



European Values, European Identity, European Society: Connecting the Dots

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1. Introduction

Article 2 TEU enshrines the founding values and principles of the EU, which, according to the Court of Justice of the European Union (CJEU), define «the very identity of the European Union».¹ The same provision also establishes a connection between values and society, in the sense that the former must “prevail” over the latter.

The connections between European values, European identity and European society are not obvious. These concepts are not

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¹ Court of Justice, Judgment of 16 February 2022, Case C-156/21, *Hungary/European Parliament and Council*, para. 232; of 16 February 2022, Case C-157/21, *Poland/European Parliament and Council*, para. 264.

homogeneous: unlike values and principles, identity and society are not easy to define univocally, let alone frame in legal terms.

However, considering values, identity and society in the EU as interconnected concepts opens interesting conceptual perspectives. This can allow to understand whether – and how – the values and principles affirmed by Article 2 TEU can contribute to creating a common European identity that stretches beyond a legal concept.

To that effect, this paper will first examine the connections between the values affirmed by Article 2 TEU and the concept of European Identity, as developed by the CJEU, submitting that this is a “constitutional” identity. It will then analyse the connections between European values and European society, an idea that emerges from several opinions of Advocates General of the CJEU, even before the Treaty of Lisbon came into force. Finally, it will explore the concept of identity, arguing that developing a European identity that is not merely a legal tenet but a concept capable of making EU citizens feel “European”. This requires the concrete implementation of EU fundamental values and rights in society, as well as raising awareness that these values and rights are what distinguishes the EU in relation to other parts of the world today.

2. Fundamental Values and European (Constitutional) Identity

Although frequently mentioned by the CJEU, and growingly investigated in legal literature, the concept of European identity remains – perhaps necessarily – rather fuzzy. However, that concept is not a recent invention of the CJEU.

The first definition of European identity was set out by a Declaration of the – at that time nine – Heads of State or Government of the Member States of the EEC on 14 December 1973, in Copenhagen.² This Declaration explained the essence of the European Identity, and what it entails:

«Sharing as they do the same attitudes to life, based on a determination to build a society which measures up to the needs of the

² https://www.cvce.eu/content/publication/1999/1/1/02798dc9-9c69-4b7d-b2c9-f03a8db7da32/publishable_en.pdf.

individual, they are determined to defend the principles of representative democracy, of the rule of law, of social justice – which is the ultimate goal of economic progress – and of respect for human rights. All of these are fundamental elements of the European Identity. The Nine believe that this enterprise corresponds to the deepest aspirations of their peoples who should participate in its realization, particularly through their elected representatives».

It is striking today to see how inspired and forward-thinking that Declaration was, adopted at the highest political level at a time when the EEC was not much more than the common market, and Britain was already on board. That Declaration can still be considered as a manifesto for European Identity. Not only does it affirm the idea that European integration is a dynamic process, based on shared and “cherished” fundamental values, it also outlines the idea of a European society in which social justice is the ultimate goal of economic progress. The European identity postulated by that Declaration, which refers to «a society which measures up to the needs of the individual» has a broad and more substantial dimension than the “constitutional” concept affirmed by the CJEU.

References to European identity then appeared in the Spinelli Project, whose Preamble declared the increasing importance for Europe «to assert its identity», while Article 60 audaciously referred to the need to adopt measures in the field of education, «in order to create a context which will help inculcate in the public an awareness of the Union’s own identity».³ The Treaty of Maastricht, whose Preamble mentioned a common defence with the aim of «reinforcing the European Identity», included among the objectives of the Union (Article B) «to assert its identity on the international scene», a concept repeated by the Preambles of the Treaty of Amsterdam and of the TEU with the Treaty of Lisbon.⁴

The rejection of the Treaty establishing a Constitution for Europe made it clear that the EU has no formal Constitution. Indeed, when the Lisbon Treaty was adopted after a ten-year stalemate it was commonly

³ www.cvce.eu/content/publication/2002/5/6/0c1f92e8-db44-4408-b569-c464cc1e73c9/publishable_en.pdf.

⁴ L. F. M. BESSELINK, *National and Constitutional Identity before and after Lisbon*, in *Utrecht Law Review*, No. 6, 2010, p. 36 ff.

affirmed that it was the result of a “de-constitutionalisation” of the former.

However, if constitutions provide structural provisions that define and limit powers, and affirm fundamental principles, rights and values, it is difficult to deny that the current Treaties provide a similar framework for the EU.

It is against this background that, many years later, the Court of Justice started referring to an “European identity”. The Court describes it in constitutional terms, as a legal concept, which is different but parallel to national identity as it results from the Constitutions of the EU Member States. Based on the interpretation of Article 2 TEU and the Charter of Fundamental Rights of the European Union (CFREU), the CJEU has established a substantial body of case law concerning the fundamental values of the EU.⁵

The Court of Justice frequently refers to the “EU Constitutional framework”,⁶ but carefully avoids using the “C”-word to qualify the European identity. However, it is submitted that the Court understands the “identity of the EU” in relation to Article 2 TEU, as a *constitutional identity, i.e. a legal concept of identity*.⁷

In *Commission/Malta* the Court highlighted that «the provisions relating to citizenship of the Union are among the fundamental provisions of the Treaties which are part of the framework of a system

⁵ L. S. ROSSI, *La valeur juridique des valeurs, L'article 2 TUE: relations avec d'autres dispositions de droit primaire de l'UE et remèdes juridictionnels*, in *RTDE*, No. 56, 2020, p. 640 ff.

⁶ See, recently, the Opinion 1/17. The Court qualified the European Treaties as the basic constitutional charter” as early as 1984, in *Les Verts*: Court of Justice, Judgment of 23 April 1986, Case 294/83, *Les Verts/European Parliament*, para. 23: «The European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty». In this regard, L. PECH, *The Rule of Law as a Well-Established and Well-Defined Principle of EU Law*, in *Hague Journal of Rule Law*, No. 14, 2022, p. 107 ff. See also Court of Justice, 18 December 2014, Opinion 2/13, *Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, para. 21.

⁷ See also G. VAN DER SCHYFF, I. LEIJTEN, C. VAN OIRSOUW, J. DE POORTER, M. STREMLER, M. DE VISSER, *Introduction: Exploring the Concept of a Constitutional Identity for the European Union*, in *European Yearbook of Constitutional Law*, 2022, p. 1 ff.; D. GRIMME, *Three Meanings of Constitutional Identity and Their Prospects in the European Union*, *ivi*, 2022, p. 13 ff.

that is specific to the European Union and which are structured in such a way as to contribute to the implementation of the process of integration that is the *raison d'être* of the European Union itself and thus form an integral part of its constitutional framework». Furthermore, «Union citizenship is thus one of the principal concrete expressions of the solidarity which forms the very basis of the process of integration, which is an integral part of the identity of the European Union as a specific legal system, accepted by the Member States on a basis of reciprocity».⁸

The CJEU case law dwells upon European identity in two respects: the “structural” identity, based on the principle of autonomy, and the value-based identity, grounded on Article 2 TEU and the Charter.⁹

The EU constitutional structure was described in Opinion 2/13: «the EU has a new kind of legal order, the nature of which is peculiar to the EU, its own constitutional framework and founding principles, a particularly sophisticated institutional structure and a full set of legal rules to ensure its operation».¹⁰

According to the CJEU, the specific characteristics of the EU (and EU law) «include those relating to the constitutional structure of the EU, which is seen in the principle of conferral of powers referred to in Articles 4(1) TEU and 5(1) and (2) TEU, and in the institutional framework established in Articles 13 TEU to 19 TEU».¹¹

The value-related aspects of the European identity have been affirmed by the CJEU in several judgments concerning Article 2 TEU, initially with reference to judicial independence and in combination with Article 19 TEU.¹² In the two “twin” judgments on conditionality,

⁸ Court of Justice, Judgment of 29 April 2025, Case C-181/23, *Commission/Malta*, paras 91 and 93.

⁹ K. LENAERTS, J. GUTIÉRREZ-FONS, *Epilogue. High Hopes: Autonomy and the Identity of the EU*, in *EP*, No. 8, 2023, p. 1495 ff.

¹⁰ Opinion 2/13, cit., para. 158.

¹¹ *Ivi*, para. 165.

¹² *Inter alia*, Court of Justice, Judgment of 27 February 2018, Case C-64/16 *Associação Sindical dos Juizes Portugueses*; 24 June 2019, Case C-619/18, *European Commission/Poland*; 19 November 2019, Joined Cases C-585/18, C-624/18 and C-625/18, *A.K. and Others*; 26 March 2020, Joined Cases C-558/18 and C-563/18, *Miasto Łowicz*; of 2 March 2021, Case C-824/18, *A.B. and Others*; 18 May 2021, Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, *Asociația “Forumul Judecătorilor din România”*; 15 July 2021, Case C-791/19,

which marked a real constitutional turning point for the EU, the full Court explained the role of the values contained in Article 2 TEU, emphasising that these values have been identified and are shared by the Member States.

According to the Court, Article 2 TEU enshrines the founding values and principles that «define the very identity of the European Union as a common legal order», an identity that the European Union «must be able to defend».¹³ Furthermore, «Article 2 TEU is not merely a statement of guidelines or intentions, but contains values, which are given concrete expression in principles containing legally binding obligations for the Member States».¹⁴

The CJEU clarified that, pursuant to Article 49 TEU, Member States must be committed to promoting those values,¹⁵ whose respect is a condition not only for accession to the EU, but also for enjoying all the rights that derive from the application of the Treaties.¹⁶

The European identity is embodied by the values of Article 2 that stem from the common constitutional traditions of the Member States. However, that identity does not represent all the constitutional

European Commission/Poland (Disciplinary regime for judges); 6 October 2021, Case C-487/19, *W.Ż.* (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment); 21 December 2021, Joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, *Euro Box Promotion and Others*; 13 July 2023, Joined Cases C-615/20 and C-671/20, *YP and Others* (Lifting of a judge's immunity and his or her suspension from duties); 5 June 2023, Case C-204/21, *European Commission/Poland* (Independence and private life of judges); 25 February 2025, Joined Cases C-146/23 and C-374/23, *XL and Others/Sqd Rejonowy w Białymstoku and Lietuvos Respublika*; 27 February 2025, Case C-16/24, *Sinalov*; 6 March 2025, Joined Cases C-647/21 and C-648/21, *D. K.*; 1^o August 2025, Joined Cases C-422/23, C-455/23, C-459/23, C-486/23 and C-493/23, *Daka*.

¹³ *Hungary/European Parliament and Council*, cit., para. 127 and *Poland/European Parliament and Council*, cit., para. 145.

¹⁴ See footnote n. 3.

¹⁵ *Hungary/European Parliament and Council*, cit., para. 124 and *Poland/European Parliament and Council*, cit., para. 142.

¹⁶ Court of Justice, Judgment of 20 April 2021, Case C-896/19, *Repubblika*, paras 63-64. See L. S. ROSSI “Concretised”, “Flanked”, or “Standalone”? *Some Reflections on the Application of Article 2 TEU*, in *EP*, No. 1, 2025, p. 1 ff.; K LENAERTS, *On Checks and Balances: The Rule of Law within the EU*, in *CJEL*, No. 28, 2023, p. 33 ff.; M. LELOUP, D. KOCHENOV, A. DIMITROVS, *Opening the door to solving the “Copenhagen dilemma”? All eyes on Repubblika v II-Prim Ministru*, in *ELR*, No. 5, 2021, p. 692 ff.

traditions of each individual Member State.¹⁷ It expresses an autonomous source of values of the European Union as a common legal order, a collective heritage that no Member State can challenge without violating the common founding pact of the Union.¹⁸

As Article 2 TEU provides just an essential framework that leaves Member States the freedom to decline values differently, according to their own constitutional traditions, national and European identities – one not replacing the other –, should coexist in harmony, as postulated by Article 52(4) of the EU Charter of Fundamental Rights.

Clashes, however, sometimes occur between the Constitutional Courts of the Member States, which invoke national constitutional identity, also in light of Article 4(2) TEU,¹⁹ and the CJEU, which “must defend” the founding values as expression of the European constitutional identity. The recent cases *Commission/Poland*²⁰ and *Commission/Hungary*²¹ have shown muscular confrontations among Courts at identitarian level.

In the first case, the Court of Justice qualified the Polish Constitutional Court as a non-independent judge established by law in the meaning of Article 19 and 2 TEU. In the second case, the Court affirmed that the identity clause of Article 4(2) TEU only protects national identities that are consistent with the values of Article 2 TEU.

¹⁷ J. ZILLER, *Common Constitutional Traditions*, in L. F. M. BESSELINK, N. LUPO, M. WENDEL (eds.), *Research Handbook of European Constitutional Law*, Cheltenham, 2023, p. 105 ff.; K. LENAERTS, *The European Court of Justice and the Comparative Law method*, in *European Review of Private Law*, No. 2, 2017, p. 297 ff.

¹⁸ L. S. ROSSI, *Commission v. Hungary: Why Article 4(2) TEU Protects Only a National Identity Which is Consistent with Article 2 TEU*, in *ELL*, June 2026, www.eulawlive-com.ezproxy.unibo.it/op-ed-commission-v-hungary-why-article-42-teu-protects-only-a-national-identity-which-is-consistent-with-article-2-teu.

¹⁹ The invocation of national identity under Article 4(2) TEU has been increasingly criticised as a vehicle for undermining the rule of law. See, *ex multis*, C. TIMMERMANS, *Mediating Conflicts between National Identities and EU Law: The Potential of Article 4(2) TEU*, in *CMLR*, No. 59, 2022, p. 75 ff.; P. FARAGUNA, *On the Identity Clause and Its Abuses: Back to the Treaty*, in *EPL*, No. 3, 2021, p. 427 ff.; R. D. KELEMEN, L. PECH, *The Uses and Abuses of Constitutional Pluralism: Undermining the Rule of Law in the Name of Constitutional Identity in Hungary and Poland*, in *CYELS*, No. 21, 2019.

²⁰ Court of Justice, Judgment of 18 December 2025, Case C-448/23, *Commission/Poland*.

²¹ Court of Justice, Judgment of 21 April 2026, Case C-769/22, *Commission/Hungary*.

Even not establishing a hierarchy between European identity and national identities,²² the Court of Justice is determined to preserve the autonomy and the essential constitutional identity of the Union.

3. *Fundamental Values and Society*

The sum of the obligations on both the Member States and on the EU institutions make Article 2 TEU a constitutional framework of values for the entire Union that is supposed to be reflected in European society. Consequently, those values must actively be promoted both by the EU institutions and by the Member States in their national society, which is the part of a broader European society under their control.

Society is not a legal concept but an empirical or pre-legal one.²³ However, it is widely accepted that societal evolution is reflected in corresponding legal changes (*ubi ius, ibi societas*) and that law shapes society (*ubi societas, ibi ius*). The impact of EU legislation and the case law of the CJEU on the EU Member States' societies is evident. The more EU law applies with general and uniform effect, the more it contributes to create a European society; that is, a society shaped by the same rules. European society certainly does entail an annihilation of national societies, nor does it represent the sum of the latter. As society is a composite and multilayered reality, we can say that EU law adds a European layer to the national, and local, societies of its members States.

Reference to “a society” in which the values of Article 2 TEU prevail is made by the second paragraph of the same Article, as it was, before it, in the Treaty establishing a Constitution for Europe. This

²² See on this point, L. S. ROSSI, *Commission v. Hungary*, cit.

²³ See C. KANTNER, *Collective Identity as Shared Ethical Self-Understanding: The Case of the Emerging European Identity*, in *European Journal of Social Theory*, No. 4, 2006, p. 501 ff. The author challenges the assumption that a strong collective identity constitutes a functional precondition for democratic legitimacy, arguing instead that “thin” forms of belonging – based on mere participation in a common legal and political space – are sufficient for the ordinary functioning of institutions. From this perspective, the social dimension precedes the legal one: the existence of a society does not depend on prior normative or value-based integration but rather emerges empirically through practices of cooperation and interaction, which may only subsequently become subject to legal formalisation.

reference has attracted the attention of scholars, in particular Armin Von Bogdandy, who argued that this Article introduces a new concept of “European” Society.²⁴

However, if it is true that the inclusion of this reference to society into the “constitutional” provision of Article 2 TEU is indeed meaningful, the concept of a European society rooted in values and fundamental rights can be found long before Article 2 TEU came into force with the Treaty of Lisbon, and even before the drafting of the Treaty establishing a constitution for Europe, in several opinions of the Court’s Advocates Generals, and more recently also by the Court of Justice itself.

In those Opinions, European society is not considered a mere place where EU law displays its effect; rather, it is seen as a reality expressing its own values. On these grounds, it could be said that not only “ubi European societas, ibi European values”, but also that “ubi European values, ibi European societas.”

In 2001, in case C-377/98, *Netherlands/Parliament and Council*,²⁵ AG Francis Jacobs, discussing the discretion of a Member State to determine the scope of the concept of public morality in accordance with its own scale of values, suggested exercising caution, arguing that «[I]t may be that the ethical dimension of some of the basic issues within the scope of the Directive is now more appropriately regarded as governed by common standards». Accordingly, for the purposes of the European Patents Convention, «...the culture in question is the culture inherent in *European society* and civilisation».

One year later, in its Opinion in *Gözütok*,²⁶ AG Ruiz-Jarabo Colomer explained the role of Member States when «the whole of European society» is affected by criminality and affirmed that this

²⁴ A. VON BOGDANDY, *The Emergence of European Society through Public Law: A Hegelian and Anti-Schmittian Approach*, Oxford, 2024, p. 136 ff; ID., *On the meaning and promise of European Society*, in *European Law Open*, No. 1, 2026, p. 1 ff. And most recently ID., *La società europea e i suoi antagonisti*, in *federalismi.it*, No. 1, 2026, p. 1 ff.; L. AZOULAI, *The Law of European Society*, in *CMLR*, 2022, p. 203 ff.; ID., *European society and its law: EU law in light of social theory*, in *ELO*, 2025, p. 1 ff.

²⁵ Opinion of AG Francis Jacobs, delivered on 14 June 2001, Case C-377/98, *Netherlands/Parliament and Council*, point 102.

²⁶ Opinion of AG Ruiz-Jarabo Colomer, delivered on 19 September 2002, Case C-187/01, *Gözütok and Brügge*.

society «by law is democratic».²⁷ The same AG returned on these concepts in *Van Esbroeck*,²⁸ qualifying European society as democratic and based on the rule of law.

In *Ordre des barreaux francophones and germanophone and Others*²⁹ AG Miguel Maduro affirmed that «lawyers’ secrecy has its roots in the very foundations of European society». He added that «[I]n principle, account must be taken of ‘the basic need of a man in a civilised society to be able to turn to his lawyer for advice and help, and if proceedings begin, for representation’ ...A representative and defence counsel, any lawyer also has an essential duty of assistance and advice. He thereby ensures not only access to justice but also access to the law. However, this latter guarantee is no less precious than the former in a complex society such as European society».³⁰

The first reference to Article 2 TEU and «the values underpinning the model of European society», notably solidarity, was made in 2014 by AG Paolo Mengozzi in *Centro Hospitalar de Setúbal*, pointing out that «solidarity is specifically recognised in Article 2 of the Treaty on European Union as one of the values underpinning the model of European society and that, consequently, entities actively promoting that value contribute to the construction of a European society in keeping with the spirit of the Treaties».³¹

The same year, AG Pedro Cruz Villalon, in *Deckmyn*,³² a case concerning the concept of “parody” and the balance between freedom of expression and other fundamental rights, pointed out that «...freedom of expression is never quite ‘unlimited’ in a democratic society... This is also why the Charter encompasses not only freedom of expression but also other rights that may occasionally compete with

²⁷ *Ivi*, point 45.

²⁸ Opinion of AG Ruiz-Jarabo Colomer, delivered on 20 October 2005, Case C-436/04, *Van Esbroeck*, point 25.

²⁹ Opinion of AG Miguel Maduro, delivered on 14 December 2006, Case C-305/05, *Ordre des barreaux francophones and germanophone and Others*, point 36. The same formula has been more recently mentioned by AG Emiliou in the Opinion related to the Case C-623/22, *Belgian Association of Tax Lawyers and Others*, point 196.

³⁰ Opinion of AG Miguel Maduro, cit., point 60.

³¹ Opinion of AG Paolo Mengozzi, delivered on 27 February 2014, Case C-574/12, *Centro Hospitalar de Setúbal*, point 40.

³² Opinion of AG Pedro Cruz Villalon, delivered on 22 May 2014, Case C-201/13, *Deckmyn*, points 80 and 83.

it: human dignity (Article 1), first, together with another series of rights and freedoms, in particular the prohibition of discrimination on grounds of race or religion (Article 21)».³³ Citing P. Häberle, he added «At the very core of those limits it is possible to identify the presence of the most deeply rooted beliefs in European society, which is far from being a society without history or, in short, without culture».³⁴

In *Rendon Marin*,³⁵ a case concerning the expulsion of a third-country national who was the parent and sole carer and custodian of a child national of that Member State, AG Maciej Szpunar, after recalling the major developments in the CJEU case law stemming from *Ruiz-Zambrano*, brilliantly explained the relationship between EU citizenship and EU society as follows: «In my opinion, this development in the case-law is the result of close cooperation between the Court of Justice and the national courts and of advances, both fortunate and logical, within the societies of the Member States and within European society taken as a whole, whose members are merely integrating into their everyday life the status of citizens of the Union conferred upon them by the Treaty. That status binds them together as peoples of a Europe that, on the basis of a civil and political allegiance still being built, but also necessary in the context of political, economic and social globalisation. It gives them rights and duties that may not be restricted by national authorities without proper justification».

Two cases concerning freedom of religion allowed AG Juliane Kokott to argue, in *G4S Secure Solutions*,³⁶ that «Ultimately, the legal issues surrounding the Islamic headscarf are symbolic of the more fundamental question of how much difference and diversity an open and pluralistic European society must tolerate within its borders and, conversely, how much assimilation it is permitted to require from certain minorities». Then, in *Congregación de Escuelas Pías Provincia Betania*,³⁷ she highlighted that the dimension of European society goes beyond the scale of a single Member States.

³³ *Ivi*, points 82 and 87.

³⁴ *Ivi*, point 83, for the citation of Häberle, see *ivi*, footnote 37.

³⁵ Opinion of AG Maciej Szpunar, delivered on 4 February 2016, Cases C-165/14, *Alfredo Rendón Marín* and C-304/14, *CS*, point 117.

³⁶ Opinion of AG Juliane Kokott, delivered on 31 May 2016, Case C-157/15, *G4S Secure Solutions*, point 3.

³⁷ Opinion of AG Juliane Kokott, delivered on 16 February 2017, Case C-74/16,

AG Cápeta, in *Safi*,³⁸ underlined the connection between European citizenship and a European society based on common values, pointing out that «[I]t is clear from the choice of wording – ‘citizenship of the Union’ – that that concept aims at creating an additional attachment for nationals of the Member States; an attachment which is not only based on the economic logic of the market, but which ties Member State nationals to a wider European society based on common values, without depriving them of their national identity». Most recently, in *Italian Republic/European Parliament and Council*,³⁹ AG Cápeta emphasised that rights of minorities are part of the European society in the meaning of Article 2 TEU and that «[D]emocracy, as understood in the European Union, goes beyond the decision-making of the democratically elected majority; it requires the protection of the rights of minorities that are part of European society».

Some Opinions describe the evolving nature of European society. This evolution is a two-ways process: if legal values influence society, an evolution of the European society may involve, *in concreto*, an evolution of the European values and legislation.

In *Coman*,⁴⁰ AG Wathelet observed that the development of European society leads to the concept of “spouse” being interpreted independently of sexual orientation. In *TGSS*,⁴¹ a case concerning equal treatment for men and women in domestic works, AG Szpunar indicated that a social model based on stereotypes of the roles of men and women no longer reflect the «reality of European society».

Looking at the overall picture, we can see that for many years Advocates General have been considering society as a matter of fact, a reality, with its inherent history and culture. They described European society as a complex and evolving one, a society which adds a further dimension to those of the Member States, and whose members integrate

Congregación de Escuelas Pías Provincia Betania, point 4.

³⁸ Opinion of AG Tamara Cápeta, delivered on 4 September 2025, Case C-147/24, *Safi*, point 70.

³⁹ Opinion of AG Tamara Cápeta, delivered on 5 March 2026, Case C-194/24, *Italian Republic/European Parliament and Council*, point 48.

⁴⁰ Opinion of AG Melchior Wathelet, delivered on 11 January 2018, Case C-673/16, *Coman and Others*, point 80.

⁴¹ Opinion of AG Maciej Szpunar, delivered on 30 November 2021, Case C-389/20, *TGSS (Chômage des employés de maison)*, point 77.

it into their everyday life. Since the most ancient cases, European society has been described as a democratic society based on the rule of law and solidarity.⁴² This does not mean that AGs “invented” or “discovered” European society, as the latter is a factual reality, not an abstract concept; rather, it indicates an increasing awareness of its emerging existence and of its relationship with common values.

In more recent times, also the judgments of the CJEU and the General Court regarding the values enshrined in Article 2 TEU refer to “society”, which sometimes means the societies of individual Member States,⁴³ and some other times «the society as a whole».⁴⁴

Two General Court judgments concerning the restrictive measures adopted against the Russian Federation, *RT France/Council*⁴⁵ and *A2B Connect and Others/Council*⁴⁶ stress the necessity of protecting European society and preserving the integrity of democratic debate within it.

As to the Court of Justice, it often uses the formula «democratic society»,⁴⁷ or, more recently, «a democratic society governed by the rule of law».⁴⁸ In *Commission/Hungary*, the Court has mentioned «the very identity of the Union as a common legal order of a society in which pluralism prevails».⁴⁹

In the overall logic of Article 2 TEU, the reference to society in its second sentence has a prescriptive value, adding a substantive dimension to the list of the EU founding values. The values and principles set out in Article 2 TEU, as a common, essential core of values and principles that must be observed by both EU institutions and

⁴² K. LENAERTS, S. ADAM, *La solidarité, valeur commune aux États membres et principe fédératif de l'Union européenne*, in *Cahiers de droit européen*, No. 57, 2021, p. 416 ff.

⁴³ Court of Justice, Judgment of 13 March 2025, Case C-247/23, *VP/Országos Idegenrendészeti Főigazgatóság*, para. 42.

⁴⁴ *Commission/Poland*, cit., paras 175, 238, 262, 264, 274.

⁴⁵ General Court, Judgment of 27 July 2022, Case T-125/22, *RT France/Council*, paras 55, 88, 193.

⁴⁶ General Court, Judgment of 26 March 2025, Case T-307/22, *A2B Connect and Others/Council*, paras 52 and 127.

⁴⁷ *A.K. and Others*, cit., paras 127-128.

⁴⁸ See for instance Court of Justice, Judgment of 19 December 2024, Case C-369/23, *Vivacom Bulgaria*, para. 44 and *Commission/Poland*, cit., paras 238 and 267.

⁴⁹ *Commission/Hungary*, cit., para. 551.

the Member States can create a common constitutional identity both for the Member States and for EU citizens.

Furthermore, the effects on society can serve as a benchmark for assessing a breach of the principles and values of Article 2 TEU, and – if so – the systemic dimension, seriousness and persistence of the violation, as well as a significant regression in the terms set out by the CJEU in *Repubblica*.⁵⁰

This paper submits that if the simple proclamation of common values can promote a sense of common constitutional identity, only the concrete implementation in society of those values can foster a real European identity.

4. *The elements of a (real) European Identity*

According to psychoanalysts, identity formation involves an interplay of differences and likenesses, of self-identification and affinities.⁵¹ The same pattern applies to each layer of identity. Individuals identify themselves based on a multitude of personal characteristics and experiences that make them both *different* from all other individuals, and *similar* to others.

Furthermore, individuals position themselves in society based on affinities, in groups that share a culture, political opinions, religion, work or even a sport or hobby. Belonging to each group can add one more layer to an individual's identity. Accordingly, the positions that individuals hold in society's various tiers contribute to processes of self-identification – and identification of others – acting as a sort of “geo-localisation” into a unique position in society. When members of a group become aware that what they have in common differentiates them from members of other groups, a collective identity is born. This collective identity may be value-based, when shared values create a sense of belonging and differentiation.

With regard to European identity, it is therefore suggested that two elements are necessary for individuals to identify with a common

⁵⁰ See, more in detail, L. S. ROSSI, *Commission v. Hungary*, cit.

⁵¹ See A. LOMBARDOZZI, *Identità*, in *SpiWeb*, 2019, see: www.spiweb.it/la-ricerca/ricerca-psicoanalisi/identita-cura-alfredo-lombardozzi/.

identity, feeling “Europeans”: awareness of belonging to a common Union that shares the same values and promotes them in society, and the perception that it is these values that differentiate the EU from other places.

As for the first element, a sense of belonging to a common entity cannot develop just looking at the blue starred European flag or listening to Beethoven’s Hymn to Joy. Individuals should become aware of belonging to a community of values, not just to the Union as a legal entity.

The progressive constitutionalisation of EU fundamental values and rights is certainly important, because it clearly indicates their position at the top of the EU legal order and establishes a common framework that shapes legislation and society. This allows individuals to know that, in addition to the protection of rights and values guaranteed by national constitutions, there is also a further protection, offered by the Union.

However, a common constitutional identity is probably still insufficient to create self-identification and a true sense of belonging for individuals. To overcome what has been described as «a deficit of reality»⁵² these values and rights must concretely permeate European society to such an extent that they can be widely recognised as characteristic features of that society. Indeed, according to some linguistic versions of Article 2 TEU (for example, the Italian and the French ones), those values must “characterise” society. It should be remembered that the Declaration on European Identity postulated «a society which measures up to the needs of individual».

Individuals can more easily develop a shared identity if they feel that those values are not only common traits in European society but are also actively and concretely promoted within it. From this perspective, implementing the value of solidarity is particularly important to foster a sense of belonging to a community. Furthermore, individuals must be able to count on the EU to defend their rights and values – first democracy – whenever necessary, even against Member States.

⁵² L. AZOULAI, *Reconnecting EU Legal Studies to European Societies*, in *VBlog*, 19 March 2024.

Self-identification in a common society is also important. There are signs that an awareness of belonging to a common society is emerging. Common problems can also foster a sense of affinity and solidarity with other subjects, beyond national borders. For example, when Italian farmers realise that they have the same problems as French ones, they take their flags and go to Brussels to demonstrate together against the EU institutions. At that moment, they become aware of belonging to a common society.

As for the second element of identity, that is differentiation, identification also implies comparing oneself with others.

The current international context could make the European society more aware of its own peculiar stance in favour of fundamental values of liberal democracy, fundamental rights and respect for international law that have traditionally characterised what was called the “Western world”. A political and ideological earthquake is underway on a global scale, shaking the foundations of the entire international legal and political system and calling into question the universal principles and multilateral structures that have ensured peace and prosperity in much of the world for decades.

As the process of European integration was rooted in these principles, the question is whether the EU is now mature enough to stand united to defend them. This is a real challenge because powerful forces – both outside and inside the EU – are clearly trying to weaken the European Union and stop its integration process.

Returning to the aforementioned Opinion by AG Cruz-Villalon, the EU must defend «the most deeply rooted beliefs in European society», our society «which is far from being a society without history or, in short, without culture». ⁵³

The values enshrined in Article 2 TEU were born in Europe and are enshrined in the Constitution of the EU Member States and in the EU Treaties. They can provide a common constitutional framework capable of resisting the drift in values that is taking place on a global scale because it is others who are moving away from them.

But they also can be a source of self-awareness and foster a real European identity if, looking at the rest of the world, Europeans become

⁵³ See footnote n. 32.

aware that it is the values they have in common that makes them different, recognising themselves as Europeans because they share common values and strive to achieve them in the different levels of societies.

ABSTRACT (ITA)

L'articolo esamina il rapporto tra valori europei, identità europea e società europea. In primo luogo, approfondisce il legame tra i valori fondanti dell'Unione e il concetto di identità europea, sostenendo che la giurisprudenza della Corte di giustizia abbia sviluppato un'identità costituzionale dell'Unione europea. Successivamente, ricostruisce il rapporto tra valori europei e società europea attraverso l'analisi delle conclusioni degli Avvocati generali, mostrando come la nozione di società europea sia emersa ben prima del Trattato di Lisbona e sia stata progressivamente associata alla democrazia, allo Stato di diritto, alla solidarietà e ai diritti fondamentali. Infine, l'articolo sostiene che un'autentica identità europea non possa essere circoscritta alla sua dimensione giuridica, ma richieda che i valori sanciti dall'articolo 2 TUE siano effettivamente attuati nella società. Solo la loro concreta realizzazione può rafforzare il senso di appartenenza dei cittadini all'Unione e accrescere la loro consapevolezza di un'identità europea condivisa, soprattutto nell'attuale contesto internazionale.

ABSTRACT (ENG)

This article examines the relationship between European values, European identity, and European society. It first explores the link between the founding values of the Union and the concept of European identity, arguing that the case law of the Court of Justice has developed a constitutional identity of the European Union. It then reconstructs the relationship between European values and European society through an analysis of the Opinions of the Advocates General, showing that the notion of a European society emerged well before the Treaty of Lisbon and has progressively been associated with democracy, the rule of law, solidarity, and fundamental rights. Finally, the article argues that a genuine European identity cannot be confined to its legal dimension, but requires that the values enshrined in Article 2 TEU be effectively implemented in society. Only their concrete realization can foster citizens' sense of belonging to the Union and strengthen their awareness

of a shared European identity, particularly in the current international context.