the system of checks and balances, and equality and non-discrimination». MEPs also instructed the Conference of Presidents[6] to consider whether to activate necessary measures, including Article 7.1 TEU. Furthermore, the EP, in a Resolution of July 2013, called on Hungary to reform its Constitution to bring it in line with EU norms and values. EP highlighted its willingness to activate the Article 7 TEU prevention mechanism if the Hungarian government did not take action to restore the rule of law in Hungary and comply with the Union's values. It is also noteworthy that, for the first time, the President of the EP, Martin Schultz, and the Vice-President of the EC, Viviane Reding, invoked the application of article 7 TEU. However, the European Council remained silent on the issue. Nevertheless, two years after the entry into effect of the new Hungarian constitution, Article 7 TEU remains unused.

Democracy and the rule of law in Romania

In May 2012, Victor Ponta was designated as the new Prime Minister of Romania after a no-confidence vote in the Parliament won by a coalition led by his party, the Social Liberal Union (USL), against the Government of the time. Ponta was the main political opponent of President Traian Basescu, and this situation entailed a number of disputes (Stratulat and Ivan, 2012: 1). The USL launched a series of attacks against several state institutions, specially the judiciary and the Constitution, in order to impeach the President. Then, Basescu and Ponta started a prosecution before the Constitutional Court over who should represent Romania in the European Council. In response to a Declaration from the Romanian Parliament designating Ponta, President Basescu asked for a ruling from the Constitutional Court, which then decided that the President should represent the Country at the European Council. Prime Minister Ponta ignored the Court's ruling (Stratulat and Ivan, 2012: 1). The co-president of USL, Crin Antonescu, then called for the dismissal of some of the judges, although the Romanian Constitution did not provide for their removal. The CJEU found the Government to be in breach of the Constitution, and requested support from the Venice Commission. In response, the Government enacted an emergency ordinance preventing the Court from reviewing parliamentary decisions, even though the Constitution does not allow interference with fundamental state institutions through emergency decrees. The conflict worsened when the USL replaced two parliamentary members from the opposing party as well as the Ombudsman. Moreover, the Parliament started proceedings to suspend President Basescu, claiming that he had infringed the jurisdiction of the Prime Minister (Stratulat and Ivan, 2012: 1).

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Other relevant issues included the change of law on referendums, the politicization of public TV, and other important bodies. All those events led to disputes and concerns about the respect for democracy and the rule of law in the EU. However, reactions from the European institutions were rather weak and limited. On the 6th July 2012, the EC warned the Romanian Government not to undermine rule of law in domestic political conflicts and stated that the Government must respect the full independence of the judiciary, restore the powers of the Constitutional Court and ensure that its rulings are observed, appoint an Ombudsman enjoying full support of all parties, and guarantee a new open and transparent procedure for appointing a General Prosecutor and a Director of the Anti-Corruption Directorate. Furthermore, political integrity must be considered as a priority. The EC, having expressed its serious concerns about these events and underlining that checks and balances must be guaranteed in a democratic system, required the Romanian Government to implement an 11-point to-do list to restore the rule of law within the country (MEMO/12/575). However, the Government minimized the urgency of this list of measures, and the Interim President, Crin Antonescu, reminded the EC that «Romania is a sovereign state and that the President of Romania, even the Interim President doesn't take orders (…) from anyone except Parliament and the Romanian People» (*EU Observer*, 16 July 2012). For his part, Ponta wrote a letter to the EC pointing out that the powers of the Constitutional Court were restored in line with EU guidelines and all points requested by the EC had already been fulfilled.

The threat of applying Article 7 TEU arose on several occasions, and the possibility of sanctions was also considered. Commissioner Viviane Reding noted that if «the annual report shows no real changes, Article 7 TEU is the only option left». Meanwhile, some MEPs such as Markus Ferber, Elmar Brok, Alain Lamassoure and Joseph Daul, seemed more concerned. They called for the resignation of Prime Minister Ponta, and threatened to activate the Article 7 TEU mechanism and suspend Romania's voting rights in the EU Council. Nevertheless, again the process was never activated. Nearly two year after the beginning of the case, in a recent meeting Barroso welcomed the latest progress (SPEECH/14/132), but still signalled some concerns over the independence of the judiciary and on the implementation of anti-corruption measures.

6. Conference of presidents: EP President and leaders of the political groups.

The Roma expulsions in France

The case of the Roma in France started during the summer of 2010, with the expulsion by the French Government of almost 1.000 Romanian and Bulgarian nationals of Roma origin living in France. On the 21st July 2010, President Sarkozy delivered the «Déclaration sur la Securité» following the violence and conflict that tarnished his popularity (Carrera and Faure, 2010: 1). He announced the need for future reforms on internal security and immigration, as well as citizenship rules. He also underlined, as a political priority, the fight against criminality and his intention to launch a «true war on traffickers and delinquents». Following a ministerial meeting, a set of measures was proposed to dismantle irregular Roma settlements and eject their inhabitants from France, such as (Carrera and Faure, 2010: 4; «Declaration conjointe des Ministres Roumains et français», 2010):

– *Systematic dismantling of illegal camps*. The Government had to conduct, within three months, the evacuation of 200 illegal camps, which were considered, by the French Government, sources of illicit trafficking, highly unsafe living conditions, and exploitation of children for begging, prostitution, or crime. Legislative reforms were announced to make this evacuation more efficient and the Government was required to proceed with the deportation of nationals of Eastern Europe illegally residing in France.
– *Reform of immigration legislation*. A reform of immigration law was announced including measures to expel the Roma from France for reasons of public order.
– *Cooperation between France and Romania*. It fostered broader cooperation between French and Romanian authorities to fight trafficking and allow the return of Romanian nationals under the best conditions. The ratification of a treaty between France and Romania on the return of unaccompanied Romanian minors was also authorised.

The fact that these people are EU citizens of the EU who are being ejected is highly significant at the EU level. Romania and Bulgaria nationals, as EU citizens, benefit from the same citizenship rights as other Europeans

Later, as a consequence of the concerns expressed at EU level by the EC and the EP, on the 13th September 2010, the French Ministry of Interior adopted a new «circular» reaffirming the overall objective, but avoiding any direct reference to Roma (Carrera and Faure, 2010: 5). The fact that these people are EU citizens of the EU who are being ejected is highly significant at the EU level. In 2007, Romania and Bulgaria joined the EU and their nationals, as EU citizens, benefited from the same citizenship rights as other Europeans.

These French measures were condemned at different levels by the «United Nations Committee for the Elimination of Racism and Discrimination», the Council of Europe, several international NGO, and civil society organizations, as well as by the Catholic Church (ibid.: 10). Nonetheless, the EU's first formal reaction had to wait until the 25th August 2010, for a written «Statement by Vice-president Viviane Reding «on the Roma situation in Europe» (ibid.: 10). She expressed her concerns about the situation and announced that the French Government had given political guarantees of the compatibility of their practices with EU law. Moreover, she suggested that, if necessary, the EC could act as a broker between MS and could also monitor and assess all progress. On the 1st September 2010, three commissioners –Viviane Reding, László Andor and Cecilia Malsmtröm– issued a joint information note to clarify the situation, and underlined that further information was still required. Some days later, the EP adopted a Resolution to demand the immediate suspension of the expulsions in France. The EP urged the EC, the Council and the MS to intervene in their request to the French authorities to «immediately suspend all expulsions of Roma» and expressed concerns on the late and limited response by the EC, as the guardian of the treaties, for the need to verify the consistency of MS actions with EU primary law and EU legislation. On this occasion «the EU response was, therefore, fast, efficient and of an EU-wide reach» (Carrera and Faure, 2010: 11).

Vice-President Reding also referred, for the first time, to the EC intention to start infringement procedures against France for a discriminatory application and lack of transposition of the guarantees of the Free Movement Directive 2004/38 (SPEECH/10/428). Her comments were extremely controversial as she stated that this kind of situation «[she had thought] Europe would not have to witness again after the Second World War». She described the affair as a *disgrace* because «discrimination on the basis of ethnic origin or race has no place in Europe and is incompatible with the values on which the European Union is founded». President Sarkozy considered Vice-President Reding's words an «insult» for the comparison of his policy to that of the Nazi regime which exterminated hundreds of thousands of Roma during World War II, and led French authorities to question the role of the EC as guardian of the treaties. Additionally, Reding recalled that «no MS can expect special treatment, particularly not when fundamental values and European laws are at stake». This case revealed profound institutional tensions at the EU level between the French Government and the EC and the EP. Nevertheless, the EC decided finally not to launch infringement proceedings against France.

More than three years have passed since these events, and France still continues to expel Romanian and Bulgarian nationals of Roma origin and the question remains unresolved. Expulsions have even increased throughout 2011, 2012 and the first half of 2013. Contrary to expectations, François Hollande's Government has maintained these practices (Carrera, 2013: 1). The European Commission considered that the responsibility for rules on citizenship rested with the national authorities, and expressed its lack of competence over these domestic issues, such as expulsions and the right to reside in another MS. This led to bilateral cooperation between some of the concerned MS regarding the reintegration of Roma.

«These policies contradict the principle and fundamental right of non-discrimination on the basis of ethnic origin and the right to leave the state of origin and reside in another MS envisaged in EU citizenship law» (ibid.: 4). With this approach, the Com-

mission neglected to frame this case from the perspective of non-discrimination, citizenship and fundamental rights (ibid.: 2), and respect of EU values. In this regard, the «French Affair on Roma» has proved, once again, the limits of EU mechanisms and the incapacity of the EU to react against national measures contrary to EU values and fundamental rights.

Other relevant cases

In Greece the members of the nationalist party «Golden Dawn» have led many attacks against immigrants. Its leader Mr Mihaloliakos, as well as other members of the party, are now in jail accused by the state attorney of belonging to a «criminal organisation» in accordance with the Nazi model (Savaricas, 2013). Golden Dawn was the third most popular party in last year's Greek elections (due to the economic crisis). Another case to be noted is the silence concerning human rights violations by the United Kingdom during Iraq's war, but there are some doubts on the application of Article 7 TEU in the external action of MS (Müller, 2013: 17).

Are problems in the application of Article 7 TEU related to political unwillingness of EU institutions?

Several years after the entry into force of the Amsterdam and Nice treaties, Article 7 TEU remains far from being used. I will now explain the reasons why I think this is basically due to a *clear political unwillingness to activate its procedures* (Pinelli, 2012: 5). Article 7 TEU confers powers exclusively on political institutions, and consequently the criteria for its application are open to interpretation by politicians (Van Hüllen and Börzel, 2013: 19). This is the main reason why these mechanisms have never been effectively used. Is political unwillingness to engage these mechanisms even stronger than the concern for serious breaches of common values? (Pinelli, 2012: 6). Additionally, the lack of clear, accurate and agreed definitions of what can be considered a *risk to or serious breach* of common values leaves wide scope for all sorts of political interpretations (Van Hüllen and Börzel, 2013: 22).

The requirement of certain majorities in the Council and Parliament represents institutional obstacles to the effective implementation of these tools. It should be noted that a hypothetical suspension of membership rights is only based on intergovernmental decisions

The requirement of certain majorities in the Council and Parliament represents institutional obstacles to the effective implementation of these tools. More particularly, it should be noted that a hypothetical suspension of membership rights is only based on intergovernmental decisions. For this reason, it is understandable that MS, and therefore the European Council and the Council, which consist of representatives of MS, are very reluctant to start these procedures and consider them as a last resort. Furthermore, the MS are not willing to activate the prevention and sanction mechanism due to worries that Article 7 TEU may in turn be used against them. The position of the EC is also very cautious on applying Article 7 TEU, probably to avoid conflicts with the MS. As we have seen in the studied cases, the EC has adopted a restrictive interpretation of Article 7 TEU, invoking alternative measures in each case and ruling out Article 7 TEU as the «nuclear option». In the Hungarian Constitutional reform the EC started infringement procedures, but in other cases, such as the Roma expulsions in France, merely threatened to start infringement procedures, but in fact never intended to do so. The EP has seriously debated on the application of article 7 TEU, but has failed in the attempt to form the required majority for its activation. As a matter of fact, the ability of the EP to act in a specific case is more related to its political affiliation than to a real interest in protecting democracy and the rule of law. Its action depends on the current political composition or environment within the EP. However, the EP, in its «Working Document on the situation of the Fundamental Rights in the EU 2012», highlighted that the current time was marked by democratic crisis in several EU MS, and some MEPs complained of the lack of political will to activate Article 7 TEU and reiterated the need to create a new mechanism in order to ensure respect for EU values. Moreover, Article 7 TEU does not provide for the CJEU to review the procedures or the fulfilment of criteria to activate this mechanism. And additionally, the monitoring and enforcement powers have not been assigned to the EC or the CJEU, but to the MS and the EP. In this sense, «the EU lacks a systematic monitoring mechanism, and judicial protection has only slowly developed» (ibid.: 19).

Considering the positions of the European institutions, it is possible that only small or powerless MS will really be subject to the intervention of the EU. This approach could be regarded as a kind of «EU hypocrisy» that delegitimizes the EU institutions both in the MS concerned and possibly across the EU as a whole» (Pinelli, 2012: 6; Müller, 2013: 1). The lesson learned in the Haider affair showed the risks of the exclusively intergovernmental character of the decision since they skewed the meaning of the sanctions, making them appear as the mere tool of national interests. It is obvious that institutions must thoroughly reform the existing mechanisms to prevent MS from committing serious breaches to common values. Taking into account the attempts to apply Article 7 TEU, it is essential to introduce legally binding measures to complement and improve the current mechanisms. It must also be considered that the imposition of Article 7 TEU, especially in the case of sanctions, may cause some prejudice to European citizens; «A major problem is that such measures tend to further punish citizens rather than governments» (Pinelli, 2012: 8; Müller, 2013: 25).

Limits between domestic affairs and the respect for EU common values: interaction between Article 2 TEU and Article 4.2 TEU

MS might object to the application of article 7 TEU on the basis of Article 4.2 TEU appealing for respect of their «national identities» from the EU. In this regard, the question arises whether the respect for national identities might legitimize MS to derogate principles from Article 2 TEU» (Pinelli, 2012: 7; De Capitani,

2012: 4). In this regard, it has to be considered that «values from Article 2 TEU affect both, national and EU identity». So, Article 2 TEU is compatible with «respect for national identities» as far as these principles consist in the internal organisation and in the main functions of the MS as mentioned in Article 4.2 TEU» (Pinelli, 2012: 8). «The co-extension between the EU founding values and those of the MS corresponds thus to that between the European and the national citizenship» (ibid.: 8).

Proposals for reforms and new mechanisms

«The EU must promote a serious and broad discussion to enhance a more systematic and pro-active approach to protect democratic principles» (Stratulat and Ivan, 2012: 2). In my opinion, it is legitimate for the EU to interfere in MS to tackle existing undemocratic practices and tendencies. «The fact that problems still persist may indicate that the EU is failing in using the existing mechanisms, but also that these instruments might not be the most effective ones» (ibid., 2012: 2). The available legal and political instruments to pressure MS may work, but it is also necessary to create new mechanisms[7] (Piccone, 2004: 31) to deal with practices that could undermine democracy within EU MS (Stratulat and Ivan, 2012: 2). However, the fact that some new measures could be legally binding may make MS reluctant to implement them. As mentioned previously, there is no clear legal or political actor to warn the other institutions about a possible risk of breach in democracy and the rule of law inside a MS (Müller, 2013: 23). This is basically because the current procedure needs strong political will and a real commitment to its effective implementation. I personally agree with some of the proposals made by J. W. Müller (2013: 23) in the sense that «Article 7 TEU ought to be left in place, with all the existing tools remaining at the disposal of the relevant actors, but it also ought to be extended» (ibid.: 25). The EU «should establish new tools to exert pressure on MS, but whose employment doesn't need an agreement from all or a large majority of MS within the European Council or the Council» (ibid.: 24). These new tools could be established according to the current treaties and would not require a major reform of the treaties.

The current procedure needs strong political will and a real commitment to its effective implementation. New tools could be established according to the current treaties which would not require a major reform of the treaties

Preventive mechanisms

Among these new procedures for preventive mechanisms, the most relevant might be:

– *Continuous monitoring from the European Commission* could be exerted uniformly in all MS avoiding a surveillance targeted towards one single MS. However, the increasing politicisation of the European Commission (ibid.: 24) could also lead to a lack or erosion of its required independence, as established under Article 17 of the Treaty on the Functioning of the European Union (TFEU).

– *Monitoring exerted by external institutions*, such as the «Fundamental Rights Agency» or a new one like the «Copenhagen Commission» or «Copenhagen Mechanism» proposed by different institutions[8] and authors. This institution could be similar to the «Venice Commission» and should be vested with a clear mandate to offer comprehensive and consistent political judgments and also have enough visibility and empowerment to be effective in alerting about critical situations that may occur. This body should be authorised to conduct its own investigations, to raise the alarms and to impose a limited range of sanctions. The «Report of the «three wise men»» is relevant here as it favoured the introduction of «preventive and monitoring provisions into Article 7 TEU to monitor and evaluate the performance of MS with the respect to common EU values». The «Copenhagen Mechanism» would be a new supervisory mechanism, built upon the Article 7 TEU, covering the triangular relationship between rule of law, democracy, and fundamental rights. It should be focused on developing the phases prior to the prevention and penalty tools (EP Study, 2013: 5). It could also provide a new tool, such as a kind of *scoreboard* to evaluate and boost the coordination between MS, in parallel with Article 7 TEU provisions (EP Study, 2013: 6). The establishment of a scoreboard wouldn't require any treaty amendment. The prevention arm of the «Copenhagen Mechanism» should be able to freeze MS practices, in case of suspected or imminent breaches of EU values. This procedure could also lead to an *accelerated infringement proceeding* against a MS and to an *expedite procedure* similar to the current preliminary ruling procedure[9] before the CJEU.

Clear powers for the CJEU

As previously noted, the *CJEU may act in accordance with the infringement procedure* laid down in Articles 258-260 TFEU, in case that a MS fails to fulfil EU law. The EC, after the *prelitigation administrative stage*, may refer the case to the CJEU (Pinelli, 2012: 10). One example is the Hungarian case in which the Commission appealed to infringement proceed-

7. The five elements that a democracy clause should contain according to Theodore Piccone are: «the incorporation of democratic norms in the organisation's core mission; the nomination of an expert committee to monitor the respect of democratic principles; the clarification of the consequences in case of breach of democratic values; the institution of economic, trade and financial sanctions in such cases and the setting of a time frame within which the government concerned should restore democracy» (Piccone, 2004: 31).

8. The European Parliament, in its Report of 24.06.2013, appeals to the establishment of a new mechanism to ensure compliance by MS with Article 2 TEU, and the continuity of the «Copenhagen criteria». «This mechanism could assume the form of a «Copenhagen Commission», or high-level group, a «group of wise men», or an Article 70 TFEU evaluation, and build up on the reforming and strengthening of the mandate of the European Union Agency for Fundamental Rights, and on the framework of a strengthened Commission-Council-European Parliament-Member States dialogue on measures to be taken».

9. A relevant example of a «preliminary ruling» is the «Thomas Pringle vs Government of Ireland» (Case C-370/12) where the Court dealt with using an accelerated procedure (Armstrong, 2012).

ings under Article 258 TFEU (IP/13/1112) or the Roma affair in France (SPEECH/10/428), but on this occasion the EC never initiated the procedure.

K. L. Scheppele proposes a new and interesting approach, which consists in extending the infringement procedure to «systemic complaints» under Article 2 TEU. «Finding a *systemic* violation of Article 2 TUE, would allow the CJEU to develop jurisprudence on this issue, and also provide guidance to MS and to EU institutions about the meaning of the core values of the EU» (Scheppele, 2013). He suggests that if a MS persists in failing to respond to a breach of EU values, perhaps a stronger approach is needed (ibid.: 5). The question is to evaluate «whether the whole adds up to more than the sum of the parts or whether all, some or none of the individual alleged infringements should be confirmed on their own» (ibid.: 6). The case of Hungary is an example to be analysed here, as the EC only brought to the CJEU the «forced early retirement of senior judges», but the CJEU could not enter other issues such as the judicial reforms and the judicial independence in Hungary, because these aspects were not adequately raised (ibid.: 8). With a «systemic infringement action» the EC could demonstrate that a specific issue is connected to a larger framework (ibid.: 4).

Effective sanctions

I would also like to refer to the proposal for effective measures or *sanctions*, which could be taken against the infringing MS. These sanctions should have a European dimension to underline that the breach concerns the EU as a whole (Müller, 2013: 24), and may consist of cuts in EU Funds, significant fines or, as currently foreseen by Article 7.3 TEU, the suspension of certain rights, including voting rights of that MS in the Council.

The «Copenhagen Mechanism» could be a new supervisory mechanism, built upon the Article 7 TEU, covering the triangular relationship between rule of law, democracy, and fundamental rights

Concerning these sanctions, Scheppele considers that instead of paying a fine from the domestic budget of MS, «the EC and the CJEU could insist that *persistent systemic violators* lose their funds or have their EU funds suspended for as long as the violation continues» (Scheppele, 2013). In a recent letter from the foreign ministers of Germany, the Netherlands, Finland and Denmark to the EC, they appealed to «New Mechanism to Safeguard the Fundamental Values to the EU (March, 2013), as a priority». They stated that «it is crucially important that the fundamental values enshrined in the European treaties be vigorously protected (…) The EU must be able to react swiftly and effectively to ensure compliance with its most basic principles». In this letter, they considered the suspension of EU funds as a last resort.

Scheppele thinks that the process of determining if a MS has violated the treaties should be handled as a *legal rather than a political matter*: «If sanction involves an element of political membership, as Article 7 TEU sanctions do, then a political process is appropriate. But, if the question is whether a MS has systematically violated its Treaty obligations through its own law practices, as a *systemic infringement action* alleges, then it is pre-eminently a legal question» (Scheppele, 2013). Then, if the CJEU ruled there was a *systemic violation of EU law* and established a fine, the EC could directly deduct the EU funds previously allocated to that State (ibid.: 6) or keep some percentage of those funds until the MS met the criteria of Article 2 TEU (ibid.: 12).

Measures for extreme cases

Other measures can be proposed, which would require an amendment of the current treaties. The power of the Council within Article 7 TEU should be more balanced and submitted to an increased accountability by the EP in all stages, especially when deciding if there is a clear or a serious breach of EU values and in case of sanctions (EP Study, 2013: 53).

Finally, I consider that in extreme cases new mechanisms could be established which might require a deep reform of the treaties, such as the possibility of expelling a MS[10] completely or a temporary suspension[11] until the democratic standards are restored (Pinelli, 2012: 16; Bribosia *et al*., 2000: 2). The possibility of exclusion could be conceived as a last resort and a form of deterrence towards MS to avoid the humiliation of being expelled (Pinelli, 2012: 16).

Conclusion

Any European country wishing to join the European Union has to fulfil the «Copenhagen Criteria»[12], and specifically to respect and to be committed to the democratic values established in Article 2 TEU on which the EU is based: «respect for human dignity and human rights, freedom, democracy, equality and the rule of law». However, it seems there are no equivalent criteria binding the current MS. Then, what would happen if these values changed in a country that is already a member of the EU? It would be a big contradiction if these criteria only had to be fulfilled for candidate countries. In this regard, EU MS have been criticised for «double standards». Whilst they require very strict compliance of democratic values by candidate and third countries, they are also reluctant to allow EU institutions to interfere with their own domestic institutions (Van Hüllen and Börzel, 2013: 23; Sadurski, 2010:

10. The current Treaty does not contain any provision for the exclusion, expulsion or suspension of the EU membership. The Lisbon Treaty provided, for the first time, in Article 50 TEU, the possibility for a MS to withdraw voluntarily from the EU. In the Council of Europe there is a provision on suspension of membership.
11. The Council of Europe has a similar provision in Article 8 of its Statute, which establishes that in case of violation of Article 3 –rule of law or fundamental rights– the State may be suspended from its rights of representation, and if the member still does not comply, the Committee may decide that it has ceased to be a member until the Committee decision is made. For instance, in the end of the 60's, concerning the violations of the rule of law and fundamental freedoms by the Greek Government, «In December 1969 Greece withdrew from the Council of Europe to avoid the humiliation of being expelled» (Pinelli, 2012: 16). See Resolution (70) 34.
12. The enlargement of the EU on the 1st May 2004 prompted the formulation of the «Copenhagen criteria» concept, which is used to define the conditions that applicant states must meet in order to become members of the EU. They were established within the conclusions of the Presidency, Copenhagen 21-22 June 1993.

8). The EC, as the guardian of the treaties, should ensure that the MS act into line with the commitments they made when they joined the EU (Scheppele, 2013: 13).

Recent developments in some EU countries –first in Austria, later in Hungary and recently in Romania and France– have put these challenges on the EU agenda. Besides these specific cases, there is a rising tide of radical, populist and eurosceptic parties in several MS, such as: the Front National in France, the Dutch Party for Freedom in the Netherlands, Golden Dawn in Greece, and Jobbik in Hungary, among others. The results for the EP in the upcoming elections, and especially in the event of high support for these parties, there may be the need to review the existing mechanisms to protect common values of the EU. Probably the EU and the MS assumed that the consolidation of democracy within the EU was irreversible. But, what would happen if a MS adopted a regime far removed from democratic principles? Would it be possible to conceive a dictatorial regime inside the EU? (Müller, 2013: 3). How can the EU –which considers its core values to be democracy, rule of law, and respect for human rights– justify that some of its MS adopt measures and policies contrary to these principles? What actions should the EU take against MS policies and attitudes that condone racism and xenophobia? The report of the «three wise men» is especially relevant nowadays, when fears of extremist groups are growing in many EU MS, as it is a warning that such groups will not be tolerated in the government (Duxbury, 2000: 4).

What would happen if EU common values changed in a country that is already a member of the EU? It would be a big contradiction if these criteria only had to be fulfilled for candidate countries

In my opinion, and according to the above mentioned reasons, it is urgent for the EU to launch an internal and public dialogue with all the concerned actors to establish a reform to ensure effective protection of common values and fundamental rights and to prevent breaches by MS both in the internal sphere and also when applying EU law. One option may be to undertake a regular dialogue between European institutions, civil society and particularly with the NGOs responsible for protecting and promoting fundamental rights. Additionally, the EC considers it important to *work in closer contact with the Council of Europe* and, in particular, with the Commissioner for Human Rights. In its annual report, the EC also insists on the role of the network of independent experts on fundamental rights, which has been incorporated into the European Union Agency for Fundamental Rights, set up in 2007.

Taking into account the lessons learned, I consider that the instruments available to the EU to pressure MS have been revealed as inadequate and ineffective in the cases studied, particularly due to their political character. For one, the final decision should not be left entirely to the Council and the European Council and, similarly, the CJEU should be vested with real and expanded competences within these processes. If the treaties conferred clear competences on the CJEU in the framework of the mechanisms available under Article 7 TEU, it would certainly facilitate the legal and binding nature of the measures taken to deal with possible breaches of EU common values by the MS. In this respect, the EU actors have to promote a reform of the existing instruments without delay. The easiest way would be to create a new independent body or to empower an existing one with the capacity to prevent and control possible infringements of EU democratic values.

As a second step, I think EU actors should seriously assess the possibility of introducing a new provision regulating a possible suspension mechanism like in the Council of Europe or the Commonwealth. Another option to be studied may be the exclusion of a MS from the EU. Of course, the criteria to activate such a provision should be very precise and with full legal guarantees, preventing it from being «corrupted» by purely political interests, and taken with all the necessary measures to protect European citizens. The creation of these provisions does not mean that they should be automatically activated once in force, but the EU should have all potentially necessary instruments available in case of an extreme or remote chance of democracy being undermined (Müller, 2013: 23) in a EU MS. If the EU could decide to establish a «similar mechanism, it will need to develop a comprehensive list of standards upon which members may be monitored, so decisions to suspend members are transparent. Given that the benefits of EU membership are considerable, the threat of suspension could be an important weapon in the fight to protect human rights» (Duxbury, 2000: 5).

Even if all actors supported the consolidation of democracy, and of course this is the expected ideal, the EU needs to be ready and all mechanisms available in case of an unexpected crisis. As president Barroso declared in the «State of the Union 2012 Address», «the institutions, worried after some threats to the legal and democratic fabric in some MS, took consciousness of the need of a better developed set of instruments –not just the alternative between the «soft power» of political persuasion and the «nuclear option of Article 7 TEU–». And in 2013, Barroso went even further beyond and stated: «Experience has confirmed the *usefulness of the Commission's role as an independent and objective referee* (…) It should be (…) *activated only* in situations where there is a *serious, systemic risk* to the rule of law, and triggered by predefined benchmarks».

The European integration process evolves continually, albeit slowly due to the political complexity of reaching agreements between 28 MS. It is obvious that there are several «legal vacuums»[13] in EU law that are a source of controversy between institutions and MS. I think that it would be very positive for the EU to anticipate these situations and be ready to face the different challenges that may arise. I hope that

13. For example:
1) *Withdrawal of the EU*. Since the Lisbon Treaty there is not any provision for the withdrawal of a MS from the EU. Article 50 TEU *provides only a voluntarily mechanism*.
2) Secession of a part of a MS or dissolution of a MS. There are no provisions for these cases, which are now source of controversial debate within the EU.
3) *Exiting the euro area*. The EU treaties do not expressly prohibit a MS voluntarily exiting the euro area, but it is debatable whether they provide an effective mechanism for such a possibility (art 352 TFEU). It is also arguable that if a MS were to exit the euro, it would also have to exit the EU itself.

European institutions and MS, continue to be conscious –as indicated by their pronouncements on this issue– of the urgency of establishing effective mechanisms to protect these values, as a sign of our identity as Europeans. I would like to finish with a statement from Mr Sadurski that seems to be an appropriate conclusion to this issue: «If the EU does not resort to these measures now, no one will take them seriously in the future and the EU will descend back to its lamentable double standards: tough on applicant states, toothless with regard to members. For, if not now –when? What else may happen in a member state, which may be properly seen as «a clear risk of a serious breach» of principles of democracy, human rights and the rule of law?» (Sadurski, 2012).

ANNEX

Article 2 TEU

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 7 TEU

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.
3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

European institutions and MS should be conscious of the urgency of establishing effective mechanisms to protect these values, as a sign of our identity as Europeans

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.
5. The *voting arrangements* applying to the European Parliament, the European Council and the Council for the purposes of this Article *are laid down in Article 354* of the Treaty on the Functioning of the European Union.

Article 49 TEU:

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union.

Article 269 TFEU:

The Court of Justice shall have jurisdiction to decide on the legality of an act adopted by the European Council or by the Council pursuant to Article 7 of the Treaty on European Union solely at the request of the Member State concerned by a determination of the European Council or of the Council and in respect solely of the procedural stipulations contained in that Article.

Such a request must be made within one month from the date of such determination. The Court shall rule within one month from the date of the request.

Article 354 TFEU:

For the purposes of Article 7 of the Treaty on European Union on the suspension of certain rights resulting from Union membership, the member of the European Council or of the Council representing the Member State in question shall not take part in the vote and the Member State in question shall not be counted in the calculation of the one third or four fifths of Member States referred to in paragraphs 1 and 2 of that Article. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2 of that Article.

For the adoption of the decisions referred to in paragraphs 3 and 4 of Article 7 of the Treaty on European Union, a qualified majority shall be defined in accordance with Article 238(3)(b) of this Treaty.

Where, following a decision to suspend voting rights adopted pursuant to paragraph 3 of Article 7 of the Treaty on European Union, the Council acts by a qualified majority on the basis of a provision of the Treaties, that qualified majority shall be defined in accordance with Article 238(3)(b) of this

Treaty, or, where the Council acts on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, in accordance with Article 238(3)(a).

For the purposes of Article 7 of the Treaty on European Union, the European Parliament shall act by a two-thirds majority of the votes cast, representing the majority of its component Members.

Article 51 of the Charter of Fundamental Rights:

The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.

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