

## Riga Conference Concept Paper

**Re:** Conference co-organised by the Court of Justice of the European Union and the Latvian Constitutional Court

**Dates:** 2 – 3 September 2021

**Venue:** Riga, Latvia

**Target group:** Constitutional Courts of EU Member States, 2 Judges per Court; Judges and Advocates General of the CJEU

**Title of the Conference:** "EUnited in diversity: between common constitutional traditions and national identities"

### Background

The role of the CJEU is to ensure that "the law is observed" in the interpretation and application of the Treaties. The authors of the Treaties have therefore entrusted the CJEU with the task of upholding the core values on which the EU is founded, as those values are an essential component of the rule of law within the EU.

Recently the CJEU has pointed out that "the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, *inter alia*, justice prevails. In that regard, it should be noted that mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premise that Member States share a set of common values on which the European Union is founded, as stated in Article 2 TEU".<sup>1</sup>

To that end, in cooperation with the courts and tribunals of the Member States, the CJEU safeguards the uniform interpretation and application of EU law. In so

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<sup>1</sup> Judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, para. 30.

doing, it also ensures that the Member States fulfil their obligations under the Treaties.

Similarly, in exercising its powers of judicial review, the CJEU also ensures that the EU institutions pay due attention to the principle of conferral, according to which those institutions may not encroach upon the competences retained by the Member States.

For their part, Constitutional Courts of the EU Member States ensure the supremacy of national constitutional law within their respective national legal orders and are entrusted with protecting and consolidating national identities. That role is explicitly recognised by the EU Treaties themselves. Article 4(2) TEU provides that the "Union shall respect the equality of Member States before the Treaties as well as their **national identities**, inherent in their fundamental structures, political and **constitutional**, inclusive of regional and local self-government" (emphasis added).

The Member States have conferred competences to the EU agreeing on a common set of values that enables them to achieve common objectives. Those values are embedded in the identities of the Member States and form part of the rule of law within the EU, both at national and Union level, since they stem from the constitutional traditions common to the Member States.

Those constitutional traditions remain central to the development of EU law. Constitutional Courts first determine the norms that form part of their own national constitutional traditions. It is then for the CJEU to determine whether there is a consensus among the constitutional traditions of the Member States that makes it possible to incorporate a general principle of law that is common to those traditions into the EU legal order.

From a methodological perspective, it may legitimately be asked whether we need a more sophisticated understanding of the way in which a common constitutional tradition is identified. What would be the best way to determine whether there is a consensus among national traditions? What is the contribution of the comparative law method to any such analysis?



Moreover, in the absence of a common constitutional tradition, one question that arises concerns the extent to which EU law allows room for national diversity. Indeed, in legal orders that are grounded in democratic principles, values are often in tension with one another and require balancing. Such balancing will take into account the particularities of constitutional traditions of a legal order concerned. As a result, some Member States will inevitably strike a balance that is different from that struck by other Member States in broadly comparable situations.

Logically, the question that arises – notably in the field of fundamental rights protection – is whether EU law should limit itself to allowing such diversity to persist or whether, on the contrary, a uniform solution should be endorsed where Member States are implementing EU law. When should national diversity be set aside in favour of EU unity? Conversely, when should EU law allow room for national diversity? Since the protection of fundamental rights remains an essential function of Constitutional Courts, as mandated by the people, how should they balance the unity and diversity dimensions.

### **The aim of the conference is:**

- 1) To search for a common approach in discovering and developing constitutional traditions common to the Member States through a more structured and inclusive dialogue between the CJEU and the Constitutional Courts of the Member States.
- 2) To examine the role that the CJEU and Constitutional Courts play in ensuring “unity in diversity”.
- 3) To discuss means for giving greater impetus to the dialogue between the CJEU and the Constitutional Courts of the Member States, by exploring both formal and informal channels of communication.
- 4) To explore the procedural and methodological options for a more transparent relationship between the CJEU and the Constitutional Courts of the Member States.



**4 Panels** organised in two sessions (conference style and round table style) will discuss the following topics:

**First panel:**

Discovering and defining constitutional traditions common to the Member States

The purpose of this panel is to explore the notion of ‘constitutional traditions common to the Member States’. To that end, it seeks to examine the case law of the CJEU in order to determine the circumstances under which that court has held that a fundamental right, enshrined either in the Charter or in a general principle of EU law, stems from the constitutional traditions common to the Member States.

What role is played in that process by case law of Constitutional Courts and by the case law of the ECtHR? How has the CJEU applied the comparative law method? How could the forms of a dialogue between the Constitutional Courts and the CJEU be made more relevant to the development of the case law?

**Second panel:**

Scope of application, competences and harmonisation

The purpose of this panel is to look at the scope of application of the Charter and of the national Constitutions. In that regard, this panel will look at the question whether respect for national identity, as determined in EU primary law, may impose limits on the competences of the EU that may, in turn, restrict the scope of the Charter. Moreover, this panel will also look at the question whether the Charter applies in the event of national constitutional law going beyond what is required by minimum EU harmonisation.

**Third panel:**

The level of fundamental rights protection



Where there is no constitutional tradition common to the Member States and where Member States are implementing secondary EU law, divergent case law may arise as to the level at which a fundamental right is to be protected. How much room exists for such diversity? What is the role of the principle of democracy in that context?

**Fourth panel:**

Limitations on the exercise of fundamental rights

Some important exceptions notwithstanding, the exercise of a fundamental right may be subject to limitations. Article 52(1) of the Charter indicates the steps that the CJEU and national Courts must follow in order to determine whether a limitation on the exercise of a fundamental right complies with the Charter. The purpose of this panel is to look at the case law of the CJEU and the Constitutional Courts of the Member States pertaining to that provision of the Charter.

