



Between Values and Identity: From Consensus to Conflict?

Vanda Petková*

TABLE OF CONTENTS: 1. Introduction. – 2. Between two identities: *national and European identity in EU law*. – 2.1. The concept of European identity in EU law. – 2.2. National identity in the context of EU Law. – 2.3. Interplay between national and European identity. – 3. From consensus to conflict? – 3.1. Identified cases. – 3.2. Which Member States? – 3.3. Affected values. – 3.4. What do the Court of Justice and Advocates General say about it? – 3.5. Analysis. – 3.5.1. Temporal development: the rise of national identity claims. – 3.5.2. Member States involved and structural patterns. – 3.5.3. Judicial response: evolution of the CJEU's approach. – 3.5.4. Functional relationship between Article 2 TEU and Article 4(2) TEU. – 3.5.5. Judicial voices compared: Advocates General and judicial minimalism of the Court of Justice. – 4. Conclusions.

ABSTRACT: This paper examines the tension between the national identity of the EU Member States and the values of the Union under Article 2 TEU. It explores whether national identity is invoked to justify actions that may contravene EU law and undermine EU values. The article relies on a combined qualitative and quantitative methodology, analysing post-Lisbon case law in which Member States invoked national identity in contexts potentially conflicting with EU values. The study outlines the legal framework of both national and European identity and their interrelationship within the EU constitutional order. It then maps relevant cases, identifying patterns in judicial reasoning, the involvement of specific Member States, and the values most frequently affected. The article argues that there is a growing tension within the EU legal order between respect for national identity and the protection of common values under Article 2 TEU.

KEYWORDS: national identity – European identity – Member States – values – conflict – European Union.

1. Introduction

In recent years, the concept of national identity of the Member States has gained increasing prominence in legal and political discourse within the European Union (EU). Certain Member States have begun to invoke national identity *vis-à-vis* the

* Internal PhD candidate, Comenius University Bratislava, Faculty of Law, Institute of European law, vanda.petkova@flaw.uniba.sk.



European Union in a variety of contexts,¹ to delineate the limits of EU competences and resist further integration.² In some instances, references to national identity have been advanced even in situations where the contested national measures may be incompatible with the fundamental values of the European Union.³ This development raises an important question: to what extent is national identity being used in the case law of the Court of Justice of the European Union (the Court of Justice) as a justificatory tool in situations that potentially conflict with the Union's common values under Article 2 of the Treaty on European Union (TEU)?

The aim of the present article is not merely to identify such cases, but to assess what their systematic analysis reveals about the evolving relationship between national identity and EU values, and the constitutional implications of this relationship for the relative positioning of European identity and national identity within the EU legal order. In particular, it seeks to determine whether conflicts arise across all Member States or are concentrated in specific ones, which EU values are most frequently affected, and how the Court of Justice and the Advocates General respond to such tensions. Identifying and mapping these cases is important because it allows for the detection of patterns that would otherwise remain invisible in isolated judgments. In this way, the analysis moves beyond description. It provides a basis for evaluating whether national identity is being instrumentalised in a manner that challenges the effectiveness and unity of EU values enshrined in Article 2 TEU. This allows for an assessment of whether a structural tension is emerging in the EU legal order.

To address this question, the research employs a combination of qualitative and quantitative methods. Firstly, Section 2 provides a brief theoretical framework for the concepts of national and European identity by analysing relevant case law of the Court of Justice and relevant legal doctrine, thereby clarifying the conceptual basis upon which the subsequent analysis builds. Subsequently, Section 3 examines the case law of the Court of Justice developed after the entry into force of the Treaty of Lisbon (ToL), as it was only with this treaty that the concepts of national identity and the fundamental values of the European Union were definitively consolidated in primary EU law as we know them today. In particular, the analysis will focus on identifying and mapping cases in which Member States, when breaching EU law and potentially the values of the EU under Article 2 TEU, justified their actions by invoking the protection of their national identity. The research will further examine which Member States rely on this argument most frequently and which EU values are most affected by such practices. Finally, the article will analyse whether and how

¹ For overview of various identity claims see J Wischhoff Gašperin, *National Constitutional Identity. Judicial Resistance in the EU As Civil Disobedience and Conscientious Objection* (Nomos, Baden-Baden 2025) 129, 202.

² S Mangiameli, 'The European Union and the Identity of Member States' (2013) 369 *L'Europe en Formation* 154.

³ For example, in Case C-430/21 *RS*, EU:C:2022:99; Case C-490/20 *Pancharevo*, EU:C:2021:1008; Case C-769/22 *Commission v Hungary*, EU:C:2025:408.

these two concepts are reflected and addressed in the judgments of the Court of Justice and in the Opinions of the Advocates General.

The analysis offers several key insights into the evolving relationship between national identity and the EU's value-based legal order. It shows that national identity is increasingly invoked not merely as a safeguard of constitutional, cultural, or linguistic diversity, but as a justificatory argument in situations involving potential non-compliance with the fundamental values of Article 2 TEU. Strikingly, this shift becomes evident only in post-2017 case law, despite earlier and well-documented rule-of-law and democratic backsliding in some Member States. Rather than coinciding with those developments, the case law suggests a delayed but increasingly intensive use of national identity arguments before the Court of Justice. Moreover, the analysis identifies a discernible jurisprudential trajectory in the Court of Justice's case law, evolving from initial judicial silence on the relationship between national identity and EU values, through a phase of contextual balancing, toward progressively stricter boundary-setting, and, most recently, toward a form of constitutional consolidation in which national identity is increasingly framed as operating within the normative boundaries of EU values.

Overall, the article concludes that a conflict between national and European identity is emerging but remains limited and potentially manageable if addressed through consistent judicial interpretation and stronger institutional enforcement of Article 2 TEU.

2. Between two identities: *national and European identity in EU law*

The motto of the European Union, 'United in diversity',⁴ is prominently reflected throughout the Treaties.⁵ In my view, it embodies the principle that, despite the plurality of national identities, Member States converge around a common set of shared values.⁶ This chapter provides a brief theoretical overview of the concepts of national and European identity with its expression in Article 2 TEU and explores the interrelationship between these two forms of identity in order to clarify the conceptual foundations upon which the subsequent parts of the article are based.

2.1. The concept of European identity in EU law

European identity can be studied from multiple scholarly perspectives. The present article, however, concentrates exclusively on the legal dimension of the concept, examining the relevant case law of the Court of Justice as well as legal doctrine concerning both the historical development and the contemporary articulation of European identity and the fundamental values through which it is expressed.

⁴ European Union, *EU Motto* (Brussels, 23 December 2025), at european-union.europa.eu.

⁵ For example, in Arts 2, 3(3), 4(2) TEU, Art 22 of the Charter.

⁶ A similar position is supported by Lenaerts. See K Lenaerts, 'On Checks and Balances: The Rule of Law within the EU' (2023) 29 *Columbia Journal of European Law* 25, 61.

European identity, as a legal concept, is relatively new. It is only in recent jurisprudence that the Court of Justice has explicitly established that the fundamental values enshrined in Article 2 TEU constitute the foundation of European identity.⁷ While the notion of European identity has always been implicitly present in EU law, it had not been formally defined until it was interpreted by the Court of Justice.

Against this background, this article adopts a deliberately restrictive conception of European identity in EU law and aligns with the position advanced by Pablo Cruz Mantilla de los Ríos. While certain strands of scholarship advocate for an expanded understanding of European identity, extending it beyond the values enshrined in Article 2 TEU to include core constitutional principles of EU law or even the four freedoms of the internal market,⁸ this article proceeds on the basis that, for the purposes of constitutional adjudication, European identity should be understood as being primarily anchored in the essential content of the values set out in Article 2 TEU.⁹ Accordingly, the analysis of European identity necessarily requires an examination of the EU's fundamental values.

The values of the EU, as we know them today, were not explicitly enshrined in the founding Treaties at the time of the establishment of the EU with the Maastricht Treaty (ToM).¹⁰ Nevertheless, the idea of a community based on shared values predates their formal codification in primary EU law.¹¹ Over time, the catalogue of values and principles underpinning the European integration project gradually evolved and expanded.¹² Before the entry into force of the ToM, certain values were defined in decisions of the CJEU as general principles of EU law.¹³ Subsequently, the Member States decided to codify these values in Article F of the ToM. However, this provision explicitly referred only to the principle of democracy, while other foundational elements, such as respect for human rights and the rule of law, were mentioned primarily in the Preamble. Moreover, Article F framed these elements as 'principles'

⁷ Case C-157/21 *Poland v Parliament and Council*, EU:C:2022:98, para 147; Case C-156/21 *Hungary v Parliament and Council*, EU:C:2022:97, para 127: 'The values enshrined in Article 2 TEU were determined and are shared by the Member States. They define the very identity of the Union as a common legal order. The Union must therefore be capable of defending these values within the limits of the powers conferred on it by the Treaties'.

⁸ JL Da Cruz Vilaca and N Picarra, 'Y a-t-il des limites matérielles à la révision des traités instituant les communautés européennes?' (1993) 3 *Cahiers de Droit Européen* 29-30; C Curti Gialdino, 'Some Reflections on the Acquis Communautaire' (1995) 32 *Common Market Law Review* 1089, 1112-1113.

⁹ P Cruz Mantilla De Los Ríos, 'European Constitutional Identity as the Unamendable Core of the EU Treaties' (2024) 20 *European Constitutional Law Review* 545, 560.

¹⁰ O Blažo, 'From Maastricht to Lisbon and Back: 30 Years of the Union of Values' (2024) in MJG García (ed), *Democracia europea y mercado único: 30 años del Tratado de Maastricht* (Fondo Editorial Aranzadi 2024) 45.

¹¹ *Ibid* 50.

¹² *Ibid* 48.

¹³ E.g. Rule of law in Case C-294/83 *Les Verts v Parliament*, EU:C:1986:166. Respect for human rights in Case C-29/69 *Stauder v Stadt Ulm*, EU:C:1969:57 and Case C-11/70 *Internationale Handelsgesellschaft*, EU:C:1970:114.

rather than ‘values’.¹⁴ The Treaty of Amsterdam (ToA) further expanded this catalogue, although it continued to employ the terminology of principles rather than values¹⁵. At the same time, it introduced a mechanism for the enforcement of these principles¹⁶ and established their observance as a condition for accession to the European Union. The Treaty of Nice (ToN) subsequently strengthened the enforcement framework by introducing a preventive, or warning, phase.¹⁷ Finally, the unsuccessful Constitutional Treaty (CT) sought to codify these values in a manner largely identical to their current formulation in Article 2 of the Treaty of Lisbon.¹⁸ Besides the Treaties, the values found their expression also in the Preamble to the Charter.¹⁹

Accordingly, European identity is composed of a set of values or principles that have been an integral part of the European Union from its very beginning,²⁰ not solely emerging with the ToL, nor even exclusively with the ToM,²¹ irrespective of whether they were conceptualized as ‘values’ or ‘principles’.²² While further research into the historical development of European identity is required, this issue falls outside the scope of this article. Nevertheless, it is evident that the founding Member States shared these values from the establishment of the Union and intended to extend them to subsequent members. This is reflected in the fact that these values

¹⁴ Blažo believes that term ‘principles’ was used in ToM and ToA for the same assets that were design in ToL as values. Blažo (n 10) 45, 78.

¹⁵ Art 6 ToA: ‘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’.

¹⁶ Art 7 ToA.

¹⁷ Art 7(1) ToN.

¹⁸ Art I-2 CT, ‘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’.

¹⁹ Charter of Fundamental Rights of the European Union, OJ C 326 of 26 October 2012, s. 391 – 407. For more detailed historical development of fundamental values since establishment of the EU see Blažo (n 10) 45, 78.

²⁰ Ibid 73.

²¹ The present article aligns with Blažo, who argues that the fundamental values of the European Union existed prior to their formal codification and that the Treaty of Lisbon did not constitute their origin but rather their explicit articulation. See *ibid* 45, 78.

²² Kochenov argues that the wording of Art 2 TEU is conceptually imprecise, maintaining that the so-called ‘values’ should more accurately be understood as fundamental principles of EU law. See D Kochenov, ‘The Acquis and Its Principles: The Enforcement of the “Law” versus the Enforcement of “Values” in the EU’ in A Jakab and D Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States’ Compliance* (Oxford University Press 2017) 9. Similarly, Mangiameli observes that once values are incorporated into the legal framework and operate as legal norm for assessing the legality of conduct by individuals or public authorities, they effectively assume the character of legal principles. See S Mangiameli, ‘Article 2 [The Homogeneity Clause]’ in HJ Blanke and S Mangiameli (eds), *The Treaty on European Union (TEU)* (Springer Berlin Heidelberg 2013) 116.

constitute a prerequisite for EU membership,²³ and any regression from, or violation of, these values is strictly forbidden.²⁴

Over the years, the Court of Justice has provided some guidance regarding the nature and purpose of fundamental values, although such guidance remains limited. The concept has also attracted considerable attention from legal doctrine, and the European Union's approach to safeguarding these values has been subject to substantial scholarly debate and critique.²⁵ This chapter does not aim to provide a critical evaluation of the concept of fundamental values; rather, it seeks to present a brief overview of their theoretical foundations.

The set of values enshrined in Article 2 TEU is non-exhaustive,²⁶ thus additional values can be found in other provisions throughout the Treaties.²⁷ The promotion of these values constitutes a core objective of the European Union,²⁸ thus their protection represents a shared responsibility of both the Union and its Member States.²⁹ Neither the Union nor its Member States may act in a manner contrary to these values or seek to undermine them,³⁰ but both are obliged to take action against any actions that threaten their integrity.³¹ Respect for these values constitutes a precondition for the exercise of all rights arising from EU law for the Member States and, at the same time, forms the basis of the mutual trust necessary for their cooperation.³² Furthermore, the candidate states, if they wish to access the EU, are required to comply with this set of values as they form an integral part of the Copenhagen criteria.³³ For some time, some scholars have argued that these values are merely political statements,³⁴ however, the Court of Justice has rejected this view, affirming that these values are

²³ Art 49 TEU (ToL).

²⁴ Lenaerts (n 6) 52. Case C-896/19 *Repubblika*, EU:C:2021:311, para 63.

²⁵ See e.g. P Bárd, DV Kochenov, L Pech and J Wouters, 'Treaty Changes for the Better Protection of EU Values in the Member States' (2024) 30 *European Law Journal* 499, 514; J Wouters, 'Revisiting Art. 2 TEU: True Union of Values?' (2020) 5 *European Papers* 255.

²⁶ Blažo (n 10) 64.

²⁷ For a more detailed discussion of values beyond those explicitly enshrined in Art 2 TEU, see Blažo (n 10) 62, 72.

²⁸ Art 3(1) TEU.

²⁹ Art 4(3) TEU.

³⁰ Lenaerts (n 6) 51, 52.

³¹ *Hungary v Parliament and Council* (n 7) paras 125-127.

³² Case C-357/19 *Euro Box Promotion a i.*, EU:C:2021:1034, paras 160-162. D Kochenov and M Klamert, 'Article 2 TEU' in M Kellerbauer, M Klamert and J Tomkin (eds), *The Treaties and the Charter of Fundamental Rights – A Commentary* (Oxford University Press 2019) 22, 30.

³³ European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency, available at www.europarl.europa.eu p.12.

³⁴ E.g. L Besselink, 'The Bite, the Bark and the Howl Article 7 TEU and the Rule of Law Initiatives' in Jakab and Kochenov (n 22); O Mader, 'Enforcement of EU Values as a Political Endeavour: Constitutional Pluralism and Value Homogeneity in Times of Persistent Challenges to the Rule of Law' (2018) 11 *Hague Journal on the Rule of Law* 133, 170.

concretized through binding provisions in EU law³⁵ and are therefore legally enforceable, not only through the mechanism provided in Article 7 TEU but also through other provisions of the Treaties and instruments of secondary law.³⁶ Although academic debate persists regarding the precise scope and modalities of the enforceability of Article 2 TEU, this article proceeds from the premise, increasingly reflected in the Court of Justice's case law, that these values possess genuine normative and legal force within the EU legal order. Rather than revisiting this debate in abstract terms, the analysis focuses on how Article 2 TEU is operationalised in concrete cases where it interacts with claims of national identity in subsequent sections.

2.2. National identity in the context of EU law

As outlined above, the European Union, as an integration comprising multiple Member States, possesses its own identity, while each Member State simultaneously retains its individual national and constitutional identity. Notwithstanding the divergent views in legal scholarship as to whether national and constitutional identity constitute a single concept or two separate notions,³⁷ this article adopts the view that national identity operates as an autonomous concept of EU law, distinct from constitutional identity. Accordingly, the analysis deliberately focuses on national identity as such, rather than on broader or overlapping understandings of constitutional identity.

In contrast to European identity, which serves as a unifying element among the Member States, national identity functions as a limit to further integration. Pursuant to Article 4(2) TEU, the European Union is required to respect the national identity of the Member States and to refrain from intervening in areas that fall within its scope. Hence, its primary function is to delimit the competences of the European Union. This

³⁵ *Poland v Parliament and Council* (n 7) paras 191-197; Opinion of AG Tamara Ćapeta in Case C-769/22 *European Commission v Hungary*, EU:C:2025:408, paras 164-166.

³⁶ *Ibid* para 195; Lenaerts (n 6) 17. For more detailed analysis of values see e.g. KL Scheppele, D Kochenov, B Grabowska-Moroz, 'EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union' (2020) 39 *Yearbook of European Law* 3.

³⁷ Legal scholarship is divided on the relationship between national identity and constitutional identity. Kiššová and Cloots argue that these notions constitute two distinct legal concepts. See E Cloots, 'National Identity, Constitutional Identity, and Sovereignty in the EU' (2016) 45 *Netherlands Journal of Legal Philosophy* 82; S Kiššová, '„In varietate concordia“ a „európsky spôsob života“: národná a ústavná identita členských štátov Európskej únie' (Dissertation Thesis) (Bratislava 2023, Univerzita Komenského v Bratislave). By contrast, the Court of Justice and some Advocates General have frequently employed the terms interchangeably, e.g. Opinion of AG Bot in Case C-399/11 *Melloni*, EU:C:2012:600, para 137. A similar view is also shared by a number of scholars, who maintain that national and constitutional identity essentially refer to the same concept within EU law, e.g. see A Blagojević, 'Procedures regarding National Identity Clause in the National Constitutional Court's and the CJEU's Case-Law' (2017) 1 *Procedural Aspects of EU Law* 210; O Hamulák, D Kopal and T Kerikmäe, 'Identité nationale et constitutionnelle dans la jurisprudence de la Court de justice de l'Union européenne' (2017) 1 *Bratislava Law Review* 6.

implies that all provisions of EU law must be interpreted and applied in a manner that respects areas potentially encompassed by the national identity of the Member States.³⁸ While this obligation might appear to bind the Union to accept any matter that a Member State designates as part of its national identity, such an interpretation would be misleading. National identity constitutes an autonomous concept of EU law, the interpretation of which ultimately lies within the exclusive competence of the Court of Justice.³⁹ Consequently, claims based on national identity are subject to judicial scrutiny and must be assessed and accepted by the Court of Justice. National identity should therefore be understood not as a unilateral prerogative of the Member States, but as the outcome of a dialogue between the Member States and the Court of Justice.⁴⁰

It was not from the outset of the European Communities that the protection of the national identity of the Member States held particular relevance. Rather, it was through judicial decisions at the national level that certain Member States began to assert the preservation of their identity and sovereignty,⁴¹ a process that ultimately led to the incorporation of this concept into the primary law of the EU. The safeguarding of national identity first gained explicit relevance with the entry into force of the Treaty of Maastricht,⁴² and its significance has only increased over time. Nevertheless, the concept itself remains uncertain to this day. Similar to the European identity, national identity has received only limited interpretation from the Court of Justice,⁴³ while simultaneously attracting considerable attention within legal scholarship.⁴⁴ This has resulted in many and often divergent interpretations.⁴⁵

³⁸ Mangiameli (n 2) 152, 155.

³⁹ RS (n 3) paras 68-71; S Kiššová, 'The EU Competence in Criminal Law and National Identity as an Opt-Out for the Member States of the European Union' (2023) 3 *Slovak Yearbook of European Union Law* 9, 13.

⁴⁰ Wischhoff Gašperin (n 1) 214.

⁴¹ Italian Corte Costituzionale, judgment n.183/1973 *Frontini*, IT:COST:1973:183; Italian Corte Costituzionale, judgment n. 170/84 *Granital*, IT:COST:1984:170; BVerfGE 37, 271 *Solange I*, 29 May 1974; French Conseil Constitutionnel, Decision 91-294 DC 25 July 1991.

⁴² Art F(1) ToM.

⁴³ S Kiššová, 'The EU Competence in Criminal Law and National Identity as an Opt-Out for the Member States of the European Union' (2023) 3 *Slovak Yearbook of European Union Law* 9, 12. For more detailed examination on the judicial minimalism of the Court of Justice see J Burda, 'National Identity and Judicial Minimalism Exploring the CJEU's Restraint in Adjudicating National Identity' (2021) 21 *International and Comparative Law Review* 68.

⁴⁴ See e.g. LFM Besselink, 'National and Constitutional Identity before and after Lisbon' (2010) 6 *Utrecht Law Review* 36, 44; DR Kelemen and L Pech, 'The Uses and Abuses of Constitutional Pluralism: Undermining the Rule of Law in the Name of Constitutional Identity in Hungary and Poland' (2019) 21 *Cambridge Yearbook of European Legal Studies* 59, 74; S Kiššová, 'Thirty Years of the Concept of National Identity in the Primary Law of the European Union: Clearly Unclear?' (2022) 20 *Balkan Social Science Review* 137.

⁴⁵ For instance, uncertainty persists regarding the interchangeability of the concepts of national and constitutional identity (see n 39).

Another important aspect concerns the substantive scope of the protection afforded by the national identity of the Member States. On the basis of the arguments invoked by Member States to date, as well as the wording of Article 4(2) TEU, it may be inferred that a wide range of elements may fall within the ambit of political and constitutional structures safeguarded by national identity. Although the determination of the substantive content of national identity lies, primarily, within the competence of the Member States, the case law of the Court of Justice demonstrates that not every element invoked by a Member State is automatically accepted as such. Firstly, where national identity is relied upon to justify measures that are incompatible with EU law, the invocation of this concept must also satisfy the requirement of proportionality.⁴⁶ According to the Court of Justice's jurisprudence, elements that have thus far been recognised as falling within the scope of national identity include the official language,⁴⁷ form of the state,⁴⁸ the division of competences,⁴⁹ institutional diversity,⁵⁰ the relationship between the state and religious entities,⁵¹ as well as constitutional values and principles such as equality,⁵² human dignity,⁵³ and legality.⁵⁴ By contrast, the primary limitation on the use of the national identity argument most frequently arises from the obligation to respect and protect fundamental rights and freedoms.⁵⁵

2.3. Interplay between national and European identity

Building on the previous theoretical overview, it is certain that both the Member States and the European Union possess their own identities, each grounded in a set of fundamental values or principles that must be safeguarded in all circumstances. The European Union, as an integration of multiple sovereign states, derives its identity from the core values and principles that have historically and continue to be central to all its Member States. The identity of the EU is therefore the result of the national identities of all Member States.⁵⁶

The relationship between national and European identity has remained relatively underexplored to date, both by the Court of Justice, which has adopted a notably minimalist approach in this domain, and within legal scholarship. Accordingly, this

⁴⁶ Case C-473/93 *Commission of the European Communities v Grand Duchy of Luxembourg*, EU:C:1996:263, para 35.

⁴⁷ Case C-379/87 *Groener*, EU:C:1989:599; Case C-391/09 *Runevič-Vardyn*, EU:C:2011:291.

⁴⁸ Case C-208/09 *Sayn-Wittgenstein*, EU:C:2010:806.

⁴⁹ Case C-156/13 *Digibet Albers*, EU:C:2014:1756.

⁵⁰ B De Witte, 'Article 4(2) TEU as a Protection of the Institutional Diversity of the Member States' (2021) 27 *European Public* 559, 570; Wischhoff Gašperin (n 1) 151.

⁵¹ Art 17(1) TFEU; Opinion of AG Tanchev in Case C-414/16 *Egenberger*, EU:C:2017:85.

⁵² *Sayn-Wittgenstein* (n 48).

⁵³ Case C-36/02 *Omega*, EU:C:2004:614.

⁵⁴ Case C-42/17 *Taricco II*, EU:C:2017:936.

⁵⁵ Case C-414/16 *Egenberger*, EU:C:2017:851; Case C-673/16 *Comani*, EU:C:2018:385; *Pancharevo* (n 3); Wischhoff Gašperin (n 1) 162.

⁵⁶ Mangiameli (n 2) 154.

chapter aims solely to present the principal findings and interpretations to date from both the case law of the Court of Justice and the relevant legal literature, without engaging in further critical analysis.

Nevertheless, existing academic debates on constitutional pluralism provide an important conceptual background for understanding this relationship, emphasizing mutual recognition and complementarity between the EU legal order and national identities.⁵⁷ However, this mutual recognition is not without limits. As Lenaerts and other scholars argue, constitutional pluralism operates in an ‘ordered’ form, meaning that it functions within the boundaries of a shared constitutional framework grounded in the fundamental values of the Union because it reflects a constitutional consensus among the Member States, as expressed in Article 2 TEU.⁵⁸ On this basis, the decisive factor is not an abstract balancing between legal orders, but the division of regulatory space: Member State autonomy exists only insofar as the Union has not defined a specific legal standard at EU level. Once such a standard exists, national discretion is necessarily constrained by it.

Within this understanding, national identity remains protected under Article 4(2) TEU, yet its invocation is constitutionally conditioned by compliance with the core values of the Union. In this sense, the values enshrined in Article 2 TEU operate as a baseline normative constraint within which claims based on national identity must be situated.

By contrast, Walker offers a more radical account of constitutional pluralism, arguing that it is characterised not by hierarchy or structured ordering, but by horizontal coexistence of multiple constitutional sites. In this view, neither the Union nor the Member States occupy a constitutionally superior position.⁵⁹ This perspective implies that conflicts between EU and national constitutional orders would be approached through ongoing institutional negotiation between equally valid constitutional claims.

However, although this account is intellectually important as a descriptive challenge to constitutional orthodoxy, this article aligns with the conception of ‘ordered pluralism’, since the functioning of the EU legal order in practice clearly presupposes a shared constitutional framework anchored in Article 2 TEU. This is reflected in the case law of the Court of Justice, which increasingly indicates that compliance with Article 2 TEU operates as a condition for the legal relevance of national identity claims. This introduces a functional asymmetry within the EU legal order that is

⁵⁷ E.g. N Walker, ‘The Idea of Constitutional Pluralism’ (EUI Working Paper Law 1-2002) 52; K Lenaerts, ‘Upholding Union Values in Times of Societal Change: The Role of the Court of Justice of the European Union’ (2014) 2 *Revista Română de Drept European* 18; Z Kortvelyei and B Majtenyi, ‘Game of Values: The Threat of Exclusive Constitutional Identity, the EU and Hungary’ (2017) 18 *German Law Journal* 1721; MP Maduro, ‘Three Claims of Constitutional Pluralism’ in M Avbelj and J Komárek (eds), *Constitutional Pluralism in the European Union and Beyond* (Hard Publishing 2012) 67.

⁵⁸ Lenaerts (n 57) 27; Kortvelyei and Majtenyi (n 57) 1721; M Bonneli, ‘National Identity and European Integration Beyond “Limited Fields”’ (2021) 27 *European Public Law* 537.

⁵⁹ Walker (n 57).

difficult to reconcile with a purely horizontal and non-hierarchical model of constitutional pluralism.

This doctrinal understanding is also largely reflected and operationalised in the jurisprudence of the Court of Justice. According to the Court of Justice, claims based on national identity raised by Member States must meet certain conditions to be deemed valid and legally defensible. Beyond the requirement of proportionality, its case law demonstrates that while the protection of national identity may, in principle, justify departures from EU law, such justification is excluded if a national measure undermines fundamental rights or the fundamental values enshrined in Article 2 TEU,⁶⁰ or other provisions that give concrete expression to those values.⁶¹ This approach appears logical in light of the fact that the fundamental values constituting the European Union's identity are rooted in the same core values that form part of the constitutional and political structures common to the Member States.⁶² Moreover, this judicial approach confirms the existence of a structured interaction between Article 4(2) TEU and Article 2 TEU, in which national identity is recognised only within defined limits.

As also noted by the European Parliament in one of its resolutions, the fundamental values enshrined in Article 2 TEU establish a framework within which Member States may maintain and develop their national identities.⁶³ Accordingly, European identity can be understood as providing a structured normative space within which national identities operate and evolve.

Through this interpretative framework, the Court of Justice seeks to safeguard both the Union and the Member States against violations of their inviolable core values, particularly against attempts to justify autocratic or otherwise non-democratic governance. From this perspective, where a Member State would fundamentally and persistently depart from the common values referred to in Article 2 TEU, one could argue that the only coherent constitutional avenue within the Treaties framework would be withdrawal from the Union under Article 50 TEU, rather than reliance on national identity as a justification for continued derogation from those values. Overall, Member States are under a continuous obligation to respect, safeguard, and achieve certain results arising directly from their membership of the Union pursuant to Article 2 TEU, even if they believe their national identity may be affected. Otherwise, failure to do so entails consequences resulting from the breach of the fundamental values of the EU.

⁶⁰ *Hungary v Parliament and Council* (n 7) paras 232-234; *Poland v Parliament and Council* (n 7) paras 264-266; Case C-181/23 *Commission v Malta*, EU:C:2025:283, para 95; S Kiššová, 'The EU Competence in Criminal Law and National Identity as an Opt-Out for the Member States of the European Union' (2023) 3 *Slovak Yearbook of European Union Law* 15.

⁶¹ *Poland v Parliament and Council* (n 7) para 328; *Hungary v Parliament and Council* (n 7) paras 157-158.

⁶² European Parliament Resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)) 52-78, point K.

⁶³ *Ibid.*

However, in my view, such cautious formulations risk understating what is, in practice, a more structured form of conditionality within the EU legal order. Rather than suggesting a strict formal hierarchy between Article 2 TEU and Article 4(2) TEU, the approach of ‘ordered pluralism’ indicates a functional limitation: national identity is recognised and respected, but only insofar as it operates within the parameters defined by the Union’s fundamental values. While constitutional pluralism is often presented as preserving normative openness, in reality its operation is largely dependent on the absence of a clearly defined EU legislative consensus regarding the level of protection afforded to a particular common good. Even if constitutional pluralism is not formally articulated in hierarchical terms, the requirement that national identity arguments must comply with Article 2 TEU effectively reveals a hierarchy of norms. In functional terms, the Union’s fundamental values operate as a constitutional gatekeeping standard, determining the admissibility and limits of national identity claims. This suggests that national identity is not merely ‘balanced’ against EU values but is instead normatively subordinated to them within the interpretative framework developed by the Court of Justice.

All in all, although scholars and the Court of Justice itself avoid framing the relationship in hierarchical terms, the operational logic of their arguments nevertheless points towards a *de facto* ordering of norms. If national identity is only legally meaningful insofar as it is compatible with Article 2 TEU, then the latter inevitably functions as a conditioning norm that determines the validity of the former. In other words, what is presented as ‘mutual accommodation within limits’ may in practice reveal a stronger structural asymmetry within the EU constitutional framework than the language of constitutional pluralism is willing to openly acknowledge.

Nevertheless, the EU’s motto, ‘United in diversity’, reflects the coexistence of two complementary dimensions: a diversity dimension within national identities, encompassing cultural, historical, social, religious, and linguistic differences, and a unifying dimension within the European identity, providing a common foundation for governance, rights, and commitments across all Member States. And as Lenaerts observes, unity and diversity should be understood as two sides of the same coin. Yet this apparent symmetry conceals a more complex constitutional reality, in which their coexistence is continuously structured by the EU legal order itself.

3. From consensus to conflict?

Based on the foregoing analysis, it may be argued that European and national identities are conceived as coexisting and, in principle, are intended to remain mutually compatible. However, their interaction has not always been harmonious in practice. Looking at the case law of the Court of Justice, scholarly literature and the current situation in some Member States, national identity has, in some instances, been invoked to contest or resist shared values of the Union. Such actions should not remain unaddressed, as they may pose a serious threat to the values of the EU that constitute

the inviolable core of European integration and, ultimately, to the integration process itself. While this issue is not purely legal but also fundamentally political in nature, this article confines its analysis to the legal dimension of the problem.

Accordingly, the following sections combine quantitative and qualitative methods. The quantitative approach is used to systematically analyse a dataset of Court of Justice case law in which Member States relied on national identity arguments to justify conduct that was contrary to EU law and actually or potentially incompatible with the values of the Union or other provisions giving them concrete expression. On this basis, the identified cases are classified according to the role of national identity and EU values in the reasoning.

The analysis first provides an overview of the case law and applies this classification in order to examine which Member States most frequently rely on national identity arguments and which EU values are most commonly affected. In addition, the Court of Justice's and Advocates General's responses are also quantified, particularly with respect to whether they identify violations of EU values, violations of provisions concretising those values, or potential conflicts only. This structured approach provides a comprehensive overview of the phenomenon and enhances transparency while reducing the risk of selective case selection.

The qualitative approach is then applied to the interpretative and doctrinal analysis of the identified cases and research findings. It builds on the structured coding of judicial outcomes and interprets these quantitative patterns.

Taken together, this mixed-method approach ensures that the analysis captures not only the frequency of national identity arguments in the case law, but also their normative and doctrinal significance within the constitutional framework of the Union.

Based on the aforementioned, the initial subsections are devoted to the descriptive presentation of the principal findings of quantitative research, while the concluding subsection provides their analytical assessment.

3.1. Identified cases

The jurisprudence of the Court of Justice contains a substantial number of cases in which national identity and/or the values of the European Union have been addressed. For the purposes of this research, a comprehensive keyword-based search was conducted in the CURIA database for the post-Lisbon period. The search was carried out using a combination of textual and provision-based queries, including 'national identity', 'Article 4(2) TEU', 'Article 2 TEU', and 'values'. This search was designed to capture all judgments in which these concepts are explicitly mentioned, regardless of the depth or legal significance of such references. On this basis, a dataset of 58 cases was identified. This figure reflects the total number of judgments in which the relevant terms or provisions appear in the reasoning of the Court of Justice and of Opinions of Advocates General. In other words, the dataset includes both cases in which national identity or Union values play a substantive role in the

Court of Justice's or Advocates General's legal reasoning, and cases in which they are mentioned only incidentally. Hence, both the judgments of the Court of Justice and the Opinions of the Advocates General are included in the analysis. Importantly, for this research, they are treated as constitutive components of a single case file and therefore as a single unit of analysis, rather than as separate analytical units.

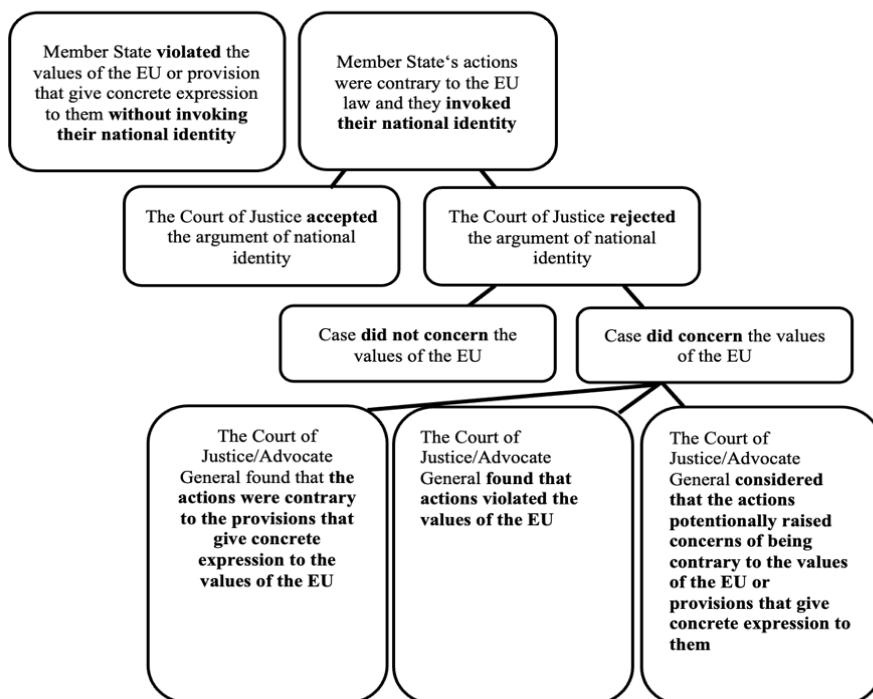
When set against the overall volume of the Court of Justice's post-Lisbon case law, which comprises several thousand judgments across all fields of EU law, this number may appear relatively limited. However, its significance lies not in its quantitative weight, but in its qualitative and constitutional relevance, as these cases engage directly with the foundational values of the Union and the limits of Member State autonomy. For the purposes of this research, the analysis is limited to cases decided after the entry into force of the Treaty of Lisbon, primarily as it was only with Lisbon that the concepts of national identity and the Union's values acquired their current legal formulation. While earlier case law is acknowledged where it is relevant for background understanding, it is not included in the systematic analysis, since the pre-Lisbon framework treated these concepts in a more fragmented and less conceptually stable manner. Focusing on the post-Lisbon period therefore allows not only for a coherent and legally comparable dataset, but also for an assessment of how frequently, and in what contexts, Member States have relied on national identity arguments within a fully articulated and consolidated legal framework governing both the Union's fundamental values and the protection of national identity.

Upon analysis of all identified cases, and in order to ensure analytical clarity, the cases were divided into two broad categories. The first category comprises cases in which EU values, or provisions concretising those values, were at issue and explicitly mentioned, while Member States did not invoke national identity as a justificatory argument (13 out of 58). The second category consists of cases in which Member States acted contrary to EU law and sought to justify their conduct by expressly invoking national identity (45 out of 58). Given that this research focuses on the relationship between national identity and the values of the Union, the second category is of primary relevance. Within this category, two cases were subsequently excluded from the analysis: in one case, the action was dismissed, while in another the proceedings did not lead to a conclusive determination, as the final assessment was left to the national court. These cases were excluded because they do not contain a clear judicial determination by the Court of Justice, meaning that no definitive legal outcome was established at the EU level; as a result, it is not possible to reliably code the outcome variable for analytical purposes. This results in a refined dataset of 43 cases.

Not all of these 43 cases were, however, equally relevant for the present study. Accordingly, the cases were further classified into two subcategories, based on the response of the Court of Justice to the national identity argument. A distinction was drawn, first, between cases in which the Court of Justice accepted the invocation of national identity (12 out of 43) and those in which it rejected it (31 out of 43).

Among the latter, a further differentiation was made between cases that did not concern EU values (17 out of 31), meaning they did not directly engage with or assess compliance with the fundamental values of the European Union as set out in Article 2 TEU and those that did (14 out of 31), i.e., cases in which the Court addressed or relied upon these core EU values in its reasoning. Given that this research focuses on the interaction between national identity and the values of the Union in situations of normative tension, only those cases in which a potential clash between these concepts arises are considered relevant for further analysis. Accordingly, the cases in which the Court of Justice rejected the national identity argument, and which concerned EU values, were subsequently classified into three additional subcategories. These include *i)* cases in which the Court of Justice or the Advocate General found that the Member State's conduct was contrary to provisions of EU law giving concrete expression to the Union's values; *ii)* cases in which the Court of Justice or Advocate General considered that the contested measures raised potential concerns regarding compliance with EU values; and *iii)* cases in which the Court of Justice or Advocate General concluded that the Member State's actions constituted a direct violation of EU values and were therefore incompatible with the European identity.

For the sake of clarity, the following schematic overview is provided. This structured breakdown is intended to visually reflect the central analytical trajectory of the article.



Source: Author's own elaboration

To investigate the relationship between EU values and national identity, only the final three subcategories will be analysed in greater detail in the subsequent subsections.

Within the Court of Justice's jurisprudence, a total of 14 cases⁶⁴ were identified in which Member States *i)* acted in a manner contrary to EU law, *ii)* invoked national identity as a justification, *iii)* had this argument rejected by the Court of Justice, *iv)* concerned EU values, and *v)* involved findings by the Court of Justice or Advocate General of either *v.i.)* a violation of the values of the EU, *v.ii.)* of provisions concretely expressing these values, or *v.iii.)* actions that were considered inconsistent with these values or provisions.

Within these 14 cases, one was still not decided by the Court of Justice at the time of writing this article but remains relevant to this research, as the analysis considers not only the Court of Justice's approach but also that of the Advocates General.⁶⁵ Additionally, two of the cases involved actions for annulment, which are particularly significant because in these instances the Member States sought to avoid obligations arising from EU law and to hinder further harmonization by invoking national identity.⁶⁶ Overall, the set of cases comprises seven infringement proceedings, two actions for annulment, and five preliminary rulings.

Among these, nine cases⁶⁷ involved a determination by the Court of Justice or Advocate General that a provision concretely expressing one or more EU values had been violated. In only two cases,⁶⁸ the Court of Justice or Advocate General assessed that the Member State's actions potentially raised concerns regarding breaches of EU values or related provisions. Finally, in three cases,⁶⁹ the Court of Justice or Advocate General conclusively found a violation of EU values, indicating that the national identity asserted by the Member State was in tension with the overarching European identity.

⁶⁴ RS (n 3); Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19, C-391/19 *Asociația Forumul Judecătorilor din România*, EU:C:2021:393; *Commission v Hungary* (n 3); Case C-814/21 *Commission v Poland*, EU:C:2024:963; Case C-808/21 *Commission v Czech Republic*, EU:C:2024:962; *Commission v Malta* (n 60); Case C-448/23 *Commission v Poland*, EU:C:2025:975; *Poland v Parliament and Council* (n 7); *Hungary v Parliament and Council* (n 7); *Pancharevo* (n 3); Joined Cases C-715/17, C-718/17, C-719/17 *Commission v Poland*, EU:C:2020:257; Case C-204/21 *Commission v Poland*, EU:C:2023:442; Case C-824/18 *A.B. a i. (Nomination des juges à la Cour suprême - Recours)*, EU:C:2021:153; Case C-487/19 *W. Ż. (a des affaires publiques de la Cour suprême - Nomination)*, EU:C:2021:798.

⁶⁵ *Commission v Hungary* (n 3).

⁶⁶ *Hungary v Parliament and Council* (n 7); *Poland v Parliament and Council* (n 7).

⁶⁷ Case C-814/21 *Commission v Poland* (n 64); *Commission v Czech Republic* (n 64); *Commission v Malta* (n 60); *Hungary v Parliament and Council* (n 7); *Poland v Parliament and Council* (n 7); *Pancharevo* (n 3); Case C-204/21 *Commission v Poland* (n 64); *A.B. a i. (Nomination des juges à la Cour suprême - Recours)* (n 64); *W. Ż. (a des affaires publiques de la Cour suprême - Nomination)* (n 64).

⁶⁸ Joined Cases C-715/17, C-718/17, C-719/17 *Commission v Poland* (n 64), and Case C-448/23 *Commission v Poland* (n 64).

⁶⁹ *Commission v Hungary* (n 3); RS (n 3) and *Asociația Forumul Judecătorilor din România* (n 64).

For reasons of transparency, a full list of cases and their classification is provided in the Appendix.

3.2. Which Member States?

To determine which Member States engage in this type of behaviour, it is essential for assessing whether the conflict between national and European identity occurs broadly across all Member States or rather is limited to specific ones.

Member States that invoked their national identity for the purpose of legitimizing their actions contrary to or in potential breach of the values of the EU were Romania, Hungary, Poland, the Czech Republic, Malta and Bulgaria. The State that used this argument most often was Poland, which did so seven times so far. In second place is Hungary, which used it three times. Czech Republic and Romania used it two times so far, and Malta and Bulgaria only one time each.

A noteworthy aspect is that these Member States frequently support one another before the Court of Justice. While it is well known that Poland and Hungary engage in such mutual support, an examination of the cases reveals that the Czech Republic also often aligns with Poland.⁷⁰ Conversely, Belgium and the Netherlands, as founding Member States, most frequently support the Commission.⁷¹

3.3. Affected values

The values enshrined in Article 2 TEU, which collectively constitute European identity, include the rule of law, democracy, respect for human dignity and human rights, freedom, equality, solidarity, pluralism, non-discrimination, justice, and tolerance. As is widely acknowledged, some Member States are currently experiencing rule of law backsliding,⁷² a trend that is also reflected in the present findings. Among these values, the rule of law is the most frequently affected, with nine cases involving its violation.⁷³ Democracy is the second most impacted value, with four instances, half

⁷⁰ Case C-814/21 *Commission v Poland* (n 64); Joined Cases C-715/17, C-718/17, C-719/17 *Commission v Poland* (n 64).

⁷¹ *Poland v Parliament and Council* (n 7); *Hungary v Parliament and Council* (n 7); Case C-448/23 *Commission v Poland* (n 64); *Asociația Forumul Judecătorilor din România* (n 64).

⁷² As Art 7 TEU had to be activated against Hungary and Poland. European Parliament, 'A proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded' P8_TA (2018)0340; European Commission, 'Reasoned Proposal in Accordance with Article 7(1) of the Treaty on European Union regarding the Rule of Law in Poland' Proposal COM(2017) 835 final.

⁷³ RS (n 3); *Asociația Forumul Judecătorilor din România* (n 64); Case C-448/23 *Commission v Poland* (n 64); *Hungary v Parliament and Council* (n 7); *Poland v Parliament and Council* (n 7); Case C-204/21 *Commission v Poland* (n 64); Joined Cases C-715/17, C-718/17, C-719/17 *Commission v Poland* (n 64).

of which were found to coincide with violations of solidarity and pluralism.⁷⁴ Subsequently, the values of non-discrimination, equality, human dignity, and respect for human rights were also affected, albeit to a lesser extent.⁷⁵

3.4. What do the Court of Justice and Advocates General say about it?

In this section, we will examine whether and how the Court of Justice and Advocates General responded to national identity arguments and addressed the relationship between national and European identity. To assess the responses of Advocates General, all 14 identified cases are considered. However, in analysing the responses of the Court of Justice, only 13 cases are included, since one case remains pending.⁷⁶ Findings concerning the reactions of the Advocates General are presented first, followed by an examination of the Court of Justice's responses.

In nearly all cases, the Advocate General assigned to the case addressed the argument of national identity and its relationship to EU values (13 out of 14 cases). This includes instances in which the Advocate General merely referred to previous judgments of the Court of Justice concerning EU values or the concept of national identity. However, two cases, specifically actions for annulment, were excluded, as in these instances the actions of the Member States were not considered contrary to EU law. Consequently, upon closer examination of the Advocate General's findings, in eight of the remaining 12 cases the Advocate General concluded that the Member State's actions were contrary to provisions of EU law that concretely express EU values.⁷⁷ However, in one of these cases, the reasoning additionally referred explicitly to a violation of the values themselves.⁷⁸ In four cases, the Advocate General considered whether the Member State's actions were, were not, or could potentially be contrary to EU values.⁷⁹

The prevailing narrative that the Court of Justice adheres to a form of strict judicial minimalism, as noted above, is clearly reflected in the present findings. Although the Court of Justice addressed the issue in some manner in the majority of cases (12 out of 13, as one case was excluded as previously mentioned), a more substantive interpretation of the relationship between national and European identity remained

⁷⁴ *Commission v Malta* (n 60); *Commission v Czech Republic* (n 64); Case C-814/21 *Commission v Poland* (n 64); *Commission v Hungary* (n 3).

⁷⁵ *Pancharevo* (n 3); *Commission v Hungary* (n 3).

⁷⁶ At the time of writing this article. *Commission v Hungary* (n 3).

⁷⁷ Case C-448/23 *Commission v Poland* (n 64); *Asociația Forumul Judecătorilor din România* (n 64); Case C-814/21 *Commission v Poland* (n 64); *Commission v Czech Republic* (n 64); *Commission v Malta* (n 60); Case C-204/21 *Commission v Poland* (n 64); *A.B. a i. (Nomination des juges à la Cour suprême - Recours)* (n 64); *W. Ż. (a des affaires publiques de la Cour suprême - Nomination)* (n 64).

⁷⁸ Opinion of AG Dean Spielmann in Case C-448/23 *Commission v Poland*, EU:C:2025:165, para 94.

⁷⁹ *Pancharevo* (n 3); Joined Cases C-715/17, C-718/17, C-719/17 *Commission v Poland* (n 64); *Commission v Hungary* (n 3); *RS* (n 3).

largely absent. In most instances, the Court of Justice limited its reasoning to reiterating its previous case law. As with the earlier analysis of the reactions of Advocates General, two cases, namely actions for annulment, were excluded for the same reasons, resulting in a final sample of 11 cases. Of these 11 cases, in eight cases the Court of Justice held that the actions of the Member States were contrary to provisions of EU law that give concrete expression to EU values,⁸⁰ while in only two cases did the Court of Justice find that the actions of the Member States were directly incompatible with the values enshrined in Article 2 TEU.⁸¹ In one of these cases, although the final ruling formally identified a violation of a provision concretely expressing an EU value, the Court of Justice's reasoning explicitly referred to a breach of the values laid down in Article 2 TEU.⁸²

3.5. Analysis

Building on the empirical findings, the following section proceeds to their analysis and addresses the research questions set at the beginning of the article.

First, there are additional cases in which Member States invoked national identity and in which, in the author's view, the contested measures raised concerns regarding their compatibility with EU values. However, because the national identity argument was advanced only as a secondary rather than a primary line of reasoning,⁸³ or possibly for other reasons, it did not meaningfully shape the Opinions of Advocates General or the judgments of the Court of Justice and consequently remained insufficiently examined.⁸⁴ Nonetheless, the present research identified a total of 14

⁸⁰ Case C-204/21 *Commission v Poland* (n 64); Case C-448/23 *Commission v Poland* (n 64); *Commission v Malta* (n 60); Case C-814/21 *Commission v Poland* (n 64); *Commission v Czech Republic* (n 64); *Pancharevo* (n 3); *A.B. a i. (Nomination des juges à la Cour suprême - Recours)* (n 64); *W. Ž. (a des affaires publiques de la Cour suprême - Nomination)* (n 64).

⁸¹ *Asociația Forumul Judecătorilor din România* (n 64); *RS* (n 3); *Asociația Forumul Judecătorilor din România* (n 64).

⁸² Case C-448/23 *Commission v Poland* (n 64) para 194.

⁸³ For instance in the cases of *Pancharevo* (n 3) and *Comani* (n 55) the Court used not only argument of national identity but also legitimate aim of public policy, or in the case of Case C-713/23 *Wojewoda Mazowiecki*, EU:C:2025:917 the Court argued that the resolution of the situation is in exclusive competence of the Member States.

⁸⁴ For example, in the well-known case *Comani* (n 55) the issue concerned discrimination and equality in the context of marriage of same-sex couples. As is widely recognized, non-discrimination, equality, and respect for human rights are among the core values of the EU, which all Member States are obliged to uphold. Although the actions at issue were not sufficiently serious or systematic to justify the initiation of Art 7 TEU proceedings or an infringement action, the Court could have interpreted and incorporated these considerations into its reasoning by highlighting that the actions of the Member State, if left uncorrected, could potentially contravene fundamental EU values, thereby emphasizing their importance. This approach was exemplified, for instance, in *RS* (n 3). The same applies to the case of *Wojewoda Mazowiecki* (n 83) which concerns largely the same factual and legal issues. Given the tendency of the Member State to repeat such actions, thereby acting contrary not only to the Court's

cases in which Member States acted in contravention of EU law and, either actually or potentially, of EU values while invoking national identity as a justificatory argument. Although these 14 cases represent roughly one quarter (24 %) of the total 58 cases in which national identity or EU values were relevant, their significance should not be underestimated. They reveal a recurring pattern of Member States invoking national identity in contexts that may conflict with EU values.

3.5.1. *Temporal development: the rise of national identity claims*

What can be inferred from the foregoing is that all of the cases under examination are relatively recent. The earliest of these occurred in 2017, that is, approximately eight years after the concepts of national identity and EU values had been established in their current form. Although instances of rule of law backsliding or cases that were certainly in violation of values in certain Member States predate this period,⁸⁵ the invocation of national identity as a justificatory argument has, as the present findings demonstrate, emerged only recently. Moreover, since the first such case in 2017, the frequency of similar disputes has increased, with the majority arising after 2021, thereby indicating an emerging and intensifying pattern.

Out of a total of 58 cases, only 16 were decided before 2017, similarly indicating that interpretative questions concerning national identity and EU values have gained prominence only in recent years. Of these 16 cases, 14 did not directly concern EU values, or the conduct of the Member States was neither sufficiently systematic nor sufficiently serious to be considered contrary to them; in these cases, national identity was invoked primarily as a justificatory argument for measures incompatible with EU law. In the remaining two cases, although national identity was not relied upon as an argument, the subject matter nevertheless related to EU values. Nonetheless, in at least four cases⁸⁶ decided before 2017, the values of the European Union could have been expressly addressed, insofar as the continuation of the measures at issue might result in a potential violation of those values. However, neither the Court of Justice nor the Advocate General explicitly examined whether those measures were capable of undermining EU values. Only in one of the four cases did the Advocate General consider whether the measures at issue were incompatible with the values of the European Union.⁸⁷ These observations show that, although Member States still invoked national identity and adopted measures contrary to EU law, such conduct did not, at that stage, reach a level of seriousness or systematicity capable

established case law but also undermining EU values, the Court should, with greater frequency, adopt a more precise interpretation of national identity in relation to EU values within its jurisprudence.

⁸⁵ E.g. Bárd, Kochenov, Pech and Wouters (n 25) 499; M Bonelli, 'From a Community of Law to a Union of Values Hungary, Poland, and European Constitutionalism' (2017) 13 *European Constitutional Law Review* 793; Resolution 2012/2130(INI) (n 62) 52-78.

⁸⁶ *Comani* (n 55); Case C-202/11 *Las*, EU:C:2013:239; Case C-188/15 *Bougnaoui a ADDH*, EU:C:2017:204; Case C-157/15 *G4S Secure Solutions*, EU:C:2017:203.

⁸⁷ *G4S Secure Solutions* (n 86) para 87.

of undermining the Union's values. Moreover, out of the twelve cases in which the Court of Justice ultimately accepted the argument of national identity, half were decided prior to 2017, reflecting compliance with the proportionality requirement and the intended scope of the concept, while only six instances of successful reliance on national identity occurred after that date.⁸⁸

Taken together, these findings indicate that the protection of national identity is no longer invoked primarily to safeguard the institutional, cultural, historical, linguistic, or social diversity of the Member States as it was before 2017 but increasingly functions as a strategic instrument for legitimising non-democratic practices and instances of rule of law backsliding.

3.5.2. *Member States involved and structural patterns*

The identified cases further show that the Member States engaged in such actions are predominantly the same, all of which acceded to the Union after 2004. By contrast, the founding Member States of the EU were generally those supporting the Union in proceedings against these states. Beyond political and historical considerations, this pattern may point to challenges associated with the accession process or post-accession enforcement,⁸⁹ particularly given that all of these states were required to satisfy the Copenhagen criteria prior to accession. Among other requirements, their governments and institutional frameworks had to comply with EU values, ensuring, above all, stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities.

As noted above, the Member States most frequently engaging in such actions are Poland and Hungary. Notably, although concerns relating to the systematic erosion of fundamental rights, democratic checks and balances, and the rule of law in both countries had been identified by the European Union at a considerably earlier stage,⁹⁰

⁸⁸ In these cases, the actions of Member States did not concern values of the EU and argument of national identity was invoked mainly for the purposes of safeguarding public safety, national language, principle of legality or specific political situation in the country. Case C-185/23 *Protectus*, EU:C:2024:657; Case C-658/19 *Commission/Spain*, EU:C:2021:138; Case C-42/17 *M.A.S. a M.B.*, EU:C:2017:936; Case C-391/20 *Boriss Cilevičs a i.*, EU:C:2022:638; Case C-328/19 *Porin kapunki*, EU:C:2020:483; Case C-793/19 *SpaceNet*, EU:C:2022:702.

⁸⁹ For more on an issue of compliance with the values of the EU during accession process and membership see e.g. J Wouters, 'Revisiting Art 2 TEU: True Union of Values?' (2020) 5 *European Papers* 255.

⁹⁰ E.g. Resolution 2012/2130(INI) (n 62); European Parliament resolution of 10 June 2015 on the situation in Hungary (2015/2700(RSP)); European Parliament resolution of 16 December 2015 on the situation in Hungary (2015/2935(RSP)); European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)); European Parliament resolution of 14 September 2016 on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union (2016/2774(RSP)); European Parliament resolution of 13 April 2016 on the situation in Poland (2015/3031(RSP)); Revised Hungarian constitution European Parliament resolution of 5 July 2011 on the Revised Hungarian Constitution.

neither Poland nor Hungary relied on the argument of national identity in proceedings before the Court of Justice prior to 2017.⁹¹ The absence of Hungarian and Polish cases invoking national identity before 2017 therefore raises important analytical questions. It suggests that the later emergence of national identity as a justificatory argument cannot be explained solely by the timing of domestic rule of law deterioration. While the present article does not seek to provide a definitive explanation for this development, the findings indicate that the invocation of national identity before the Court of Justice is not an automatic or immediate response to domestic constitutional change, but a more recent and deliberate legal strategy that crystallised only at a later stage.

This inevitably leads to the conclusion that the most affected value was the rule of law and democracy, followed by non-discrimination and respect for human rights. While the rule of law may be understood as an overarching value encompassing the effective realisation of other Union values,⁹² the present cases most frequently implicate its institutional dimension, particularly judicial independence and the separation of powers. These findings reflect persistent patterns of rule of law backsliding already observed in certain Member States⁹³ and highlight the need for a more assertive response at the Union level. This necessity arises not only because Member States act contrary to EU law and its values, which they are obliged to uphold, but also because they increasingly invoke national identity as a strategic instrument. Such reliance suggests that their conceptions of national identity are, in practice, in tension with the values of the rule of law and democracy, principles that, not only form the identity of the EU, but most likely also constitute the inviolable core of their constitutional orders,⁹⁴ thereby creating potential risks both to the rights of individuals within these States and to the integrity of the Union's legal order.

In addition to the findings of this study, the World Justice Project Rule of Law Index (overall score) also reflects the developments associated with the conduct examined. Since the index was first published in 2015, all Member States identified as engaging in the analysed behaviour have experienced a decline in their ranking positions.⁹⁵ By

⁹¹ The states that used argument of national identity in a proceeding before the Court of Justice were for instance Germany, France, Luxembourg, Austria, Belgium, Italy, Spain.

⁹² B Flander, 'The International and Supranational Rule of Law in the Slovenian Legal System: "Lessons" from European Courts' (2024) 1 *Law, Identity and Values* 58.

⁹³ E.g. Hungary, Poland, Bulgaria, Romania; V Reding, 'The EU and the Rule of Law - What next?', Speech/13/677 of 4 September 2013, at ec.europa.eu.

⁹⁴ E.g. Germany in a *Lisbon* judgment established that the Art 79(3) of its Constitution form eternity clause and its national identity which constitute of value of rule of law, human dignity, freedom (BVerfGE, 2 BvE *Lisbon* 2/08). Poland, also in the *Lisbon* judgment established rule of law, democracy and human rights and other values and principles as values forming its national identity (Judgment of the Constitutional Tribunal of Poland of 24 November 2010, case no. K 32/09 (*Lisbon Treaty*). Other Member States did the same e.g. *Frontini* (n 41).

⁹⁵ Notwithstanding the expansion of the index by the inclusion of 41 additional states since 2015, Hungary fell down from 36th position in 2015 to 79th position in 2025, while Poland fell from 22nd to

contrast, the majority of founding Member States have largely retained their high ranking positions in the index, with some even experiencing modest improvements,⁹⁶ whereas several post 2004 Member States have registered substantial decreases.

Taken together, these patterns highlight a divergence between long-standing and newer Member States, ultimately calling into question whether the common values enshrined in Article 2 TEU were merely shared in the past or remain genuinely shared today. This empirical background provides the necessary context for assessing how the Court of Justice and the Advocates General have responded to the increasing invocation of national identity in value-sensitive cases.

3.5.3. *Judicial response: evolution of the CJEU's approach*

Against this backdrop, and building directly on the foregoing findings, the following analysis turns to the approach of the Court of Justice and Advocates General. Overall, the evidence points to the fact that both institutions have been relatively responsive to issues of national identity and EU values, at least insofar as they consistently refer to the relevant treaty provisions and reiterate interpretations established in prior case law. However, it should be noted at the outset that in the earliest cases in which national identity was invoked in opposition to EU values (2017) the Court of Justice largely ignored such arguments and refrained from articulating any explicit relationship between national identity and the Union's values.⁹⁷ It was only after several subsequent cases of this nature (4),⁹⁸ culminating in judgments delivered in 2022, that the Court clarified that Article 4(2) TEU is not an exemption from the Union's foundational values, but a guarantee of constitutional diversity that operates within the boundaries set by those values.⁹⁹

32nd place over the same period. Romania experienced a drop from 31st place in 2015 to 44th place in 2025, and Bulgaria similarly declined from 42nd to 61st place. The Czech Republic recorded a marginal decrease, moving from 19th place in 2015 to 20th place in 2025 and Malta was included in the index only in 2021, entering at 30th position and subsequently falling to 31st place by 2025.

⁹⁶ The Netherlands consistently ranked within the top 10 throughout the period from 2015 to 2025. Belgium exhibited some fluctuations over the same period but ultimately maintained a similar position (16th in 2015 and 17th in 2025). Germany, in contrast, experienced an upward shift in its ranking, moving from 8th in 2015 to 6th in 2025.

⁹⁷ In the first case from 2017 (Joined Cases C-715/17, C-718/17, C-719/17 *Commission v Poland* (n 64)), although arguments based on national identity were advanced by all the Member States concerned, the Court of Justice did not take them into consideration and provided no meaningful interpretation of those arguments. This was so despite the fact that the Advocate General had suggested that the conduct of the Member States in that case might potentially conflict with Union values, such as the rule of law and solidarity.

⁹⁸ *A.B. a i. (Nomination des juges à la Cour suprême - Recours)* (n 64), *W. Ž. (a des affaires publiques de la Cour suprême - Nomination)* (n 64), *Pancharevo* (n 3), *Asociația Forumul Judecătorilor din România* (n 64).

⁹⁹ *RS* (n 3) para 43; *Hungary v Parliament and Council* (n 7) paras 233-243; *Poland v Parliament and Council* (n 7) paras 265-266.

From that point onwards, the Court of Justice has largely adhered to a stable and repetitive interpretation of Articles 4(2) TEU and 2 TEU and their mutual relationship while at the same time progressively strengthening and intensifying its language. In particular, in 2023, the Court of Justice expressly ruled out the possibility that compliance with core values could be regarded as adversely affecting a Member State's national identity within the meaning of Article 4(2) TEU.

This trajectory of consolidation and intensification becomes even more apparent in the Court's most recent case law. In its 2025 judgment,¹⁰⁰ the Court of Justice confirmed and extended its earlier case law. Notably, it expressly affirmed that national identity cannot be adversely affected by ensuring the full respect for and application of EU values, reiterating that, by ratifying the Act of Accession and thereby acceding to the Union, Member States accepted the primacy of EU law and its values.¹⁰¹ But most importantly, it went a step further by explicitly rejecting the use of national identity as a justification for non-compliance with EU values.¹⁰² Accordingly, the Court of Justice emphasized that Member State action and legislation must first comply with European identity, and only thereafter may a Member State invoke national identity as a justification for derogating from the application of certain provisions of EU law.¹⁰³

3.5.4. *Functional relationship between Article 2 TEU and Article 4(2) TEU*

In light of the patterns identified above, this judicial stance may be read as a response to the increasingly strategic invocation of national identity in cases involving rule of law backsliding. From this, the Court of Justice's trajectory may be inferred, evolving from initial judicial silence, through a phase of balancing and contextual assessment, towards progressive boundary-setting, and ultimately the constitutional absorption of national identity within the framework of EU values. A comparison between these value-based cases and those in which Member States relied on national identity to justify conduct contrary to EU law, but not engaging EU values, for instance in the context of internal market rules, where the Court of Justice applies a proportionality test, reveals a differentiated judicial approach depending on the normative context of the dispute.¹⁰⁴

This evolution demonstrates that Article 2 TEU operates as a substantive interpretative constraint on the application of Article 4(2) TEU, insofar as national identity arguments are not accepted where they would undermine the effectiveness of the Union's foundational values. On this basis, it may be argued that the Court of Justice's jurisprudence can be interpreted as attributing a higher normative status to EU

¹⁰⁰ Case C-448/23 *Commission v Poland* (n 64).

¹⁰¹ *Ibid* paras 172-177, 191.

¹⁰² *Ibid* para 193.

¹⁰³ *Ibid* paras 227-232.

¹⁰⁴ E.g. *Sayn-Wittgenstein* (n 48) paras 83-87; *Runevič-Vardyn* (n 47) paras 84-88.

values, and thus to European identity, within value-based adjudication *vis-à-vis* national identity, which may suggest a form of functional hierarchy in the application of the two Treaty provisions. This apparent ordering raises important constitutional questions within the framework of EU law. Does this mean that Article 2 TEU should be understood as hierarchically superior also to other provisions of primary EU law? It remains to be clarified how such a hierarchy is to be reconciled with Article 4(2) TEU, which formally requires the Union to respect national identity, as well as with the broader paradigm of constitutional pluralism underpinning the EU legal order. In the authors' view, the Court of Justice should further clarify and more precisely delineate the limits of the national identity clause *vis-à-vis* EU values, given that it has already outlined the contours of this relationship in its jurisprudence. Moreover, it should also engage more with the role of Article 2 TEU in the EU legal order and what its position implies for other provisions in the Treaties. The absence of more explicit and operational boundaries risks leaving room for divergent interpretations by Member States.

Our conceptualization of the relationship between national and European identity aligns with this judicial interpretation. While it is true that national identity is intended to preserve cultural, historical, and social diversity among Member States, the fundamental values enshrined in Article 2 TEU are explicitly established as common to all Members. This raises a critical question as to why national identity is being invoked to differentiate or justify a Member State's actions in circumstances that implicate these common EU values? However, an examination of this issue falls beyond the scope of the present article and is therefore not pursued here.

3.5.5. *Judicial voices compared: Advocates General and judicial minimalism of the Court of Justice*

Concerning the substantive responses and findings of the Court of Justice and Advocates General, the instances in which both identified either a violation of EU values or of provisions giving concrete expression to those values largely overlap. Specifically, Advocates General reached one of these conclusions in all ten relevant cases, while the Court of Justice did so in eight out of nine cases. Nevertheless, Advocates General tend to offer a more detailed interpretation of the relationship between national and European identity and to articulate identity conflicts more explicitly. By contrast, the Court of Justice generally adopts a more cautious approach, often addressing these issues only briefly, adopting the result without providing comparable reasoning depth.

Moreover, the findings indicate that both the Court of Justice and Advocates General are more inclined to identify violations of provisions that give concrete expression to EU values than to find direct violations of the values themselves, as enshrined in Article 2 TEU. This tendency likely reflects the abstract nature of the values themselves. In contrast, provisions concretely expressing these values provide

clearer legal guidance, facilitating the identification of specific breaches, such as violations of the rule of law. However, this approach arguably weakens the normative force of EU values, as it emphasizes technical compliance over their broader significance. Accordingly, when establishing a violation of a provision concretely expressing EU values in preliminary rulings or infringement proceedings, both the Court of Justice and Advocates General should simultaneously emphasize that the underlying EU values themselves are being infringed, as was done in the case *RS*.¹⁰⁵ This consideration is especially important given that the values constituting European identity are precisely those that Member States are both expected and obliged to uphold within their national legal orders. Repeated reminders of the meaning and importance of these values are essential for safeguarding their practical effect and the integrity of EU law. Continued judicial minimalism by the Court of Justice risks further regression of EU values in Member States, potentially undermining mutual trust and threatening the autonomy, primacy, and effectiveness of EU law.

Furthermore, this tendency towards judicial minimalism may also help explain the patterns identified earlier in this analysis. As demonstrated above, the invocation of national identity as a justificatory argument in cases implicating EU values emerged relatively late (after 2017) and has intensified only in recent years, particularly since 2021, alongside an increasing number of Member States engaging in such practices. It may be argued that the Court of Justice's reluctance to articulate clear and restrictive boundaries for the national identity clause in the earliest cases of this kind generated a degree of interpretative uncertainty, which was subsequently exploited strategically by Hungary, Poland, and later by other Member States.

The growing number of cases in which national identity is invoked, often in conjunction with measures undermining the rule of law or democratic standards, thus appears not merely as a reflection of domestic constitutional developments, but also as a reaction to the Court's previously cautious approach. Seen in this light, the post-2017 increase in such cases does not signify a sudden emergence of conflict, but rather the crystallisation of a strategy that became legally viable only once national identity had remained insufficiently constrained within the Union's value-based legal order.

This dynamic further reinforces the central argument of this article, namely that the Court of Justice can no longer afford an approach of judicial minimalism at a moment when the strategic invocation of national identity is becoming increasingly widespread among Member States. Instead, the Court must articulate clear boundaries for the permissible use of the national identity clause and unequivocally demonstrate the legal consequences of Member State actions that undermine the Union's foundational values. Failing to do so risks, over time, undermining not only the normative force of EU values, but more fundamentally the effective functioning of the

¹⁰⁵ *RS* (n 3). This approach was already suggested in Scheppelle, Kochenov and Grabowska-Moroz (n 36).

EU legal order and the protection of fundamental rights within Member States. In light of these risks, the protection of European identity and European integration in the face of a values crisis requires a more explicit value protection by the EU institutions against such a strategy of certain Member States.

4. Conclusions

In a period characterized by a values crisis, it is necessary that both the European Union and its Member States actively safeguard and uphold these fundamental values enshrined in Article 2 TEU, thereby reinforcing European identity. This requires heightened awareness of all potential threats that could undermine them. The present article reveals that an additional threat to these values has already emerged, necessitating timely intervention. Based on the foregoing descriptive and analytical assessment of the research findings, the findings indicate that the conflict between national and European identity is present and has intensified over time. National identity is increasingly instrumentalized as a justification for non-compliance with EU values rather than as a safeguard of cultural, social, historical or linguistic diversity. Examining the relationship between national and European identity is therefore essential to delineate the boundary between legitimate constitutional and cultural diversity on the one hand, and violations of the Union's core principles on the other. Failure to address the strategic instrumentalization of national identity could weaken mutual trust between Member States, undermine the primacy and effectiveness of EU law, and jeopardize the protection of fundamental rights for EU citizens

At present, however, this conflict is not yet systemic, but rather geographically and politically concentrated, leaving room for corrective measures. By implementing a more proactive and transparent enforcement strategy, coupled with consistent and explicit interpretive guidance from the Court of Justice and Advocates General regarding the protection of EU values, it is still possible to address the current challenge. Such an approach would reinforce compliance with Article 2 TEU, prevent further tensions between national and European identity, and clearly demonstrate a firm commitment to safeguarding these values while affirming that no Member State may regress from them.

The Court of Justice's jurisprudence has already suggested the emergence of a hierarchy, whereby national identity operates within, rather than in opposition to, the framework of European identity, thereby providing the Commission with a legitimate basis to initiate infringement proceedings whenever a Member State invokes national identity to justify actions that contravene EU values. Ultimately, ensuring that national identity operates within, rather than against, European identity is essential for the resilience of the Union, the stability of its legal order, and the protection of citizens' fundamental rights.

Appendix 1

Table 1 - Full list of the 58 cases identified

	Case number	NI invoked	NI accepted or rejected	Art 2 TEU or provision that are their expression involved	CJEU's decision	AG Opinion
1	C-824/18	Yes	Rejected	Yes	MS actions contrary to provisions that give concrete expression to EU values	MS actions contrary to provisions of EU law that concretely express EU values
2	C-487/19	Yes	Rejected	Yes	MS actions contrary to provisions that give concrete expression to EU values	MS actions contrary to provisions of EU law that concretely express EU values
3	C-204/21	Yes	Rejected	Yes	MS actions contrary to provisions that give concrete expression to EU values	MS actions contrary to provisions of EU law that concretely express EU values
4	C-715/17	Yes	Rejected	Yes	The CJEU did not express his views	Considering whether the MS' actions were, were not, or could potentially be contrary to EU values
5	C-490/20	Yes	Rejected	Yes	MS actions contrary to provisions that give concrete expression to EU values	Considering whether the MS' actions were, were not, or could potentially be contrary to EU values
6	C-156/21	Yes	Rejected	Yes	Actions of the MS are not considered to be contrary to EU law	
7	C-157/21	Yes	Rejected	Yes		
8	C-448/23	Yes	Rejected	Yes	MS actions contrary to provisions that give concrete expression to EU values + reasoning explicitly referred to a breach of the values	MS' actions contrary to provisions of EU law that concretely express EU values + considering whether the MS' actions were, were not, or could potentially be

						contrary to EU values
9	C-181/23	Yes	Rejected	Yes	MS actions contrary to provisions that give concrete expression to EU values	MS actions contrary to provisions of EU law that concretely express EU values
10	C-808/21	Yes	Rejected	Yes	MS actions contrary to provisions that give concrete expression to EU values	MS actions contrary to provisions of EU law that concretely express EU values
11	C-814/21	Yes	Rejected	Yes	MS actions contrary to provisions that give concrete expression to EU values	MS actions contrary to provisions of EU law that concretely express EU values
12	C-769/22	Yes	Rejected	Yes	<i>Pending at the time of writing the article</i>	Considering whether the MS' actions were, were not, or could potentially be contrary to EU values
13	C-83/19	Yes	Rejected	Yes	MS actions directly incompatible with EU values	MS actions contrary to provisions of EU law that concretely express EU values
14	C-430/21	Yes	Rejected	Yes	MS actions directly incompatible with EU values	Considering whether the MS' actions were, were not, or could potentially be contrary to EU values
15	C-379/19	No	X	Yes	X	X
16	C-619/18	No	X	Yes	X	X
17	C-192/18	No	X	Yes	X	X
18	C-216/18	No	X	Yes	X	X
19	C-132/20	No	X	Yes	X	X
20	C-748/19	No	X	Yes	X	X
21	C-272/19	No	X	Yes	X	X
22	C-585/18	No	X	Yes	X	X
23	C-64/16	No	X	Yes	X	X
24	C-284/16	No	X	Yes	X	X
25	C-621/18	No	X	Yes	X	X
26	C-817/21	No	X	Yes	X	X
27	C-791/19	No	X	Yes	X	X
28	C-157/15	Yes	Accepted	No	X	X
29	C-713/23	Yes	Rejected	No	X	X
30	C-185/23	Yes	Accepted	No	X	X
31	C-51/15	Yes	Accepted	No	X	X
32	C-156/13	Yes	Accepted	No	X	X

33	C-658/19	Yes	Accepted	No	X	X
34	C-743/22	Yes	Rejected	No	X	X
35	C-33/22	Yes	Rejected	No	X	X
36	C-742/19	Yes	Rejected	No	X	X
37	C-438/14	Yes	Accepted	No	X	X
38	C-364/10	Yes	Rejected	No	X	X
39	C-311/18	Yes	Rejected	No	X	X
40	C-391/09	Yes	Accepted	No	X	X
41	C-414/16	Yes	Rejected	No	X	X
42	C-391/17	Yes	Rejected	No	X	X
43	C-128/17	Yes	Rejected	No	X	X
44	C-391/20	Yes	Accepted	No	X	X
45	C-42/17	Yes	Accepted	No	X	X
46	C-328/19	Yes	Accepted	No	X	X
47	C-511/18	Yes	Rejected	No	X	X
48	C-208/09	Yes	Accepted	No	X	X
49	C-51/08	Yes	Rejected	No	X	X
50	C-188/15	Yes	Rejected	No	X	X
51	C-202/11	Yes	Rejected	No	X	X
52	C-58/13	Yes	Rejected	No	X	X
53	C-399/11	Yes	Rejected	No	X	X
54	C-673/16	Yes	Rejected	No	X	X
55	C-793/19	Yes	Accepted	No	X	X
56	C-623/17	Yes	Rejected	No	X	X
57	C-151/12	Yes	Rejected	No	X	X
58	C-393/10	Yes	Rejected	No	X	X

Explanations:

- NI: national identity
- CJEU: the Court of Justice of the European Union
- AG: Advocate General
- Rejected: the Court of Justice of the European Union did not agree with the argument, or agreed but it was not proportionate, thus the outcome of the case was not favourable for the Member State
- Accepted: the Court of Justice of the European Union agreed with the argument, considered it proportionate, the outcome of the case was favourable for the Member State
- X: irrelevant
- MS: Member States