Democracy control in the European Union

Krisztina Arató
Associate professor, ELTE, Faculty of Law, Institute of Political Science, Budapest
krisarato@ajk.elte.hu

Abstract
The paper examines the development of democracy control mechanisms towards Member States in the European Union and looks at its roots and the latest procedural developments. The theoretical framework for this examination is the concept of Europeanisation; we argue that Europeanisation is apart from the classic understanding (top-down-bottom-up) a value-driven concept that is suitable for the analysis of democracy control.

Keywords: democracy, European Union, Art. 7. TEU

The European Union is a family of democratic states governed on the basis of the principle of rule of law and democracy. This notion has not always been laid down by the Treaties since the 1951 treaty of Paris but was naturally understood as a basic value during the postwar history of European integration. In the 1960s and 1970s the common value of democracy was demonstrated by the facts that countries under authoritarian rule could not join the EC and the association agreement of Greece was suspended at the moment of the military coup in 1967. The 1990s brought about the inclusion of the principles of democracy in the treaties and the first decades of the new century produced several examples where full members of the European Union seem to have breached those principles.

The treaty gives a broad definition of democracy and establishes a rather general procedure in the famous (or infamous?) Article 7 potentially resulting in the suspension of certain rights of the member state in question deriving from the application of the treaties. Since these consequences are very severe, article 7 is widely nicknamed as the „nuclear weapon” of the EU towards a member state allegedly in the process of non-democratization. Apart from the harshness of the punishment, several other questions arise. How can we tell that a member state reached a stage when democratic

1 Parts of this paper is based on the following publication: Arató Krisztina – Varga András (2015): An obligation or an opportunity? Safeguarding democracy in the European Union. IN: Mikecz Dániel – Tóth Csaba (eds): Member state violation against democratic principles - What can the EU do? ELF – Republikon, Budapest, 42-68.
values are seriously breached? Who should state this and on what basis? Isn’t that already a serious takeaway of national sovereignty? Is there a definition of democracy that can serve as a basis of comparison? What institution should make the decision about the suspension of membership?

The issue itself is so new that we do not even have the terminology for it. Commission Communication COM(2003) 606 circumscribes the problem in its title as „respect for and promotion of the values on which the Union is based“. COM (2014) 158 that deals with the same issue already narrows the subject as „a new EU Framework to strengthen the Rule of Law“. The not too widescale social science literature addresses the issue as „safeguarding democracy in the EU“ (Müller 2013) or uses the term „protection of values“ (Budó 2014; Pinelli 2014). For social sciences and also for political communication purposes, a short and clear term should be identified. In our study we will refer to the subject as „safeguarding democracy“.

This paper is organised as follows. In the first chapter we collect the history of the idea and the development of the legal basis of the EU safeguarding member state level democracy and give some examples where the problem occurred. In the second part we shortly summarize the problem of measuring democracy as a social science problem. In the third part we address theoretical questions – how can we conceptualize these developments? Can we put the developing member state democracy control into the „Europeanisation“ concept?

1. State of the art: history and examples of EU safeguarding democracy

The importance of democratic structures in member states or potential member states – while not explicitly stated in the founding treaties – have been considered throughout the history of the European Communities since its birth. While Art 237 of the original Treaty of Rome does not mention any other condition for membership than the country in question should be European, the Court of Justice of the European Communities interpreted this clause as „that state is a European state and if its constitution guarantees (...) the existence and continuance of a pluralistic democracy and (...) effective protection of human rights. 2 Also, when the association agreement of Greece had to be suspended because of the coup d’état in 1967, the Community stated that the agreement would be limited to matters of day-to-day management - in other words, the dismantling of tariffs as originally envisaged - until the democratic and parliamentary structures are restored in Greece. The Community’s financial aid towards Greece was also suspended. (Commission 1978)

After the end of the Cold War when Central and Eastern European countries turned West and started their approach to the EU, the European Council decided on the application of a set of conditions for their accession. The so-called „Copenhagen criteria” – referring to the European Council meeting in Copenhagen in June 1993\(^3\) – included several conditions for accession that created an „external-internal bifurcation” in the EU legal system, i.e. no equivalent criteria existed at the time for member states themselves. (Williams 2000) Thus, the idea that the EU should take on the explicit responsibility to safeguard democracy was born in a paradox: a requirement for externals, no rules for the member states. We should note here, that while the European Union in 1993 intended to identify accession criteria for outside countries (CEECS), at the same time the list declares the list of values of the EU members as well (Lucarelli 2006:4, Miteva 2010:124.)

The idea of safeguarding democracy is embedded in the first, political criterion, including the „stability of institutions” heading: guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. However, the puzzle was, how to operationalize these concepts. Since there were no explicit definitions given, we can rely on the Commission regular reports prepared yearly on each candidate country in the accession period. On the basis of the analysis of these reports (carried out by Marktler 2006) we can list the following elements:

- elections are free and fair and in line with international standards and commitments on democratic elections;
- the national parliament continues to operate satisfactorily, its powers are respected and the opposition plays full part in its activities;
- any extraordinary legislative procedure which potentially mixes legislative and executive powers, such as legislating by executive ordinances, should be limited and well-justified;
- all stages of the legislative process, including the proposal of legislative amendments, should enjoy the highest degree of transparency, giving the public the opportunity to monitor this process in real time;
- a functioning executive: the Commission frequently criticized candidate counties for inadequate management, the lack of qualified personnel and low salaries in public administration;
- an independent civil service; a good executive is effective, professional, accountable, well-regulated and transparent;
- completely demilitarised executive, including the police, which should be composed of civilian public servants, serving the rule of law;

\(^3\) European Council in Copenhagen, Conclusions of the Presidency, (21-22 June 1993, SN 180/1/93) 12.
- judiciary should be independent, well-staffed, well-trained, well-paid, efficient, respected and accessible to citizens;
- effective fight against corruption;
- respect of human rights: civil and political rights, economic, social and cultural rights, and minority rights.

With the exception of minority rights, basically all the Copenhagen political criteria were incorporated in the Treaty of Amsterdam in 1997 in the form of naming the principles on which the EU is founded („liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”, Art. 6.). Also, in order to ensure the maintenance of these principles, the Treaty introduced a new procedure in Art. 7. – that later were called „lex Austria” because of the Haider case. In these provisions, in the case or serious breach of the principles the EU is built on, the Heads of State or Government acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may suspend the voting rights of the member state concerned while its obligations would continue to be binding.

The basic approach of this original procedure has been modified since. The Treaty of Nice – taking into account that in Austria in fact there was no serious breach of the rule of law and democracy but only the „possibility” of such change (Williams 2000:91) – introduced a preventive procedure as suggested by the report of the expert group Martti Ahtisaari, Jochen Frowein and Marcelino Oreha. (Report 2000:35) The current procedure and the relevant articles about the values that should be considered by member states are set in article 2; 4; and 7 of the Treaty of Lisbon.

Article 2 renames what the Treaty of Amsterdam called „principles” to „values”. These values are further elaborated in the Charter of Fundamental Rights that have the same legal value as the Treaties. (Art.6.) A potential contradiction might stem from Article 4 that states that the European Union respect the identities and fundamental political and constitutional structures – thus there is very weak and sensitive line between EU competences in the area of the respect for democracy, rule of law and fundamental right sin member states and the sovereignty of member states.

Article 7 gives a detailed description on what happens if a member state (1) show a clear risk of breaching the common values or (2) definitely breaches the common values. In the first case, the Commission, the European Parliament and also one third of the member states in the Council may put forward a proposal. The Council holds a hearing and may determine on the existence of the risk of serious breach of the proposal. In the case of the existence of the breach, Art. 2, one third of the member states may come up with such a proposal (not the Parliament, it may only give its consent)
and the Council acting with qualified majority may suspend the voting rights of the member state in question. This procedure, especially if applied, is generally considered as a major humiliation for the member state concerned; it is taken as too harsh, just too much and also potentially counterproductive: sanctions may even push that country and also their citizens away from common values and the EU itself.

However, before this „nuclear weapon” is triggered, there are other tools available: the infringement procedure, the Commission proposal for a preemptive procedure, the activities of the Fundamental Rights Agency of the EU and also co-operation with the international organisation specializing on human rights protection in Europe: the Council of Europe.

First, if a possible infringement of EU law is identified by the Commission or reported in a complaint, the Commission (after attempts to quickly resolve the underlying problem with the Member State concerned by means of a structured dialogue), under Art. 258 there is a possibility to launch a formal infringement procedure that, in case the member state and the Commission is unable to resolve the problem, may lead to a litigation procedure at the Court of Justice of the European Union. The infringement process, however, may be applied in clear-cut cases of breaching of EU law – and not EU principles or values. This dichotomy occurred e.g. in the case of Hungary, where, although there were several alleged problems about the functioning of democracy compiled in the Tavares report of the European Parliament (REPORT 25 June 2013 PE) those could be dealt with within an infringement procedure where there was a clearcut legal basis.4


Second, in March 2014 the European Commission in its Communication COM(2014) 158 proposed a framework to strengthen the rule of law in member states. The Communication acknowledges that the procedures set in Art. 7 of TEU need to be preceded by a mechanism that may contribute to the resolution of systematic democracy and rule of law problems in member states. The Communication discusses the background, the legal and the political bases and also the procedures of the framework (see Chart 1.). Two major problems occur with the proposed framework. First, it seems to seriously narrow the principles set in Art. 2 TEU: while the values of the EU are respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, the framework considers only the member state practices merely on the area of the rule of law. While the content of the original Copenhaghen criteria - as discussed above - included a wide range of elements, the definition of the rule of law principle includes a limited list as follows (COM(2014) 158:4):
- legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws;
- legal certainty;
- prohibition of arbitrariness of the executive powers;
- independent and impartial courts;
- effective judicial review including
- respect for fundamental rights;
- equality before the law.

Second, the key player of the proposed framework is the Commission. While the Commission has several assets to carry out its tasks and the framework refers to cooperation with other bodies during the process proposed by the framework, it does not have one important characteristic necessary for this extremely sensitive political issue: input legitimacy. However, in the case of such a politically sensitive issue, the European Parliament, the only EU institution with input legitimacy is indispensable in the process.

The third element of EU tools that may contribute to the prevention of the application of the “nuclear weapon” is the EU Fundamental Rights Agency (FRA). It was established by Council Regulation 168/2007 and based in Vienna and is partly useful actor for a potential procedure aiming the safeguarding of democracy and rule of law in member states. Article 2 of Regulation 168/2007 states that “the objective of the Agency shall be to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.” Thus, FRA has a limited mandate, its function can be identified as an information and advisory agency and its area of competence is limited to the application of EU law. Thus, we tend to agree with professor Pinelli, who says that FRA is an “opportunity lost” from the point of view of maintaining democracy in member states (Pinelli 2012:13); it has no right to report on developments in member states beyond the application of EU law and its stature does not refer to Art. 7 TEU.

As a fourth element/player in a potentially effective mechanism in order to maintain democracy and rule of law in EU member states is an organisation outside the EU: the Council of Europe. Established in 1949 and later becoming a key player of human rights protection in Europe, the Council of Europe has several tools to achieve its goals. First, Art. 8 of its statute establishes a procedure similar to Art 7. TEU; it states that
“Any member of the Council of Europe which has seriously violated Article 3 [according to which “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the Council as specified in Chapter I”] may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine”.

This Article was applied towards Greece in 1967. The Council of Europe has also other instruments for ex ante handling of serious breaches of rule of law and fundamental freedoms: in 1990, the European Commission for Democracy through Law (Venice Commission) was established to provide expertise to countries in the process of transition to democracy. Apart from this Committee, CoE has a set of preemptive methodologies that could create a common ground for the European Union to act together.

The very recent development in handling member state democracy problems is the proposal for an interinstitutional agreement by Sophia in ’t Veld (LIBE) in the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament of April 5 2016.6 The first major feature of the proposal is giving the problem a name – the complex nature of the issue is expressed in „democracy, the rule of law and fundamental rights”, that was also given an acronym (DRF). Second, it seems that the proposal tries to connect a procedure with a complex research methodology – a problem, also indicated above. According to the proposal, a so-called „DRF scoreboard” would be prepared by expert committees7 annually in three areas: democracy, rule of law and fundamental rights. The evaluation of all three areas in the case of each member states would be either satisfactory (green), or risk (yellow), or breach or violation (red). The country reportswould be adopted by the European Commission that would trigger a so-called „DRF semester”. The reports would be on the agenda of the European Parliament and also the Council, and the procedure in the case of „red signals” could

---

6 DRAFT REPORT with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)) Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Sophia in ’t Veld. The Report is accompanied by an analysis – Ballegooij, Wouter van – EVAS, Tatjana: An EU mechanism on democracy, the rule of law and fundamental rights. Interim European Added Value Assessment accompanying the Legislative initiative Report (Rapporteur Sophie in ’t Veld). European Parliamentary Research Services, April, 2016.

7 Expert committees would include one independent expert designated by each Member State; ten academic experts designated by the federation of All European Academies (ALLEA); ten experts designated by the European Network of National Human Rights Institutions (ENNHRI); two experts each designated by the Venice Commission and the Council of Europe Human Rights Commissioner; ten former judges designated by CEPEJ; two experts each designated by the United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD).
result in starting one of the procedures set in Article 7. TEU. The third very important feature of the proposal is its attempt to define the three key concepts. In the understanding of the proposal, indicators for Democracy are separation of powers, the impartial nature of the state, the reversibility of political decisions after elections, the existence of institutional checks and balances which ensure that the impartial state is not called into question, the permanence of the state and institutions, based on the immutability of the constitution, freedom and pluralism of the media, integrity and absence of corruption, transparency and accountability, and title V of the Charter of Fundamental Rights of the European Union. The indicators for the Rule of Law are legality, legal certainty, prevention of abuse or misuse of powers, equality before the law and non-discrimination, access to justice: independence and impartiality, fair trial, constitutional justice (where applicable), particular challenges to the rule of law: corruption, conflict of interest, collection of personal data and surveillance and title V of the Charter. The third elements (fundamental rights) would be evaluated on the basis of titles I to IV of the Charter.  

The reason for the creation of this wide set of legal provisions and soft tools in order to maintain member state democracies has been in the news every day for the last decade or more: we can bring several examples of democracy/human rights/rule of law problems in member states. Just to mention a few:

- **The Haider case in Austria** – After the 1999 elections the Freedom Party of Austria (FPÖ), considered as an extreme right party, became member of the governing coalition. The other fourteen member states of the European Union imposed sanctions of diplomatic and bilateral nature; they were intended to defend European values but not using European law. (Budó 3-4); Falkner (2001)

- **Constitutional reform in Hungary** – Hungarian party FIDESZ won national elections with a two-thirds majority and initiated a major constitutional reform, that also went together with the re-organisation of several central state agencies, a new media law and the re-organisation of the public media. (Arató-Koller 2015: 13) Apart from legal aspects, several civil society and other issues were identified as problematic compared to the general European understanding of democracy and rule of law (Tavares Report 2013)

---

8 The proposal of Sophie in’t Veld has two Annexes in which expert groups analyse the latest developments and also potentials of such enquiries. See An EU mechanism on democracy, the rule of law and fundamental rights Annex I - An EU mechanism on democracy, the rule of law and fundamental rights. European Parliamentary Research Service April, 2016. 579.328 and An EU mechanism on democracy, the rule of law and fundamental rights Annex II - Assessing the need and possibilities for the establishment of an EU Scoreboard on democracy, the rule of law and fundamental rights. European Parliamentary Research Service April, 2016. 579.328
Constitutional crisis in Romania - In 2012 Victor Ponta became Prime Minister of Romania (Social Liberal Union, USL) with his political opponent Traian Basescu holding the position of president. A fight began between them that did not respect constitutional regulations about the Constitutional Court, the Ombudsman, the General Prosecutor, etc. (Budó 2014:5) (Müller 2013:6-8)

Expulsion of Roma people in France - Starting in summer 2010 under President Sarkozy the expulsion of Roma people from France back to Bulgaria and Romania started. Several declarations were made by Commissioners (e.g. Viviane Reding) that this act is discriminatory and also against the free movement directive (2004/38), still expulsions were maintained, even after Francois Hollande won the elections. The EU did not impose sanctions against a member state practice that is contrary to EU values. (Budó 2014:6-7)

But actually how can we tell that in a county there are problems with democracy and rule of law? Who says that? Compared to what? This is where the issue of the measurement of democracy has to be addressed.

2. Can democracy be measured?

In the post-WWI era two major factors contributed to the birth of a vast number of methodologies and surveys conducted all over the world for the measurement of democracies. First, the developed world spent billions of dollars/euros to aide democracies in transition in order to promote democracy and good governance. Whether the ways and methods of spending was effective and reached the desired effects, had to be measured. Second, the idea of democracy has become a kind of a „mantra” all over the world (Coppedge-Gerring 2011): since even non-democratic political systems tend to pretend that in fact they are democratic, the desire to identify the concept, the features of democracies and thus the comparison of polities are there both in policy-making and also in social sciences. There are so many models and measurements that even a certain competition can be detected among them. Here we list only the most important ones:

- Freedom House⁹ as a government funded NGO in the USA annually publishes (among others) its Freedom in the World Report in which they identify the degree of democratic freedoms (democracy, political freedom and human rights) in nations and significant disputed territories around the world, by which it seeks to assess the current state of civil and political rights on a scale from 1 (most free) to 7 (least free). They apply a thin

---

⁹ www.freedomhouse.org
understanding of democracy, meaning that they mainly consider institutional and electoral features of democracy. (Ágh 2012)

- The Economist Intelligence Unit\(^\text{10}\) publishes its Democracy Index (on 167 countries) regularly since 2010 is based on 60 indicators grouped in five different categories measuring pluralism, civil liberties, and political culture. In addition to a numeric score and a ranking, the index categorizes countries as one of four regime types full democracies, flawed democracies, hybrid regimes and authoritarian regimes.

- The Bertelsmann Stiftung\(^\text{11}\), based in Germany, publishes two indexes that measure democracy. The Transformation Index (BTI), updated every two years, provides a ranking with quantitative scores for the performance of 128 developing and transition countries. The index measures the current state of democracy and market economy in a given country, its evolution over the past two years and the quality of governance. The Sustainable Governance Indicators (SGI) – first published in 2009 - analyze and compare the need for reform in OECD member countries, as well as each country’s ability to respond to current social and political challenges. The project is designed to create a comprehensive data pool on government-related activities in the countries considered the world’s most developed free-market democracies. The SGI are updated every two or three years.

Apart from these systematic surveys on democracy, there are a number of universities and research institutes in the Europe / the European Union that focus on democracy research. The Arena, Centre for European Studies in Oslo, Norway, conducted a wide-scale research project between 2007-2011 funded by the 6th Framework Programme for Research of the EU on democracy throughout Europe named RECON. The aim of the project was to identify strategies through which democracy can be strengthened and propose measures for rectifying institutional and constitutional defects in different policy areas.\(^\text{12}\) The Stockholm-based research institute, IDEA (International Institute for Democracy and Electoral Assistance, IDEA)\(^\text{13}\) is both a research and a policy institute with wide knowledge on democratic processes and they publish reports on democracy mainly about developing countries. The European University Institute\(^\text{14}\) (EUI) that is the „university of the EU” in Florence, Italy, doing wide-scale research programmes and also Ph.D programmes, in the framework of its Robert Schuman Centre for Advanced Studies operates and „European Union Democratic Observatory (EUDO). EUDO

\(^{10}\) www.eiu.com
\(^{11}\) http://www.bertelsmann-stiftung.de
\(^{12}\) www.reconproject.eu
\(^{13}\) www.idea.int
\(^{14}\) www.eui.eu
does research and publishes policy papers on a wide range of issues connected to democracy in EU member states.

On the basis of the list above, we can see that in Europe there is vast social science knowledge about the measurement of democracy. Probably neither of them is perfect – but we can safely say that most of them are good enough to identify major processes in democracies focusing on EU member states. It seems that currently international social research is able to identify changes in the quality of democracy in countries. In chapter 1 we saw that currently there is a procedure in the making that intends to make use of these measurements and intends to make the European Union able to tackle challenges in member state democracies. Now, how can we conceptualise these developments?

3. Europeanisation and member state democracies

The developments in the history of the European Union in the area of democracy, rule of law and fundamental rights can be seen as a gradual strengthening in terms of the competences of EU institutions. Whereas until the publication of the Copenhagen criteria in 1993, both the concept and its application hardly came to the surface, since the beginning of the Eastern enlargement process it was implicitly defined, put in the Treaties and also procedures are connected to it. In the following I argue that the most useful concept to explain this development is Europeanisation.

The concept of Europeanisation came up in the integration literature at the beginning of the 1990s (after the Treaty of Maastricht) when European integration reached a stage when a significant number of formerly domestic policy areas were transferred on the European level. The logic of decision-making started to change as well: a growing number of EU legislation was to be adopted by co-decision between the Council and the European Parliament, also, the Council acted more and more frequently with qualified majority. Caporaso argued that these developments could not be adequately framed by grand theories (neofunctionalism, intergovernmentalism, institutional theories, multi-level governance, etc.) so the new concept of Europeanisation was developed (Caporaso 2008) However, it was never considered as a new integration theory, rather a conceptual framework that is applied to characterise the correlation between member state political systems and the EU polity. (Arató-Koller 2015) However, the experts who deal with the issue understand different phenomena under the same name - the tsunami of definitions that came since its birth, characterize the uncertainty of the concept. Robert Ladrech, who gave one of the first definitions, understands Europeanization as an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational

---

15 The summary of the Europeanisation literature is provided in several articles. The basis of following argumentation was elaborated in Arató-Koller (2015).
logic of national politics and policy-making’. (Ladrech 1994: 17). Claudio Radaelli later specified the areas that are involved in the process of Europeanisation – according to him, Europeanisation refers to ‘processes of construction, diffusion and institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies’. (Radaelli 2003: 30). Risse et al. gave a general definition involving the pet concept of the turn of the century (governance): ‘We define Europeanisation as the emergence and the development at the European level of distinct structures of governance’. (Risse et al. 2001: 3) Looking at the vast number of definitions with different content, many authors became sceptical about the use of the concept – Kassim noted that although the field is rich in definitions, a single and precise meaning of the terms remains elusive (Kassim 2001), moreover, Olsen doubted whether the concept is at all useful (Olsen 2002).

The Europeanization literature flourished in the time of the Eastern enlargement: the accession of East Central European countries, apart from many things, meant a transfer of European law, EU policies and also institutional structures and “ways of doing things” taken and learned from the European Union, the process was a prime example for Europeanisation. (See e.g. Simmelfennig and Sedelmeier 2004) This notion has been expanded by the idea that, apparently, the European Union is “exporting” its structures, institutions, notions and norms also to areas that are not potential candidate countries - the concept of Normative Power Europe (NPE) can also be included in the Europeanization literature. (Manners 2008)

The above definitions triggered the elaboration of several sides of the concept. Tanja Börzel argued that apart from the usual understanding of Europeanization ad “downloading” policies, rules, institutions, “ways of doing things” from the European Union, there are “uploading” cases as well when domestic impacts are detectable. (Börzel 2002) Also, we can talk about horizontal effects of Europeanisation referring to the cooperation between the individual member states and its effects on the whole EU integration process. Key issue is also whether we understand Europeanization as a process or and outcome - if it is an outcome, the concrete changes in domestic or EU levels have to be found that is caused by the other, if it is a process, it should be looked as a phenomenon that arises from the continuous interaction of EU and member states’ political systems. (Arató-Koller 2015)

Types of Europeanization has also been established. Schimmelfennig argued that „thin” and „thick” variants exist. The thin form of Europeanisation is limited to changes in behaviour
and rhetoric, while the thick form also includes changes though the internalization of rules and norms. (Schimmelfennig 2001). The concept has been criticized by several authors for being blurred also in the context of scope – they argue that Europeanization is really EU-ization since theoretical writings and case studies concentrate on the European Union level – member state level interactions whereas Europeanization is a more complex and also historically determined phenomenon. (Wallace 2000, Flockhart 2010)

Few has been said before about the aspect that is more important for us: values. If we consider the different aspects of the Europeanization literature, the issue of values fits well in all of them. The uploading/downloading element can clearly identified: while at first sight our case seems to be special since outside actors (accessing countries) triggered the identification of the DRF values as well as the procedures connected to them, the list declares the values of the EU members as well. Thus, we see a dynamic correlation here: an upload of the issue by future member states, at the same time there is a download in the case of the procedure in case these principles have to be enforced.

In the case of the issue whether Europeanization is an outcome or a process we might realize that it is both. It would be hard not to notice that the „upload” of DRF values has been a process since the 1960s starting with the Greek coup d”etat and the suspension of the association agreement, via the Copenhagen criteria to the current list of values and Art. t. in the Treaty of Lisbon. Moreover, the process has not ended, there are several pre-Art. 7 procedures either available or in the making. On the other hand, DRF values in legal terms can be considered as an outcome since the list of values and the procedures have not been present in the previous treaties.

In terms of the idea of thin and thick Europeanization we should be optimistic – the Treaties at least suggest that the European Union is based of the above listed values so it should not be merely a rhetoric, „thin” type of commonality. As stated in the preamble of the Charter of Fundamental Rights, “The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values”.

Europeanization or EU-ization? We can again argue for both. According to the periodization of Flockhart (and also general historical knowledge), the values of democracy has preceded the establishment of European institutions in the postwar period and thus cannot be solely connected to the European institutions. (Flockhart 2010) On the other hand, DRF procedures are in the EU Treaties

---

and connected to EU institutions, thus, can be connected to the EU-ization side of the phenomenon as well.

4. Conclusions

This paper argues that the list of values and procedures connected to rule of law, democracy and fundamental rights can be placed in the conceptual framework of Europeanization. In the first two chapters we saw how the values of democracy, rule of law and fundamental rights have gradually got their way to be included in the treaties and how European institutions (especially the European Commission and the European Parliament) has kept working on preemptive procedures that might serve as early-warning mechanisms before the politically sensitive Art. 7 procedure is initiated.

The paper also argues that the often insufficiently defined (or sometimes too broad) conceptual framework of Europeanization is useful in order to understand the several aspect of the regulatory process. While Europeanization case studies usually examine clear-cut policy areas, I argue that the very basic concepts of common values can also be understood in this conceptual framework. My arguments can be supported by the explanatory statement of the proposal of Sophie in’t Veld, attached to the draft report: “The European Union has a wide range of instruments for the enforcement of its laws and Treaties when it comes to material issues. The European Commission can order Member States to adjust their budgets, public health schemes or tax rulings to make them compliant with EU law. In such cases, Member States do not dispute the fact that they are bound to comply with EU law according the EU Treaties. Not so when it comes to enforcement of the Treaty obligations regarding democracy, the rule of law and fundamental rights. Attempts by the European Commission, the guardian of the Treaties, to remind a Member State of its commitments, are met with reluctance or a downright refusal to recognise commonly agreed rules and the authority of the EU to enforce those rules. So far, intervention by the Commission has been timid and arbitrary. In addition, EU institutions themselves have sometimes been failing to comply with the key principles of democracy, the rule of law and fundamental rights.”

Obviously, it is much easier to analyse processes (or even outcomes) of Europeanization in the areas of material or even procedural issues. In the case of values, the process has been gradual and the application of the common principles met several difficulties. Further research should elaborate both the case and the theoretical implications of the phenomenon.

17 DRAFT REPORT with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)) Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Sophia in’t Veld.
**Bibliography**


Ballegooij, Wouter van - EVAS, Tatjana: An EU mechanism on democracy, the rule of law and fundamental rights. Interim European Added Value Assessment accompanying the Legislative initiative Report (Rapporteur Sophie in ’t Veld). European Parliamentary Research Services, April, 2016.


Budó, Gloria (2014): *EU common values at stake: is Article 7 TEU an effective protection mechanism?* CIDOB Documents.


**Documents and legal texts**


DRAFT REPORT with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)) Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Sophia in ’t Veld


REPORT 25 June 2013 PE 508.211v04-00  A7-0229/2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)) Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Rui Tavares

Statute of the Council of Europe. London, 05/05/1949