Conference Proceedings: "Integration Through Law and the European Union: Political and Legal Developments vs. Polycrisis", University of Bonn in October 2024†

*Domenica Dreyer-Plum**

Thinking about European integration processes, there is one key variable that is both technical and normative and of utmost importance for both the foundation and the functioning of the Community of Member States: *the law*. Normatively, it is inherently linked to the principle of rule of law. This implies that the development of law follows specified legal procedures as laid down in the legal framework of the treaties and secondary European law. However, it is important to remember that this legal order and the law stemming from it is neither natural nor resistant to change. Quite the opposite: the legal framework of our governmental organisation, but even more so the laws that shape our society, are subject to change, particularly through practice and interpretation.

The European Union (EU) represents an international legal order which, with the cooperation of its Member States, has influenced and shaped national legal systems to a considerable extent and created limits for national scope of action. The internal market and fundamental freedoms are regarded as the nucleus of European integration progress, as these freedoms are interwoven with other sensitive policy areas that have been Europeanised in the course of treaty developments, including, for example, the realisation of the free movement of persons in the Schengen area and the establishment of the currency area. In addition, the case law of the Court of Justice of the European Union (CJEU) in relation to the internal market is increasingly used to negotiate political and social issues with legal consequences for all EU Member States, such as the right to strike,

† This is a translated and extended conference report of the proceedings published by the author as 'Integration durch Recht und die Europäische Union' (2025) 48 *integration* 1, 90–98.

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anti-discrimination and equality issues.[1] It is not uncommon for the court to arrive at an interpretation of norms that is characterised by observers as politically formative.[2] It is obvious that the theoretical approach of *integration through law* in its pure form is no longer able to explain the progress of integration, but that the significance of individual judgements of the ECJ continues to have a formative influence on European societies beyond market issues. In the face of disruptive crises that call into question the balance of institutions, the negotiation of European social cohesion and the unification process as a whole, *integration through law* as a model of European integration seems to be at an end.[3]

Against this backdrop, it is a good time to ask: What does the theory of *integration through law* still contribute to our understanding of the (further) development of the European legal community today? Answers were discussed by ten national and international legal and political scientists at the interdisciplinary conference 'Integration Through Law and the European Union: Political and Legal Developments vs. Polycrisis' on 24 and 25 October 2024 at the Institut Français in Bonn. The aim of the research conference was to review the theory of *integration through law*, according to which the EU's integration progress up to the 1980s was essentially explained by case law. Going a few steps further, the discussions extended to the present and broadened the view towards processes of integration that are connected to the general principle of *integration through law* but with different connotations and instruments than jurisprudence: such as *transformation through legislation* but also: *integration through funding* and *integration forged by crises*.

The conference opened with a panel on the theoretical approach of *integration through law* from the 1980s, which particularly emphasised the position of the ECJ within the institutional framework of the EU. This

1 M. Höpner, 'Usurpation statt Delegation. Wie der EuGH die Binnenmarktintegration radikalisiert und warum er politischer Kontrolle bedarf' (2012) *MPIfG Discussion Paper*; D. Grimm, *Europa ja – aber welches? Zur Verfassung der europäischen Demokratie* (München, 2016); S. K. Schmidt, *The European Court of Justice and the Policy Process. The Shadow of Case Law* (Oxford, 2018); M. Höpner and S. K. Schmidt, 'Can We Make the European Fundamental Freedoms Less Constraining? A Literature Review' (2020) 22 *Cambridge Yearbook of European Legal Studies*, 182; see also the contribution by Susanne K. Schmidt in this volume (Pages 79 to 104).

2 Höpner and Schmidt, see n. 1; M. Höreth, *Die Selbstautorisierung des Agenten. Der Europäische Gerichtshof im Vergleich zum U.S. Supreme Court* (Baden-Baden, 2008).

3 L. Azoulai, '"Integration through law" and us' (2016) 14 *International Journal of Constitutional Law*, 449, 461.

was followed by a second panel, which extended the view to the European Commission as an important actor in *integration through legislation* and addressed the cross-cutting issues of legitimacy and sovereignty. The third panel focused on the *rule of law* as a central value and principle of the EU. The experiences of the past ten years have painfully taught the EU that democratic development is not a linear process but that setbacks are also possible. Based on these considerations, a concluding fourth panel focused on the EU's *self-conception* in the face of the polycrisis. The aim was to assess how the EU deals with past and present crises. One of the focal points were budgetary issues, since they are highly relevant not only for the EU's autonomy and ability to act but also for the legitimisation of its output.

1. Classic: Integration Through Law by Jurisprudence

In an examination of the theoretical starting point, the first panel reflected on the development of *integration through law* in recent years in the face of the polycrisis. Among other things, the democratic deconstruction in individual Member States was discussed, which is referred to as the 'rule of law crisis' and has led to the Court of Justice's case law on values, in particular on the interpretation of the common value of the rule of law.

Based on empirical analyses, the theory approach of *integration through law* from the 1980s focused heavily on individual ECJ rulings that had made a significant contribution to shaping the legal community.[4] *Martin Höpner* emphasised that *integration through law* should be distinguished from the integration of legal systems, which effectively arises from the intertwining of legal systems. In that sense, the vertical integration of legal systems is not to be mixed up with integration through jurisprudence. He emphasised that the treaty objectives of the European Economic Community (EEC) had initially resulted in a primacy of market freedoms, which, however, lacked a normative dimension. The resulting tension between the market and the state had been resolved through effective economic liberalisation in favour of *negative integration*. This term captures the dismantling of interstate trade relation barriers in regional economic integration that are found at different levels and vary from the establishment of a free trade area to a

4 See generally: J. H. H. Weiler, 'The Transformation of Europe' (1991) 100 *The Yale Law Journal*, 2403.

customs union, common market and economic union until they reach full economic integration.[5] Höpner argued that early European integration was strongly influenced by case law that promoted economic integration within the newly established organisation by way of jurisprudence. Indeed, it could be observed that the legal development of the EEC in the first decades after its foundation in 1957 was strongly shaped by the judiciary and its interpretation of the treaties. This gave rise to questions of legitimisation, especially when legal decisions were of great political importance.

Clemens Ladenburger argued that the focus of the ECJ's case law is now largely on the interpretation of secondary law, which is contrary to the thesis of negative integration and is rather an expression of positive integration, which is essentially based on regulations and directives.[6] Indeed, the development of the European legal community has increasingly experienced positive integration in the sense that the Member States have established policy areas and institutions at European level in the meantime, which included the transfer of competences. Most compelling examples include the Single European Act (1986/1987) and the Maastricht Treaty (1992/1993). The reference to the significance of positive integration in the current judicial setting of the EU paved the way for a discussion of today's challenges of the political dimension of case law. The different views on positive and negative integration then crystallised in the discussion on the values of the European Union and the question, if it is possible to define the scope and meaning of the values of the Union by interpreting the Treaties.[7] This highlights the political dimension of jurisprudence in the European multilevel legal setting: The involvement of the Member States' legal systems and their affectedness by European case law is the reason for concerns regarding the political legitimacy of European case law that might ultimately draw red lines on the understanding of basic democratic principles.

The panellists thus discussed critically the recent approach of the ECJ to judicialise values enshrined in Art. 2 TEU such as the rule of law and

5 See generally: F. Scharpf, *Governing in Europe: Effective or Democratic?* (Oxford University Press, 1999).

6 Arguing similarly: M. van den Brink, M. Dawson and J. Zglinski, 'Revisiting the asymmetry thesis: negative and positive integration in the EU' (2023) 32 *Journal of European Public Policy*, 209.

7 See this current debate in: J. Bast and A. von Bogdandy, *Unionsverfassungsrecht* (Nomos, 2025). See also the contribution of D. Piqani in this volume (Pages 149 to 172).

democracy. For *Höpner*, a significant reason for a critical consideration of those judicial activities is the question of legitimacy: He questioned, whether individual judges at the ECJ are legitimised to proactively push for a specific interpretation of liberal democracy, not limited to but especially with regard to values. *Höpner* further argued that the empirical variance of rule of law as a premise of democracy should be uphold and prevent a streamlined and rather uniform understanding of rule of law resulting from case law decisions by the ECJ. The idea of rule of law behind the judgements is linked to the idea that the rule of law can guarantee freedom. The law should function as a common language and lead to integration. However, this does not work because the law is not applied in this way, argued *Eva Lautsch*. Law gives politics a form, *Höpner* agreed, and is a crucial instrument for operationalising political decisions. However, referring to the current crises, *Lautsch* emphasised: "No reading of primary law will help us to meet the political challenges of the legal community."

2. Strategic: „Big on big things" versus Everyday European Legislation Lost in Details

The introductory panel on integration theory was followed by a panel that broadened the view of the European Commission as an important player in *integration through law*. In September 2017, Jean-Claude Juncker made the following promise as a priority for the European Commission:

> "Last but not least, I want our Union to have a stronger focus on things that matter [emphasis in original], building on the work this Commission has already undertaken. We should not meddle in the everyday lives of European citizens by regulating every aspect. We should be big on the big things. We should not march in with a stream of new initiatives or seek ever growing competences. We should give back competences to Member States where it makes sense."[8]

This demand has been repeated many times since then with regard to the European Commission. The Commission of *Ursula von der Leyen* has also defined "better regulation" as a "common task" for the legislative period

8 European Commission, 'State of the Union address 2017', Speech/17/3165, 13 September 2017.

from 2024 to 2029, in which "all institutions will be involved".[9] The past legislative period from 2019 to 2024 in particular, with legislative initiatives to realise the EU climate targets as part of the Green Deal, left the impression that regulation by the Commission had become excessive. A lot of these are small-scale regulation activities, which entail extensive regulation at national level, explained *Susanne Schmidt*. This is problematic from a democratic perspective, as the EU draws its legitimacy essentially from the legitimacy of its Member States, insofar as the governance of the EU is based on "governance by governments"[10]. *Linn Selle* added that EU citizens also have the impression that the EU regulates too much. The perception is that EU-wide regulation is still increasing and burdening companies and state administrations at various levels.

Ladenburger countered that sometimes detailed regulations are needed, such as energy-saving shower heads, in order to realise big goals through the small details of everyday life. In addition, the Commission had set standards in recent years with groundbreaking legislation not only with regard to climate neutrality, but also in the area of digitalisation with the General Data Protection Regulation, the Artificial Intelligence Regulation, the Digital Services Act and the European Media Freedom Act. This is embedded in a concept of "better legislation"[11], which has provided for both multi-year planning and detailed annual planning for legislative practice since 2016.

Nevertheless, according to *Lautsch's* observations, lines of conflict arise from the fact that the law is no longer perceived as an instrument for strengthening individual freedoms but rather that individual freedoms are strongly restricted by overwhelming bureaucracy. The European legal community has thus abandoned the path of promoting individual rights in favour of strong regulation.

9 U. von der Leyen, 'Europe's Choice. Political Guidelines for the next European Commission 2024–2029' (*Commission*, 18 July 2024) <https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_de?filename=Political%20Guidelines%202024-2029_DE.pdf> accessed 7 May 2025, 9.

10 S. K. Schmidt, 'Legitimacy dynamics in the multilevel EU – implementing integration through law at the MS level', Bonn, 24 October 2024.

11 European Commission: 'Communication from the Commission to the European Parliament, the European Council and the Council: Better Regulation: Delivering better results for a stronger Union' COM(2016) 615 final.

3. Legitimacy and Sovereignty of the Commission

Another important area of responsibility of the European Commission – as guardian of the treaties – is to monitor compliance with European law by the Member States. In the political science debate, an essay by *Tommaso Pavone* and *R. Daniel Kelemen* has been cited across policy areas since 2023,[12] according to which the Commission has abandoned this role and is deliberately initiating fewer infringement proceedings for strategic reasons. The authors accuse it of pursuing a „supranational policy of forebearance"[13].

Ladenburger – Deputy Director General of the European Commission's Legal Service – countered that this was not the case. It is true that there has been a decline in the number of infringement proceedings. In 2010, the Commission as a college had made a conscious decision to prioritise infringement proceedings and to focus more on systematic issues than on minor matters. However, this strategic decision should be read in a context in which the dialogue with the Member States has been intensified and there is increased political control and accountability. In any case, the College of Commissioners would decide on infringement proceedings. The reasons for the drop in numbers, according to *Ladenburger*, are declining legislation as well as the Commission's limited resources and the simultaneous expansion of its remit.

4. Controversial: Juridification of Values versus 'Regression Through Law'

The panel discussion on rule of law focused on the core values and principles of the EU. With the experience of the restructuring of the judicial and media systems in Hungary and Poland, the European legal community has learnt that democratic development in the Member States can also turn into the opposite – especially with recourse to the law. In this tense relationship, it is crucial for the ECJ that the independence of the courts is preserved in order to guarantee the functionality of the legal community, stated *Darinka Piqani*. In a decision relating to Art. 19 of the Treaty on European Union

12 R. D. Kelemen and T. Pavone, 'Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union' (2023) 75 *World Politics*, 779.

13 R. D. Kelemen and T. Pavone, see n. 12, 779.

(TEU), the ECJ expressly included the values of the EU from Art. 2 TEU for interpretation and operationalised the abstract concept of rule of law for the first time.[14] *Piqani* considers this step in case law to be ground-breaking, as it establishes a Community-wide understanding of the rule of law. At the same time, this decision emphasises the Member States' responsibility to guarantee for the independence of their courts.

The tension surrounding the interpretation of the rule of law is not only relevant for the Union itself but increasingly with a view to the envisaged EU enlargement towards the Balkan states. If the EU accepts further Member States, it will be important to build on a basic political and legal consensus on the status and significance of the rule of law. This emphasises once again the important technical-serving but also normative role that law as such plays in the EU.

Embedding democratic principles and the rule of law in the Member States' systems and societies is therefore of central importance. The introduction of the Council rule of law annual dialogues and the EU rule of law reports are promising formats for peer dialogue to define the scope of rule of law, promote and share best practices and identify potential challenges early.[15] The EU rule of law report also covers law developments in the candidate countries Albania, Montenegro, North Macedonia and Serbia and can accordingly serve as a tool to enhance a Community culture of rule of law developed bottom-up by dialogue between the Member States. This could contribute to a veritable constitutional development of a shared understanding of rule of law.

At the same time, ideas and strategies are needed to recognise regressions in the rule of law at an early stage and prevent them if possible. The important question as to how the EU could decisively and effectively counter the phenomenon of democratic backsliding in various Member States was ultimately left open during the discussion. The idea of incentivising financial integration – freezing or making funds available – to achieve political goals, as suggested by *Marcin Gorski*, is an obvious one. However, if a constitutional culture is to be strengthened, investment in the political culture is needed too, which will have to come from the citizens of the

14 Court of Justice, Judgment of the Court (Grand Chamber) [2018] ECLI:EU:C:2018:117, C-64/16 *Associação Sindical dos Juízes Portugueses*.

15 European Commission, 'Communication from the Commission of 11 March 2014, A new EU Framework to strengthen the Rule of Law' COM(2014) 158 final.

Member States. This cannot be replaced by EU funds in the sense of conditionalisation.

5. Creative: Integration Through Funding

Based on these considerations and questions of legitimacy, sovereignty, rule of law and their coming into life by practices of especially the supranational European institutions, the panellists and participants discussed the EU's self-conception in the face of numerous crises in a concluding panel. Since the financial and sovereign debt crisis in several EU countries in the early 2010s, it has often been observed that reactions to crises were immediate, but long-term integration measures were often delayed, if they were realised at all. By focusing on the experience of multiple severe crises in the past 15 years, *Selle* pointed to a considerable expectation gap: While citizens placed high expectations on the EU, especially during crises, the political room for manoeuvre was limited due to the (bounded) competences and (restricted) financial resources of the EU.

The discussion then concentrated on an assessment of how the EU dealt with past and present crises by looking into budget issues related to crises. Financial capacities are highly relevant to the EU's autonomy, ability to act and its output legitimisation. Already during regular times, the negotiations circling around the Multiannual Financial Framework take numerous rounds of bargaining to define the EU budget and the contributions made by Member States. *Selle* assumed that the negotiation game for the Multiannual Financial Framework with its previous focus on net contributors and net recipients could be changed if a significant proportion of the EU budget were covered by own resources or own revenues, such as the plastic tax or other financial income options independent from the Member States. Whereas *Ruth Weber* remembered that taxes cannot be levied indefinitely, she confirmed this potential avenue for partial budgetary independence by linking funds to conditionality in the sense of *integration through funding*. The pandemic-related recovery fund NextGenerationEU (NGEU) can be seen as an example of how *integration through funding* can work. In a similar vein, the Draghi report presented in September 2024 also builds on this. However, the EU still lacks the full authority to take out loans. To date, the EU has relied mainly on contributions financed by the Member States and, to a much lesser extent, on its own resources.

Yet, the EU's financial options have been significantly changed by NGEU: Although the Commission has been implementing loan programmes for 40 years, it has so far strictly adhered to a link between borrowing and disbursement. This meant that Member States received repayable funds that were linked to fixed repayment periods and fixed costs. With NGEU, the decision was made in favour of a new and „diversified financing strategy",[16] in which the timing, volume and maturity of the bond transactions are independent of the time of disbursement. In December 2022, this diversified financing strategy was adopted by the legislative bodies as the standard method for EU borrowing.[17] In the future, there is thus the potential to underpin other policy areas (energy, defence) on the basis of the diversified financing strategy.

In this sense, *integration through funding* could supplement *integration through law*. This would also be conceivable with regard to the rule of law and values policy but would reinforce the conditionality approach and undermine the principle of mutual trust between Member States. A compromise could – also in the area of the rule of law – be the explicit promotion of rule of law projects instead of a sanction-oriented approach of withholding funds. This would resemble the active promotion of green technology and digitalisation within the NGEU funding line. But what are the limits of borrowing and the creative use of legal instruments to create financial sources? And why do we even allow ourselves to shift credit financing into the future? These legitimising questions remain open for discussion in hypothetical thoughts about *integration through funding*.

6. Outlook: Integration Through a Legally Sound Financing Architecture

EU law has proven to be robust in the multiple crises of the past 15 years. Nevertheless, many pressing questions arise with regard to its sustainability.

16 European Court of Auditors, 'Special report 16/2023: NGEU debt management at the Commission – An encouraging start, but further alignment with best practice needed' 2023/C 206/07, 9.

17 Regulation (EU, Euratom) 2022/2434 of the European Parliament and of the Council of 6 December 2022 amending Regulation (EU, Euratom) 2018/1046 as regards the establishment of a diversified funding strategy as a general borrowing method [2022] OJ L 319/1; replaced by Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) [2024] OJ L 2024/2509.

Integration through law, in the sense of further development of the legal community through jurisprudence, is currently controversial, particularly in the area of common values. It is doubtful whether this can be an effective way of preventing democratic regression through the use of legal instruments, as long as a corresponding judicialisation of values is not supported by broad social consent. This in turn requires a political and legal culture in the EU, as is being developed in the initial stages of the rule of law dialogue.[18]

The integration of legal systems in the EU has progressed far through regulation and jurisprudence. This development is also viewed critically, as the continued comprehensive regulation at European level has a significant impact on the lives of citizens.[19] Thus, integration of the law has become a complex and undeniable reality for the vertical European multilevel legal system. Since it constitutes a political system with both vertical and horizontal dimensions and outreach, it is advisable to scrutinise the legitimating power of law itself. What follows from this assessment is the need to consider the political dimension necessary for the continuous confirmation of the European integration project not just based on law but on political will, as expressed by actions of the Member States in the sense of positive integration and feeding back into the legal and political European institutional setting.

Legitimisation by the Member States will continue to play a decisive role in all *integration through*-formats. Despite supranational structures and institutions, the concept of "governance by governments"[20] will remain essential. This also applies to *integration through funding*, which was introduced with NGEU and is aimed in particular at the economic promotion of sustainable technologies for climate neutrality and digitalisation in the fight against the pandemic and is becoming increasingly important in the European discourse on overcoming political challenges.

Conference Programme

International and interdisciplinary research conference on European integration, organised by the Institute for Political Science and Sociology (IPWS), the Centre Ernst Robert Curtius (CERC) and the Center for Ad-

18 See also in this volume: Darinka Piqani (Pages 149 to 172).

19 S. K. Schmidt, 'Legitimacy dynamics in the multilevel EU – implementing integration through law at the MS level', Bonn, 24 October 2024; see also in this volume: Susanne K. Schmidt (Pages 79 to 104).

20 See in this volume: Susanne K. Schmidt (Pages 79 to 104).

vanced Security, Strategic and Integration Studies (CASSIS) of University of Bonn, in co-operation with the Institut français Bonn. Supported by the Arbeitskreis Europäische Integration e.V. (ECSA Germany) and the Foundation for International Dialogue of the Savings Bank in Bonn.

Thursday, 24 October 2024

Welcome and Introduction by Convenors

Dr. Domenica Dreyer-Plum, Postdoctoral Researcher at RWTH Aachen University; Senior Fellow, Center for Advanced Security, Strategic and Integration Studies, University of Bonn
Prof. Dr. Wolfram Hilz, Professor of Politics, Co-Director Center for Advanced Security, Strategic and Integration Studies, University of Bonn

Panel 1: Integration through Law – A Grand Theory Then and Now

Still an Asymmetry Between Negative and Positive Integration?
Prof. Dr. Martin Höpner, Research Group Leader Political Economy of European Integration, Max Planck Institute for the Study of Societies, Cologne
Legitimacy by Legal Means is Deficient Without Political Legitimation
Dr. Eva Lautsch, Political Editor DIE ZEIT Online, Berlin
Integration through Law and Legal Culture
Dr. Domenica Dreyer-Plum, Postdoctoral Researcher RWTH Aachen University

Chair: Prof. Dr. Wolfram Hilz, University of Bonn

Panel 2: Sovereignty and Legitimacy vs. Commission and Court of Justice

Legitimacy dynamics in the multilevel EU — implementing integration through law at the Member State level
Prof. Dr. Susanne Schmidt, Professor of Policy Field Analysis, University of Bremen
Regulation for Governance: The Commission's Response to Member States' Demands

Prof. Dr. Clemens Ladenburger, Deputy Director-General, Legal Service, European Commission, Brussels

Chair: Dr. Domenica Dreyer-Plum, RWTH Aachen University

Friday, 25 October 2024

Panel 3: Polycrisis and its Processing: Rule of Law and Backslider Populism

Legal Methods Against Rule of Law Deterioration
Prof. Dr. Marcin Gorski, Professor of the University, Chair of European Constitutional Law, University of Lodz
Rule of Law by way of Constitutional Jurisprudence of the Court of Justice
Dr. Darinka Piqani, Assistant Professor, European Constitutional Law, University of Leiden

Chair: Prof. Dr. Jared Sonnicksen, RWTH Aachen University

Panel 4: Self-conception of the European Union in crisis and beyond

EU in times of crisis: past and present
Dr. Linn Selle, Head of Division 'Europe', Representation of North Rhine Westphalia, Berlin
Understanding the EU's self-conception through its financial integration
Prof. Dr. Ruth Weber, Professor of Administrative science, University Speyer; Head of Emmy Noether Junior Research Group "Budgetary Powers" Humboldt University, Berlin

Chair: Dr. Anna Wenz-Temming, FernUniversität in Hagen

Wrap up and Final Discussion

Moderation: Dr. Domenica Dreyer-Plum / Prof. Dr. Wolfram Hilz