

EU LAW AS A RESILIENT AND RESISTING CONCEPT

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Abstract

Recent European Union law is concerned with the reconstruction of the Union's capacity to act, within a context where the material, normative and legal bases of European integration are deemed to be under threat. This gives rise to a transformation of the Union in the form of a 'geopolitical Union' and a reconceptualization of EU law in the form of 'resilient EU law'. This contribution raises the question of whether resilient EU law is capable of responding to deep scepticism and resentment underpinning European societies about social dispossession, cultural threat and ecological collapse. At this critical moment in Europe's history, we need more than just resilient EU law: we need a resisting EU law that is receptive to social reality and reflexive about its own conceptuality.

1. 'Transforming scepticism into action'

To properly engage in this reflection about the EU and the defence of its values, it is essential that we have a clear conception of the historical situation in which we find ourselves. This should help us to make sense of the challenges that the EU and its law are facing. Many accounts of the present situation appear in the literature. These are broad analyses informed by history, philosophy and social sciences. Thus, there are studies pertaining to the concept of 'late' or 'post' fascism.¹ There is literature about new forms of capitalism; whether it is called 'cognitive', 'surveillance' or 'green' capitalism.² Some argue that we live 'in the age of populism' or

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1. Alberto Toscano, *Late Fascism: Race, Capitalism and the Politics of Crisis* (Verso 2023); Enzo Traverso, 'Post-Fascism: Fascism as Trans-Historical Concept' (2024) 11 *Crisis and Critique* 161.

2. Yann Moulier-Boutang, *Cognitive Capitalism* (Polity 2011); Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Profile Books 2019); Thea Riofrancos, *Extraction: The Frontiers of Green Capitalism* (Norton & Company 2025).

under a ‘new form of imperialism’.³ Such analyses provide general and theoretical accounts of the situation. Each one focuses on its own series of threats and challenges: destruction of social groups or natural resources, domination over individuals and social groups, over-exploitation of workers and underprivileged social classes. These accounts work as a sort of political guide for navigating the world we live in. They help to orient oneself in the face of a reality that is challenging for someone who was raised in the spirit and political dynamic of the post-war period, assuming a shared and stable, even if contested, understanding of the principles of liberalism and social democracy.

However, addressing the current situation from a rigorous and critical perspective requires that we start not with our own account but with the specific understanding of the situation developed within the EU institutional sphere. This is how we may capture the characteristic way in which Europe and its law responds to it. Only then is it possible to assess this response in light of the challenges and concepts developed by the above literature. The question, therefore, is whether an ‘existential threat’ is acknowledged by the Union institutions and what that threat consists of.

And there does seem to be such a thing: the specific existential threat to which the EU and its institutions see themselves exposed is of a political and geopolitical nature. It is mainly conceived and phrased as an attack affecting its capacity to act, its independence and unity of action. This was expressed most clearly in a speech delivered by Mario Draghi in Rimini on 22 August 2025.⁴ Europe would live in a sort of interregnum: the old forms of European integration are dying and new forms are yet to be born. Draghi insists on the ‘scepticism towards Europe’ that ‘has never been higher’. War, the weaponization of trade, the ecological catastrophe, Europe’s dependency on external resources, the rule of law and democratic backsliding in some Member States, the socioeconomic decline of middle class Europe’s households, the polarization of European societies and the ensuing contestation of political institutions are ordeals to which the Union is forced to adapt. According to Draghi, all of this boils down to one single challenge: the Union’s inability to act and defend its own values. This would be the main reason for the growing scepticism towards Europe. Thus his call for ‘transforming scepticism into action’. Draghi’s vision seems to be widely

3. Étienne Balibar, ‘Géométries de l’impérialisme au XXI^e siècle’ (*Analyse Opinion Critique*, 15 November 2024) aoc.media/analyse/2024/11/24/geometries-de-limperialisme-au-xxie-siecle-1-2/ (all websites last visited 19 November 2025).

4. Mario Draghi, ‘How Do We Change Our Continent’s Trajectory?’ (*Groupe d’études géopolitiques*, 24 August 2025) geopolitique.eu/en/2025/08/24/mario-draghi-how-do-we-change-our-continents-trajectory/.

shared among EU actors and lawyers. It corresponds to a situation in which EU's internal structure and assets no longer coincide with its external interests, but should be adapted and enhanced to respond to geopolitical threats.⁵

This concern for the independence and unity of action is neither new nor foreign to EU law. It is enshrined in the original European integration project, and most clearly in the field of external relations. The conceptual framework set up by the Court of Justice in this field is explicitly governed by a deep concern about 'the surrender of the independence of action of the Community in its external relations'.⁶ It certainly admits that the Union's external action may be affected by alien contexts and geopolitical realities. However, it is adamant that this should not 'alter the essential character of the powers conferred on the Union institutions'.⁷ Independence amounts to a vision of the Union as a distinct political actor enjoying its own capacity to act, both internally and externally. This is the meaning of the recurring judicial formula according to which 'an international agreement cannot affect the allocation of powers fixed by the Treaties or, consequently, the autonomy of the EU legal system'.⁸ As an instrument of the Union's independent power, it is therefore crucial that EU law be developed as an 'independent source of law'.⁹

2. Europe's three challenges

Today's concern for the Union's capacity and independence of action is not just a response to discrete disruptive events. Rather, the Union's perceived impotence is linked to three challenges to the structural bases of European integration.

The first one is a challenge to the material basis of the project. European integration is based on a series of economic, geographic, social, political and cultural interdependencies between the Member States that are

5. On the legal nexus between external relations and internal EU policies, see Marise Cremona, 'External Relations and External Competence of the European Union: The emergence of an integrated policy' in Grainne de Búrca and Paul Craig (eds), *The Evolution of EU Law* (OUP 2011).

6. Opinion 1/76, *Draft agreement establishing a European laying-up fund for inland waterway vessels*, EU:C:1977:63.

7. Opinion 1/00, *Proposed agreement between the European Community and non-Member States on the establishment of a European Common Aviation Area*, EU:C:2002:231, para 20.

8. Opinion 2/13, *Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, EU:C:2014:2454, para 201.

9. Case C-6/64, *Flaminio Costa v E.N.E.L.*, EU:C:1964:66.

not just given but constructed and managed in a legal and technical way. This construction was originally called the ‘common market’ or the ‘internal market’. It is an institutional fact that is meant to bring growth and peace to its Member States and a capacity for action to the EU. Today, however, there is an increased sense that this construction is being challenged. There is the perception that, while being enmeshed in ever denser webs of interdependence, European societies are structurally embedded in beyond-control natural and sociotechnical processes (climate change and digital revolution), dependent upon external resources that Europe does not own or control (critical raw materials), exposed to so-called or perceived ‘out-of-control’ social phenomena (migration and disinformation), subject to exorbitant ‘infrastructural powers’ (platforms) and surrounded by external actors who are rivals or even ‘enemies’ (China, Russia, and the USA). The Union and its Member States used to be engaged in an order-building enterprise, subject to internal limits that could only be shifted as Europe’s norms were expanding. Now, they find themselves exposed, vulnerable and dependent. For European leaders, this essentially means that the EU should transform into ‘geopolitical Europe’.¹⁰

The second challenge is related to the normative basis of the project. Since the inception of European integration, it is taken for granted that democratic and liberal values, the values that the EU is founded upon as stated in Article 2 TEU (respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights), constitute the normative background against which it operates. This is the basis for the protection of individuals within European societies. It is also the basis for ensuring that Member States and their societies do not diverge from each other or fall apart internally, and for making sure that EU law mechanisms function effectively and uniformly in all Member States. Now, there is an increased realization that, despite the historically unprecedented intensity of interdependence between European societies, the decrease in mutual trust and harmony is tangible both between and within European societies. The ‘fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is funded, as stated in Article 2 TEU’ is shaken.¹¹ It has become clear that any form of overall normative agreement cannot be taken for granted. The extreme fragility of a shared understanding of reality in Europe has come to the fore in relation to deep social and political conflicts that revolve around basic issues such as migration, democracy,

10. Luuk van Middelaar, ‘Europe’s Geopolitical Awakening’ (*Groupe d’études géopolitiques*, 15 April 2021) geopolitique.eu/en/2021/04/15/europes-geopolitical-awakening/.

11. Opinion 2/13 (n 8) para 168.

climate change and the protection of minority groups. The main concern, therefore, is with how Europe and its law may continue to exist when what European institutions have regarded as the *sine qua non* of their authority – the ‘fundamental premiss’ – is absent.

The last challenge affects the legal basis of European integration. Originally, the problem was to ensure the authority of a construction that is not supported by a State’s means of enforcement and conventional markers of legitimacy. Law was designed as the means, providing both a language and institutional practice aimed at embedding and transmitting ideas about the ‘special type of relationship’ between European States and populations.¹² It was entrusted with the task of fashioning the tenuous and inherently precarious integration process into a legitimate and authoritative one. For this purpose, the Court of Justice developed the notion that EU law enjoys a form of ‘autonomy’. This essentially means that EU law is endowed with its own basis of validity (the EU Treaties as a ‘constitutional charter’), provided with its own sources of meaning (EU law concepts and interpretations) and action (internal policies and international agreements) and equipped with effective modes of enforcement. Such are ‘the essential characteristics of the EU and its law’.¹³ Now, it is felt that the EU’s legal authority is being undermined not just by various forms of indifference towards or avoidance of EU rules, but also by forms of resistance that elude, question or even openly contest any form of governance through law.¹⁴ The politics of contestation started with the rise of illiberal forces in Europe. It now takes the form of a backlash against the Union’s attempt to regulate in the face of social, political and geopolitical complexity. Remarkably, this attempt is widely seen as a source of ‘over-regulation’ and a cause of people’s dispossession.¹⁵

From the EU’s perspective, the existential threat is the sum of these challenges seen as creeping forms of deconstruction. It is assumed that the EU not only lacks the political will, but also the institutional and policy resources to respond to these challenges.¹⁶ Hence its inability to respond

12. Pierre Pescatore, *The Law of Integration. Emergence of a new phenomenon in international relations, based on the experience of the European Communities* (Sijthoff 1974) Preface.

13. Case C-284/16, *Slowakische Republik v Achmea BV*, EU:C:2018:158, para 33.

14. See Niamh Nic Shuibhne and Sara Iglesias Sanchez’s contribution in this issue.

15. This has prompted a recent move towards a ‘simpler Europe’, resulting in the withdrawal of legislative proposals and the deletion of specific requirements relating to environmental protection, equality, transparency or privacy. European Commission, ‘Moving forward together: A Bolder, Simpler, Faster Union’ COM (2025) 45 final. See Hannah Ruschemeier, ‘The De-Regulatory Turn of the EU Commission’ (*Verfassungsblog*, 18 February 2025) verfassungsblog.de/the-de-regulatory-turn-of-the-eu-commission/.

16. See Bruno De Witte’s contribution in this issue.

to recent events; ‘the European Union has remained a spectator’, as Draghi asserts.¹⁷ In the EU, the question has therefore become how to regain agency by transforming the material, normative and legal basis of European integration.

3. Resilient EU law

The EU’s response runs along three main axes. These axes are interrelated and, taken together, potentially amount to a transformation of the Union and its law.

The first concerns its material basis. The EU is reinventing itself as an ‘infrastructural’ entity, reorientating its fundamental mission towards the maintenance and development of the essential infrastructures of European societies.¹⁸ It is no longer about the building of a political and socio-economic ‘order’. Instead, the focus is on reinforcing the resilience of a range of ‘ecosystems’, both in connection with institutional constructions (the internal market, Schengen, the monetary system, the banking system), social and sociotechnological complexes (the security ecosystem, healthcare systems, the financial system, energy systems, information systems), irrespective of whether they are European or national in character.¹⁹ This involves new bundles of rules such as the European Green Deal, NextGenerationEU, the Pact on Migration and Asylum, the Digital Services Act, the Digital Markets Act and the AI Act, Strategic Autonomy rules and a set of techniques relating to planning, funding, investing, stockpiling, conditionality or joint purchasing mechanisms that are not new but are combined in such a way as to give rise to ‘institutional variation’ and, potentially, a new constitutional arrangement.²⁰

The second axis revolves around a new narrative, a shift in EU institutional imaginary from Europe as a ‘common market’ and an ‘area of freedom’ to Europe as a ‘safe place’ and ‘resilient society’.²¹ For some years

17. Draghi (n 4).

18. Loïc Azoulai, ‘Infrastructural Europe: EU law and human life in times of the Covid-19 pandemic’ (2020) 66 *Revista de Derecho Comunitario Europeo* 343, doi: 10.18042/cepc/rdce.66.01.

19. Michael Dougan, ‘From “Crisis” to “Resilience” in EU Internal Market Law: Foundations, Techniques and Challenges’ (2024) 51 *LIEI* 317, doi: 10.54648/LEIE2024016.

20. Bruno De Witte, ‘Euro Crisis Responses and the EU Legal Order: Increased Institutional Variation or Constitutional Mutation?’ (2015) 11 *EuConst* 434, doi: 10.1017/S1574019615000292.

21. Editorial comments, ‘Europe is trembling. Looking for a safe place in EU law’ (2020) 57 *CML Rev* 1675, doi: 10.54648/COLA2020764.

now, European institutions have been embracing the rhetoric that the EU has as its main purpose the defence of the ‘European way of life’.²² The EU does not wish to conquer and expand; rather, to conserve and protect its basic assets, that is, its market, rules, critical infrastructures and values. This rhetoric is not confined to discrete statements. It has become a cultural system endowed with political and legal authority. Union institutions express their determination to defend Europe’s market and value order, both in relation to the dividing ‘other’ inside and *vis-à-vis* the threatening ‘other’ outside Europe. This is manifested in the discourse about ‘strategic autonomy’ and ‘resilient Europe’.²³ Fields involving Europe’s critical infrastructures, such as information, energy, transport, financial, digital infrastructures and natural ecosystems are typically reframed as security-related issues.²⁴ This is also reflected in a pervasive concern about the cohesion of society, based on the assumption that society would constantly be at risk of being destabilized and fragmented due to a ‘continuum of threats’ from war, terrorism and organized crime to domestic violence, child sexual abuse and, according to this narrative, uncontrolled migration.²⁵

The last axis of transformation relates to the legal basis of integration. It has been famously stated that the development of European integration has given rise to ‘a structured network of principles, rules, and mutually interdependent relations linking the EU and its Member States, and its Member States with each other’.²⁶ EU law has essentially been designed as a means to bring European States together, linking them into a liberal model of social formation: the Article 2 TEU European ‘society’.²⁷ This presupposes the possession of a ‘constitutional framework’ involving the protection of individual rights, institutional rules on the division of powers and on procedures for exercising these powers and respect for fundamental rules

22. Francois Foret and Noemi Trino, ‘The “European way of life”, a new narrative for the EU? Institutions’ vs citizens’ view’ (2023) 24 *European Politics and Society* 336, doi: 10.1080/23745118.2021.2020482.

23. Kathleen R McNamara, ‘Transforming Europe? The EU’s industrial policy and geopolitical turn’ (2023) 31 *JEPP* 2371, doi: 10.1080/13501763.2023.2230247; Ana E Juncos and Sophie Vanhoonacker, ‘The Ideational Power of Strategic Autonomy in EU Security and External Economic Policies’ (2024) 62 *J Com Mar Stud* 955, doi: 10.1111/jcms.13597.

24. Editorial comments, ‘The passion for security in European societies’ (2024) 61 *CML Rev* 283, doi: 10.54648/COLA2024022.

25. European Commission, ‘Sixth Report on the implementation of the EU Security Union Strategy’ COM (2023) 665 final.

26. Opinion 2/13 (n 8) para 167.

27. This is the main point of European integration from the perspective of social sciences. Bruno Karsenti, *Nous autres Européens. Dialogue philosophique avec Bruno Latour* (PUF 2024). On the concept of European society, see Armin von Bogdandy’s contribution in this issue.

and values.²⁸ Now, the recent contestation of EU legal authority has given rise to an adaptation of this framework in the form of a newly added layer: a reference to the ‘Union’s identity’. This occurred in two judgments of 16 February 2022 in which the Court of Justice undertook to endow the concept of the EU’s identity with binding legal effects.²⁹ It held that ‘the values contained in Article 2 TEU [...] define the very identity of the European Union as a common legal order’. It then inferred what seemed to be the natural consequence of that statement: ‘the European Union must be able to defend those values’ against existential threats. The threat may come from the illiberal practices of Member States’ authorities,³⁰ from an authoritarian third State hostile to European democracies³¹ or from transactional and commodification forces that corrupt the ‘special relationship of solidarity’ between European polities and their citizens.³² In these cases, the issue is no longer one of granting individual rights and respecting liberal values, but of the manner in which the European common public order is protected and EU values defended.

4. Resisting EU law?

This material, cultural and legal transformation of the EU gives rise to a new concept of EU law that can be termed ‘resilient EU law’. This concept is meant to respond to scepticism about the EU’s capacity to act in the context of political and geopolitical attacks against European democracies. Now, the question is whether this concept can withstand the deeper scepticism that underpins European societies and populations as the result of widespread perceptions about structural erosion of socioeconomic standing of middle classes, systemic threats to the cultural and personal identities of particular social groups and irreversible processes of destruction to the planet. These subjective perceptions develop in the background of objective transformations of European societies and their environments, following systemic disruptive events such as climate change, the Covid-19 pandemic,

28. Opinion 1/17, *Comprehensive Economic and Trade Agreement (CETA)*, EU:C:2019:341, para 11; Luke Dimitrios Spieker, *EU Values Before the Court of Justice: Foundations, Potential, Risks* (OUP 2023).

29. Case C-156/21, *Hungary v European Parliament and Council of the European Union*, EU:C:2022:97 and Case C-157/21, *Republic of Poland v European Parliament and Council of the European Union*, EU:C:2022:98.

30. Michael Dougan and Christophe Hillion, ‘The EU’s duty to respect Hungarian sovereignty: An action plan’ (2022) 59 CML Rev 181, doi: 10.54648/COLA2022150.

31. Case T-125/22, *RT France v Council of the European Union*, EU:T:2022:483.

32. Case C-181/23, *European Commission v Republic of Malta*, EU:C:2025:283.

sudden migrant inflows, the rise of ‘digital worlds’ and the eruption of international disorder.³³ These transformations raise ‘existential problems’ insofar as they threaten the basic material and moral conditions for the reproduction of European societies.³⁴ Scepticism in today’s Europe does not just mean a sense of impotence in the face of international instability. It means a feeling of vulnerability in the context of ‘social insecurity’.³⁵

This feeling expresses itself in the form of anxiety about the loss of one’s own place in society, in the world and on Earth.³⁶ Europeans feel bound by a sense of catastrophe, whether imminent or underway: an ecological, demographic and cultural catastrophe.³⁷ It is in relation to these transformations that broad speculation about ‘post-fascism’, ‘absolute capitalism’ and ‘neo-imperialism’ is developing. It is in relation to this widespread sense of catastrophe that powerful imaginaries about social dispossession, cultural destruction, ecological collapse and demographic replacement have emerged in the media, social networks and the public sphere.

Is EU law capable of conjuring these imaginaries? Is it capable of resisting this insidious feeling? It may seem farfetched to suggest that EU law may be equipped to address this explosive subjective and social reality.³⁸ And yet, I believe that we, European lawyers are called to engage with these questions. More specifically, the question is whether ‘resilient EU law’, by strengthening interdependencies between EU States, promoting the defence of the European way of life and endowing the EU legal order with identity traits risks fuelling even greater feelings of loss, alienation and the self-defeating imaginaries of dispossession. If only to start addressing this question, I will briefly refer to three areas where this problem clearly arises: how Europeans relate to outsiders and migrants, the place of particular social

33. On the notion of digital worlds, see Gerald Bronner, ‘The Empire of Beliefs and Digital Worlds: What Does Contemporary Science Say?’ (2024) 45 *The Tocqueville Review* 11, doi: 10.3138/tr.45.2.11.

34. On the notion of ‘existential problems’, see Thomas Scheffer, ‘Existentielle Probleme, soziologisch’ (2021) 10 *Zeitschrift für Theoretische Soziologie* 3, doi: 10.3262/ZTS2101003. See further Loïc Azoulay, ‘European Society and its Law: EU Law in Light of Social Theory’ (2025) *European Law Open*, doi: 10.1017/elo.2025.10039 (forthcoming).

35. The concept of social insecurity has been developed by Robert Castel, *L’insécurité sociale. Qu’est-ce qu’être protégé?* (Seuil 2003). See also Catarina Kinnvall, Ian Manners and Jennifer Mitzen (eds), *Ontological Insecurity in the EU* (Routledge 2011).

36. Andreas Reckwitz, ‘The Challenge of Loss’ (*Los Angeles Review of Books*, 10 January 2023) <lareviewofbooks.org/short-takes/the-challenge-of-loss/>.

37. On the notion of catastrophe, see Étienne Balibar, ‘Régulations, insurrections, utopies. Pour un ‘socialisme’ du XXI^e siècle’ in Étienne Balibar (ed), *Histoire interminable. D’un siècle à l’autre. Ecrits I* (La Découverte 2020).

38. Eva Illouz, *Explosive modernité. Malaise dans la vie intérieure* (Gallimard 2025); Cynthia Fleury, *Here Lies Bitterness: Healing from Resentment* (Polity 2022).

groups in European society and how the EU relates to the world. To do so, CJEU case law will be relied on as a lens through which to test the resistance of EU law. It would be worth expanding this research to the other layers of EU legal production.

One of the anxieties that torment today's European society is its relationship with 'outsiders', whether mobile Union citizens or migrants. EU law applies different legal regimes to these two categories of people. In both cases, however, it is confronted with social representations and regressive public policies where poor citizens and racialized migrants are perceived as threats to the public order and national identity. A brief analysis of recent case law demonstrates that EU law does not yield to these sentiments and policies. It does not endorse the 'enemization' of the racialized or poor 'other'. In *CG*, the Court of Justice acknowledged the widespread fear that poor Union citizens may be tempted to 'abuse' generous Member States' welfare systems.³⁹ However, it considered that the host Member State must ensure that *CG*, who finds herself in a vulnerable situation with her young children 'may nevertheless live in dignified conditions'. This is on the basis of the EU Charter of Fundamental Rights, with Article 1 protecting human dignity and Articles 7 and 24 protecting family life and childhood. Similarly, in *Kinsa*, the CJEU refused the criminalization of *OB*, a Congolese asylum-seeking woman accused of having attempted to bring her eight-year-old daughter and 13-year-old niece into Italy with false documents.⁴⁰ Again, and remarkably, this was not on the basis of protecting vulnerable migrants. In its judgment, the CJEU relied on respect for family life and the rights of the child enshrined in Articles 7 and 24 of the EU Charter. EU law is committed to protecting European values centred on family ties and child welfare, rather than unconditional hospitality and solidarity towards outsiders.

It follows that EU law operates by the determination of degrees of proximity with the form of socialization that is most consensual and familiar to us, that is, the European model of family life. Thus, it reduces otherness to the way of life of the average European. Conversely, this allows for the detection of degrees of deviance within the group of 'others'. The Court of Justice does not accept the criminalization of the poor and migrants. However, it does admit the idea that there are 'dangerous' and 'free-rider' individuals and that these especially include the poor and migrants.⁴¹ Its

39. Case C-709/20, *CG v The Department for Communities in Northern Ireland*, EU: C:2021:602.

40. Case C-460/23, *Kinsa*, EU:C:2025:392.

41. On migrants, see Case C-143/22, *Association Avocats pour la défense des droits des étrangers (ADDE) and Others v Ministre de l'Intérieur*, EU:C:2023:689. On poor citizens, see

principled refusal to reduce migration to a geopolitical threat subject as such to criminalization is compensated by a form of alienation of discrete individuals. This seems to be the CJEU's way of acknowledging that it is concerned with protecting the 'European way of life' and 'fostering of social cohesion at local, national and European level'.⁴²

A similar ambivalence may be discerned in cases in which EU law is confronted with claims for the recognition of particular social groups. The Commission's infringement action against Hungary's anti-LGBTIQ+ law is evidence of the EU's willingness to defend the values of pluralism and tolerance in a democratic society.⁴³ In the Commission's view, LGBTIQ+ people form a coherent group embodying the Union's identity and, as such, are worth protecting. However, the same protection does not apply to groups seen as carrying differences that are not easily subsumable under EU values. Rulings concerning the ban on wearing the Islamic veil in the workplace are cases in point.⁴⁴ In the CJEU's view, this ban is a case of indirect discrimination that can be justified where there is 'a genuine need on the part of the employer'.⁴⁵ Veiled Muslim women are seen as a factor causing trouble and social disorder. Thus, the EU law framework with regard to minority groups is dichotomous: some social subgroups and their differences are recognized, while others are not, depending on whether they are composed of individuals seen as capable of personal autonomy and amenable to embodying and internalizing EU values. In this case, the distinction is not based on the ability to lead a 'normal family life' but on the ability to integrate into a 'good society'.⁴⁶ EU law is committed to pluralism, but only to the extent that societal cohesion and social peace are not 'threatened'.

The third area concerns the EU's relationship with the outside world and the planet. This relationship is framed in terms of flows to be managed and controlled. The principal flows that structure our relationship with the

Case C-333/13, *Elisabeta Dano and Florin Dano v Jobcenter Leipzig*, EU:C:2014:2358. See, for further analysis, see Loïc Azoulay, "'Living together" in Europe's polarised societies: Navigating the ECtHR and CJEU case law' (2024) EUI Law Working Paper 2024/18 <cadmus.eui.eu/server/api/core/bitstreams/487361b9-87a7-58c9-962c-b0640182f049/content>.

42. European Commission, 'EU Security Union Strategy' COM (2020) 605 final, 16.

43. Request for a preliminary ruling in Case C-769/22, *European Commission v Hungary*. Lucia Serena Rossi, "'Concretised", "Flanked", or "Standalone"? Some Reflections on the Application of Article 2 TEU' (2025) 10 *European Papers* 1.

44. Case C-188/15, *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA*, EU:C:2017:204; Joined Cases C-804/18 & C-341/19, *IX v WABE eV and MH Müller Handels GmbH v MJ*, EU:C:2021:594; Case C-344/20, *L.F. v SCRL*, EU:C:2022:774; Case C-148/22, *OP v Commune d'Ans*, EU:C:2023:924.

45. Joined Cases C-804/18 & C-341/19, *WABE*, para 64.

46. The notion of 'good society' appears in the Opinion of AG Ćapeta in Case C-769/22, *Commission v Hungary*, EU:C:2025:408, para 157.

world are the flow of energy and critical materials, the flow of information and data, the flow of people and migrants and the flow of goods and capital. In this context, the Court of Justice insists that the Union should remain open to the world and compliant with EU values in the conduct of its external relations.⁴⁷ Yet, what emerges from cases such as the *Front Polisario* cases is that patterns of unequal exchange remain embedded in EU law.⁴⁸ In this case, the Court of Justice has made it clear that an international agreement concluded by the Union could not be interpreted as applying to the territory of Western Sahara, since this would be contrary to the right to self-determination of the Sahrawi people.⁴⁹ Yet, at the same time, it admits that the consent of this population could be presumed as long as this population ‘receives a specific, tangible, substantial and verifiable benefit from the exploitation of that territory’s natural resources which is proportional to the degree of that exploitation’.⁵⁰ This is in sharp contrast with the rejection of any form of commercialization and transaction regarding political citizenship in Europe, as asserted by the CJEU in *Commission v Malta*.⁵¹

It seems that EU law’s relationship with the concept of ‘territory’ differs depending on whether it concerns the territory ‘in which’ we live or the territory ‘from which’ we live.⁵² It accepts the extraction of resources as essential to Europe’s prosperity in outside territories.⁵³ Yet, this is not to subdue or repress the ‘people from which we live’. This is not pure ‘extractive colonialism’: EU law acknowledges that the Sahrawi people are entitled to self-determination and political existence. However, with a view to maintaining European standards of living in a context of economic dependency and ecological catastrophe, the political existence of the

47. Marise Cremona, ‘Values and Interests, Law and Power in EU External Relations: Two Perspectives’ (2025) AEL Working Paper 2025/05 <cadmus.eui.eu/server/api/core/bitstreams/b2ec03eb-35bf-431e-9031-0176a06f196f/content>.

48. On these patterns, more generally, see Scott and Kilpatrick, ‘Is the EU’s turn to sustainable supply chains neo-colonialist?’ (forthcoming, 2026).

49. Case C-104/16 P, *Council of the European Union v Front populaire pour la libération de la saquia-el-hamra et du rio de oro (Front Polisario)*, EU:C:2016:973.

50. Joined Cases C-779 & C-799/21 P, *European Commission v Front populaire pour la libération de la saquia el-hamra et du rio de oro (Front Polisario)*, *Council of the European Union and Council of the European Union v Front Populaire pour la libération de la saquia-el-hamra et du rio de oro (Front Polisario II)*, EU:C:2024:835, para 153.

51. Case C-181/23, *Commission v Malta*.

52. On this distinction, see Bruno Latour, ‘Is Europe’s soil changing beneath our feet?’ (2022) Groupe d’études géopolitiques Working Paper, June 2022, 85 <www.bruno-latour.fr/sites/default/files/downloads/179-CONTINENT-SORBONNE-GB-pdf.pdf>.

53. Johan Stagstrup, ‘The CRMA Goes Abroad: Strategic Recognition Without Normative Coherence?’ (*EU Law Live*, 9 June 2025) <eulawlive.com/op-ed-the-crma-goes-abroad-strategic-recognition-without-normative-coherence/>.

Sahrawi people is reduced to mutual economic benefit for Sahrawis and Europeans. This resonates with the transactional approach to the recent EU-US trade deal.⁵⁴ ‘Resilient EU law’ ultimately relies on a dichotomous concept of ‘territory’, split between the territory that is inhabited and governed and the territory that is dominated and exploited.⁵⁵

5. Reflexive EU law

This short and incomplete study has uncovered the core conceptuality and internal normativity of EU law: family-society-territory. The development of this core is a thin yet balanced response to the ‘existential’ challenges that Europe is facing. It means that EU law stands up for its values in a geoecological, geopolitical and psychosocial context that is widely hostile to them. It firmly refuses to be implicated in pervasive racist, hegemonic and extractivist ideologies. However, in its own way of sticking to its values, concerned as it is by the objective of ensuring Europe’s strategic autonomy, resilience and social cohesion, it inevitably produces forms of alienation, discrimination and exploitation. This generates a frustration that certain political forces are prone to exploiting, including by pitting social groups against each other. Therefore, the issue at hand is the capacity of EU law to resist these forces and its ability to involve itself in a fragmented social reality; indeed, its ability to survive in this context.

The commitment of EU institutions to the rule of law, democracy, pluralism and international stability – all of which I advocate – as well as the EU’s resolution to defend EU values and its concern for the reconstruction of the Union’s capacity for action will not be enough. We, European lawyers who treasure Union institutions and EU values should realize that we need to engage with the ‘experience of Europe’ as it is represented by social groups living in Europe and affected by Union policies. This means – I

54. European Commission, ‘EU-US trade deal explained’ (Press release, Brussels, 29 July 2025) <ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_25_1930/QANDA_25_1930_EN.pdf>; European Commission, ‘Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade’ (Brussels, 21 August 2025) <policy.trade.ec.europa.eu/news/joint-statement-uni-ted-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en>.

55. On this dual conception, see Pierre Charbonnier, *Abondance et liberté. Une histoire environnementale des idées politiques* (La Découverte 2020). For a critique of this conception, see Marie Petersmann, ‘Reordering the European ground – regrounding the European legal order?’ (2024) 3 *European Law Open* 180, doi: 10.1017/elo.2024.12.

should like to suggest – developing more reflexive EU law and EU legal studies, being eager to know more about social reality (defined as the set of social practices and categories through which social groups relate to their own conditions of existence), being capable of resisting confusing social representations and populist phraseology and being prepared to revisit its core conceptuality.