


## The Concept and Legal Nature of EU Values

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**Abstract:** Values are a fairly common concept that is used extensively at the everyday level and is the subject of study in many sciences, including philosophy, sociology, psychology, cultural studies, religious studies, economic theory, political science, etc. Following the substantiation of values as a separate philosophical category, a branch of philosophy that deals with the study of values – axiology – was formed. Values began to move into the field of law and were used mainly as categories of philosophy of law or axiology of law and only partially became the subject of study of constitutional law and legal theory, as their nature as legal categories remained questionable for a long time. The enshrining of the values on which the European Union (EU) is based in Article 2 of the TEU, together with the introduction of a special liability mechanism for the breach of values in Article 7 of the TEU, as well as the validation by the Court of Justice of the EU of the mechanism outlined in Articles 258–260 of TFEU in case of breach of EU values, has put on the agenda the issue of a paradigm shift in the legal nature of values. Have EU values become a part of law or a legal category? Have they become part of the EU legal order? The confirmation of the legal nature of values and their properties as a separate legal category of the EU's legal system would have far-reaching consequences in the future shaping of the interpretation, application, and development of EU law, national legal systems of Member States and of third countries that cooperate with the EU. The absence of such a transformation and property of values would significantly reduce the potential for influence

and significance of the core values of the EU. The article defines which values are the core values of the EU. The author draws a conceptual distinction from related legal concepts and categories, primarily principles and norms. The author formulates law's main characteristics or attributes from the perspective of both Legal positivism and natural law doctrine, namely: normativity, binding nature, formal certainty, systematicity and coerciveness or liability, compliance with the ideals of freedom, justice, and fundamental human rights. It also analyzes the compliance of values with these attributes or key characteristics. The analysis confirms that the core EU values enshrined in Article 2 of the TEU meet these criteria, and the author concludes that values are a new category of law that has emerged within the EU legal order. The author uses mainly doctrinal legal and inter-disciplinary legal research methods to characterize the basic concepts of law and the concept of values, as well as to identify and formulate their main attributes. The comparative method is used to compare values with related legal categories, in particular principles and norms, to determine their common and distinctive features. Deduction techniques were used to identify the main characteristics of law from the perspective of Legal positivism and natural law doctrine and assess the compliance of the EU's core values with these features.

## 1. The Concept and Properties of Values

The Oxford Dictionary defines value as “the property of being useful or important.”<sup>1</sup> Similarly to many other languages (English “value,” German “Wert,” French “Valeur,” Spanish “costo,” Polish “wartość”), the term “value” is linked to the cost<sup>2</sup> or the significance of something. That is, in general language use, the emphasis is on the significance, importance, or usefulness of something, i.e. on certain properties.

<sup>1</sup> Oxford Learner's Dictionaries, *Value*, accessed June 7, 2024, [https://www.oxfordlearnersdictionaries.com/definition/american\\_english/value\\_1](https://www.oxfordlearnersdictionaries.com/definition/american_english/value_1).

<sup>2</sup> The reference to value is often associated with the borrowing of this term by philosophy from political economy, where value was understood as a purely economic value, which denotes the ability of a product to be useful for a person, satisfying a certain need. For more details, see: Iryna Streletska, “Value as a Subject of Socio-Philosophical Analysis (Methodological and Linguistic-Semantic Aspects)” (PhD diss., Donetsk National University, 2008), 101–4.

Values can be objects of the material or spiritual environment, but also phenomena, objects, and their properties, as well as ideas that embody social ideals.<sup>3</sup> The key property of such objects or items is their capacity to be needed, necessary, significant, and important, and the ability to satisfy the needs and interests of a person, society, or humanity. Another property of values is that they serve as a basis not only for evaluation but also for making choices and decisions. G. Giordan characterizes them quite well as “beliefs and ideals that form the basis for choices and preferences, both individual and collective [...] and are defined as what is ‘good’ and what is desirable and capable of making a person happy.”<sup>4</sup> Similarly, Thesing describes them as “standards that determine the direction, goals, intensity, and choice of human behaviour.”<sup>5</sup>

Professor Calliess describes them as the basic attitudes of a society or individuals, characterized by a particular strength of conviction about their correctness.<sup>6</sup> Values can be compared to a system of coordinates<sup>7</sup> or a compass used by people as human beings in an organized society,<sup>8</sup> or operating

<sup>3</sup> Krystyna Zhebrovska, *Universalism and Relativism of Legal Values in the Dialogue of Legal Systems: A Monograph* (Odesa: Phoenix, 2018), 10.

<sup>4</sup> Quoted in: Dario Čepo, “European Values in Croatia and the European Union: The State Of Affairs,” in *European Values and the Challenges of EU Membership Croatia in Comparative Perspective* (Zagreb: Centar za demokraciju I pravo Miko Tripalo, 2020), 24, accessed June 7, 2024, <https://tripalo.hr/wp-content/uploads/2020/10/European-Values-and-the-Challenges-of-EU-Membership-1-70.pdf>; Giuseppe Giordan, “Values,” in *The Blackwell Encyclopedia of Sociology*, ed. George Ritzer (Blackwell, 2007), 5176.

<sup>5</sup> Josef Thesing, *Die Europäische Union als Wertegemeinschaft*, 10, accessed June 10, 2024, [https://www.kas.de/c/document\\_library/get\\_file?uuid=22e5a011-3e72-fa6e-5d74-77b0-e8f79e61&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=22e5a011-3e72-fa6e-5d74-77b0-e8f79e61&groupId=252038). It should also be noted that although he mentions their ethical nature, he insists that values are far from being moral precepts, as society has to live by them, to take them as a guide. As an example, he cites democracy, which cannot be forced by the state, but the majority of society should feel the need to live in accordance with the democratic consensus. See p.10.

<sup>6</sup> Christian Calliess and Matthias Ruffert, *EUV/AEUV. Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtscharta* (C.H. Beck, 2011), 33.

<sup>7</sup> Yuliya Lypovets, “Legal Values as Ideals and Compromises” (PhD diss., National Academy of Internal Affairs 2021), 74

<sup>8</sup> Roberta Astolfi, “Value in Law: Concept and Application within the Legal System of the EU,” in *Being a Citizen in Europe: Insights and Lessons from the Open Conference*, eds. Sandra Seubert and Frans van Waarden (Zagreb: 2015), 171, accessed June 20, 2024, <https://www.uu.nl/sites/default/files/being-a-citizen-in-europe-insights-and-lessons-from-the-open-conference-zagreb-2015.pdf>.

system settings that determine the operation of the entire system, regardless of the programs that are installed. Values guide people according to their needs, interests, and inclinations. Thus, in a broad sense, the term “value” is used to refer to phenomena and objects, their features, as well as abstract ideas or ideals that have a positive meaning for people and society and satisfy their needs or interests.

Despite the wide range of terminology in the philosophy of law and legal theory, values are generally understood as a legally recognized imperative that a legal entity is guided by when making decisions.<sup>9</sup>

The core values of the EU are a particularly interesting category of values. They provide the basis for this international organization, which today represents not only an economic or political union, but also a community of values. The core values of the EU are those enshrined in Article 2 of the Treaty on European Union: human dignity, freedom, democracy, equality, the rule of law and respect for human rights, in particular those of persons belonging to minorities.<sup>10</sup> According to Article 3, the EU undertakes to uphold the values, to ensure their observance not only by the EU and its Member States, but also to promote them in the international arena (Article 32), especially with neighboring countries (Article 8) and candidate countries (Article 49).

By values in the sense of Article 2 of the EU Treaty, Hilf and Schorkopf understand “recognized rules that guide legal actors in their decision-making,”<sup>11</sup> guiding principles that are predefined and recognized by the legal system and serve as a guide for interpretation, a standard for legal

<sup>9</sup> Josephine Seidl, “Beitrittsverfahren und Sanktionen als Sicherungsmechanismen für die Werte der Europäischen Union” (PhD diss., University of Erfurt, 2017), 15.

<sup>10</sup> It should be noted that in the 2018 Eurobarometer survey, no conceptual distinction was made, and the following answers were given to the question “Which values best represent the EU” by 39% of EU citizens 33% “human rights,” 32% “democracy,” 22% “rule of law,” 18% “solidarity,” and respect for human life, personal freedom, respect for other cultures, equality and tolerance between 12% and 16% of respondents said that they best represent the EU. The second part of Article 2 of the TEU partially mentions some elements of the values mentioned in the first part of the article, as well as principles of a more social nature – tolerance, equality, solidarity.

<sup>11</sup> Meinhard Hilf and Frank Schorkopf, “Art. 2 EUV [Grundlegende Werte],” in *Das Recht der Europäischen Union: EUV/AEUV: Loseblattausgabe. Kommentar*, 72nd ed., eds. Eberhard Grabitz, Meinhard Hilf, and Martin Nettesheim (C.H. Beck, 2021), para. 19.

evaluation, and “form a legitimating meaning.”<sup>12</sup> In other words, they can be called the core of the EU’s legal order, or maxims that cannot be changed either by the EU or its Member States.<sup>13</sup>

In its opinion, the CJEU included EU values in the constitutional basis of EU law: “[...] the EU has a unique constitutional basis. This foundation encompasses the fundamental values set out in Article 2 of the TEU.”<sup>14</sup>

Democracy, the rule of law, freedom, and fundamental rights have become the structural features of the EU,<sup>15</sup> or “structural specifications and requirements for optimisation within the European Union of states and constitutions.”<sup>16</sup> They are sometimes referred to as the constitutional and legal framework of the EU.<sup>17</sup> According to Professor Monica Claes of Maastricht University, Article 2 confirms “the expression of the European Union’s self-perception, a description of its identity.”<sup>18</sup>

The preamble to the Charter of Fundamental Rights points to the main features of the EU’s core values – the common character of values, their universality, and indivisibility:

The peoples of Europe, forging an ever closer alliance, are determined to live together in a peaceful future based on shared values. Conscious of its spiritual and moral heritage, the Union is founded on the indivisible universal values of

<sup>12</sup> Christian Calliess, “Europa als Wertegemeinschaft: Integration und Identität durch europäisches Verfassungsrecht?,” *JuristenZeitung*, no. 21 (2004): 1034.

<sup>13</sup> Michal Tomášek and Václav Šmejkal, *Commentary on the Treaty on the Functioning of the EU, the EU Treaty and the Charter of Fundamental Rights of the EU* (Praha: Wolters Kluwer Czech Republic, 2024), 1255.

<sup>14</sup> Opinion of Advocate General BOT, Opinion 1/17 of the Court delivered on 30 September 2019, ECLI:EU:C:2019:72, para. 110.

<sup>15</sup> Markus Frischhut, *The Ethical Spirit of EU Values. Status Quo of the Union of Values and Future Direction of Travel* (Springer Cham, 2022), 13, <https://doi.org/10.1007/978-3-031-12714-4>.

<sup>16</sup> Karoline Dolgowski and Dennis Traudt, “Das sind die Werte der EU! – Replik an Lucia Puttrich,” Jean Monnet Saar, accessed November 28, 2023, [https://jean-monnet-saar.eu/?page\\_id=141058](https://jean-monnet-saar.eu/?page_id=141058).

<sup>17</sup> Opinion 1/17 of the Court of Justice (full Court) of 30 April 2019 (CETA), ECLI:EU:C:2019:341, para. 110.

<sup>18</sup> Monica Claes, “How Common are the Values of the European Union?,” *Croatian Yearbook of European Law & Policy* 15, (2019): VIII.

human dignity, freedom, equality, and solidarity. It is based on the principles of democracy and the rule of law [...].<sup>19</sup>

The indivisibility of values means that they cannot be interpreted in different ways, or diminished or levelled down, for example, because of cultural diversity.<sup>20</sup> The universality of values has also been repeatedly emphasized in both international legal instruments and EU documents.<sup>21</sup> This means that these values apply to all people in all countries, although it is clear that different countries may implement and protect them in different ways.

Common values apply not only to the EU, but also to the Member States. They link the values of Member States to those of the EU. Values such as human dignity, democracy, freedom, and the rule of law are enshrined in almost all Member States' constitutions and form the constitutional core of the Member States. Commonality shows that the Member States are like-minded, they share these values, they live by them, and this distinguishes them from other states.<sup>22</sup>

An interesting question is whether values are to be defined as a type of norms, principles, or perhaps some new legal category. Let us consider this question in more detail.

## 2. Legal Values and Norms of Law

The correlation between values and legal norms is an interesting issue. While some scholars identify legal values with norms, J. Datsi believes that legal values are the most general rules of law,<sup>23</sup> similar to the principles of law.

<sup>19</sup> EU(2000) Charter of Fundamental Rights of the European Union, 2000/C 364/01, 7 December 2000, Preamble, paras. 1–2, accessed July 14, 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT>.

<sup>20</sup> Čepo, “European Values in Croatia,” 19, accessed July 14, 2024, <https://tripalo.hr/wp-content/uploads/2020/10/European-Values-and-the-Challenges-of-EU-Membership-1-70.pdf>.

<sup>21</sup> See: EU(2019) European Parliament resolution of 18 December 2019 on the rule of law in Malta following the recent revelations surrounding the murder of Daphne Caruana Galizia, 2019/2954(RSP), para. A, accessed July 15, 2024, [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0103\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0103_EN.html).

<sup>22</sup> Claes, “How Common are the Values,” X–XI.

<sup>23</sup> Jordan Daci, “Legal Principles, Legal Values and Legal Norms: Are They the Same or Different?,” *Academicus International Scientific Journal*, no. 2 (2010): 109–15.

Others believe that these are completely different legal categories,<sup>24</sup> although some values may indeed be enshrined in legal norms,<sup>25</sup> and the other part, which is not directly enshrined in the norms, may be derived from their content through interpretation,<sup>26</sup> or act as moral, cultural or other social norms. According to this approach, values can be transformed into norms if they are institutionalized, i.e. legal mechanisms for their guarantee and protection are created. The consolidation of legal norms may be a component of the formation of such mechanisms. For example, human rights have been enshrined in numerous constitutional provisions, universal and regional conventions on the protection of human rights and fundamental freedoms. In addition, at the level of individual states, fundamental human rights and freedoms have been embodied in the constitutions of European countries, in the separation of legislative, judicial, and executive powers, as well as in democratic institutions such as freedom of speech, freedom of association, free, secret and transparent elections.<sup>27</sup>

In addition to the consolidation of values by norms, the reverse process may be possible, when legal norms can become values or reflect values. In this case, subjects of law will comply with them not only because of their legally binding nature and the possibility of coercion but also because of their internal conviction that values should be observed or fulfilled. If values are not institutionalized, their implementation is ensured not by state

<sup>24</sup> Thus, Ukrainian scholar Kozyubra points out that values, norms, and facts are heterogeneous elements of the structure of law. In addition, he emphasizes that normative formulations should not only be consistent with value ideals but also be subject to values. See: M. Kozyubra, "Principles of Law: Methodological Approaches to Understanding the Nature and Classification in the Context of Modern Globalisation Transformations," *Law of Ukraine*, no. 11 (2017): 147. Also, a well-known Ukrainian international lawyer Victor Muravyov points out that although principles and norms form the basis of EU law, they are completely different categories ("Principles and Values of the European Union and the Legal Order of Ukraine," *Actual Problems of International Relations*, no. 138 (2019): 99). The difference between principles and values is also emphasized by German lawyer J. Seidl: "Beitrittsverfahren und Sanktionen," 15.

<sup>25</sup> Viktoriya Tychyna, *Legal Values of the European Union: A Textbook*, Ministry of Education and Science of Ukraine (Zhytomyr: State University «Zhytomyr Polytechnic», Pravo, 2023), 11–2.

<sup>26</sup> Vasyly Kostytskiy, *Selected Problems of the Theory of Law: Textbook* (Odesa: Helvetica Publishing House, 2022), 54–5.

<sup>27</sup> Natalia Amelchenko, *Values of the United Europe*, NGO "Agency for Legislative Initiatives," accessed November 24, 2023, 1, [https://parlament.org.ua/upload/docs/European\\_Values.pdf](https://parlament.org.ua/upload/docs/European_Values.pdf).

coercion and possible sanctions, but solely by an internal sense of duty and determination to act honestly, fairly, and with dignity.<sup>28</sup> It should be noted that such statements will be correct, but when it comes to the EU's core values, the protection of these values is additionally ensured by special sanctions enshrined in Article 7 of the TEU.

Professor Calliess sees a different relationship between norms of law and values. He argues that every norm is based on at least one value, which is transformed and concretized through them. In this context, in his view, values not only provide legitimation for norms, but also serve as a guiding principle for interpreting and monitoring norms through their content.<sup>29</sup>

Values are, by their nature, more abstract categories than the norms of law or legal regulations from which rights and obligations directly derive. Some scholars justifiably point to the fact that the content of legal values is much richer and more extensive than the content of individual legal norms. Also, legal values may often initially exist in the form of philosophical, political, or religious ideas or customs and only be enshrined in legal norms over time.<sup>30</sup> The core values of the EU, such as the rule of law, equality, and respect for human rights are an excellent example of this. They have long existed as philosophical, religious, and political concepts, although they have had an impact on the legal sphere even before they were enshrined in the founding treaties of the EU. Values have a basic systemic nature. Thus, Article 2 of the EU Treaty states that the EU is based on values. In this respect, values can only be compared with constitutional norms, although even so, they have greater weight and a wider impact. Values can be enshrined in law through legal norms or other means, and in this case, we speak of their institutionalization. However, not all values are enshrined in law. Quite often, values are not limited to specific addressees and are not tied to specific legal consequences,<sup>31</sup> which distinguishes them from principles.

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<sup>28</sup> Ibid.

<sup>29</sup> Calliess and Ruffert, *EUV/AEUV*, 33.

<sup>30</sup> Kostytskyi, *Selected Problems*, 55.

<sup>31</sup> Calliess, "Europa als Wertegemeinschaft," 1038–4.



### 3. Values and Principles of Law

Principles are understood as “basic, initial provisions,”<sup>32</sup> “guiding principles, initial ideas that determine the content and direction of legal regulation of social relations”<sup>33</sup> which “are characterised by universality, significance, higher imperative and reflect the essential provisions of theory, doctrine, systems of domestic and international law,”<sup>34</sup> “basic fundamental rules, which, although broad, are mandatory,”<sup>35</sup> “legal norms that enshrine essential elements of the rule of law,”<sup>36</sup> i.e. these are the most fundamental and general rules of law that define the principles of the rule of law and require specification.

In legal theory, there is an approach according to which legal values are identified with the principles of law, and the common values enshrined in Article 2 of the EU Treaty are called the constitutional principles of the EU.<sup>37</sup> Proponents of this approach sometimes refer to the fact that the values of the EU enshrined in the Lisbon Treaty on the European Union were called principles in previous versions. Article 21(1) of the TEU is also sometimes cited as a confirmation:

In its actions in the international arena, the Union shall be guided by the principles which inspired its creation, development and enlargement and which it intends to promote throughout the world, namely democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the Charter of the United Nations and international law.

<sup>32</sup> Viacheslav Bousel, ed., *The Great Explanatory Dictionary of the Modern Ukrainian Language* (Kyiv: Perun Publishing House, 2003), 1366.

<sup>33</sup> Petro Rabinovych, “Principles of Law,” in *Legal Encyclopedia in 6 vols.*, vol. 5, ed. Y.S. Shemshuchenko (Kyiv: Ukrainian Encyclopedia, 1998), 128.

<sup>34</sup> Yuriy Voloshyn, “Principle,” in *Legal Encyclopaedia in 6 vols.*, vol. 5, ed. Y.S. Shemshuchenko (Kyiv: Ukrainian Encyclopaedia, 1998), 110–1.

<sup>35</sup> Rudolf Streinz, “Principles and Values in the European Union,” in *Europarecht Beiheft: Beiheft 1. Liability of Member States for the Violation of Fundamental Values of the European Union*, eds. Armin Hatje and Luboš Tichý (Baden-Baden: Nomos, 2018), 10.

<sup>36</sup> Andrew T. Williams, “Taking Values Seriously: Towards a Philosophy of EU Law,” *Oxford Journal of Legal Studies* 29, no. 3 (2009): 559, <https://doi.org/10.1093/ojls/gqp017>.

<sup>37</sup> Dolgowski and Traudt, “Das sind die Werte der EU!,” accessed November 25, 2023, [https://jean-monnet-saar.eu/?page\\_id=141058](https://jean-monnet-saar.eu/?page_id=141058).

Such terminological differences, in our opinion, can be partially explained by a certain immaturity of constitutional and legal terminology at the level of the EU. On the other hand, we can indeed agree on certain common features, such as general, fundamental nature, the need to consolidate and detail them in legal regulations to ensure their correct application. For example, Czech scholars quite reasonably point out that EU principles, as well as values, determine the main parameters of the internal organization of the EU.<sup>38</sup> The core values also reflect the content of the relevant constitutional principles.<sup>39</sup>

At the same time, it should be noted that such identification does not have sufficient grounds not only because of the differences in formation, but also because of the systemic, consensual nature of legal values.<sup>40</sup> Their systemic nature can be confirmed by the statement made by the European Parliament in its decision of 3 July 2013, according to which “the common values enshrined in Article 2 of the TEU are the core of the rights of citizens and persons residing in the territory of the European Union.”<sup>41</sup> The position of the Court of Justice of the EU is interesting, as it described these values as part of the autonomous “constitutional basis” of EU law – along with the general principles of EU law, the provisions of the Charter of Fundamental Rights of EU and the provisions of the Treaties.<sup>42</sup> In this way, the Court emphasized the distinction between values and general principles of EU law, but pointed to their common belonging to the core or “constitutional basis” of EU law. Also, former judge of the Court of Justice of the European Union E. Perillo distinguishes between EU values and principles as follows: “Values truly establish order because they are fundamental legal assets that are not available to any public authority, [...] while legal principles provide the legal basis for these orders, since they guide

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<sup>38</sup> Tomášek and Šmejkal, *Commentary on the Treaty on the Functioning of the EU*, 1270.

<sup>39</sup> Calliess and Ruffert, *EU/EAUV*, 32.

<sup>40</sup> Seidl, “Beitrittsverfahren und Sanktionen,” 17.

<sup>41</sup> EU (2013) European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to European Parliament resolution of 16 February 2012) (2012/2130(INI)), para. 1B.

<sup>42</sup> CJEU Opinion 1/17, 30.04.2019, ECLI:EU:C:2019:341, para. 110; see also: CJEU, Opinion 2/13. 18.12.2014, ECLI:EU:C:2014:2454.

the actions of public institutions and protect citizens from any arbitrary use of the prerogatives of the state.”<sup>43</sup>

It should be agreed that the EU’s core values are not only closely related to the principles, but may also include them. Thus, some of the EU’s core values contain general principles of law as components. For example, the elements of the rule of law include the right to an effective judicial protection<sup>44</sup> and the principles of equality before the law and non-discrimination,<sup>45</sup> which have been recognized by the EU Court of Justice as general principles of EU law. The peculiarity of values is that they have a normative and orientation function, which makes it possible to distinguish good from evil.<sup>46</sup>

Although the core values of the EU are currently enshrined in the EU’s founding documents and occupy a key place in this document, it is not entirely clear whether this category is legal and whether its features are inherent in the law.

Without attempting to delve into the basic concepts of the understanding of law (Legal positivism, natural law theory, sociological, psychological school, integrative approach, etc.),<sup>47</sup> and without attempting to

<sup>43</sup> Ezio Perillo, “National Identity Versus European Identity: From the Acquis Communautaire to the European Union’s Rule of Law,” accessed April 30, 2024, <https://free-group.eu/2022/03/07/national-identity-versus-european-identity-from-the-acquis-communautaire-to-the-european-unions-rule-of-law/>.

<sup>44</sup> CJEU Judgment of 27 February 2018, Associação Sindical dos Juizes Portugueses, Case C-64/16, EU:C:2018:117, para. 35; CJEU Judgment of 13 March 2007, Unibet (London) Ltd and Unibet (International) Ltd v. Justitiekanslern, Case C-432/05, ECLI:EU:C:2007:163, para. 37; CJEU Judgement of 22 December 2010, DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland, Case C-279/09, EU:C:2010:811, paras. 29–33.

<sup>45</sup> CJEU Judgement of 14 September 2010, Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v. European Commission, Case C-550/07-P, EU:C:2010:512, para. 54.

<sup>46</sup> Udo Di Fabio, “Grundrechte als Werteordnung,” *Juristen Zeitung* 59, no. 1 (2004): 3.

<sup>47</sup> The natural law doctrine considers law from the standpoint of the moral principles of justice, freedom, and equality inherent in it, which are conditioned by the nature of man himself. Accordingly, only a normative phenomenon that corresponds to public perceptions of freedom, equality, and justice can be considered law. A key element of the natural law doctrine is the concept of natural inalienable human rights and fundamental freedoms. According to legal positivism, law is the rules enshrined in laws and other regulations that are established and enforced by the state, i.e. it is the so-called positive law. As for human rights, i.e. subjective rights, they can be granted by the state, or taken away or restricted by

formulate any general or average definition of the concept of law,<sup>48</sup> since the German philosopher I. Kant was sceptical about attempts to formulate a definition of the concept of law, instead formulating only some essential properties of law.<sup>49</sup>

To this day, no universal definition of law has been formulated and cannot be formulated, and the most thorough studies focus on the analysis of the process of cognition of law, explanation of law, or its individual features. If we take law as an objective phenomenon as a basis, the following

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it. The sociological school of law is based on the so-called “living law,” i.e. social relations that are protected by the state. The law is actually made by courts and other public officials in the field of law enforcement. It is not the rules that are primary, but social relations. The legislator does not create norms, but only formulates them. Representatives of this school of thought pay attention not so much to written law as to judicial practice. The psychological school of law is somewhat less controversial. Its representatives consider law to be a manifestation of legal consciousness, a phenomenon of the human psyche, certain subjective experiences and emotions that reflect real life. There are also postmodern types of legal understanding (phenomenology, hermeneutics, anthropology and synergetics of law), and integrative approaches (liberal-legal, communicative, dialogical, realistic-positivist, invariants of legal understanding), which combine the principles underlying the previous approaches in different proportions. Read more about different types of legal understanding and schools of law: Kostytskyi, *Selected Problems*, 74–156; Mykhailo Kelman and Vasyl Stratonov, *General Theory of Law: Textbook*, 6th ed. suppl. (Kherson: OLDi-PLUS, 2020), 38–51; Marko Tsvik and Olexandr Petryshyn, eds., *General Theory of State and Law: Textbook for Students of Law Universities* (Kharkiv: Pravo, 2009), 141–5; Aleksei Yushchik, *Dialectics of Law: General Doctrine of Law (Critical Analysis of General Legal Concepts)* (Kyiv: “Law of Ukraine”; In Jure, 2013), 620; Oleg Leist, *The Essence of Law. Problems of the Theory and Philosophy of Law* (KNT Publishing House, 2021), 340–63; Herbert Hart, *The Concept of Law* (Kyiv: KNT, 2021), 262–82; Robert Alexy, *Begriff und Geltung des Rechts* (Agency SIR RGB, 2005), 13–152; Leo Strauss, *Natural Law and History* (Kyiv: KNT Publishing House, 2021), 123–57; John Finnis, *Natural Law and Natural Rights* (Kyiv: Centre for Educational Literature, 2021), 19–56.

<sup>48</sup> Yushchik describes law as “a normative method of social management by which a ruling subject, interested in preserving the unity of society, sanctions (establishes and maintains) the rules of conduct that constitute the social order necessary, from his point of view, by denying arbitrariness and establishing in the communication of subjects an objective will that expresses the law of their conduct and subordinates their individual will to it as a positive law.” Yushchik, *Dialectics of Law*, 632.

<sup>49</sup> Immanuel Kant, *Works in Six Volumes*, vol. 4, part 2 (Moscow, 1965), 139–41. From the standpoint of philosophy, he identifies the following properties of law: it concerns only external, and moreover, practical relations between people (and not thoughts or desires); through law, the actions (concessions) of some people are combined with the actions of others in terms of the universal law of freedom; law is a mutual coercion that protects common freedom.

legal properties or attributes are usually cited: normativity, binding nature, formal certainty, systematicity, and coerciveness or liability. Given the developments of the natural law doctrine, it is necessary to take into account the compliance of law with the ideals of freedom, justice, and fundamental human rights.

Taking these features as a basis, it is necessary to take into account the peculiarities of international law and the law of the EU, and, in particular, the limited possibilities of coercion.

Normativity means that law regulates the behavior of legal entities and determines the degree of their freedom. It covers generally binding rights and obligations for an indefinite number of legal subjects (impersonality), and can be applied for a long time and repeatedly to an indefinite number of life situations. Positivists associate normativity with legal norms, although this understanding is somewhat narrow.<sup>50</sup>

The values of EU law enshrined in the EU Treaty regulate the behavior of both the EU and its Member States. For example, Article 3(1) of the TEU states that the purpose of the Union is “to promote peace, its values and the well-being of its peoples (para. 1).” Article 3(5) refers not only to the observance, but also to the promotion of values. The EU is obliged to implement values not only within its borders but also in relations with third countries. For example, Article 5 of the TEU states that “In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens,” “The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to safeguard its values [...]” (Article 21(2a)). The obligation to safeguard values rests not only with the EU, but also with the Member States, which, according to Article 32, through convergence of their actions, shall ensure, “that the Union is able to assert its interests and values on the international scene.” Article 49 of the TEU requires candidate countries to “respect” the values referred to in Article 3 and to be “committed” to their promotion. Thus, the values regulate the behavior not only of the EU and its Member States, but also of other countries with which the EU cooperates, and especially of countries

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<sup>50</sup> More about normativity: Alla Babiuk, “The Concept of Normative of Law,” *University Scientific Notes* 52, no. 4 (2014): 15–21.

applying for EU membership. The content of the fundamental values and the rights and obligations arising from them are described in more detail in the EU Charter of Fundamental Rights (chapters I–VI). These rights and obligations can be repeatedly applied to an indefinite number of subjects. Thus, the requirement of normativity can be considered satisfied.

The binding nature of law is ensured through legitimation and coercion. Legitimation implies the recognition of law as an authoritative regulator. It should be noted that the authority of EU law is ensured by the supreme legal force granted to EU law in the domestic legal orders of the Member States. In addition, the EU legal order is considered one of the most efficient in the world and enjoys a high reputation for effective regulation of relations both within and outside the EU. In addition, all amendments to the founding treaties, including the Lisbon Treaty, which enshrines the EU's core values, require ratification by all EU Member States.

Formal certainty of law implies that it is enshrined in clear forms – sources of law. This ensures the accuracy, clarity, and predictability of law. It should be noted that the EU values are enshrined not only in the Treaty on European Union and the Charter of Fundamental Rights as its component. The Charter devotes six chapters to the regulation of values. In addition to the sources of primary law, values are mentioned in numerous acts of the EU institutions and enshrined in agreements with third countries, in particular in the Association and Partnership and Cooperation Agreements, as well as in numerous judgments of the EU Court of Justice.

With regard to coercion,<sup>51</sup> considering the specifics of the EU's legal order, it is more correct to speak of liability. Article 7 sets out sanctions for gross violation of EU values. Thus, according to Article 7(3) of the TEU, if the European Council finds that a Member State has persistently and materially violated the values referred to in Article 2, “the Council may decide by a qualified majority to suspend certain rights of the Member State concerned arising from the application of the Treaties, including the right to vote of the representative of the government of the Member State in

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<sup>51</sup> Kelsen wrote that “Law differs from other social orders in that it is a coercive order. Its special feature is the use of coercion; this means that an act envisaged by law as a consequence of a socially harmful act must also be carried out against the will of the addressee, and in case of resistance on his part - with the use of legal force” (H. Kelsen, *Pure Theory of Law* [Universe, 2004], 45).

the Council.” The EU Treaty provides for separate procedures for holding Member States accountable for violations of the rule of law, which have already been applied to Poland and Hungary.

Some critics have pointed out that suspension of the right enshrined in Article 7(3) is not solely a legal liability, but rather a political one. We can only partially agree with this. In addition, Article 258 provides for a procedure for bringing Member States to justice for breaches of Treaty obligations, including breach of Article 2 TEU, which is considered by the Court of Justice of the EU. It can be initiated by individual Member States. The procedure provided for in Article 258 was activated by the EU Court of Justice, in particular, in cases C-619/18, *Commission v. Poland* (independence of the Supreme Court, paras. 58 and 59), C-192/18, *Commission v. Poland* (independence of ordinary courts, paras. 106 and 107). Thus, the violation of EU values enshrined in EU treaties is a ground for initiating proceedings in the EU Court of Justice. The Court cannot consider violations of certain social or moral norms or philosophical concepts if they are not legal in nature and do not form an obligation under EU law.

The systemic nature of law implies that it is a set of interrelated and interdependent elements that interact with each other. The EU values are not only part of the EU legal system but are an integral part of its *aquis communautaire*.<sup>52</sup> In addition, the values of the EU form a separate system of values, and are interconnected. For example, references to values are made in various articles of the EU Treaty, including Articles 2, 5, 13, 21, 32, 49, the preamble, and the Charter of Fundamental Rights, which is a component of the EU Treaty. In terms of content, the values are also closely linked. They are mutually reinforcing and together they aim to ensure the primary value of respect for human dignity.

Considering compliance with the ideals of freedom, justice, and fundamental human rights as properties of law, it should be noted that the EU

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<sup>52</sup> There is no unambiguous interpretation of the term itself. While some scholars, as well as the Draft Treaty on a Constitution for Europe, identify it with the legal system of the European Union, EU law or a set of mutual rights and obligations binding on all EU Member States. For more details, see: Roman Petrov, “*Acquis Communautaire* as a Component of the Phenomenon of the European Union Law,” *European Law*, no. 1 (2012): 54–66; Victor Muraviov, “The *Acquis Communautaire* as a Basis for the Community Legal Order,” *Miskolc Journal of International Law* 4, no. 2 (2007): 38–45.

values themselves embody these ideals and are aimed at achieving them, so this feature is obvious and does not require proof.

Thus, it can be argued that the EU values enshrined in Article 2 of the TEU meet all the criteria of law, including normativity, formal certainty, binding nature, systematicity, liability, compliance with the ideals of freedom, justice, and respect for human rights. Values as elements of EU law have specific features in relation to the principles and norms of EU law, although they are mutually related to them through institutionalization of values as they can be affirmed in the norms and principles of EU law. Thus, the fundamental values of EU law have become not only a separate legal category of EU law, but have become a basic systemic element of the legal system and the *aquis communautaire*, a key element on which the EU as a union of values is based. The transformation of EU values into a distinct legal category of the EU's legal order, and their transformation to the essential core element of EU Aquis will have far-reaching consequences in shaping the development of EU law, national legal systems of EU Member States, third countries, and other international actors that cooperate with the EU.

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