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Innovative Strategies to Address Urgent  
Cross-Cutting Challenges

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# The Challenges Involved in Teaching About the Rule of Law as a Fundamental Value of the EU System



Iliina Cenevska 

**Abstract** As the state of the rule of law continues to deteriorate in certain EU Member States, the EU is being presented with a unique challenge—that of protecting the value of the rule of law against internal systematic violations thereof. In the face of these ongoing developments, it has equally become a challenge for instructors at EU and non-EU universities who teach about the rule of law as an EU value to fully deliver the rule of law ‘message’ to their students. This chapter will firstly elaborate on the importance of the rule of law as a baseline principle of the EU framework, providing insight into the current state of play regarding the EU’s rule of law issues. Secondly, the analysis will weigh in on the most appropriate methodological approaches to be employed in the university-level instruction covering the fields of EU Law and EU studies more broadly. Thirdly, the chapter will specifically look into the most suitable and most effective methodological tools for teaching the rule of law as an area of study. Lastly, conclusions will be drawn about the ways in which instructors can improve the methodological toolkit they utilize when teaching about the rule of law as an EU value as well as a general concept, such that would allow students to internalize their knowledge of the different components of the rule of law and, as a result, be prepared to successfully apply this knowledge to practical, real-world situations.

**Keywords** EU values · Rule of law · EU studies · Teaching methodology

## 1 Introduction

The rule of law is crucial to the proper functioning of any given society and yet, as a vastly diverse and complex concept it is still subject to varying interpretations and different ways of applying it. This contribution addresses this complexity while also highlighting the potential difficulties associated with teaching on the rule of law as a

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foundational value underpinning the EU political and legal order. It aims to provide answers to the question regarding the most suitable approaches to be adopted in educating students on the key components of the rule of law and developing their comprehensive understanding thereof.

As a uniquely complex and versatile,<sup>1</sup> but also “somewhat diffuse”<sup>2</sup> concept, the rule of law finds expression in various contexts—national (state), regional (e.g., European, EU) and international. In a general sense, to observe the rule of law means much more than to merely comply with rules.<sup>3</sup> As a legal concept, the rule of law requires that law binds all, including the state and the people.<sup>4</sup> The rationale of the rule of law is rooted in the need to protect individuals from the exercise of arbitrary power,<sup>5</sup> signifying that the actions of the sovereign (in modern times, the actions of those in power) cannot be unlimited nor unbridled.<sup>6</sup> Equally, as a context-dependent concept,<sup>7</sup> the precise content and interpretation of the rule of law is informed by the given historical and geographical setting, the legal and other traditions of the interpreter, and the context in which such interpretation takes place.<sup>8</sup> Although the usefulness and necessity of the idea of the rule of law is universally recognized, there are nevertheless distinct approaches (e.g., *formal* and *substantive*, or *thin* and *thick*) that have been distilled through examining the extent of compliance with *one particular* rule of law concept.<sup>9</sup> The formal dimension of the rule of law derives from the requirement that the governing institutions comply with the rules of ‘formal legality’ to the fullest possible extent—such formal legality denoting that state action is subject to the law and adheres to the core characteristics of the law.<sup>10</sup> Those characteristics include: generality, clarity, promulgation, stability, consistency between rules and behavior, non-retroactivity, non-contradictory rules, and not requiring the impossible.<sup>11</sup>

Fundamental to the organization of any given political system, the concept of the rule of law stems from liberal democracy and is a pre-condition for the exercise of a whole array of civil and political rights which are crucial to democracy and are embedded in any operational legal system.<sup>12</sup> However, this is not to infer that improving the state of the rule of law would automatically improve the state of democracy in a society—while the rule of law and democracy are intricately linked,

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<sup>1</sup> Walker (2009), p. 119.

<sup>2</sup> Carothers (2003), p. 8.

<sup>3</sup> Palombella (2010) and Palombella (2016), p. 40.

<sup>4</sup> Moller (2018), p. 29 and Drinóczi and Bień-Kacała (2021a), p. 17.

<sup>5</sup> Palombella (2016), p. 40.

<sup>6</sup> Palombella (2016), pp. 40, 42; See also McIlwain (1947), pp. 67–92.

<sup>7</sup> Moller (2018), p. 33 and Bedner (2018), p. 41.

<sup>8</sup> Tamanaha (2012), p. 247 and Drinóczi and Bień-Kacała (2021a), p. 11.

<sup>9</sup> Drinóczi and Bień-Kacała (2021a), p. 11.

<sup>10</sup> Moller (2018), p. 29 and Drinóczi and Bień-Kacała (2021a), p. 17.

<sup>11</sup> Fuller (1969), in chapter 2 and Palombella (2016), p. 40.

<sup>12</sup> Carothers (2003), p. 7.

still, deficiencies in the rule of law can frequently be found within democratic political systems<sup>13</sup> (the Hungarian ‘illiberal democracy’ model which will be briefly discussed Part 2 below serves as a poignant example).<sup>14</sup> Moreover, democracy can often times exist alongside considerable shortcomings in the state of the rule of law, even in countries that are recognized Western democracies and serve as a model for developing and post-communist countries.<sup>15</sup>

This contribution focuses on the ‘rule of law’ as a foundational value of the EU’s political and legal system as well as an exceptionally diverse and robust concept in its own right. On account of the rule of law backsliding developments continuing to take place in certain EU Member States, the theme of the rule of law has pervaded the EU discourse as the Union is being presented with a unique challenge—one of protecting the value of the rule of law against some of its own Member States’ systematic violations thereof. In the face of these ongoing developments, it has equally become a challenge for professors (teachers) at EU and non-EU universities who teach the rule of law in its iteration as an EU value to fully deliver the rule of law ‘message’ to their students. The contribution will firstly expand on the importance of the rule of law as a baseline principle of the EU politico-legal framework and offer insight into the current state of play concerning the rule of law in the EU. Secondly, from a pedagogical and didactical vantage point, the contribution will explore the most appropriate methodological approaches to be employed in the university-level instruction covering the fields of EU Law and EU studies more broadly. Thirdly, the focus of the analysis will shift to those methodological tools that are considered as the most suitable for the teaching that specifically addresses the subject of the rule of law. The fourth and last part of this contribution will draw conclusions relevant to the improvement of the methodological toolbox available to professors when teaching about the rule of law in such a way that would allow students to internalize their knowledge of the different components of the rule of law and, as a result, be prepared to effectively apply this knowledge in their professional careers and be able to anticipate and confront the common traps that institutions in power sometimes deploy in order to misrepresent their disregard for the rule of law, giving a semblance that their actions are governed by it.

## 2 Is There an EU-Specific Version of the Rule of Law?

Seeing as the rule of law is a context-related and a time- and location-bound concept,<sup>16</sup> it is worth lending insight into how the rule of law is understood and applied within the EU context. The forging of an EU-specific understanding of the rule of law is logical and even expected for a multi-level governance polity such as the Union

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<sup>13</sup> Carothers (2003), p. 7.

<sup>14</sup> On this topic, see Drinóczi and Bień-Kacała (2021a, b).

<sup>15</sup> Carothers (2003), p. 7.

<sup>16</sup> Drinóczi and Bień-Kacała (2021a), p. 13.

which exercises supranational authority and power and at the level of which law- and policy-making processes take place.<sup>17</sup> It has been argued that when a Member State's compliance with the 'rule of law' is being evaluated, the term is understood as referring to the observance of a particular 'rule of law' concept implemented within a particular (Western) kind of constitutionalism.<sup>18</sup> It therefore follows that the (Western) European states and the European Union have been fostering a distinct kind of constitutionalism that brings with it a particular understanding of the rule of law.<sup>19</sup> Some scholars have made the deliberate choice of using the broader designation 'European' instead of 'EU' rule of law to convey an understanding of the rule of law that is the product of a shared history and a common European heritage of values and principles.<sup>20</sup> In its thinnest legal sense, the European rule of law is a legally enforceable concept that embraces a formal legality, which necessarily encompasses the regulatory and judicial enforcement of EU law.<sup>21</sup> Nevertheless, as a concept applied both at the European and domestic level, the European rule of law is a concept that is more than thin and leaning towards thick given that it not only prescribes features of formal legality,<sup>22</sup> but also (to a given extent) places demands regarding the specific content of domestic laws that would make these compatible with EU rules and principles.<sup>23</sup>

The rule of law figures among the values enshrined in *Article 2 TEU* as values upon which the Union is founded and which are common to the Member States—the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.<sup>24</sup> These are values shared by all the Member States, the Court of Justice of the EU (CJEU) having repeatedly stated that the former have freely and voluntarily committed themselves to these common values and, as such, to respect those values and undertake to promote them.<sup>25</sup> Hence, the EU legal order is based on the fundamental premise that each Member State shares with all the other Member States, and recognizes that those

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<sup>17</sup> Williams (2010), p. 77.

<sup>18</sup> Kochenov (2017), p. 429 and Drinóczi and Bień-Kacała (2021a), p. 16.

<sup>19</sup> Drinóczi and Bień-Kacała (2021a), p. 36.

<sup>20</sup> Drinóczi and Bień-Kacała (2021a), pp. 17–19; Gosalbo-Bono calls it the “European way” of the rule of law as it derives from the EU law system and the system established under the European Convention of Human Rights (Gosalbo-Bono 2010, p. 259).

<sup>21</sup> Drinóczi and Bień-Kacała (2021a), p. 36.

<sup>22</sup> Drinóczi and Bień-Kacała (2021a), p. 19.

<sup>23</sup> Drinóczi and Bień-Kacała (2021a), p. 19.

<sup>24</sup> For a commentary on the terminological inconsistency and qualitative distinction between qualifying the rule of law as a value as opposed to classifying it as a principle, see Cenevska (2020b), pp. 8–9.

<sup>25</sup> Emphasis added; See C-896/19 *Repubblica v Il-Prim Ministru*, ECLI:EU:C:2021:311, para. 61; C-619/18 *Commission v Poland*, ECLI:EU:C:2019:531, para. 42; C-621/18 *Andy Wightman and Others v Secretary of State for Exiting the European Union*, ECLI:EU:C:2018:999, para. 63; C-64/16 *Associação Sindical dos Juizes Portugueses* (Portuguese judges) EU:C:2018:117, para. 30.

Member States share with it, those same values.<sup>26</sup> Furthermore, compliance with the Article 2 values is a condition for the Member States to be able to enjoy the rights deriving from the application of the Union Treaties<sup>27</sup> as well as a necessary condition that any European state applying for EU membership has to meet.<sup>28</sup>

Back in the 1980s, at the time when the *Les Verts* judgment was handed down, the (then) European Economic Community (EEC) was viewed by the CJEU as a *community based on the rule of law* inasmuch as neither its member states nor its institutions could avoid a review of whether the measures adopted by them are in conformity with the Community's basic constitutional charter, the (then) EEC treaty.<sup>29</sup> The CJEU has emphasized in subsequent cases that Member States cannot amend their legislation in such a way as to bring about a reduction in the protection of the rule of law as a "value which is given concrete expression by, inter alia, Article 19 TEU."<sup>30</sup> In particular, Member States are required to ensure that, in the light of the value of the rule of law, any regression of their laws on the organization of the justice system is prevented, and refrain from adopting rules which would undermine the independence of the judiciary.<sup>31</sup> Article 19 TEU is the provision which gives *concrete expression* to the value of the rule of law,<sup>32</sup> entrusting Member States with the responsibility to guarantee the full application of EU law, including the judicial protection of individual rights under that law, by the national courts and tribunals and the Court of Justice (of the EU) itself.<sup>33</sup> In this vein, the second subparagraph of Article 19(1) TEU<sup>34</sup> precludes those national provisions relating to the organization of the justice system which are such as to constitute a reduction in the protection of the

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<sup>26</sup> Emphasis added; See Case C-619/18 *Commission v Poland*, para. 42; Case C-621/18 *Wightman*, para. 63; C-896/19 *Repubblica v Il-Prim Ministru (Repubblica)*, ECLI:EU:C:2021:311, paras. 62; C-64/16 *Associação Sindical dos Juízes Portugueses (Portuguese judges)*, EU:C:2018:117, para. 30; Emphasis added; *Repubblica*, para. 62; *Portuguese judges*, para. 30.

<sup>27</sup> *Repubblica*, para. 63.

<sup>28</sup> See Art. 49 TEU.

<sup>29</sup> Case 294/83 *Partie Ecologiste 'Les Verts' v. Parliament* ECLI:EU:C:1986:166 [1986] ECR 1339, para. 23.

<sup>30</sup> *Repubblica*, para. 63; Also, see, to that effect, judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 108).

<sup>31</sup> *Repubblica*, paras. 63–65; For a discussion on the obligation of non-regression, see Leloup et al. (2021); For a poignant discussion on what the *Repubblica* case adds to the CJEU's case law regarding the rule of law obligations of Member States as well as the EU candidate countries, see Łazowski (2022); For a commentary on how the EU's pre-accession rule of law conditionality matches the post-accession rule of law reality in certain Member States, see Cenevska (2020a).

<sup>32</sup> Emphasis added; *A. B. and Others*, para. 108; *A. K. and Others*, para. 167.

<sup>33</sup> Emphasis added; *A. K. and Others*, para. 167.

<sup>34</sup> Article 19(1) TEU states that: "The Court of Justice of the European Union [...] shall ensure that in the interpretation and application of the Treaties the law is observed. Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law."

value of the rule of law, and in particular the guarantees of judicial independence.<sup>35</sup> The principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, qualifies as a general principle of EU law stemming from the constitutional traditions common to the Member States, which has also been reaffirmed in *Article 47 of the Charter of Fundamental Rights of the EU* (CFREU), which guarantees the right to an effective judicial remedy and to a fair trial.<sup>36</sup>

Confirming the existence of an indisputable link between the meaning of the rule of law as it has been crafted within the confines of the EU legal order and the EU doctrines of direct effect and supremacy, the Court of Justice has invoked the principle of primacy of EU law to accentuate the imperative nature of the Article 19 TEU requirements, by stressing that the effects of the principle of primacy of EU law are binding on all the organs of a Member State and that rules of national law, including constitutional provisions, cannot be allowed to undermine the unity and effectiveness of EU law.<sup>37</sup> The principles of supremacy and direct effect make up the foundation of a full-fledged legal order—that of the EU—whose instruments make *legality* work.<sup>38</sup> The logic behind the rule of law achieved in this way at the EU level revolves around the value of legality, including the principle of effective judicial review as a suitable tool for tackling the non-compliance of the state institutions.<sup>39</sup>

The rule of law places a limitation on the power exercised by domestic decision- and law-makers as such that cannot override the obligations stemming from EU law and has to be performed in accordance with the obligations prescribed by EU law.<sup>40</sup> However, a Member State's failure to comply with the "value aspect" of the rule of law should not always be taken to mean that the Member State concerned neglects the "compliance aspects" of the rule of law and does not comply with EU law at all.<sup>41</sup> The former lines up with the contention that the rule of law (at least its formal legality aspect) does not necessarily have to exist alongside a democratic rule—in a state subscribing to the thin view of the rule of law, democracy (albeit illiberal)<sup>42</sup>

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<sup>35</sup> See *Repubblika*, para. 65; C-824/18 *A.B. and Others (Appointment of judges to Poland's Supreme Court)*, EU:C:2021:153; Joined Cases C-585/18, C-624/18 and C-625/18 *A. K. and Others (Independence of the Disciplinary Chamber of Poland's Supreme Court)* ECLI:EU:C:2019:982.

<sup>36</sup> *Portuguese judges*, Para. 35; See also, *A. B. and Others*, paras. 108 and 144.

<sup>37</sup> Emphasis added; *A. B. and Others*, para. 146.

<sup>38</sup> Palombella (2016), p. 37.

<sup>39</sup> Palombella (2016), p. 37.

<sup>40</sup> Palombella (2016) and Drinóczi and Bień-Kacała (2021a), p. 19.

<sup>41</sup> Drinóczi and Bień-Kacała (2021a), p. 36.

<sup>42</sup> Drinóczi and Bień-Kacała give the example of *illiberal legality* which comes as a by-product of illiberal democracy and illiberal constitutionalism. The authors have found that the governing regimes in Hungary and Poland exhibit distinct characteristics of illiberal democracy and illiberal constitutionalism, the latter being put into place to enable the former (Drinóczi and Bień-Kacała 2021a, pp. 20, 21); Drinóczi and A. Bień-Kacała use the term 'illiberal legality' to describe the 'illiberal' version of the (European) Rule of Law. The term encapsulates the 'Rule of Law situation' in illiberal constitutionalism. Illiberal legality violates the basic tenets of constitutionalism, while at the same time, as a result of EU membership and being part of other international organisations,

can exist alongside significant shortcomings in the state of the rule of law.<sup>43</sup> As a consequence, repairing the rule of law in this instance would not boil down to fixing or amending one single rule—quite to the contrary, the rule of law should be regarded as “the entire picture, seen through the lens of the quality of legality.”<sup>44</sup> Therefore, a Member State charged of infringing the Article 2 TEU values cannot respond by simply amending some of its rules—such a violation would require a revision and a rebalancing of the very rationale of its legal system.<sup>45</sup>

As the rule of law backsliding developments in Hungary and Poland continue to unfold,<sup>46</sup> commentators have singled out these two countries as having forged their own rule of law concepts (Hungarian and Polish, respectively) which depart from the EU’s own understanding of the rule of law as a value and a legal concept.<sup>47</sup> Making a clear break from their communist past, prior to joining the EU in 2004, these Central and Eastern European (CEE) countries went through a unique transformation of their political and legal systems, making use of the rule of law, understood in its “most general” meaning, as one of the guiding principles that helped move forward this transformation.<sup>48</sup> These countries’ endorsement of the rule of law as a concept rooted in the values of liberal democracy was their vehicle on the road towards EU integration and EU accession.<sup>49</sup> Upon accession however, the question of ‘which rule of law?’ for these countries morphed into one of deciding ‘the rule of which law?’ as they witnessed their traditional notions of sovereignty and legal unity being increasingly challenged,<sup>50</sup> which in turn raised controversies over the place of national constitutional rules within the hierarchy of the EU legal order.

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being both politically and legally steered towards accepting certain constraints over the exercise of public power (Drinóczi and Bień-Kacała 2021b, p. 221). Important feature of illiberal legality is the emphasis put on the “instrumental and opportunistic use of the law in both legislation and law-application and adjudication.” (Drinóczi and Bień-Kacała 2021b, p. 222). The law is thus used as a tool of political power, in the sense of the “rule by law” approach without having an understanding of the higher purpose of the rule of law which is to prevent those in power from abusing and instrumentalizing the law (Drinóczi and Bień-Kacała 2021b, p. 222).

<sup>43</sup> Carothers (2003), p. 7.

<sup>44</sup> Palombella (2016), p. 57.

<sup>45</sup> Palombella (2016), p. 57.

<sup>46</sup> For the evolving situation regarding the Rule of Law Conditionality mechanism deployed by the EU in response to the rule of law situation in the two countries, see: European Commission, “*NextGenerationEU: European Commission endorses Poland’s €35.4 billion recovery and resilience plan Brussels*” (Press Release), 1 June 2022 [[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3375](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3375)]; European Commission, Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary. COM (2022) 485 final, Brussels, 18.9.2022 [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0485>].

<sup>47</sup> Drinóczi and Bień-Kacała (2021b), p. 219.

<sup>48</sup> Přibáň (2009), p. 337.

<sup>49</sup> Přibáň (2009), p. 337.

<sup>50</sup> Přibáň (2009), p. 337.

## 2.1 *The Constituent Elements of the Rule of Law as a Fundamental Value of the EU System*

Once the existence of an EU-specific version of the rule of law has been established, the task ahead is to pinpoint the elements that comprise the rule of law as an EU value and by consequence, demarcate the scope and content of the requirement and the mirroring obligation for Member States and EU bodies to observe the rule of law. What are they expected to (not) do? There is a panoply of legal acts and policy documents that the EU institutions have adopted over the years, containing relevant references about the content of the rule of law as a Union value. Light will be shed on some of them.

In its *2014 and 2019 Communications* concerning the EU's efforts to strengthen the rule of law, the Commission has outlined the following essential constituent elements as providing the content of the rule of law: legality (guaranteeing a transparent, accountable and democratic law-making process); legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review; as well as respect for fundamental rights, and equality before the law.<sup>51</sup> The rule of law requires that all public powers function within the constraints established by law, under the control of independent and impartial courts, respecting the values of democracy and fundamental rights.<sup>52</sup> In addition, the developing case law of the Court of Justice of the EU and of the European Court of Human Rights, as well as the documents produced by the Council of Europe, including the work of the Council of Europe's Venice Commission, contribute in a significant way to the practice of enforcement of the rule of law.<sup>53</sup> The Commission has underscored that the foregoing standards for the observance of the rule of law form the bedrock for the respect of the rule of law in all Member States, regardless of their constitutional structures.<sup>54</sup> It has also affirmed that the core meaning of the rule of law has been well-defined and this meaning is the same in all Member States, regardless of "the different national identities and legal systems and traditions that the Union is bound to respect."<sup>55</sup> The former thus rules out the possibility for the Member States to craft

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<sup>51</sup> Communication from the Commission to the European Parliament and the Council: A New EU Framework to Strengthen the Rule of Law, COM (2014) 158 final 11.3.2014, p. 4.

<sup>52</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Strengthening the rule of law within the Union A blueprint for action, Brussels, 17.7.2019 COM(2019) 343 final, p. 1.

<sup>53</sup> Communication from the Commission to the European Parliament and the Council: A New EU Framework to Strengthen the Rule of Law, COM (2014) 158 final 11.3.2014, p. 4.

<sup>54</sup> Communication from the Commission to the European Parliament, the European Council and the Council: Further strengthening the Rule of Law within the Union State of Play and Possible Next Steps, COM/2019/163 final, Brussels, 3.4.2019, Part IV.

<sup>55</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Strengthening the rule of law within the Union A blueprint for action, Brussels, 17.7.2019 COM (2019) 343 final, p. 1.

their own individual understanding and interpretation of the core meaning of the rule of law.

*Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget* (Conditionality Regulation), which establishes rules for the protection of the Union budget in instances where Member State are found to be in violation of the rule of law, refers to the ‘rule of law’ as a Union value enshrined in Article 2 TEU.<sup>56</sup> As such, the rule of law comprises the principles of legality, implying a transparent, accountable, democratic and pluralistic lawmaking process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection and respect for fundamental rights, including access to justice, by independent and impartial courts; separation of powers; and non-discrimination and equality before the law.<sup>57</sup> The Conditionality Regulation lists the following as type of behavior that may be indicative of breaches of the principles stemming from the rule of law: “(a) endangering the independence of the judiciary; (b) failing to prevent, correct or sanction arbitrary or unlawful decisions by public authorities, including by law-enforcement authorities; (c) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.”<sup>58</sup> As clarified in the Commission’s *Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget*,<sup>59</sup> the definition of the ‘rule of law’ provided in the Conditionality Regulation is not intended to provide an exhaustive definition of the concept of rule of law and merely outlines *a number* of the principles that the rule of law comprises—specifically, those that are most relevant to the Regulation’s purpose, which is to ensure the protection of the Union budget.<sup>60</sup>

In 2020, the EU introduced a *European Rule of Law Mechanism* which launched a process for an annual dialogue on the rule of law between the Commission, the Council of the EU and the European Parliament together with Member States, including national parliaments, civil society and other stakeholders.<sup>61</sup> A Rule of Law Report prepared annually by the Commission is the foundation of this new process,

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<sup>56</sup> Art.2 Definitions, Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, pp. 1–10.

<sup>57</sup> Art. 2 of Regulation.

<sup>58</sup> Article 3—Breaches of the principles of the rule of law, Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, pp. 1–10.

<sup>59</sup> Communication from the Commission, Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget, Brussels, 2.3.2022 C(2022) 1382 final.

<sup>60</sup> Communication from the Commission, Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget, Brussels, 2.3.2022 C(2022) 1382 final, p. 3; See judgement of 16 February 2022, Hungary v Parliament and Council, C-156/21, ECLI:EU:C:2022:97, paragraph 227.

<sup>61</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en).

its aim being two-fold: first, to identify rule of law challenges facing the Member States as soon as possible and assist the former in finding solutions for safeguarding and protecting the rule of law and second, from a preventative standpoint, to forestall problems from occurring or evolving further.<sup>62</sup> As indicated by the Commission, the preparation of the annual rule of law reports is part of the EU's efforts to promote and defend its values.<sup>63</sup> The Rule of Law Report screens significant rule of law developments in the Member States by covering four pillars (i.e. key areas for the rule of law): the justice system, the anti-corruption framework, media pluralism, and other institutional issues related to checks and balances.<sup>64</sup> The national parliaments and national authorities of the Member States are invited to discuss the Report while the involvement of other stakeholders at the national and EU level is also encouraged, including relevant input from the Council of Europe and the Venice Commission.<sup>65</sup> The Commission takes full political responsibility for its assessment and the recommendations issued in the Report.<sup>66</sup> The most recent 2022 *Rule of Law Report* includes country chapters that document (positive and negative) developments in the 27 Member States.<sup>67</sup> Equally, the Report provides country-specific recommendations addressed to all the Member States; these recommendations are proportionate to the challenges identified and, as the Commission assures, sufficiently specific to enable the Member States to provide “a concrete and actionable follow-up,” by taking into consideration “the national competences, legal systems and institutional context.”<sup>68</sup> The purpose of these recommendations is to build a continuous dialogue with the Member States, assist them in their efforts to implement reforms relating to the rule of law and detect areas where further improvements may be required.<sup>69</sup>

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<sup>62</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en).

<sup>63</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report The rule of law situation in the European Union, COM/2022/500 final; [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en).

<sup>64</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en).

<sup>65</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en).

<sup>66</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en).

<sup>67</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report The rule of law situation in the European Union, COM/2022/500 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1658828718680&uri=CELEX%3A52022DC0500>.

<sup>68</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report The rule of law situation in the European Union, COM/2022/500 final; European Rule of Law mechanism: Methodology for the preparation of the Annual Rule of Law Report [https://commission.europa.eu/system/files/2022-07/rolm\\_methodology\\_2022.pdf](https://commission.europa.eu/system/files/2022-07/rolm_methodology_2022.pdf), at p. 5.

<sup>69</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report

### 3 The Challenge of Crafting a ‘Core’ Curriculum for the EU Law- and EU Studies-Related Courses

Bearing in mind the complexities surrounding the interpretation and application of the rule of law as an EU guiding principle and foundational value, for teachers at higher education establishments across Europe delivering EU studies-related course content can sometimes be a veritable challenge. This happens to the point where, concerning this particular (broadly defined) subject area, what is being taught and *how* it is being taught *directly affects* the present and future trajectory of the European integration process,<sup>70</sup> understood as such in its internal and external dimension.

Notably, European Union Law as a subject area is sometimes seen as a sort of “anomaly in legal education”<sup>71</sup> given that in the national higher education setting the study of the domestic legal system takes priority while the study of European Union Law is usually conceptualized in reference to categories and concepts of the national legal system.<sup>72</sup> EU Law scholars extensively research about the nature of different areas of EU law (competition, environment, migration, etc.) which are their specialty whereas there is considerably less research interest devoted to examining the nature of their teaching style and methodology of the courses they teach, the result being a scarcity of available comparative literature dealing strictly with EU Law teaching.<sup>73</sup>

The diversity of curricula in the field of the study of the European Union and European integration has its advantages and limitations.<sup>74</sup> On the one hand, it lends itself to a wide array of teaching approaches which are especially beneficial for conveying to the audience the nature of the EU as a system of multi-level governance and the complexities of the European integration process.<sup>75</sup> On the other hand, it raises obstacles such as the lack of a ‘core curriculum’ in EU studies<sup>76</sup> and lack of relevant pedagogical approaches intended to define the profile of students specializing in this field and provide them with some essential knowledge and skills.<sup>77</sup> The fact is that there is as yet no standardized system for EU law teaching and training uniform for all EU Member States, much less the EU candidate or membership aspirant countries.<sup>78</sup> At present, the Union Treaties confer limited competence to the EU to adopt and apply EU-wide standards for the content of EU law education in the

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The rule of law situation in the European Union, COM/2022/500 final; European Rule of Law mechanism: Methodology for the preparation of the Annual Rule of Law Report [https://commission.europa.eu/system/files/2022-07/rolm\\_methodology\\_2022.pdf](https://commission.europa.eu/system/files/2022-07/rolm_methodology_2022.pdf), at p. 4.

<sup>70</sup> Visvizi et al. (2021), pp. 3–14.

<sup>71</sup> MacLennan (2020), p. 8.

<sup>72</sup> De Witte (2013), p. 107.

<sup>73</sup> DE Witte (2008), pp. 4, 5; Poiras Maduro (2008); For a similar critique when it comes to European legal research, van Gestel and Micklitz (2014).

<sup>74</sup> Timus et al. (2016), p. 654.

<sup>75</sup> Timus et al. (2016), p. 654.

<sup>76</sup> Umbach and Scholl (2003), pp. 71–80.

<sup>77</sup> Timus et al. (2016), p. 654.

<sup>78</sup> Alemanno and Khadar (2018), p. 170.

Member States.<sup>79</sup> Each Member State has its own legal system and traditions as well as its own individual approach to the overall legal education and training, not only the EU law-related one.<sup>80</sup> The picture is rather fragmented because of the different way in which EU law is being taught and presented in the legal literature of different countries.<sup>81</sup> Yet, the EU has in good measure influenced the legal systems as well as the legal training in the Member States seeing as EU law is a constituent part of the said legal systems. EU law is being incorporated into national law by the domestic legislators, implemented by the domestic executive organs and applied by the domestic courts—and it is as such taught at university level.<sup>82</sup>

It can be said that teaching on and learning about the EU today is presented with two major challenges—the first relates to how teachers can help students understand the true relevance of the European Union and the European integration process. The origins of the latter date back from quite some time ago (seven decades) and people are often inclined to forget the economic, political, and historical reasons that underpin the nature and goals of the European integration project thereby prompting the need to demonstrate the link between recent past and present.<sup>83</sup> The second issue has to do with finding ways to integrate the modern methodological and technological innovations into the teaching process regarding these subject areas.<sup>84</sup> With this in mind, would it be possible to envisage the components of a ‘typical’ EU law curriculum that would be applicable both for the teaching of EU law at EU and non-EU universities?<sup>85</sup>

The Jean Monnet Programme is an EU initiative launched in 1990 dedicated to promoting the integration of courses and educational activities in the larger field of European integration into university curricula, the so-called Jean Monnet modules.<sup>86</sup> The core stated objective of the Jean Monnet Programme, as noted by the European Commission, is “to stimulate excellence in teaching, research and reflection in European integration studies in higher education institutions.”<sup>87</sup> In the first phase of its establishment, the programme promoted the integration of courses such as ‘EU Law’, ‘EU Economic Studies’, ‘EU Political and Administrative Studies’ and ‘European Historical Studies’ in the university curricula.<sup>88</sup> E.g., one academic study, the results

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<sup>79</sup> On the expanding nature of EU’s competence in the area of education, see, e.g., Garben (2008, 2011) and Alemanno and Khadar (2018), p. 170.

<sup>80</sup> See Lonbay (2008).

<sup>81</sup> De Witte (2013), p. 108.

<sup>82</sup> Kerikmäe and Nyman Metcalf (2014), p. 276.

<sup>83</sup> González and Mella (2021), p. 86.

<sup>84</sup> González and Mella (2021), p. 86.

<sup>85</sup> See e.g., MacLennan (2020).

<sup>86</sup> Baroncelli et al. (2014), p. 94.

<sup>87</sup> European Commission (2007), p. 4; Under the auspices of the Jean Monnet programme, university departments are awarded the distinction “Jean Monnet Centre of Excellence” which signifies excellence in teaching and research activities in subject areas related to European integration and the EU; likewise, individual professors teaching in the broader area of EU studies are awarded the title of ‘Jean Monnet Chair’.

<sup>88</sup> Baroncelli et al. (2014), p. 95.

of which were published in 2014, has focused on the correlation between the Jean Monnet Programme and the use of innovative pedagogical tools in the university-level teaching and research on EU-law related courses.<sup>89</sup> Namely, the study examines the deployment of teaching methods and tools in EU-related courses across different countries in Europe, scrutinizing how frequently such innovative teaching methods and tools were used for this type of courses.<sup>90</sup> Likewise, the study investigates the factors that influence the deployment of innovative teaching methods such as, *inter alia*, the use of internships, distance learning, and exchange programmes.<sup>91</sup>

While it is certain that the teaching of EU law should not be focused solely on theoretical instruction and reliance on traditional lectures and knowledge assessment<sup>92</sup> the reality is that, broadly speaking, undergraduate-level EU law instruction remains predominantly doctrinal (outlining the most important case law, treaty provisions, and legal principles and norms), historical, and institutional (covering an overview of the development of the EU institutions and the evolution of the EU legal order).<sup>93</sup> A similar approach pervades the master-level instruction in different areas of EU law.<sup>94</sup> Aside from notable exceptions of examples of EU law teaching and academic work that are interdisciplinary in nature and engage with the social and political context of EU law and its practical application, in the main, EU law teaching still remains largely conservative in approach and passive in delivery.<sup>95</sup>

The move to reform teaching approaches and methodologies has been spurred by the development of new technological and digital tools that can be used in the delivery of lectures<sup>96</sup> As a consequence, we have been witnessing a transition from traditional to innovative teaching methods with many institutions now shifting from traditional teaching methods, characterised by the passive delivery of lectures without student participation to a digital learning approach which features an interactive learning process with the students as active participants.<sup>97</sup>

### ***3.1 The Essential Methodological Toolkit for Teaching EU Law and EU Studies More Broadly***

In light of the evolving modern technology tools of the digital era, the all-important mission becomes to equip teachers with the necessary knowledge and tools to teach

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<sup>89</sup> Baroncelli et al. (2014), p. 95.

<sup>90</sup> Baroncelli et al. (2014), p. 96.

<sup>91</sup> Baroncelli et al. (2014), p. 96.

<sup>92</sup> See, Valcke (2018), p. 194 and Heringa and Akkermans (2011).

<sup>93</sup> Alemanno and Khadar (2018), p. 172 and Jakab (2007).

<sup>94</sup> Alemanno and Khadar (2018), p. 172.

<sup>95</sup> De Witte (2008), p. 4 and Alemanno and Khadar (2018), pp. 172, 173.

<sup>96</sup> See Bjerede et al. (2010), pp. 3–7 and Dede (2009), pp. 66–69.

<sup>97</sup> Fonti and Stevancevic (2014), p. 112; See also Hannan and Silver (2000).

the EU Law/EU Studies more *efficiently*,<sup>98</sup> seeking out the most suitable innovative methods and tools for teaching and learning that can be employed in order to guarantee the best results.<sup>99</sup>

Teachers rely on a variety of teaching techniques to engage students in an active learning process. Some innovative teaching methods employed in higher education learning across different learning cultures include: Teamwork; Fieldwork; Student-led discovery; Special expert sessions; Simulation and learning games; Project-based learning; Work-based learning (use of workplace skills or/and collaboration with companies), Role-plays; Distance learning; Peer tutoring; Internships and student's volunteering; Exchange programmes.<sup>100</sup> The creation of the European Higher Education Area and the start of the Bologna process<sup>101</sup> opened the way towards incorporating alternative methodologies of active learning (such as problem-based learning, problem-solving, peer teaching, role-playing, and simulation games) whose goal is to enhance student participation and create a more collaborative classroom environment.<sup>102</sup> This emphasis on 'student-centeredness' and active learning has helped empower students to apply their theoretical knowledge in practice, through various independent or group learning research-based activities.<sup>103</sup> Taking into consideration the demands of the current job market, the pedagogical approach in higher education should strive for a *deep learning process* (as opposed to surface learning where students are expected to merely reproduce material<sup>104</sup>) which enables the students to make practical connections with the acquired theoretical knowledge.<sup>105</sup> The deep learning approach is a student-centred one, where the learning process revolves around the student.<sup>106</sup> Teaching core concepts and theoretical notions by linking them to practical experiences—such as fieldwork, special expert sessions, and work-based learning—should be encouraged as a way to connect academia with business.<sup>107</sup>

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<sup>98</sup> Visvizi et al. (2021), pp. 3–14.

<sup>99</sup> Visvizi et al. (2021), pp. 3–14.

<sup>100</sup> Hannan and Silver (2000), Hattie (2005), Timus et al. (2016), p. 655, and Baroncelli et al. (2014), p. 98.

<sup>101</sup> Through the creation of the European Higher Education Area, the Bologna Process aims to increase the coherence among European higher education systems, by improving student and faculty mobility, making higher education more inclusive and accessible and raise the appeal and competitiveness of European higher education on the global stage [<https://education.ec.europa.eu/education-levels/higher-education/inclusive-and-connected-higher-education/bologna-process>].

<sup>102</sup> Van Dyke and Loedel (2009), Van Dyke Declair and Loedel (2000), and Baroncelli et al. (2014), p. 93.

<sup>103</sup> Angouri (2021), pp. 11, 17–18.

<sup>104</sup> Marton and Säljö (1976), pp. 4–11.

<sup>105</sup> Timus et al. (2016), p. 655.

<sup>106</sup> See Neumann (2013), pp. 161–175; One study shows that the most popular student-centred pedagogies in the EU geographical region are based on teamwork and student-led discovery (approximately 90% used at least 'sometimes'), expert sessions, and project-based learning (81% and 68% respectively) (Baroncelli et al. 2014, p. 104).

<sup>107</sup> Baroncelli et al. (2014), p. 93.

The previously listed modern approaches to teaching have to a certain extent also been applied in the subject areas of EU Law and EU studies,<sup>108</sup> although, as some authors note, there is still a way to go for it to become the norm and be applied as a matter of routine.<sup>109</sup> The former exercise should undoubtedly go hand-in-hand with efforts aimed at incorporating EU law/EU studies courses in the curricula of EU and non-EU universities. For European countries that are not EU members, but have a short-, medium- or long-term EU membership perspective this has been an especially demanding task. These countries are actively undergoing the process of ‘Europeanization’ of their political and legal systems as a process that produces a fundamental change in the domestic hierarchy of sources of law, modifies the domestic legal culture and reforms the methodology of how legal sciences are taught and applied.<sup>110</sup> For example, a study the results of which were published in 2014 concentrated on the ‘Europeanization’ of the law curricula and teaching methods of universities across the Eastern Partnership countries,<sup>111</sup> evaluating the “Europeaness” of the curricula and the “European spirit” of the teaching process”, found that this particular Europeanization exercise had not been comprehensively accomplished.<sup>112</sup> This last stemmed from issues that were more substantive in nature than the mere changing of course titles or the integration of EU-related chapters into existing course curricula—rather, they had to do with the overall course content and approach to teaching.<sup>113</sup> However, irrespective of whether the Europeanization of the law curricula is being carried out in the Member States or (as in this instance) the Eastern Partnership countries, the process’s underlying objective remains the same.<sup>114</sup> Europeanizing the law curricula extends beyond the introduction of new disciplines and methodologies—its function is equally to introduce law students to the European legal culture, expecting that this would precipitate a transformation in their mind-set as future legal professionals.<sup>115</sup> The foregoing findings made with respect to the Eastern Partnership countries are also applicable to the current EU candidate countries as these countries’ need for lawyers well versed in the basics as well as advanced (specialized) aspects of EU law continues to grow. These individuals will be expected to actively participate in the Europeanization of their respective domestic institutions and, will further down the line, once their country accedes to the EU, be adequately prepared to meet the legal challenges that EU accession entails.

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<sup>108</sup> Fonti and Stevancevic (2014), p. 113 and Baroncelli et al. (2014), p. 90.

<sup>109</sup> Fonti and Stevancevic (2014), p. 113; A study undertaken by Timus, Cebotari and Hosein revealed that the most-used innovative research methods by respondents were teamwork (74.4%), followed by project-based learning (66.2%), simulations (65.0%), problem-based learning (54.4%), expert sessions (50.6%) and exchange programs (43.1%) (Timus et al. 2016, p. 660).

<sup>110</sup> See Ziller (2006) and Kerikmäe and Nyman Metcalf (2014), p. 281.

<sup>111</sup> The ‘Eastern Partnership’ is a joint initiative between the EU, its Member States and six Eastern European Partner countries: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine.

<sup>112</sup> Kerikmäe and Nyman Metcalf (2014), p. 278.

<sup>113</sup> Kerikmäe and Nyman Metcalf (2014), p. 278.

<sup>114</sup> Kerikmäe and Nyman Metcalf (2014), p. 280.

<sup>115</sup> Kerikmäe and Nyman Metcalf (2014), p. 282.

Considering that learning is predominantly a culture-based phenomenon,<sup>116</sup> it should be expected that resistance will be met throughout the whole process of Europeanization of university curricula and teaching methodologies. This is why, in assessing the different cultural teaching and learning styles, it is necessary to have an awareness of the regional similarities and differences along with the understanding that pedagogical methods and their perceived efficacy can sometimes vary depending on the culture: teaching methodologies and learning styles that are effective in some cultures can prove ineffective in others.<sup>117</sup>

#### 4 The Topic of the Rule of Law in EU Law- and EU Studies-Related Course Curricula

It follows from the complex and variegated nature of the concept that teaching on the rule of law can be a demanding task for teachers at the university level. What is more, as a public good, national education systems have a key responsibility in upholding and advancing the principles of the rule of law as they equip learners with the knowledge, values, attitudes and behaviors they would need to take ethically responsible decisions in their daily lives, thereby empowering the future generations to hold state institutions accountable for rule of law breaches.<sup>118</sup>

While teaching EU Law/EU studies represents a challenge in and of itself, teaching on the rule of law, as an EU value and more broadly as a baseline value of any democratic society, should be seen as a challenge within a challenge. This is especially true for post-authoritarian societies and vulnerable democracies, which include most of the current EU candidate countries from the Western Balkans and Eastern Europe. Successful transitions from post-authoritarian to democratic systems can require a lengthy period of time, with educational institutions fulfilling the function of facilitators of those transitions.<sup>119</sup> Initiating such a substantial institutional and constitutional transformation can take decades, even generations, the end goal being to garner overwhelming public support for and understanding of the rule of law<sup>120</sup> and cultivate what is called a ‘culture of lawfulness’ in a particular society. The idea behind the notion of a ‘culture of lawfulness’ lies in the necessity to create cultural and social conditions in which the rule of law can thrive and develop.<sup>121</sup> Moreover, the notion equally incorporates the non-formalized aspects of the law, manifesting in non-formal practices and traditions that impact how citizens behave and how they interact with the public institutions.<sup>122</sup>

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<sup>116</sup> De Vita (2001) and Timus et al. (2016), p. 665.

<sup>117</sup> Timus et al. (2016), p. 665.

<sup>118</sup> UNESCO and UNODC (2019), p. 14.

<sup>119</sup> See Doyle Stevick (2019).

<sup>120</sup> Tamanaha (2009), p. 13 and Doyle Stevick (2019), p. 1.

<sup>121</sup> UNESCO and UNODC (2019), p. 19.

<sup>122</sup> UNESCO and UNODC (2019), p. 19.

The ongoing erosion of the state of the rule of law in Poland and Hungary as EU Member States has brought to the fore the need for a rule of law culture to be *sustainable*.<sup>123</sup> As countries of the Central and Eastern European (CEE) region, following the dissolution of the SSSR, Hungary and Poland turned towards regaining their previous or newly instituted democratic institutional structures with adherence to the rule of law as their core objective.<sup>124</sup> Regrettably, what the processes of rule of law deterioration that have been taking place in Poland and Hungary over the past years make ostensibly clear is that these countries' rule of law accomplishments of the 1990s, resulting from the political and legal transformation of their societies,<sup>125</sup> seem to have come with an expiration date. We are presently witnessing the leaders of these countries from the Central and Eastern European (CEE) region deploying legal tactics such as changing the constitution and shifting the composition of the judiciary in order to create a context governed by a nationalistic and authoritarian political sentiment.<sup>126</sup> These societies remain vulnerable to populism and nativism ideologies while the public's support for democracy and the rule of law is not as all-encompassing as should be expected.<sup>127</sup> To confront these negative trends, educational institutions in the CEE region as well as the rest of Europe should be viewed as a space where students can become sensitized to the vital importance of the rule of law as one of the bedrocks of a democratic society<sup>128</sup> and a key agent in advancing broad public support for the rule of law and developing a rule-of-law culture in these societies.<sup>129</sup>

#### ***4.1 The Importance of Teaching Students About How the Rule of Law Works and How to Apply It***

As one author encapsulates it, the rule of law exists as “a normative system that resides in the minds of the citizens of society.”<sup>130</sup> Adherence to the rule of law is as much a cultural as it is an institutional achievement. In this sense, the cultural transformation serves as a *pre-condition* for the institutional transformation,<sup>131</sup> making it a priority for societies to “create the cultural and social conditions in which the rule of law is respected”<sup>132</sup> and highlighting the importance for education as a promotor of the rule of law and the accompanying ‘culture of lawfulness’.<sup>133</sup> As an institutional

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<sup>123</sup> Doyle Stevick (2019), p. 1.

<sup>124</sup> Doyle Stevick (2019), p. 1.

<sup>125</sup> See Přibáň (2009).

<sup>126</sup> Abiodun Olatokun (2019).

<sup>127</sup> See Doyle Stevick (2019).

<sup>128</sup> Abiodun Olatokun (2019) and Doyle Stevick (2019).

<sup>129</sup> Doyle Stevick (2019), pp. 2–3, 8.

<sup>130</sup> Carothers (2003), p. 8 and Doyle Stevick (2019), p. 1.

<sup>131</sup> Doyle Stevick (2019).

<sup>132</sup> UNESCO and UNODC (2019), p. 19.

<sup>133</sup> UNESCO and UNODC (2019), p. 14.

achievement, the rule of law will only be adequately implemented and respected if the public understands and adheres to the rule of law principles.<sup>134</sup> Such an approach instills in the general population of a society the obligation to follow the law *because* it believes that doing so provides a fair and just response to the needs of individuals and society as a whole.<sup>135</sup>

Education plays a crucial part in promoting and protecting the rule of law, principally, by equipping students (learners) with the appropriate knowledge, values, attitudes, and behaviors they would need to be able to contribute to the safeguarding of the rule of law and by encouraging students (learners) to value and apply the principles of the rule of law in their daily lives by making ethically responsible decisions as citizens.<sup>136</sup> By virtue of law's capacity to be a vehicle of democratic transformation, law professors and teachers have the task to guide the students' perception of law's potential to bring about change in society, among other things, by shedding light on the ability of lawyers as legal professionals to make these institutions better, individually or as members of a group.<sup>137</sup> The goal of legal education is to provide insight into the broader picture of legal knowledge and the rule of law network.<sup>138</sup> Conceptualized along these lines, legal knowledge becomes a "concrete feature of the way in which the rule of law is brought to life"<sup>139</sup> whereby citizens' legal knowledge of and participation in the relevant legal frameworks becomes one of the constitutive components of a democratic society.<sup>140</sup> Legal education therefore lies at the intersection between the formal demands of the rule of law, on the one hand, and the dynamic and growing complexity of the law.<sup>141</sup> It enables people to understand legal issues and developments and be aware of their legal rights, arming them with the requisite skills to address the legal challenges they may potentially face.<sup>142</sup> Hence, through the medium of education, learners gain the necessary knowledge and understanding of the rule of law and the culture of lawfulness by developing their ability to critically reflect on the meaning of these concepts and how they are being applied in the functioning of the government institutions and their domestic legal system.<sup>143</sup> Owing to

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<sup>134</sup> Doyle Stevick (2019).

<sup>135</sup> UNESCO and UNODC (2019), p. 19.

<sup>136</sup> UNESCO and UNODC (2019), pp. 10, 20–21.

<sup>137</sup> Bartl (2022).

<sup>138</sup> Wintersteiger and Mulqueen (2017), pp. 1571, 2.

<sup>139</sup> See Bingham (2011).

<sup>140</sup> Wintersteiger and Mulqueen (2017), p. 1572; The 2007 UK Public Legal Education and Support Task Force Report sheds light on the intrinsic connection between legal knowledge and the constitution of the state (state-building) (see PLEAS-Public Legal Education and Support 2007).

<sup>141</sup> Wintersteiger and Mulqueen (2017), p. 1572.

<sup>142</sup> Wintersteiger and Mulqueen (2017), p. 1572; PLEAS-Public Legal Education and Support (2007); Legal education endows citizens with 'legal capability' as it helps them make an association between the law and how it is being effectively applied in practice (Wintersteiger and Mulqueen 2017, p. 1572; Collard et al. 2011, pp. 15–24) thereby creating a legally-enabled citizen that possesses the necessary capabilities to have an active part in democratic life (PLEAS-Public Legal Education and Support 2007, p. 13).

<sup>143</sup> UNESCO and UNODC (2019), p. 24.

the rule of law education, learners become empowered to demand accountability and transparency of the public institutions and become better equipped to recognize real-life examples of rule of law violations in their immediate environment and respond accordingly by taking practical steps.<sup>144</sup>

It is important to note that some of the literature differentiates between *civic education* (classroom instruction) and *civic learning*. Civic education relates to the formal part of the teaching and learning experience while civic learning is a much broader term that refers to all processes through which the public is taught to “embrace and function” in societies organized under the rule of law<sup>145</sup> and extends to other “aspects of accumulated learning” beyond the classroom.<sup>146</sup> These types of informal learning experiences, if guided effectively, can be impactful forms of ‘experiential’ learning by which learners apprehend the subject via accumulated and direct real-life experiences as their theoretical knowledge is being developed through parallel processes of “observing, reflecting, and experimenting.”<sup>147</sup> What can be tricky concerning one’s knowledge about the rule of law is that one can at once *know* what the rule of law should manifest as in practice, but not be as sure about what the *essence* of the rule of law is.<sup>148</sup> Therefore, the downside of prioritizing civic education is that in practice, as experts report, the former has failed to produce a consistently positive effect on the democratic values of learners.<sup>149</sup> As a part of civic learning, the lived experience is a vital but often overlooked factor in the building of a rule of law culture, one that complements the formal, classroom-based learning.<sup>150</sup>

## 4.2 *Best Practices for Teaching on the Rule of Law in a European Educational Setting*

University curricula coupled with co- or extra-curricular learning opportunities play a formative role in educating students who will contribute to society and be responsible citizens.<sup>151</sup> The mindset students develop during their studies is fundamental to their problem-solving capacity, adaptability and resilience but also, ultimately, to the wellbeing of societies.<sup>152</sup> This requires universities to strike the right balance

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<sup>144</sup> UNESCO and UNODC (2019), p. 32.

<sup>145</sup> Doyle Stevick (2019), pp. 4–5.

<sup>146</sup> Doyle Stevick (2019), p. 5; For more on this type of integral (holistic) approach to learning, see Schugurensky and Myers (2003) and Blair (2003), p. 53.

<sup>147</sup> Cohen (2013), p. 121 and Doyle Stevick (2019), p. 5.

<sup>148</sup> Carothers (2003), p. 8.

<sup>149</sup> See e.g., Morris (2002), p. 17.

<sup>150</sup> USAID (2018), p. 4.

<sup>151</sup> Angouri (2021), p. 7.

<sup>152</sup> Angouri (2021), p. 7.

between providing for long- and short-term societal needs and responding to historical, regional, national and international priorities.<sup>153</sup> One of the recently occurring contexts that had a deep impact on the teaching process is the digital age combined with the pressures brought on by the Covid-19 pandemic.<sup>154</sup> The foregoing emphasizes the need for the development and promotion of the rule of law through education to follow a two-pronged approach which involves *learning about* the rule of law (acquiring knowledge) and *learning to apply* this knowledge in practice.<sup>155</sup> In this way, the educator at once transmits not only knowledge, but also, more implicitly, values and behaviors associated to that knowledge. This has been described as the ‘hidden curriculum’,<sup>156</sup> which represents a reflection of the educator’s meta-orientations and curriculum positions, and is in a certain sense a byproduct of his/her ideologies.<sup>157</sup> It has to do with the unspoken (implicit) values, behaviors, procedures, and norms that are part of the educational space.<sup>158</sup> The hidden curriculum is an implicit curriculum by which educators’ attitudes, knowledge, and behaviors are unwittingly transmitted to learners, through actions and words that are commonplace in a particular society.<sup>159</sup> Through this process, norms, values and beliefs are communicated to learners through tools that go beyond the formal teaching and learning tools, arming learners with the skills needed to participate in society as “ethically responsible citizens.”<sup>160</sup>

What are the most appropriate methodological tools and approaches teachers can use to instill an accurate understanding of the rule of law and encourage the development of a culture of lawfulness? Such participatory and student-centered pedagogical tools and approaches can include: problem-based learning and project-based learning, community-based learning, web-based learning, the flipped classroom method, etc. *Problem-based learning* and *project-based learning* are both variations of a research-led approach to learning.<sup>161</sup> The *active learning* experience,<sup>162</sup> is essential to problem-based learning as a teaching approach and a process in which the learner “actively constructs knowledge.”<sup>163</sup> When engaged in problem-based learning and project-based learning, learners work on a project or find a solution to a given problem, which motivates them to improve their analytical and problem-solving skills while at the same time familiarizing themselves with the researched topic and prepares them to be able to deal with complex issues in practice.<sup>164</sup> The

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<sup>153</sup> Angouri (2021), p. 7.

<sup>154</sup> Angouri (2021), p. 7.

<sup>155</sup> UNESCO and UNODC (2019), pp. 32, 34.

<sup>156</sup> Alsubaie (2015), pp. 125–128 and UNESCO and UNODC (2019), p. 34.

<sup>157</sup> Miller and Seller (1990).

<sup>158</sup> Alsubaie (2015), p. 125.

<sup>159</sup> Jerald (2006).

<sup>160</sup> UNESCO and UNODC (2019), p. 34.

<sup>161</sup> Angouri (2021), p. 13.

<sup>162</sup> Tonra (2020), p. 15.

<sup>163</sup> Gijsselaers (1996), p. 13.

<sup>164</sup> UNESCO and UNODC (2019), p. 44.

former two approaches are not dissimilar to the *flipped classroom* method as a type of student-centered learning where the curriculum content delivery revolves around student research engagement in and outside of the classroom.<sup>165</sup> Problem- and project-based learning underscores the importance of the students' learning to apply theoretical knowledge to practice.<sup>166</sup> It does not presuppose compromising disciplinary training but rather serves to translate the application of disciplinary training to interdisciplinary contexts, so that the student directly experiences the relevance of their studies to real-world problems.<sup>167</sup> The effectiveness of problem-based learning as an alternative teaching and learning method in the field of European Studies has been extensively analyzed by scholars, in particular, its potential to allow for real-life problems to be explored by learners with due regard to their complexity and by assuming an interdisciplinary approach.<sup>168</sup> Scholars also point out that the basic logic of problem-based learning is substantially different from that of traditional teaching approaches and therefore calls for these last to undergo a "paradigm change."<sup>169</sup> Employing the problem-based learning approach to curriculum delivery in higher education institutions where traditional teacher-centered methods are the norm can be particularly demanding.

Through *community-based learning*, the learners' problem-solving skills are put to use to deal with a challenge that affects the community the learners live in, thereby enabling them to effect a positive and visible change in their community by implementing the findings and solutions they reach.<sup>170</sup> Similarly, as an alternative to the conventional classroom-based environments, *web-based learning* (learning that relies on digital technology tools) can be used in support of many of the previously elaborated approaches, while also helping learners develop their digital literacy.<sup>171</sup> Bearing in mind the complexity of the issues covered in the EU Law/European studies curricula, experts have found that the innovative methods such as the use of simulations,<sup>172</sup> web seminars,<sup>173</sup> and distance learning<sup>174</sup> have only to a limited extent responded to the demands of students in the digital classroom as a teaching environment.<sup>175</sup> Significantly, before the Covid-19 pandemic, the *synchronous online teaching* as a more interactive and engaging form of distance learning had rarely been

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<sup>165</sup> Abeysekera and Dawson (2015).

<sup>166</sup> Angouri (2021), p. 12.

<sup>167</sup> Angouri (2021), p. 13.

<sup>168</sup> Maurer and Neuhold (2014), pp. 200, 204; For a case study on how the 'problem-based learning' approach has been developed at Maastricht University, see van Til and van der Heijden (2009).

<sup>169</sup> Birenbaum (2003) and Tonra (2020), p. 15.

<sup>170</sup> UNESCO and UNODC (2019), p. 44.

<sup>171</sup> UNESCO International Bureau of Education (2017) and UNESCO and UNODC (2019), p. 44.

<sup>172</sup> Usherwood (2014) and Guasti et al. (2015).

<sup>173</sup> Lieberman (2014) and Mihai (2014).

<sup>174</sup> Bell et al (2017).

<sup>175</sup> See Plank and Niemann (2020), p. 52.

used in the area of European studies.<sup>176</sup> Relatedly, *blended learning* as a teaching method that uses in-person instruction combined with “computer-mediated instruction”<sup>177</sup> has also been studied by scholars, in terms of its efficiency and effectiveness for the student’s learning process.<sup>178</sup>

Finally, another issue that needs pointing out is the resistance that some students exhibit in the process of introduction and implementation of the aforementioned innovative methods.<sup>179</sup> In the initial stages of implementation of the new methodological approaches, students may feel overwhelmed and will need adequate guidance, especially in exercises involving group work where they may find themselves unprepared for the social interaction element of the exercise.<sup>180</sup> The personal experience of the author of this contribution is a confirmation of this: during the synchronous online teaching carried out throughout the period of the Covid-19 pandemic, there was a noticeable reluctance from the students in the EU law and related courses to engage proactively in class and class assignments. For some students, the digital tools available even had, in some part, the reverse effect. This was possibly due to the fact that in a large majority of universities in North Macedonia web-based instruction was only introduced for the first time during the Covid-19 pandemic, leaving the students with a lack of familiarity with the learning tools and approaches typical of the virtual classroom environment. The preceding observations clearly demonstrate the need to prepare and train both teachers and students for the demands and expectations brought on by the shift to synchronous online or blended learning in order that they do not feel overwhelmed or discouraged from embracing the novel teaching/learning approaches.<sup>181</sup>

## 5 Concluding Remarks

Several *general conclusions* can be synthesized based on the foregoing analysis of the innovative methodological approaches and tools available to higher education professionals (teachers) in the fields of EU Law and EU studies more broadly. First and foremost, it is crucial to understand that one of the main avenues for helping students become “independent, reflective and sustainable learners”<sup>182</sup> is by modernizing and innovating the teaching (and correspondingly, learning) methodology while at the same making the novel approaches and tools tenable and durable for the long term—in particular, by accommodating them to the specific needs and individual

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<sup>176</sup> Plank and Niemann (2020), p. 54; For more on the advantages of the synchronous online classroom, see Mc Brien et al. (2009).

<sup>177</sup> Graham (2006), p. 5.

<sup>178</sup> Garrison and Vaughan (2007).

<sup>179</sup> Tonra (2020), p. 15.

<sup>180</sup> See Maurer and Neuhold (2012), p. 3.

<sup>181</sup> See e.g., Maurer (2015), p. 381 and Tonra (2020), p. 15.

<sup>182</sup> Maurer and Neuhold (2012), p. 3.

characteristics of the different academic environments. Any new teaching methodology should be put into practice in a way that takes into account the needs of the educational institution, the students' experiences and expectations, and the teaching techniques that teachers feel most at ease using. That being said, it is quite normal and expected for the first experiences with implementing novel academic methodologies to not always be as simple and straightforward.

In terms of which approaches to follow for optimal delivery of the curriculum content in these fields, efforts should focus on enhancing the students' digital and technical skills in the classroom context and assisting them in improving their critical thinking and active engagement with the topics covered in the curriculum, thus helping them develop *ownership* of the curriculum. Students should be led to understand the fundamental importance of the need to take ownership throughout the learning process as a necessary condition for improving their analytical and critical thinking abilities.<sup>183</sup> Teachers should encourage students to take ownership of the curriculum through active participation in the learning process—in fact, active learning approaches such as problem-based learning could potentially become unmanageable or overwhelming for students if they do not have or aspire towards ownership.<sup>184</sup>

Students should be motivated to proactively think and engage with the subject matter taught, which in turn enables them to not only critically analyze the issues covered in class, but also translate this knowledge to their everyday lives and respond accordingly.<sup>185</sup> An active learning process contributes to advancing students' understanding of the key EU concepts, doctrines and principles and their application in practical, real-world scenarios. It would therefore be desirable for teachers to reevaluate their role as facilitators in the active learning process and express a willingness to be more responsive, approachable and flexible in accommodating the demands of the innovative methodologies.<sup>186</sup>

Following now are the *conclusions specific to the university-level teaching on the rule of law* as a fundamental value of the EU system. Through the medium of education, students build their knowledge and understanding of the rule of law and the culture of lawfulness, developing their capacity to critically reflect on their significance and practical realization. As a consequence of the rule of law education being designed in a proactive way, students are better able to identify and be sooner sensitized to rule of law transgressions taking place in the societies they live in. In terms of identifying methodological approaches that best correspond to the objective of active learning, project- and problem-based learning have been found to be among the most suitable. By employing these approaches, students are taught about the practical difficulties associated with maintaining and safeguarding the rule of law. By encouraging student involvement in real-life cases, the practical application of the

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<sup>183</sup> See e.g., Maurer et al. (2020), p. 10 and Tonra (2020).

<sup>184</sup> See Tonra (2020), p. 15.

<sup>185</sup> See also O'Mahony (2020).

<sup>186</sup> See also O'Mahony (2020).

rule of law can be observed first-hand, thereby making it less of an abstract and one-dimensional concept.<sup>187</sup> Furthermore, such type of active learning prepares students to competently deal with issues relating to the rule of law and take appropriate action when the state of the rule of law in their societies is being compromised. It is essential that the methodological toolkit used in the teaching on the rule of law be devised in a way that helps students to internalize their knowledge of the different components of the rule of law and, as a result, be equipped to effectively apply this knowledge in their professional careers and to anticipate and confront the common traps that the institutions in power sometimes deploy in order to misrepresent their disregard for the rule of law, giving a semblance that their actions are governed by it.

Teaching about the rule of law as an EU value, but also more broadly as a fundamental value of any democratic society, is indeed a challenge, especially for professors (teachers) in post-authoritarian societies and vulnerable democracies, as are most of the current EU candidate countries from the Western Balkans and Eastern Europe. By demanding accountability and transparency from the governing institutions and by acting as accountable and engaged citizens, students can be effective in applying their classroom-acquired knowledge about the rule of law. In this respect, it is important to draw attention to a potential disadvantage that teachers experience when delivering the rule of law curriculum to students from non-EU countries, particularly those with a short-, medium- or long-term EU membership perspective. The former disadvantage hails from, among other things, the EU's acute rule of law challenges whereby the Union is torn between, on the one hand, struggling to 'discipline' two of its Member States for their rule of law violations and, on the other hand, aspiring to serve as a rule-of-law role model for the membership aspirant countries. EU Law and EU Studies teachers tend to have difficulties explaining this discrepancy to their students, especially since problems with the rule of law have commonly been regarded as a legacy of those *outside* of the Union. Consequently, in the period to come, a major task for the teachers will be to keep the students as future professionals from being apathetic and discouraged about safeguarding and promoting the rule of law in their domestic contexts or altogether losing interest in actively supporting their countries' pre-accession efforts.

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<sup>187</sup> See, e.g., Gijsselaers (1996), pp. 14–16 and Tonra (2020), p. 15.

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