

CONFERENCE ON THE RULE OF LAW

I. Object and aim of the conference?

The conference will start by taking a closer look at the concept of the Rule of Law: what are its historical and philosophical origins? How has this concept been defined in relation to the concepts of democracy and fundamental rights? How have the ECJ and ECHR approached this concept in their caselaw?

After laying out these theoretical bases, an attempt will be made to ascertain the rule of law requirements with regard to specific chosen s, such as (i) judicial action and the necessity to protect the right to an effective remedy, (ii) emerging technologies and activities of the Bigtech, and (iii) legislative action and its compliance with fundamental rights.

It will then be discussed whether we can find a satisfying common definition that encompasses the Rule of Law value, as enshrined in article 2 of the treaty on the European Union. Such discussion will be based on a presentation of the European Law Institute (ELI) Project of preparing a Charter of Fundamental Constitutional Principles of a European Democracy.

Concluding remarks will finally be drawn.

A written publication documenting the different interventions will also be prepared and made available to all attendees in the weeks following the conference.

II. Practical Information

- ***When/where:*** 23 May 2025, 9.30-17.30, at *Palais des Académies*, Brussels
- ***Organisation:*** Anthemis, Editor
- ***Scientific committee :*** Pierre de Bandt, Tatiana Ghysels, Arnaud Jansen, Yves Poullet
- ***Participants:*** Open to the general public with a legal background
- ***Languages:*** English and French (no simultaneous translation)

III. Schedule/Speakers:

Time	Topic	Speakers
9:00-9:30	<i>Arrival</i>	
9:30-9:45	Introduction (EN)	Pierre de Bandt, Advocaat
9:45-10:15	Historical and philosophical foundations (FR)	David Doat, Ulille
10:15-10:45	Tripod: Rule of law, Democracy, Fundamental rights (FR)	Arnaud Jansen, Avocat
10:45-11:15	<i>Coffee break</i>	
11:15-11:45	The rule of law in the ECJ case law (FR)	Paul Nihoul, UCL – TUE
11:45-13:00	Panel 1: Right to an effective remedy and the rule of law (EN/FR)	Jonathan Wildermeersch, Ulg Resp.: Françoise Jacques de Dixmude, Trib. Entr. Bruxelles Audrey Despontin, Avocate,
13:00-14:00	<i>Lunch Break</i>	
14:00-15:00	Panel 2: Rule of law facing emerging technologies and Bigtech (FR)	Yves Poulet, UNamur, Resp.: Florian Ernotte, Avocat, Erik Valgaeren, Advocaat
15:00-16:00	Panel 3: Ex ante review of legislation and the rule of law (EN)	Tatiana Ghysels, Avocate, Resp.: Piet van Nuffel, KUL/CE, Tim Corthaut, VUB – Raad van State/Conseil d'Etat
16:00-16:30	<i>Coffee Break</i>	
16:30-17:00	The rule of law as an ensemble of values common to European democracies: presenting the Charter of Fundamental Constitutional Principles of a European Democracy (EN)	Elise Muir, KUL
17:00-17:30	Closing remarks (FR)	Frédéric Krenc, CEDH
17:30-18:30	<i>After conference drink</i>	

Annex – General background

1. Why?

The Rule of Law is today at the center of public attention in the European Union (“EU”), and more widely in the sphere of the member countries of the Council of Europe, especially at a time when the boundaries for human rights protection, access to justice and freedom of expression are being tested in an unprecedented way. The Rule of Law report 2024¹, prepared by the European Commission (“EC”), provides an interesting overview of some of these challenges. The report also highlights the interdependent relation between Rule of Law, democracy and fundamental rights.

An increasing number of scholars, professionals and public personalities in Europe is speaking out on the subject, which on the one hand, enables a wider public to engage in the Rule of Law debate, but on the other hand, adds to the mystery of the precise scope of this unruly concept.

This is also seen in the US, where the Rule of Law was an important theme in the federal elections, in a context where trust in US courts and elections is polarized and faith in government accountability low.²

2. Scope and limits of the Rule of Law principle?

In the EU, the Rule of Law is, pursuant to Article 2 TEU, one of the core values on which the Union is founded and which are shared by all Member States.³

Furthermore, Article 7 TEU empowers the EU to impose sanctions on its Member States in instances where it determines that they have violated the principle of the Rule of Law.

Recent years have seen numerous attempts to define the scope of this principle. On the one hand, the Court of Justice has been called upon to rule on violations of provisions of the Treaties or the Charter, read together with the values enshrined in Article 2. In that context, the Court has started to identify

¹ Available here : https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_en.

² See World Justice project news; World Justice Project, *U.S. Rule of Law Trends and the 2024 Election, 2024*, Rule of Law in the United States | World Justice Project.

³ Article 2 TEU provides: “*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*”.

certain essential requirements in relation to the Rule of law⁴. This slow process has however not (yet) led to a definition of the concept by the Court.

On the other hand, reference can be made, among others, to the comprehensive definitions developed by the Venice Commission⁵, by the World Justice Project⁶ and the EC⁷, as well as the definition adopted by the EU legislators⁸.

Do these definitions cover the same reality? Taking them into account, are we able to identify the actual scope and limits of the Rule of Law in the EU?

Another fundamental question is whether and to what extent it is possible and appropriate to develop basic standards of compliance with the Rule of Law in the EU.

In its 2024 Rule of law methodology⁹, the EC refers to “*EU law standards and well-established European Standards*”, which include “*relevant obligations under EU law and European Court of justice case law*”, “*European Court of Human Rights case law*”, and “*Council of Europe standards*”. Similarly, the Venice Commission establishes, in its 2016 Rule of Law checklist¹⁰, a detailed (though not exhaustive) list of benchmarks standards to assess compliance with specific aspects of the Rule of Law, such as legal certainty or independence.

⁴ See, notably, Judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311; Judgment of 5 June 2023, *Commission v Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442; Judgment of 5 March 2024, *Public.Resource.Org and Right to Know v Commission and Others*, C-588/21 P, EU:C:2024:201.

⁵ See Report on the Rule of Law, adopted by the Venice Commission on its 86th plenary session, Venice, 25-26 March 2011, which concludes: “*it seems that a consensus can now be found for the necessary elements of the rule of law as well as those of the Rechtsstaat which are not only formal but also substantial or material (materieller Rechtsstaatsbegriff)*. These are:

(1) *Legality, including a transparent, accountable and democratic process for enacting law*
(2) *Legal certainty*
(3) *Prohibition of arbitrariness*
(4) *Access to justice before independent and impartial courts, including judicial review of administrative acts*
(5) *Respect for human rights*
(6) *Non-discrimination and equality before the law*”

⁶ See World Justice project which defines the Rule of Law as “*a durable system of laws, institutions, norms, and community commitments that delivers four universal principles, namely accountability, just law, open government and impartial justice*”.

⁷ EC Communication on “Further strengthening the Rule of Law within the European Union”, 3 April 2019, which provides the following definition : “*Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of , independent and impartial courts. The rule of law includes, among others, principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review, including respect for fundamental rights; separation of powers; and equality before the law.*” See also EC Communication “Strengthening the Rule of Law within the European Union, COM(2019) 343 final, 17.7.2019.

⁸ See 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, Article 2 a): “*‘the rule of law’ refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU*”.

⁹ Available here: https://commission.europa.eu/document/e80a08e9-a5cd-4100-833d-f87548004226_en.

¹⁰ Available here: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e).

Are these standards delineated with sufficient and comprehensive clarity? Are they helpful to attain a common understanding of the Rule of Law principle at EU and national level?

At first sight, the adoption of basic Rule of Law standards seems mandated by the need for EU Member States to have a clear understanding of the minimum requirements which their legislative, administrative and judicial system must meet in order to satisfy Article 2 TUE.

The adoption of such standards may also reinforce the cohesion between Member States as they would agree on minimum standards expressing the values shared between them pursuant to Article 2 TUE.

Moreover, since the Rule of Law also applies to the EU institutions¹¹, the development of common standards of compliance may contribute to the latter's legitimacy in overseeing Member States' compliance with Article 2 TUE.

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¹¹ See judgment of 4 September 2015, *National Iranian Oil Cy and others vs Council*, T-577/12, EU:T:2015:596, point 129 ; judgment of 22 June 2021, *Venezuela/Council*, C-872/19 P, EU:C:2021:507, point 52.