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THE EUROPEAN CONSTITUTIONAL ADAPTATION AND THE IMPETUS OF THE ACCESSION PROCESS TO ITS IMPROVEMENT

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Abstract

In the context of the accession of the Western Balkans to the EU, which geopolitical challenges have recently pushed to completion, the defence of fundamental European values and the institutional principles, that are their expression, is becoming increasingly urgent. A new commitment has emerged on the part of the European Union to reassert its unity and its responsiveness to welcome the new candidates, imposing a revision of the institutional system within which enlargement must take place. The eastward enlargement of 2004-2005, based on conditional rules, imposing respect for democracy and the rule of law, already revealed that the deepening of the EU's constitutional set-up cannot be separated from the opening of the negotiations with potential new members. Indeed, the absence of clear rules governing the entry of new States, which would, for their part, undertake to respect the obligations arising from European law, on the one hand, and the presence of an incomplete apparatus of sanctions for cases of violation of these obligations, on the other hand, would impede the orderly development of the integration process. As will be seen, reaffirming that respect for fundamental values within the meaning of Article 2 TEU constitutes a primary, non-negotiable and mandatory obligation, especially at the time of enlargement, is of absolute importance, and it is equally important that this obligation be promptly guaranteed by political and jurisdictional remedies of a punitive nature. On the contrary, a disengagement on such issue would undermine the credibility of the European project whose historical and ideological significance is based on an identity common to European nations.

Keywords: *Fundamental values, crisis, sanctions, enlargement, constitutional reform.*

Introduction

The geopolitical storm that has engulfed Europe has brought the Union's enlargement process back onto the European institutional agenda with greater momentum. It has, however, made the alignment of the States to a common vision even more complex, preparatory for a coherent, credible and incisive enlargement.

Far from adopting fast track solutions, the Member States seem to have looked with distrust at the possibility of new entries, mindful of experiences of conflict with unconsolidated and vulnerable democracies, that demonstrated to be unwilling to cede a part of their sovereignty.

Currently, the driving idea of the European Union is to restore its authoritativeness, that has been taken away from it for too long through the continuous insubordination of some members and, at the same time, to bring back to unity that supranational identity on which the Union has been conceived and built.

With the title "*Sailing on High Seas*", on 18 September 2023, a group of 12 Franco-German scholars developed a program of institutional reforms for the European Union which should accompany the now long-standing accession process of the Western Balkans[1]. Before the ship sinks, according to the group of experts, it is necessary to take note of the impossibility on the part of the European Union to proceed with a new enlargement, both from a political and institutional point of view, and the non-immediacy of a process of substantial change, including the possible reform of the Treaties, which will have to involve, at least, the entire 2024-2029 legislature.

Despite the admirable speeches of the European Commission on the potential of new entries, as a necessary historical step to enhance the European integration[2], the democratic reconstruction of the *applicants* will require a currently inestimable amount of time and the transformation of their *status quo,* in the most compliant way possible with advanced democracies, requires considerable efforts. It must not only concern the strengthening of the mechanisms for the protection of common values in view of further participants, but also the renewal of the Union's ability to adapt itself and this latter will depend on the Member States' acknowledgement in carrying out reforms that make the Union more responsive to the challenges posed by the new generations.

It is clear that a lack of commitment at the internal level to orient the States to fully and effectively recognize the conditional, legal and democratic obligations, would risk definitively imploding the project of a larger and more supportive Europe, gathered around a common identity .

The international crises and the growing disaffection with the European Union and its representative institutions, which has turned into the expansion of anti-democratic conduct on the part of some governments, have made the synthesis of the accession process of the new candidates even more complex, currently requiring more accuracy and critical sense.

It is not sufficient that Article 49 TEU, which dictates the procedural rules for accession, allows continuous adaptations to the existing Treaties through accession agreements, since those changes to the functioning of the European Union appear to be excluded; this latter, instead , is considered an *acquis*, non-negotiable, which candidates must comply with and which is not directly linked to accession.

The entire European constitutional system, which common values and the rule of law are part of, is, in particular, the legal framework within which all States, without any distinctions, should be able to act, because the recognition of democracy and human rights is the minimum ideological substratum on which any type of relationship between them and the European Union is based. Also included in this reasoning are those mechanisms that monitor and protect the primary interest of the European institutions in ensuring that democracy, the rule of law and human rights are respected, avoiding those backlashes that seriously jeopardize the stability of the Union.

What we reflect on here is that the future accession of new Member States is closely connected with the refinement of constitutional construction at supranational level and these two paths, irreversibly, condition each other and influence each other. The constitutionalization of the European Union is already at a very advanced stage, but much still needs to be done for it to reach its completion.

A necessary observation in this context is that, for example, the fifth Eastern enlargement of 2004-2007, which has allowed the entry of ten Central and Eastern countries into the EU, contributed largely to the constitutional process in Europe (Sadurski, 2010). And there is no doubt that the challenges posed by the adaptation of the Western Balkans to the common framework of the Union may, in turn, give impetus to a further improvement of the European Constitution, being, for its part, influenced by the growing development of it.

[1] Report of the franco-german working group on EU institutional reform, *Sailing on High Seas*: *Reforming and Enlarging the EU for the 21st Century*, Paris-Berlin, 18 September 2023.

[2] Communication from the European Commission, A credible enlargement perspective and a stronger EU commitment to the Western Balkans, COM(2018) 65, 6 February 2018.

According to a study conducted by the EP and its AFCO Commission in 2019 on the constitutional adaptation of enlargement[3], in the political and legal debate on the topic, among the various relevant aspects, one specific has emerged, namely the identification of the most suitable means to ensure respect for fundamental European values.

Indeed, the latter is a fixed point in all processes of accession to the European Union but, in some ways, the candidates have moved away from it after the accession. Two rationales are to be found in the gaps accumulated in the contemporary adaptation of the European institutional and constitutional system: one is the powerful adhesion of new members, the second is the almost total European disinterest in monitoring their commitment to comply with those obligations deemed necessary to realize the project of a Europe of values.

In this regard, this paper aims to highlight that, despite being a dutiful objective that the European institutions never loose sight within their mandate, the European constitutional adaptation, in the principles that identify the European legal framework, can be represented as a hyperbole whose path has been not linear at all. Preliminarily, it will be noted that an important component that the expansion to the East in 2004 has diligently added to the European nucleus of fundamental values is the introduction into the European legal system of heterogeneous mechanisms of control over democracy, rule of law and human rights; in particular, the Treaty of Amsterdam has laid the foundations of the European constitutionalization (par.1).

Article 7 TEU will be described as the result of the institutional demand to defend democracy and human rights in the face of the acceptance of countries to which liberal ideas are unknown (par.2). In this context, however, article 7 procedural obstacles, due to its eminent political dimension, will be overlooked, but, on the contrary, it will be noted that the limitations it bring reflect a strategy that has hindered the development of an advanced constitutional system (par.3).

Indeed, the European Constitution of values has progressively failed as a common liberal democratic model due to the intrinsic deficits of the system: not surprisingly, the sanctioning procedure referred to in Article 7 TEU has proven to be insufficient to repress any form of regression and to protect the Union vulnerability against destabilization phenomena.

In this regard, attention will be drawn to the fact that, on the topic of how to safeguard the rule of law and democracy in Europe, the Treaties are not and cannot be considered self-correcting, because Article 7 TEU must be appropriately revised to constitute the only effective instrument for protecting the construction of a unitary constitutional policy on a supranational level.

Otherwise, since it cannot be denied that the creation of Article 7, in its preventive and sanctioning effects, is the product of a broader constitutional affair, together with a renewed common political consciousness, it could constitute at least a conceptual paradigm to redefine the constitutional reform project in the European Union and, therefore, a real contribution to allow it to better include new members and make them an essential part of its modernized institutional building.

1.The importance to refine the European constitutional framework through its adaptation capacity.

The first major European constitutional reform must be dated back to the fifth Eastward enlargement, when the need for a new constituent phase for the Union, based on the institutional renewal of the Organization, emerged from the European Council in Copenhagen in 1993, which started the accession negotiations and established the conditions.

[3] European Parliament, Directorate General for Internal Policies of the Union, *Constitutional Challenges of the Enlargement: Is Further Enlargement Feasible without Constitutional Changes?*, PE 608.872, March 2019.

Undoubtedly, in the intergovernmental conferences of 1996 and 2000, preparatory to the Treaty of Amsterdam, the need to deepen the link between the institutional capacity of the Union to absorb new members and enlargement was made clear in a democratic and progressive spirit, as well as the inevitable impact of the latter on constitutional issues (De Búrca, 2004)[4].

The prospect of the European institutions to defend the principles expressing the rule of law, such as democracy and human rights, which, in parallel, as highlighted in Copenhagen, appeared closely connected to the need to strengthen the protection of the European constitutional order.

A discussion was inevitable with States which, in their historical-political past, had dealt with regimes extremely distant from those liberal democratic and in which the rule of law was the epitome of an anti-democratic system reluctant to respect for human rights (Alston & Weiler, 1998).

Basically, during the years that from 1993 to 2004 led to the accession of the CEECs (Cremona, 2003), the debate between the supranational institutions was intersected by two macro-themes: one relating to the strategy for membership of a large number of States within the EU; the other concerned the new European constitutional structure, which among many aspects had to be structured in such a way as to give greater value to the protection of fundamental values.

In fact, the subsequent Treaty of Amsterdam brought about important changes, transforming concerns about respect for democratic standards and human rights into a real legal basis of reference for Member States and candidates[5] and, moreover, introducing a minimum level of mandatory guarantees for States even outside the scope of implementation of Union policies.

In parallel, the aim of making the rights of individuals constitutionally binding prepared the ground for the adoption of the Charter of Fundamental Rights of the Union, which became a source of primary law in the 2000s (Bronzini, 2019; Nascimbene 2021)[6], and for the adoption of the first sanctions procedure against States in which a "*serious and persistent*" violation of democratic principles is recognisable (Kochenov, 2017; Pech, 2020).[7]

What is more, for the benefit of a constitutional framework that prepared the European Union to respond to the most important institutional challenges of enlargement, with the Cooperation and Verification Mechanism, established in 2007 to monitor the internal progress of Romania and Bulgaria, the European Commission pressured candidates to gradually comply with respect for the rule of law and judicial independence as political pre-conditions for membership (Schroeder, 2016).

Therefore, the constitutional framework generated by the Amsterdam revision was destined to last over the years, so much so as to survive the Nice impasse, where, in truth, a significant response to the problem of the Union's institutional adaptation to the upcoming Big Bang did not seem to be offered.

The most relevant reform project, resulting from the Convention on the Future of the Union of 2002-2003[8], was brought into the Treaty of Lisbon, which, for its part, confirmed that the functioning of the institutional system was scarcely altered by the hypertrophic enlargement to the European bureaucratic apparatus (Dehousse et al., 2006; Best et al., 2008).

The Lisbon revolution further confirmed that the attempts to institutionalize a sustainable protection network to the benefit of the European democratic legal system are not separated from the commitment

[4]Corfu European Council, Presidency Conclusions, Part IV: *"Preparation for the 1996 Intergovernmental Conference",* 24 and 25 June 1994. Retrieved from: https://www.europarl.europa.eu/ .

[5]Articles 6 par.1, which lists the principles of freedom, democracy, respect for human rights and the rule of law, as principles on which the Union is founded and 49 TEU, which sets as a preliminary condition for the attribution of candidate status in compliance with the previously mentioned principles.

[6]The Charter was adopted in 2000 in Nice and amended a second time in Strasbourg in 2007. With Lisbon in 2009 the Charter became binding under primary EU law.

[7] Article 7 TEU. *Ex multiis*, see SADURSKI W. (2010), which, on the basis of numerous resolutions of the European institutions on the subject, fully analyzes the connection between enlargement and the sanctioning mechanism.

[8]Laeken Convention of 2001 which prepared the Draft Treaty establishing a Constitution for Europe.

towards an enlarged political Europe, as a community based on the annulment of divisions and on the streamlining of its composite nature and of its multidimensional policies.

Nevertheless, it did not add anything that emerged beforehand.

As a matter of fact, the need to reconstruct the candidates' domestic institutions, along with the accession negotiations, gave more impetus to the structural reorganization of the Union's legal system.

These statements are reflected in the objective datum that the intention to Europeanize fundamental freedoms and human rights, which, moreover, were considered general principles belonging to the European legal framework, found confirmation in regulatory provisions, which gave imperativeness to the commitment of the new democratized member States to respect them and made the accession process irreversible.

This last aspect is inextricably linked to the fact that compliance with the obligation to protect democracy was supposed to cement the membership of the States to the Union and consolidates their membership. And not only. On the side of the European institutions, the imposition of severe conditionality meant the strengthening of their democratic legitimacy, in the face of communities which had to be motivated to accept a new common identity. In this context, the European Union took on a well-defined systemic-constitutional connotation, based on the rule of law and the principle of legality, also placed as a limit on the States' action, so as to dissuade them from dangerous returns to the past.

In particular, a lesson from the fifth enlargement, to which the greatest constitutional impetus should be attributed, was that the unitary dimension, due to the idea of creating a European constitutional Union, is full of strong symbolism, namely that the project of European construction, in the phase preceding the enlargement of the Union, demands respect for fundamental rights and fundamental democratic principles. And the most solid warning to be addressed to future Central and Eastern members was that the cost of a superficial democracy could cause the suspension of the accession procedures, with equal gravity of the possible expulsion of the Member States.[9]

2. Article 7 to refine the European constitutional framework.

Inscribed in the Treaty of Amsterdam, Article 7, as is known, regulates the procedure for cases of violation of European constitutional principles (currently, Article 2 of the Treaty of Lisbon). It should be remind that, pursuant to Article 7 of the Treaty of Lisbon, with a majority of 4/5 and upon a reasoned proposal from 1/3 of the Member States, the European Parliament or the Commission, the Council decides on the "*clear risk of a serious breach*" by a Member State of the values referred to in Article 2, allowing that State to submit observations and make preliminary recommendations to it.

If such determination continues to apply, the European Council intervenes and, acting unanimously on a proposal from 1/3 of the Member States or the European Commission and after obtaining the consent of the European Parliament, may establish the existence of a "*serious and persistent breach*" of the values in question. Faced with such a resolution, the Council, acting by a qualified majority, may decide to suspend some of the rights deriving from the application of the Treaties, including the temporary suspension of Member State's participation in the deliberative process.[10]

Hence, as the result of a close discussion between the Commission, the Council and Member States'representatives, the introduction of Article 7 TEU into EU primary law explains the attempt by supranational institutions to manage the wave of East accessions with the institutional keys of liberal democracy and was, therefore, the watershed between the spread of democratic principles and the inability to stem violations of these principles by the Member States (Van Hüllen & Börzel, 2013).

As masterfully reconstructed by Sadurski (2010), the target of the preparatory work of the 1996 IGC in the context of the institutional review process was to steer the European Union to an international

[9]Report of the 1995 IGC Reflection Group established at the Corfu Summit on 24 and 25 June 1994.
[10]Art.7, par.1,2,3 TEU.

structure based on common values, protected by a sanctioning mechanism, as integral part of the institutional review process.

However, although the architecture of the fifth enlargement and its peculiarities had suggested addressing a sort of warning to the Central and Eastern candidates, through the threat of sanctions in the event of anti-democratic conduct, this warning was also addressed to the Member States, whose reluctance to accept the activation of a binding legal mechanism and the eventual interference in national affairs on human rights was already well known at that time.

The obstacles to the approval of the proposal relating to Article 7 [11]were overcome by diverting the procedure towards a markedly political dimension, removed from the judicial control of the Court of Justice, while, on the contrary, an attempt was made to guarantee to a rather extensive extent control over it by the States within the Council.

Indeed, the 1996 discussions resulted in a procedure which, in that context, presented numerous institutional limits such as: unanimity in the Council's deliberation on the verification of the violation, the qualified majority in the imposition of sanctions, the marginalization of the role of Parliament and the absence of the European judges.

Following the Austrian Häider case (Happold, 2000; Merlinger et al., 2001; Leconte, 2005)[12], alongside the punitive purpose, the 2000 IGC[13]underlined the further preventive-warning potential of the mechanism. Indeed, the 2001 Treaty of Nice empowered the Council to prevent and monitor any serious violations, or clear risk of violation, by a Member State of the founding values expressed in the Treaty and the human rights obligations contained in the Charter.

Therefore, the Treaty, as modified, presented a multiplicity of new characteristics. First of all, the event that triggered the procedure is "*the clear risk of serious breach*" and no longer a "*serious and persistent*" violation, thus leaving ample margin for a discretionary assessment (par.1). Pursuant to the new provision, the risk could be deduced, not from contingent circumstances, but must be systemic, structural, therefore, rooted in the national systems.

Meanwhile, the sanctioning phase was not modified in any way (par.2), while, on the contrary, the role of the European Parliament was enhanced, both in terms of initiative and approval. A super majority of 4/5 had replaces unanimity in the deliberative phase and space was left for dialogue with the Member State, a signal of the Commission's granting of a greater margin of flexibility to the benefit of the State concerned as a condition for action , as well as a right of defense for it, before receiving the recommendations. Lastly, the intervention of an independent commission was envisaged, tasked with periodically verifying the health of democracy in the Member State under accusation (a commission, later abolished with the Treaty of Lisbon).

Consequently, the new trace, which is found in the constitutional revolution inaugurated by Amsterdam, is given by the connection between enlargement and the defense of values, the latter being placed as an objective of the Union to be achieved through horizontal, general and transversal mechanisms and being activated even beyond the sectors regulated by European law.

[11]Conference of Representatives of the Governments of the Member States, Approach suggested by the Irish Presidency, *Droits foundationaux* , CONF 3945/96, Brussels, 8 October 1996, p.2.

[12]The entry into the coalition government of the far-right FPÖ party in Austria in 1999 threatened to seriously undermine democracy in the country, prompting an immediate reaction from states members (then 14) in favor of the activation of the procedure referred to in Article 7 TEU, already established with the Treaty of Amsterdam.

[13]Intergovernmental Conference: *the Commission proposes an addition to Article 7 of the Treaty on respect for democratic values* , IP/00/1116, Brussels, 4 October 2000. See also Resolution of the European Parliament containing the European Parliament's proposals for the Intergovernmental Conference, 14094/1999 – C5-0341/1999 – 1999/0825(CNS), A5-0086/2000, 13 April 2000.

Nonetheless, the preparation of the "nuclear" arsenal[14], even before fulfilling a defensive task of the European political and legal order, was conceived as a limit to pluralism, a structural connotation of the Union but also the inevitable result of the differentiated integration between the States.

The vision that has emerged in this phase is that a global transnational policy, which overcomes the division between domestic politics and European politics and crosses the border between internal competences and the competences of the Union , could only be designed on the basis of a constructive comparison with the candidates.

After all, the introduction of a sanction mechanism, albeit included in the Treaties, within a fragmented systemic framework revealed all its unsustainability. More and much more needed to be done.

In fact, in the relations with the newcomers the Union undertook to primarily eliminate all the diversity, provided that they, in turn, strived to promote and respect the EU foundations.

On the other hand, by establishing a general capacity of the institutions in any case of violation of the European foundations, even in those sectors in which the States act autonomously, the Amsterdam constitutional reform was confirmed by the Lisbon revision, which, on its part, definitively confirmed the political nature of Article 7, by abolishing the distinction between European circumstances and national circumstances in which the prosecuted violation is found.

3. The untapped potential of Article 7 TEU.

The positive times which gave origins to Article 7 TEU seems to reached an early expiry. The limits of the disposition became immediately clear. Some of them may be actually listed (Kochenov, 2021).

1. The confinement of the procedure to a cumbersome verification mechanism. The preventive procedure, which in fact aims at establishing a constructive dialogue with the State where the risk of serious violation is barely visible, is not able to work for long. Indeed, the processing of the reasoned opinion on the state of facts in the accused State by the Commission should be anticipated by a realistic analysis of the actions implemented by the State and of the objective data obtained from the application of internal rules, which for the moment do not seem to exist (Kochenov & Pech, 2015b).

2. The vagueness of cases of violation of the rule of law, which remains a cryptic concept. According to the dominant literature, the extension of the scope of the procedure to non-EU sectors would be an advantage.[15]

On the contrary, however, the limit of the legal *acquis* could represent an important threshold for assessing the seriousness of the violation and also becomes an obstacle for any domestic policy which must be, in any case, compliant with European law. The systematic nature of the breach does not seem to draw the line beyond which the States must act so as not to incur a serious breach of the fundamental values, since the assessment of the seriousness in any case depends on very high voting thresholds (unanimity within the Council), and then, by obvious procedural obstacles (Michelot, 2019).

3. The delay in implementing the procedure, a sign of profound indecision on the part of the institutions in activating a mechanism whose immediate result is the pillorying of a Member State. The European reactions to the galloping regression of the rule of law in Hungary and Poland are a case in point. [16]When the Commission has finally decided to activate the sanctioning procedure against Poland, Hungary's veto power has nullified any effort at credibility.

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[14]Expression used a few years later, in 2007, by the former president of the EU Commission, Barroso.

[15]This literature is reflected in the position of the European Commission. See: European Commission, *Article 7 of the Treaty on European Union – Respect for and promotion of the values on which the Union is based,* COM(2003) 606 final, 15 October 2003, 5.

[16]Recommendation 2017/1520 of 26 July 2017, followed by Proposal for a Council Decision on the finding of the existence of a clear risk of serious breach of the rule of law by the Republic of Poland, COM(2017)835, 20 December 2017, accompanied from Recommendation, n.2018/103, 20 December 2017; European Parliament resolution on a proposal inviting the Council to establish, pursuant to Article 7(1) of the Treaty on European Union, the existence of

Conversely, thanks the obstinacy of the European Parliament, which, on the other hand, is seriously intent on taking legal action against the inertia of the European executive, Article 7 TEU has been activated against Hungary, when, by now, the demolition of democratic institutions has proved to be irreversible. Nevertheless, the threat addressed to Hungary has lost strength, due to the Hungarian government's unblocking of its favorable vote on investment programs to Ukraine.

4. The scope of the sanctions. An eventual exit of the State concerned from the political arena does not seem to be deduced, by virtue of the mutual trust that supervises its membership (Besselink, 2017).

The manifest flaws in the structuring of the system posited by Article 7 TEU can still lead to a brief but in-depth consideration.

The juridical constraints placed on the implementation of Article 7 proceedings, such as unanimity, are a direct consequence of more serious political problems. In fact, the scarce use of the disposition is the reflection of that variable geometry and differentiated integration that are necessary to confer stability to the European architecture.

It is undeniable that the vulnerabilities of the European Union in the field of democracy and the rule of law are, *first and foremost*, political, as the ideological pluralism that characterizes the Organization makes its atypical features more hindering. Although a common system of values exists, at least in the interpretation activity of the Court of Justice (Kochenov & Pech, 2021), it remains undeniably impracticable.

The rigidity of the rules pre-packaged by the Treaties not only do not allow regime changes, as this is confined to purely internal competences, but they do not even allow to avoid dangerous regressions in the Member States, which in some cases structural deficiencies are inherent in their constitutional traditions (Dobry, 2000; Albi, 2003; Blokker, 2005). And there's more.

The rise of illiberal regimes and the institutional inability to exploit the nuclear option have weakened the constitutional project in Europe, while, as seen, article 7, originally, was part of such a project as a defensive tool. The theme of the defense of democracy and values seems to emerge from that intra-European discourse, which, today, however, returns to being an urgent question and, more than ever, devoid of a solution.

Conclusions

As seen in the previous paragraphs, Article 7 has arisen in the wake of the constitutional reform of the EU in view of enlargement. Currently, faced with internal dynamics, made increasingly complex by geopolitical challenges, and with the new wave of membership applications from the Balkans, Ukraine and Moldova, it inevitably falls outside the original logic.

Whether, at the time of the Central and Eastern States' accession process, the imposition by the Commission of the democratic conditionality regime was followed by a sanctioning approach towards those States that claimed to ignore it once they entered the EU, today the sanction mechanism of Article 7 TEU, which, in fact, aims at materializing that approach, cannot be perceived as a strategic legal option that efficiently protect the Union from new entries.

On the other side, the institutional conditions imposed to realise the forthcoming accession process cannot be conceived within a legal framework that is not yet adapted to handle the new wave of enlargement and the internal structural elements of the new candidates.

And the most important aspect on which the European Union, not only can no longer hesitate, but is also called to act with greater resoluteness, is the research for a non-fallable method to make the rule of

a clear risk of a serious breach by Hungary of the values on which the Union is founded, 2017/2131, 12 September 2018.

law and democracy binding, and, only as a last resort, give space to mechanisms that avoid resurgences after the candidates are incorporated into the Union.

The trilogy of proposals addressed from the group of Franco-German scholars to the Council contains numerous elements of inspiration in this regard and, not surprisingly, the objective of strengthening the Union's decision-making capacity to face external and internal challenges, also indicated by the report, is associated with the upgrading of the tools for the protection of the rule of law, its fundamental values and democratic legitimacy in the EU. The latter, which, in fact, is a generic and common objective that would be independent of enlargement, is, in parallel, depending from it.

However, facing the democratic crisis which seems to have no setbacks as also confirmed by the results of the new European Parliamentary elections with the victory of far-right parties, the sense of urgency towards a more effective protection of values leads to the necessity of supporting the course already pursued by the European institutions. Along this path, Article 7 TEU, for example, does not currently seem capable of an effective deterrent force.

The reason behind the critical issues attributable to the systematic improvement of Article 7 TEU is far from obvious.

First of all, the absence of a uniform monitoring framework, which assists and supports the examination of compliance with fundamental values, implies double standards in the assessment of the situation in the various European States.

Secondly, the content of the values is excessively generic and abstract; the concept of democracy, in particular, cannot be deduced into the minimum conditions necessary to differentiate a democratic government from a non-democratic one. What is missing is a reliable and influential European procedure which, through continuous and exhaustive evaluation, allows to identify cases that require more massive intervention.

Thirdly, the absence of a commission of independent experts that puts forward legal feasibility proposals to be addressed to the European Council, which is charged by the Treaties with drawing up the admissibility criteria (art. 49 par.1). An important role has been entrusted to the European Agency for Fundamental Rights on the measurement of the indicators of compatibility with the values ex art. 2 TEU, but the candidates appear to be excluded from the comparative procedures.

In its current form, Article 7 TEU would require a revision, at least procedural, which is not actually imaginable, since even a possible integration would have to be unanimously approved during the decision-making process and be subjected to the consent of Parliament. The deputies do not currently appear to be willing to coordinate with the other institutions, which, on their part, are much more cautious on this issue. At least, an organic reform of the procedures presupposes timescales that do not coincide with the speed required by the new accessions.

Yet the legal instrumentation offered by the Treaties allows concrete actions. Suffice it to think of the multiple instruments related to the limitations of financial investments and budgetary constraints that have appeared on the scene in recent years, when episodes of systemic violations make the European institutions' reactions more peremptory and the threat of sanctions more decisive.

For all these instruments, secondary legislation is otherwise more or less sufficient.

However, if concrete actions are not preceded by a real intention to change course and political discrepancies persist on the manners of managing the integration, it will be difficult to aspire to any positive breakthrough.

It remains to be seen whether the Commission is willing to do something more. The 2023 enlargement package to the Western Balkans is for the moment the only means to defuse the institutional

stalemate at European level. At the moment, it offers no more than merely setting guidelines for future reform priorities.[17]

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