

The legal case against Hungary's anti-LGBTIQ+ law:

A shift in the protection of the fundamental rights of the European Union

• Abstract

In an unprecedented move, fifteen Member States and the European Parliament have asked to intervene in support of the European Commission in an action against a Member State. While this exceptional advocacy is mostly due to the priority given by these States and this institution in 2023 to protect LGBTIQ+ persons from discrimination, it also reflects several developments in the European Union's attachment to ensuring compliance with its values and fundamental rights.

Politically, a more Community-based and committed approach is increasingly gaining ground over a more cautious intergovernmental approach, so much so that a breach of these values by a Member State has become a shared concern for all Member States.

From a legal standpoint, the normative power specific to the Union's fundamental rights and values is growing, which in turn reinforces the role of the Court of Justice and of the Commission.

Against this backdrop, it is in the EU's interest to clarify its stance on its fundamental rights and values, highlighting the compatibility between full compliance with these "values", defined as key legal principles, and these rights on the one hand; and the diversity of cultural and societal models in its Member States on the other hand. These are two complementary conditions for its unity, all the more so given the context of future enlargements.

DEMOCRACY &
CITIZENSHIP

POLICY BRIEF
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#democracy
#socialrights

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**This paper is an
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• Introduction

“France, together with Germany, has decided to support the European Commission in its legal case against the anti-LGBTIQ+ law which entered into force in Hungary in June 2021”. This announcement was made at a press briefing by the French foreign ministry on 7 April 2023¹.

On 19 December 2022, the Commission brought a case² before the Court of Justice of the European Union (CJEU) against Hungary, due to legislation adopted by the Hungarian parliament in June 2021 on the protection of children³. The Commission believes that, under the pretext of protecting children, the Hungarian law is in breach of the fundamental rights of LGBTIQ+ people⁴.

This law, which is dangerously similar to a law adopted by the Russian parliament in June 2013⁵, restricts access of audiences under 18 years of age to content that “promotes or portrays deviation from gender identity aligned with sex at birth, gender reassignment and homosexuality”. Such content is subject to a restrictive regime similar to that applicable to pornographic or violent content. These restrictions apply to all media, commercial advertising and educational programmes.

Fifteen Member States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden) and the European Parliament have announced that they have requested leave to intervene in the legal case in support of the Commission⁶.

This is the very first time in the history of European construction that so many Member States have asked to intervene in support of the Commission in an action against a Member State. Furthermore, it is extremely rare that the European Parliament asks to intervene in this type of case. In addition, for many of the Member States involved, including France⁷ and Germany, this is their very first intervention in support of the Commission in a legal case which focuses primarily on compliance with the EU’s Charter of Fundamental Rights (the Charter) and the values protected by article 2 of the Treaty on European Union (TEU). To date, only Belgium, Denmark, Finland, the Netherlands and Sweden had intervened in support of the Commission in a dispute of this kind⁸.

Given the scale of the support it has garnered, this legal case is absolutely exceptional.

1 <https://www.diplomatie.gouv.fr/fr/dossiers-pays/hongrie/evenements/article/hongrie-afghanistan-q-r-extrait-du-point-de-presse-07-04-23>

2 See articles 258 and 260 of the Treaty on the Functioning of the European Union (TFEU). If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union. If the Member State does not comply with the judgment finding its infringement, the Court may impose a lump sum or penalty payment, specified by the Commission.

3 Hungarian law LXXIX of 2021.

4 Case C-769/22, Commission v. Hungary.

5 Russian federal law 135-Φ3 of 30 June 2013.

6 Pursuant to article 40 of the Statute of the CJEU, Member States and institutions of the Union may intervene in cases before the Court of Justice. Requests to intervene submitted to the Court are not published. The number and identity of the Member States listed in this paper are based on the public statements of national authorities, accessible from sources in the public domain. As regards the European Parliament, its JURI committee (in charge of legal affairs) is said to have voted by a large majority in favour of the institution intervening in the legal case on 21 March 2023 (according to a press release from the European Parliament’s “LGBTI” Intergroup published on the same day).

7 France has already acted as a third party in support of the Commission in a dozen legal cases, brought between the end of the 1970s and the early 2000s, but with a predominantly economic aim (see, for example, case C-375/90, Commission v. Greece, concerning imports of frozen chicken, and case C-124/81, Commission v. United Kingdom, concerning milk).

8 These five Member States intervened together to support the Commission in two legal cases brought against Poland concerning respect for the value of the rule of law (cases C-791/19 and C-204/21, Commission v. Poland). In addition, Sweden also acted as a third party in a legal case brought by the Commission against Hungary concerning the transparency of associations (case C-78/18, Commission v. Hungary).

Clearly, the involvement of so many Member States and of the institution that directly represents European citizens is largely due to the priority that these States and this institution give, in 2023 and in our Union of law, to the protection of LGBTIQ+ rights, particularly in a Member State which in recent years has repeatedly infringed the fundamental rights and values that this Union protects⁹.

Many Member States are publicly committed to protecting LGBTIQ+ rights in general¹⁰ and more specifically to challenging this Hungarian law¹¹. France is among these States and in October 2022 took the unprecedented step of appointing an ambassador for LGBTIQ+ rights. As regards the European Parliament, it also vigorously condemned the disputed Hungarian law, a few weeks after its adoption¹².

More fundamentally, in addition to defending LGBTIQ+ rights, this legal case also seems to reflect several developments taking place in our Union's attachment to ensuring compliance with its values and fundamental rights.

I • Respect of the Union's fundamental rights and values: a matter for all Member States

On a political level with regard to respect of the Union's fundamental rights and values, a more Community-based and committed approach is increasingly gaining ground over a more cautious intergovernmental approach, so much so that **a breach of these values by a Member State has become a shared concern for all Member States**.

Even only a few years ago, it would have been difficult to envisage fifteen Member States

intervening to support the Commission in an action against a Member State. This is due to the importance of the intergovernmental system in European construction, which encourages Member States to refrain from intervening in a legal action directed against one of their peers unless there are grounds of clearly identified national interest.

By observing this distance, Member States protect the conventional distribution of roles, with the role of guardian of the Treaties belonging solely to the Commission¹³. Admittedly, the Treaties provide that a Member State may bring a legal case against another Member State¹⁴. However, Member States have only ever used this procedure in the event that the alleged breach by one of their peers involves a cross-border or bilateral aspect that concerns them¹⁵.

In addition, by refraining from intervening against other Member States before the CJEU, Member States express their preference for political dialogue, playing down the relevance of the litigation process in their mutual relationships. Indeed, the intervention of a Member State in support of the Commission in a legal case is perceived by the Member State brought before the court as an act of aggression.

Increasingly, this cautious intergovernmental approach is giving way to a more Community-based and committed approach when it comes to the respect of the Union's fundamental rights and values. In this second approach, a Member State's breach of these rights and values is an infringement of the key elements of the agreement that each Member State undertook to comply with upon joining the EU, so much so that this infringement is no longer solely a matter for the Commission in its role as guardian of the

⁹ Since the mid-2010s, Hungary has been found by the CJEU to be in breach of matters concerning freedom of association, academic freedom and asylum.

¹⁰ See in particular [the Declaration of fourteen European Member States on the protection of LGBTIQ persons in the European Union](#)

¹¹ See in particular [the joint statement of eighteen Member States, on 22 June 2021, expressing their deep concern about the adoption by the Hungarian Parliament of amendments that discriminate against LGBTIQ people](#)

¹² See in particular [the European Parliament resolution of 8 July 2021 on breaches of EU law and of the rights of LGBTIQ citizens in Hungary](#)

¹³ See article 17(1), TEU.

¹⁴ See article 259 TFEU.

¹⁵ For example, the case brought by the Czech Republic against Poland, on grounds that Poland had extended the lignite extraction activities of the Turow mine (case C-121/21, Czech Republic v. Poland).

Treaties, but rather a matter for all Member States collectively.

This dates back to the introduction of the procedure of article 7 of the TEU into the EU's primary law through the Treaty of Amsterdam, which was subsequently supplemented by the Treaty of Nice. This procedure, which enables the Council to record and sanction, where applicable, a clear risk of a serious breach or the existence of a serious and ongoing breach by a Member State of the values on which the EU was founded was drafted with a view to the accession to the EU of States freed from the Iron Curtain and in response to the far right joining the coalition government in Austria in 1999. It paved the way for a certain spirit of collective vigilance between Member States.

However, until the early 2010s, this **spirit of collective vigilance** between Member States did not ever really materialise. The situation has changed significantly in the years since, as the EU bears witness to a concerning internal crisis regarding respect of its fundamental rights and its values, in particular in Hungary and Poland. In response to this crisis, several important decisions have embodied this spirit of collective vigilance.

Firstly, the Union triggered for the first time the procedure of article 7 of the TEU against Poland and Hungary¹⁶. While the Council has not yet reached a decision, it regularly submits the Polish and Hungarian authorities to hearings.

Secondly, the EU adopted a conditionality mechanism enabling the Council, acting on a proposal from the Commission, to suspend the payment of EU funds to a Member State

which, by infringing the principles of the rule of law, endangers the EU's financial interests¹⁷. Ten Member States, including France and Germany, have intervened in support of the EU legislator before the CJEU to defend the legality of this regulation¹⁸. In December 2022, for the first time, the Council adopted a decision under this mechanism against Hungary¹⁹.

Thirdly, as part of its major recovery plan adopted in response to the pandemic ("Next Generation EU"), the Union decided to entrust the Council with the role of approving national recovery plans comprising reform targets, including the independence of the judiciary and the fight against corruption, that each Member State must meet to obtain instalments of assistance²⁰.

At the same time, some Member States, particularly in Northern Europe, have been especially involved in fostering this spirit of collective vigilance. This can be said of Belgium, Denmark, the Netherlands, Finland and Sweden which, in 2019, took the unprecedented step of intervening in support of the Commission in a legal case it brought against Poland concerning respect for the rule of law²¹. In addition, it was a Dutch jurisdiction that referred the first questions for a preliminary ruling concerning the consequences of the rule of law crisis in Poland with regard to the execution of European arrest warrants²². This stance has sometimes been taken too far, with the Dutch parliament asking its government at the end of 2020 to bring a legal case against Poland, on the grounds that the Commission had allegedly not done enough to counter Polish breaches of the principle of an independent judiciary²³.

¹⁶ In 2017 against Poland, upon the initiative of the Commission which raised the issue of serious breaches of the value of the rule of law; in 2018 against Hungary, upon the initiative of the European Parliament which raised the issue of serious breaches of the values of the rule of law, freedom of expression and respect for the rights of minorities, migrants and refugees.

¹⁷ Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

¹⁸ Cases before the CJEU C-156/21 and C-157/21, Hungary v. Parliament and Council and Poland v. Parliament and Council.

¹⁹ Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.

²⁰ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

²¹ Case Commission v. Poland, C-791/19, Op. cit.

²² See in particular joined cases C-354/20 PPU and C-412/20 PPU, Openbaar Ministerie (independence of the issuing Member State's judiciary).

²³ Tweede Kamer der Staten-Generaal, Session 2020-2021, 35 570 VI, n°58.

In 2023, the involvement of an exceptionally high number of Member States in support of the Commission's legal case against Hungary for the breach of LGBTIQ+ rights tends to reflect this shift from a cautious intergovernmental approach to a more committed Community-based approach with regard to respect of the Union's fundamental rights and values.

In practical terms, this means that **in coming years, Member States may intervene more in support of the Commission in the legal cases it brings concerning such breaches of these rights and values**, to the detriment of the restraint that has broadly been visible until now. In this respect, the legal case that the Commission recently brought against Hungary due to the Hungarian authorities' refusal to authorise the broadcasting of independent radio Klubradio, which raises the issue of respect for freedom of expression, could be a relevant indicator of this shift²⁴.

Furthermore, this move means it is more likely that discussions concerning the continuation of procedures under article 7 of the TEU brought against Hungary and Poland may resume. To date, the options made possible under this article have not been fully leveraged; in particular, the Council is able to issue recommendations to the Member States concerned before observing a clear risk of a serious breach of the Union's values. A resumption of discussions may renew the mechanism's credibility, the operational scope of which is perceived as very limited by EU citizens, given the demanding voting majorities it requires.

Moreover, the EU legislator is set to introduce greater levels of conditionality in EU regulations, suspending the benefits in the event of a breach of the EU's fundamental

rights and values. This is corroborated by the revision of the EU's financial regulation which is currently under debate²⁵.

II • The increasing normative power of the EU's fundamental rights and values

From a legal standpoint, the normative power specific to the Union's fundamental rights and values is growing, which in turn reinforces the role of the CJEU and of the Commission.

In principle, the Charter of Fundamental Rights' design does not give the EU an independent legal force²⁶. As a consequence, it was a long-standing common belief that the rights protected by the Charter should guide the way in which Member States must implement the specific and precise rules provided for under primary and secondary law. Similarly, it has long been commonly accepted that the values listed in article 2 of the TEU did not have any independent legal effect and were intended to guide the interpretation of these precise and specific rules²⁷.

This gap between the EU's fundamental rights and values, which are formulated in very general terms and cannot be used easily to come to a clear and operational instruction, and the precise and specific rules that are directly provided for under the EU treaties or adopted by the legislator with a legal basis explicitly set out by these treaties ensures that **the EU only requires compliance from Member States in the areas in which it exercises its competence explicitly.**

²⁴ See the Commission's press release: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2688
Notice of the case has recently been published in the Official Journal of the European Union:

<https://curia.europa.eu/juris/document/document.jsf?mode=DOC&pageIndex=0&docid=274197&part=1&doclang=EN&text=&dir=&occ=first&cid=4424261>

²⁵ Cf. Rubio E., Kiss-Gálfalvi T., Nguyen T. Ruiz de la Ossa T., Corti F., Forns A. (2023), "The tools for protecting the EU budget from breaches of the rule of law: the Conditionality Regulation in Context", Study requested by the BUDG committee, European Parliament: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747469/IPOL_STU\(2023\)747469_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747469/IPOL_STU(2023)747469_EN.pdf)

²⁶ See in particular article 6(1), TEU and article 51 of the Charter.

²⁷ To date, the CJEU has never found the direct infringement of the EU's values by a national measure: it observes the breach of specific and precise rules of primary or secondary EU legislation which embody these values, such as article 19(1) of the TEU for the rule of law, for example.

In recent years, this gap has started to close. The Court has a broad interpretation of the Charter's scope of application²⁸. Moreover, the CJEU has developed a case law that tends to find, not only any breaches of the precise and specific rules provided for under primary or secondary EU law, *interpreted in light of the fundamental rights protected in the Charter*, but also infringements of these rules and, *separately but similarly*, where EU law is in force, breaches of these fundamental rights²⁹. Such case law has led some observers to wonder when the Commission and the CJEU will take the step towards autonomous breaches of the Charter³⁰.

Furthermore, in its recent case law the CJEU has seemed increasingly inclined to **acknowledge that the EU's values have a specific normative power**³¹.

The legal case that the Commission has brought against Hungary for the breach of LGBTIQ+ rights follows on from this trend. The Commission alleges that Hungary has breached the rules of the internal market, particularly the directives on e-commerce, on services and on audiovisual media services. In a separate but related matter, it raises the breach of several rights protected by the Charter, in particular, human dignity, respect for private and family life, freedom of expression and information and non-discrimination. The Commission has also filed a separate grievance on grounds of an autonomous breach of the Union's values³².

This development is likely to strengthen the role of the CJEU and the Commission.

Firstly, such a shift is set to give the Commission, which has a discretionary power to bring a legal case against a Member State, a key responsibility. Once a rule of EU law is applicable in the circumstances, it may **request that the Court checks the compliance of national measures with the Charter and with the EU's values, including in sensitive areas** in which the EU legislator has not explicitly decided on the level of protection of fundamental rights and values to be applied. Such a responsibility must be considered in relation to the fact that as a collegial body, the Commission is accountable to the European Parliament³³. Indeed, the European Parliament has consistently supported a more stringent and even sometimes ambitious approach to respect for the EU's fundamental rights and values³⁴.

Secondly, this development would give the CJEU more authority as a judge of fundamental rights, on the model of the judge of the European Convention on Human Rights (ECHR). The CJEU would be called upon increasingly to specify the normative content of the Charter and of the values listed in article 2 of the TEU, as well as the extent to which fundamental rights can be reconciled, in reference in particular to the case law of the Strasbourg Court. It should be noted however that unlike the European Court of Human Rights, where proceedings only begin

²⁸ See in particular Judgment of the CJEU of 26 February 2013, *Akerberg Fransson*, C-617/10, points 19 and 21 and case law cited; Judgment of the CJEU of 20 September 2016, *Ledra Advertising v. Commission and ECB*, C-8/15 P to C-10/15 P, point 67 and case law cited; Judgment of the CJEU of 21 December 2016, *AGET Iraklis*, C-201/15, point 63 and case law cited.

²⁹ See the Judgments of the CJEU of 21 May 2019, *Commission v. Hungary (Rights of usufruct over agricultural land)*, C-235/17, of 18 June 2020, *Commission v. Hungary (Transparency of associations)*, C-78/18, and of 6 October 2020, *Commission v. Hungary (Higher education)*, C-66/18.

³⁰ Platon S. (2023), "La démocratie illibérale en droit de l'Union européenne. La question de l'activation juridictionnelle des valeurs de l'Union", in Barbé V., Combrade B.-L. and Sénac C.-E. (dir.), *La démocratie illibérale en droit constitutionnel*, Brussels, Bruylant, p. 107-134.

³¹ See in particular Judgment of the CJEU of 16 February 2022, *Hungary v. Parliament and Council*, C-156/21, points 124 to 129 and case law cited, and Judgment of the CJEU of 20 April 2021, *Repubblika*, C-896/21, point 63 and case law cited. In these cases, the Court asserts that a Member State's respect of the values listed in article 2 of the TEU constitutes a condition for the enjoyment of all rights resulting from the application of the treaties to this Member State.

³² See [the notice of action accessible on the website of the CJEU](#). The Commission also alleges the violation of the general data protection regulation. However, this complaint does not refer directly to the prohibitions provided for under the Hungarian law in question of allowing audiences under the age of eighteen access to the content concerned. Rather, it refers to public authorities' access to data concerning natural or legal persons who are alleged to have violated this prohibition. This complaint is not being considered in this paper.

³³ Article 17(8), TEU.

³⁴ See for example [the European Parliament resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights](#).

after a national judge has ruled, the CJEU is the court of both first and last instance for direct legal cases brought before it.

Such a shift, which demonstrates how far European construction has come since the creation of an initial technical community with a main focus on economic issues more than seventy years ago, brings to the fore the question of the **emergence of a single legal order on the European continent for matters concerning respect for human rights**. The coordination between the courts in Luxembourg and Strasbourg and between the EU and the Council of Europe is at play here. The EU's accession to the ECHR, which is provided for under EU treaties and which is currently being negotiated, aims to provide a response.

III • The EU's fundamental rights and values: "united in diversity"?

Against this backdrop, it is in the EU's interest to clarify its stance on its fundamental rights and values, highlighting **the compatibility between full compliance with these "values" and rights on the one hand, and the diversity of cultural and societal models in its Member States on the other hand**. These are two complementary conditions for its unity, all the more so given the context of future enlargements.

"The fight [for values] is not very clear as it sometimes gets dressed up as a conflict between modernists and those who look back towards the past", commented Jacques Delors³⁵.

Such a statement still resonates today, all the more so when considering the crisis of respect for these values and rights, particularly within Member States governed by political powers deemed - or even claiming to be - "illiberal". Some confusion remains concerning the extent to which these values

and rights stand against a democratically elected government and parliament's choice to adopt a policy perceived as conservative or even reactionary. This confusion is heightened by clumsy attempts to separate what is subject to EU law and what is not within such a policy³⁶.

There is, however, **a dividing line between the legal obligations resulting from the respect for fundamental rights and values enshrined in article 2 of the TEU and in the Charter, as well as each Member State's choice to apply, in accordance with this binding legal framework, its own scale of values**, in view of its specific cultural features, its history and its society's situation. These two components, namely the respect for common rights and values along with freedom of choice, and beyond these common rights and values its societal model at any point in its history, are present in the EU treaties.

Firstly, pursuant to article 2 of the TEU and the Charter, the EU is founded on several values which are common to the Member States, and it recognises in addition several fundamental rights derived in particular from constitutional traditions and international obligations common to the Member States. These include respect for human dignity, the rule of law, non-discrimination, gender equality and freedom of expression and information. The abolition of the death penalty is also explicitly enshrined in the Charter and is a condition for joining the EU.

These values and fundamental rights are in some respects the outcome of a "constitutional consensus", expressed when the EU treaties were signed. As a manner of speaking, they are key components of the "agreement" that the Member States freely undertook to comply with when joining the EU. They are a legacy of European history, and of the Enlightenment in particular, as well as the fight against authoritarian, dictatorial

³⁵ Delors J. (2000) "Dissertation sur les valeurs", four-yearly international Congress of Benedictine Abbots, San Anselmo, Rome, 8 September 2000, in *Relire Delors. Discours de Jacques Delors depuis 1996*, Paris: Jacques Delors Institute, 2021, p.102.

³⁶ For further information, see Chopin T. and Macek L. (2022), "European values. A debate to be clarified, a struggle to be fought", Policy paper, Paris: Jacques Delors Institute, 6 April – https://institutdelors.eu/wp-content/uploads/dlm_uploads/2022/04/PP275_European-values-clearer-debate-for-a-more-effective-fight_Chopin_Macek_EN.pdf

and totalitarian regimes. The past experience of the European peoples following the tragedies of the 20th century forged a consensus in relation to these principles which were then embodied in the political project for European integration. This project took the form of a community of law and not merely an alliance between sovereign States, which could not guarantee the permanence of the peace achieved.

Moreover, the treaties enshrine the respect for the history, culture and traditions of the peoples of the Member States. They recognise the EU's pluralism and require the EU to respect the national identity of Member States, which is inherent to their fundamental political and constitutional structures. They protect the richness of the EU's cultural diversity³⁷.

While no unjustified or disproportionate breach of these fundamental rights and values enshrined in the treaties may be tolerated, **the difference between Member States' political and societal choices, which are the hallmarks of their diversity, are legitimate beyond this binding legal framework.**

Drawing a dividing line between these common obligations and this freedom to choose a societal model is no mean feat. In the event of a disagreement, the task will always fall to the EU's judge, which is fortunate in a union of law. That being said, we all too often forget that this judge is not only the guarantor of these obligations, but also of this freedom, which makes the EU diverse.

Moreover, there is clearly a difference between the extreme decision of a Member State to entrust the appointment of almost all members of the body in charge of appointing judges and ensuring their independence to its executive and legislative powers or to conflate any content depicting a sexual orientation other than heterosexuality with pornographic or violent content, with the

decision of a Member State, according to its own sensitivities, to determine the degree of separation between religion and State, the contents of its social policy, the institution of marriage and its own specific approach to questions of bioethics³⁸.

It is clear that, while the **European project is fully compatible with a wide range of practices related to the latter societal choices**, it is in full contradiction with the former.

It is therefore important that the EU's stance on its values and fundamental rights makes this dividing line visible and understandable. In this respect, **the term "values" used in article 2 of the TEU may give rise to some confusion, as it may be conflated with the values that underpin the cultural and societal choices made by each Member State.** This term can be understood to suggest that there are common values and values specific to each Member State - and that they may enter into contradiction. The term "principles", used in article 6(1) of the TEU in its version taken from Amsterdam Treaty, had the merit of avoiding a suggestion of such a "value struggle"³⁹.

Situations in which the EU's values and fundamental rights are sometimes challenged, both within and outside its borders, have led its institutions to step up their discourse and actions to defend these rights and values. This is, of course, absolutely necessary. However, it is precisely because these rights and values are challenged that it may be timely to adopt a discourse that also highlights the diversity of Member States' cultural and societal models, which is a complementary condition of the EU's unity - hence its motto: "United in diversity".

Firstly, such a discourse would give renewed impetus to the emergence of a feeling of belonging and even pride in relation to this balance between common obligations and diversity that is specific to our Union.

³⁷ See in particular the preamble of the TEU, article 2, TEU, article 4(2), TEU and article 3(3), TEU.

³⁸ See Chopin T. and Macek L. (2022), *op. cit.*

³⁹ This article provided that: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States". On the distinction between "values" and "principles", see Chopin T. and Naim A. (2023) "European values under pressure from war in Ukraine", *Policy paper*, Paris: Jacques Delors Institute, 9 May – https://institutdelors.eu/wp-content/uploads/2023/05/PP289_valeurs-europeennes-Ukraine_Chopin_Naim_EN.pdf

Secondly, such an approach would go some way to **refuting the rhetoric of “illiberal” powers that the EU wants to impose a single, binding societal model** to all its Member States. It would also counter the unqualified argument of a divide between “West” and “East” in the EU, in which the former is attempting to impose “its model” on the latter. This approach would also miti-

gate the risk of double standards between Member States.

Lastly, such an approach would be meaningful, in view of the future enlargement of the EU to States in Eastern and South-Eastern Europe which enjoy diverse historical, cultural and religious traditions.

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