

The EU's Governance Transfer

From External Promotion to Internal Protection?

Vera van Hüllen and Tanja A. Börzel



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The EU's Governance Transfer. From External Promotion to Internal Protection?

Vera van Hüllen and Tanja A. Börzel

Abstract:

Whether the European Union (EU) really lives up to its image of “transformative power” is still an open empirical question. There is no doubt that the EU has been active in setting and promoting norms that go far beyond the objective of regional economic integration. It prescribes and promotes standards for national governance institutions related to democracy, human rights, and the rule of law. However, in comparison to other regional organizations, the EU used to focus on the transformation of domestic governance institutions beyond rather than within its borders, targeting accession candidates, neighboring countries, and third states alike. Only recently did the EU start to develop policies and instruments explicitly aiming to protect the same norms and values within its own member states that it seeks to transfer externally. This paper traces the evolution of the EU's external and internal governance transfer. While the external dimension is still better developed institutionally, regional integration provides the EU with effective policies and instruments to protect its fundamental values within the member states.

Zusammenfassung:

Ob die Europäische Union (EU) tatsächlich dem Anspruch einer „transformativen Macht“ gerecht wird, ist eine offene empirische Frage. Die EU setzt und fördert jedoch ohne Zweifel aktiv Normen, die weit über das Ziel regionaler wirtschaftlicher Integration hinaus gehen. Dazu gehören Standards für nationale *Governance*-Institutionen mit Blick auf Demokratie, Menschenrechte, und Rechtsstaatlichkeit. Im Gegensatz zu anderen Regionalorganisationen konzentrierte sie sich dabei ursprünglich vor allem auf die Transformation nationaler *Governance*-Institutionen jenseits ihrer Grenzen in Beitrittskandidaten, Nachbarländern und Drittstaaten. Erst seit Kurzem entwickelt die EU auch Strategien und Instrumente, die explizit auf den Schutz dieser Normen und Werte in ihren eigenen Mitgliedstaaten zielen. Dieses Papier zeichnet die Entwicklung des externen und internen *Governance*-Transfers der EU nach. Obwohl die externe Dimension institutionell nach wie vor besser entwickelt ist, stehen der EU im Rahmen des Integrationsprozesses effektive Instrumente zum Schutz ihrer Grundwerte in den Mitgliedstaaten zur Verfügung.

Table of Content

1. Introduction	5
2. EU Governance Transfer: (External) Democracy Promotion and (Internal) Democracy Protection	6
2.1 A Community of Values	8
2.2 Constitutionalizing Governance Transfer	9
2.3 External Governance Transfer: From Development Cooperation ...	10
2.4 ... to Eastern Enlargement and the European Neighborhood	11
2.5 Internal Governance Transfer: Locking-In Achievements of External Governance	12
2.6 EU Governance Transfer: A Case <i>Sui Generis</i> ?	17
3. Article 7: Effectively Protecting the EU's Founding Principles?	18
3.1 The Dog That Has Not Barked: Cases of Article 7's Non-Application	20
3.2 Why the Dog Has Not Barked: Reasons for the Non-Application of Article 7	21
4. Conclusion	22
Annex	25
References	26

1. Introduction¹

The European Union (EU) is a “governance exporter” *par excellence*. The successful, top-down Europeanization of member states and attempts at external governance transfer toward third countries have marked the EU as a “transformative,” “civilian,” or “normative” power (cf. Börzel and Risse 2009). With the Treaty of Lisbon (2009), the EU has a comprehensive framework at its disposal to shape the governance institutions in its member states as well as in accession, neighboring, and third countries. Yet, external and internal policies and practices have evolved differently over time. Unlike other regional organizations, which almost exclusively focus on shaping the governance institutions of their member states, the EU uses its external relations to support domestic reforms toward the political liberalization and democratization of (semi-) authoritarian regimes, as well as the consolidation of democracy in countries that have successfully undergone this transition. When it comes to protecting and promoting democracy, human rights, the rule of law, and good governance in its member states, the EU has been less active. Article 7 of the Treaty of the European Union (TEU) provides a formidable safeguard against breaches of the EU’s fundamental values and the risk thereof within the member states. Yet, the EU has refrained from using this instrument of internal governance transfer to impose sanctions in response to France’s extradition of its Roma population or attempts by Hungary and Romania to undermine democratic freedoms and the rule of law. Instead, the European Commission has resorted to the infringement proceedings of Article 258 TEU as well as the Control and Verification Mechanism, neither of which was designed to respond to serious breaches of democratic standards and human rights.

Article 7 TEU is a rather feeble instrument of internal governance transfer compared to other regional organizations that have a much weaker democratic membership base. As a “club of democracies,” the EU did not see the need for internal governance transfer for a long time. It was the prospect of Eastern enlargement that convinced member states to adopt Article 7 in the Amsterdam Treaty. Article 7 was devised to keep domestic changes in post-communist countries locked in after their accession to the EU, as accession would mean the end of membership conditionality. While Article 7 follows the standard model of a democracy clause adopted by other regional organizations, such as the Council of Europe, the Organization of American States (OAS), Mercosur, or the West African Economic Community (ECOWAS), its institutional design renders it a cumbersome instrument of democracy protection for the EU.

The first part of this paper provides an overview of the EU’s governance transfer and describes its evolution over time. We will show that the EU has developed a comprehensive and elaborate

¹ This paper is derived from the research project B2 “Governance Transfer by Regional Organizations,” which is part of the Collaborative Research Center (SFB) 700 “Governance in Areas of Limited Statehood,” funded by the German Research Foundation (Deutsche Forschungsgemeinschaft, DFG). Earlier drafts of this paper were presented at the ECPR 2011 General Conference and at the ISA 2013 Annual Convention. We are grateful to Liesbet Hooghe, Joe Jupille, and Sebastian Krapohl for their most valuable comments and to all of the participants in our project for several years of fruitful cooperation. We would also like to thank Sven Hilgers, Sören Stapel, Wiebke Wemheuer, and Lea Spörcke for their research assistance.

set of standards, policies, and instruments to transfer governance institutions to countries that are not members (yet). The emergence of a formal policy for internal governance transfer has lagged behind by 10 years. We argue that this is the case because the demand for internal governance transfer arose only with the prospect of Eastern enlargement: while functional equivalents and the Council of Europe were sufficient to protect the EU's "community of values" in its first four decades, the accession of several new and potentially unstable democracies created the demand for formal provisions to protect the achievements of the transformation process after accession. In addition, the diffusion of governance transfer by regional organizations in the 1990s provided a supply of new models and ideas. The second part of the paper focuses on Article 7 as potentially the most powerful provision of internal governance transfer by the EU. It grew out of a functional demand to safeguard the "community of values" by locking in democratic changes in the post-communist countries that would join in 2004 and 2007. Yet, despite several developments in Hungary and Romania that have triggered discussion of Article 7, it has not been invoked so far. We discuss to what extent institutional design, institutional self-interest, and party politics can account for the non-application of Article 7. The paper concludes with an overall assessment of the EU's external and internal governance transfer. While the external dimension is institutionally better developed, regional integration provides the EU by law with effective policies and instruments to protect its fundamental values within the member states.

2. EU Governance Transfer: (External) Democracy Promotion and (Internal) Democracy Protection

In order to map and compare the EU's activities in shaping the governance institutions of member and non-member states, the paper applies an analytical framework that we have developed in a research project on governance transfer by regional organizations (Börzel et al. 2013; Börzel et al. 2011).

We speak of governance transfer when the EU explicitly prescribes and/or intentionally and actively promotes the establishment and modification of governance institutions in member states or third countries. In line with the SFB 700 (Risse 2011), we understand governance institutions as norms, rules, and procedures that form the basis for the provision of collective goods and collectively binding rules (what), defining the who (governance actors, state and non-state), how (modes of social coordination, hierarchical and non-hierarchical), and for whom (governance collective) of governance (Beisheim et al. 2011). By prescribing and promoting standards for governance institutions, the EU defines what governance should look like at the national level in order to be legitimate. In addition to human rights, the rule of law, and good governance, the EU places major emphasis on democracy as a standard for legitimate governance institutions (Börzel and Risse 2009; van Hüllen and Stahn 2009).

In investigating the framework for governance transfer by regional organizations, we consider the prescription of standards in addition to any provisions for their active promotion and protection. Provisions for governance transfer can be integrated into the founding treaties of a regional organization, political declarations, or secondary legislation at the regional level. We

also analyze the adoption and implementation of actual measures by regional actors through the application of instruments and other, ad-hoc initiatives. We describe governance transfer in terms of the actors involved (standard-setter vs. addressee; promoter vs. target), the standards set and promoted (content; objectives), and the instruments and underlying mechanisms of influence: litigation and military force (coercion); political and economic, material, and immaterial sanctions and rewards (incentives); fora for dialogue and exchange (persuasion, learning, and/or socialization); and technical and financial assistance (capacity-building). Figure 1 summarizes our analytical framework.

Figure 1: Analytical framework for mapping governance transfer by the EU

	internal	external		
	member states	accession candidates	neighborhood countries	'the rest'
prescription of standards				
prescription of standards				
policy for protection & promotion				
- objectives				
- actors				
- instruments – mechanisms				
o coercion – military intervention, litigation				
o incentives – conditionality: sanctions & rewards				
o capacity-building – assistance				
o socialization, learning, persuasion – dialogue & exchange				

The remainder of this section will use the analytical framework above to map the EU's governance transfer in member and non-member states, exploring how the internal and external dimensions have been entangled. We will show that while the EU developed policies early on to promote democracy and human rights within its member states, its activities emerged as side products of the integration process rather than explicit prescriptions of its own standards linked to specific policies and instruments for their promotion. The EU has developed a far more comprehensive toolbox for external governance transfer. It evolved through attempts to shape the governance institutions of developing countries in the late 1980s and was subsequently applied to accession candidates and neighboring countries. Not until 10 years later did the EU start to engage more explicitly in internal governance transfer.

The EU's efforts at external governance transfer since the late 1980s are inextricably linked to its emergence as an international actor that projected and thus reaffirmed its own identity as a "community of values." We argue that changes in demand and supply factors after the end of the

Cold War can explain the EU's turn toward internal governance transfer in the second half of the 1990s (Börzel et al. 2013). For the first 40 years of European integration, there had been no demand among the EU's member states for regional institutions to promote and protect standards for governance at the national level. From its inception in the 1950s onward, the EU had been a "community of values," firmly grounded in the democratic and market-economy values of "the West." It had always comprised an overwhelming majority of consolidated democracies that had no need for regional mechanisms to lock in new, potentially weak institutions. At least partly initiated for the purpose of reconciliation in (Western) Europe, the EU and its member states experienced decades of relative stability and peace, lifting the pressure to deal with negative externalities arising from conflicts in the region. Furthermore, the EU had developed functional equivalents to internal governance transfer early on, through the process of integration. Finally, the Council of Europe complemented economic integration and cooperation projects in Europe, such as the EU and the European Free Trade Area, with a decidedly political dimension, including a well-developed and well-protected regional human rights regime.

With the end of the Cold War, the situation changed radically: Dealing with transformation processes in Central and Eastern European (CEE) countries and conflict in the Western Balkans posed a significant challenge to the EU's external relations, prompting the development of its sophisticated toolbox for external governance transfer. However, when the Copenhagen European Council formally granted the CEE countries a perspective for membership in 1993, the prospect that a large number of newly established democracies would accede in the near future suddenly created a demand among the EU's old member states for formal mechanisms of internal governance transfer. While the EU's pre-accession policy was designed to align candidate countries as much as possible with the EU's norms and standards before joining the "club," the EU-15 adopted the Amsterdam (1997) and Nice (2001) Treaty revisions in order to prepare the EU for Eastern enlargement. This reflected the need not only to guarantee the EU's continued function as a regional organization, but also to safeguard the achievements of political, economic, and social transformation once the countries had become member states. We argue that the uncertainty created by the pending Eastern enlargement plays a large role in explaining the introduction of a democracy clause (Article 7), the formalization of an antidiscrimination policy, and the adoption of the EU's Fundamental Rights Charter. However, it is no coincidence that these changes in the EU's design occurred when the idea of—and a script for—(internal) governance transfer by regional organizations had begun to spread around the globe (Börzel et al. 2013). With the end of the Cold War, regional organizations like the Council of Europe and the (OAS) had extended their initial focus on human rights to also prescribe and promote standards related to democracy, the rule of law, and good governance; also, a growing number of regional economic communities outside of Europe started to engage in (internal) governance transfer.

2.1 A Community of Values

During the EU's early years, there was no demand for formal provisions for governance transfer among the EU's member states. Even though founding treaties of the 1950s did not include any reference to democracy, human rights, or the rule of law, the EU has always been a "community

of values” of Western European democracies. The so-called “Birkelbach Report” (Birkelbach 1961), presented at the parliamentary assembly of the European Communities, already confirmed in the early 1960s that membership in and accession to the three European Communities was inextricably linked to the values shared by (potential) member states, including democracy and human rights.

In addition, the European Court of Justice (ECJ) and the European Commission were instrumental in developing alternatives to formal governance transfer by securing existing governance standards through the process of regional integration. Aside from monitoring national policies’ conformity to EU primary and secondary law, the ECJ has ensured since the late 1960s that member states respect human rights and fundamental freedoms in their implementation of Community legislation (Bogdandy 2000: 1320; Heidebreder and Carrasco 2003: 6; Merlingen et al. 2000: 4). Before the Charter of Fundamental Rights, which only entered into force in 2009, the ECJ referred to the “legal heritage of the Community” formed by principles common to all member states (Alston and Weiler 1998: 665). Within this framework, the ECJ permitted individuals to challenge the EU’s legal acts on the basis that they violated their human rights (ibid.: 709). However, in the absence of general jurisdiction, many deemed the ECJ’s human rights protection inadequate (Sadurski 2010: 419; Bogdandy 2000: 1320).

Beyond the ECJ, the EU made efforts to establish an antidiscrimination policy. Using “specific legal bases to be found in the Treaty, where human rights and the objectives of creating a common or single market happen to coincide” (Alston and Weiler 1998: 666), the EU and especially the European Commission sought to advance issues such as gender equality, for example as reflected in the 1976 Equal Treatment Directive (Bogdandy 2000: 1314; Alston and Weiler 1998: 717).²

Judicial protection of human rights and their promotion through EU secondary law could be seen as first inceptions of internal governance transfer. However, they emerged as side products of economic integration rather than as intentional efforts by the EU to shape the governance institutions of its member states. Moreover, these efforts focused on antidiscrimination policies as a specific area of human rights that could be linked to market freedoms (e.g., employment) and, in the case of gender equality, originated in Article 119 of the Treaty of Rome (equal pay).

2.2 Constitutionalizing Governance Transfer

In the context of the EU’s Southern enlargement in the 1980s, member states agreed for the first time on an informal provision for internal governance transfer. The pending accession of Greece, Portugal, and Spain had raised concerns among the member states about safeguarding and strengthening democratic reforms to lock in the acceding countries’ recent transitions.

² Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 039, 14.02.1976, p. 40–42.

While the Treaties remained unchanged, the European Council issued a “Declaration on Democracy” in April 1978 stating that “respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership” (EC Bulletin 3/1978: 6). The declaration could be invoked by the member states to counteract breaches of democracy after accession (Wallace 1996).

It was only in 1986, however, that the member states made their first constitutional commitment to governance transfer. The preamble to the Single European Act (SEA, 1986/1987) obliges the member states (rather than the EU!) to “promote democracy” internally (Paragraph 3) and “display the principles of democracy and compliance with the law and with human rights” externally (Paragraph 5) to contribute to international peace. From there, the EU first developed the practice and policy of governance transfer in external relations that focused on “exporting” the EU’s norms and standards in order to promote human rights and democracy around the world. It took the EU another decade before it started to create a policy specifically designed for internal governance transfer.

This is reflected in the evolution of formal treaty provisions on governance transfer. The Maastricht Treaty (1992/1993) integrated external governance transfer into the EU’s legal basis as part of its new external policies. The objective “to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms” was introduced in the new Common Foreign and Security Policy (CFSP) (TEU, Article J.1, now 11.1) and Development Cooperation (Treaty Establishing the European Community [TEC] Article 130u.2, now 177.2). The Amsterdam Treaty (1997/1999) then added first provisions on internal governance transfer, in particular the democracy clause of Article 7 (TEU) and the legal basis for a Community policy on antidiscrimination (TEC, Article 19, now 13).

2.3 External Governance Transfer: From Development Cooperation ...

The EU’s external governance transfer originates in the so-called “essential element clause” or “suspension clause” of its development cooperation policy. This clause allows for the suspension of an agreement or treaty if one of the two parties acts against democracy or other essential principles guiding the EU’s external relations. The “essential element clause” was first introduced into the fourth Lomé agreement with the African, Caribbean, and Pacific (ACP) countries in 1989, marking the beginning of both economic and political conditionality in EU development policy (cf. Börzel and Risse 2009). It then “travelled” to bilateral cooperation and association agreements with other countries (Horng 2003). The wording of the clause was standardized, and its inclusion in new agreements with third countries and regional groupings became mandatory in 1995 (European Commission 1995; Council of the EU 1995).³ Both (negative) democratic conditionality and political dialogue explicitly build on this clause (Bartels 2004).

³ “Respect for the democratic principles and fundamental human rights ... inspires the domestic and external policies of the Community and of [the country or group of countries concerned] and constitutes an essential element of this agreement” (European Commission 1995: 9).

The EU invoked the suspension clause several times in the 1990s, for example against Nigeria, Rwanda, Burundi, Niger, and Sierra Leone (Holland 2002: 134). Yet, in the case of the Mediterranean countries, the EU has refrained from using negative conditionality although both its regional cooperation program “MEDA” and the bilateral Euro-Mediterranean Association Agreements (EMAA) contain suspension clauses (Van Hüllen 2012). The same is true for the EU’s relations with its Eastern neighbors (see below).

The EU’s reluctance to protect democracy by answering undemocratic changes to the *status quo* and serious human rights violations with sanctions might derive from its concern about the legitimacy of its external democracy promotion and protection efforts, particularly *vis-à-vis* developing countries, many of which (particularly the ACP) are former colonies of EU member states. The 1991 Resolution on Human Rights, Democracy and Development clearly underlined that “a positive and constructive approach should receive priority,” focusing on such instruments as political dialogue (persuasion), financial assistance (capacity-building), and positive conditionality (incentives), and only secondarily drawing on negative conditionality tied to contractual relations.

The foundations of the EU’s external governance transfer were laid in the field of development cooperation. It received its biggest boost, however, in 1993, when the EU member states decided to offer a membership perspective to the post-communist countries of Central and Eastern Europe.

2.4 ... to Eastern Enlargement and the European Neighborhood

The EU’s enlargement policy used the external governance transfer developed in its cooperation agreements with the ACP and Mediterranean countries. It adapted them to the situation in Central and Eastern Europe, where the main challenge facing the EU was to foster democratic consolidation rather than induce political liberalization and democratization in authoritarian regimes. Most importantly, the EU’s enlargement policy strengthened the essential element clause as an instrument of positive conditionality, rewarding compliance with human rights, democracy, and the rule of law (political Copenhagen criteria) by opening accession negotiations and ultimately offering membership (cf. Cremona 2003; Kochenov 2004). The Europe Agreements, which provided the framework for applicant countries’ integration into the EU, made accession conditional upon *ex ante* compliance with the Copenhagen criteria (i.e., positive conditionality). Suspension clauses (negative conditionality) were only introduced through the so-called Accession Partnerships in 1998, which defined specific priorities in the accession process agreed upon by the Commission and the candidate country, making financial aid conditional upon compliance with democratic principles, human rights, the rule of law, and a market economy. Failure to respect these general conditions could lead to a decision by the Council to suspend pre-accession financial assistance. Likewise, these partnerships allowed the EU to postpone the opening of accession negotiations or delay the opening of new chapters and the closure of opened chapters if candidate countries refused to comply. The EU exercised this

power in the case of Slovakia in 1997, helping to prevent an authoritarian backlash by nationalist forces (cf. Henderson 1999).

Yet, with a few (successful) exceptions, negative conditionality was hardly invoked. As in its relations with developing countries, the EU's enlargement policy complemented accession conditionality with financial and technical assistance to help candidate countries comply with the Copenhagen criteria. (Bailey and de Propris 2004; Maresceau 2003: 12-13).

Given the perceived success of Eastern enlargement in terms of external governance transfer to the CEE countries, the EU's pre-accession strategy for the current candidate countries in the Western Balkans closely follows the CEE trajectory, combining financial incentives with trade concessions in the shadow of (positive) membership conditionality (Friis and Murphy 2000; Magen 2006: 513-516; Elbasani 2013).

Finally, external governance transfer has been a key component of the EU's approach to turning its new neighbors to the east into an area of security, stability, and prosperity (Börzel et al. 2008). The European Neighbourhood Policy (ENP) uses the same policies and instruments that proved so successful in the CEE accession countries, albeit with a much lower intensity and one major exception (Kelley 2006; Magen 2006): Covering the EU's Eastern and Southern neighbors, the ENP was built as an alternative to membership. As a result, the EU lacks its most important instrument for both the promotion and protection of democracy: accession and membership conditionality.

In sum, since the 1990s, the EU has sought to actively transfer norms, rules, and procedures of democracy, human rights, the rule of law, and good governance to states in its immediate vicinity and beyond. In doing so, it heavily relies on political dialogue, assistance, and positive conditionality to reward and support domestic reforms toward political liberalization and democratization of (semi-)authoritarian regimes, as well as the consolidation of democracy, in countries that have successfully undergone transition. Negative conditionality is largely confined to democracy protection to prevent authoritarian backlash.

The various policies and instruments of the EU developed through an incremental process of "learning by doing" rather than by following a grand master plan. They initially emerged in the development cooperation between the EU and the so-called ACP countries, then "travelled" to the Eastern enlargement process and to the European neighborhood countries (Börzel et al. 2007). As we will see in the next section, they eventually spilled over to the EU's domestic policies as well.

2.5 Internal Governance Transfer: Locking-In Achievements of External Governance

The Amsterdam Treaty (1997) marked the beginning of an explicit policy dedicated to the EU's governance transfer *vis-à-vis* its own member states. In the early years of European integration, the EU had developed an antidiscrimination policy, which was protected and promoted

through legal coercion exercised by the ECJ. Yet, the EU did not set its own governance standards. Instead, it referred to the “legal heritage” of its member states and the Conventions of the Council of Europe. Moreover, the EU did not develop specific policies or instruments to shape the governance institutions of its member states. The Treaty of Amsterdam not only formalized and extended the EU’s antidiscrimination policy but also created a mechanism designed to more broadly protect democracy and fundamental rights at the level of member states.

With regard to antidiscrimination, the Treaty of Amsterdam (1997) finally established a general legal basis for the Community to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” (Art. 13 TEC, now Art. 19 Treaty on the Functioning of the EU [TFEU]). The European Monitoring Centre on Racism and Xenophobia (EUMC) was founded earlier that year, reflecting the EU’s growing ambitions to create a human rights policy based on the principle of antidiscrimination.⁴ Beyond the creation of the EUMC as an independent monitoring agency, the Race Directive and the Employment Directive of 2000 (Heidbreder and Carrasco 2003: 9–10), as well as a second Equal Treatment Directive of 2004, build directly on this innovation, making the protection of fundamental rights part of EU jurisdiction.⁵ In this field of action, the EU has even engaged in active promotion through a Community program to combat discrimination (2001–2006) and support employment and social solidarity (PROGRESS, 2007–2013).⁶

The Amsterdam Treaty also codified a democracy clause to protect the values upon which the EU was founded. Article 7 of the revised TEU established a sanction mechanism in case member states failed to uphold/respect common principles such as democracy, human rights, and the rule of law (see below). While applicable to all member states, Article 7 was clearly an attempt by the EU-15 in the Treaty of Amsterdam to address the need for institutional reforms in preparation for the accession of up to 12 new member states (see e.g. Mayhew 1998). A sanction mechanism was prominently proposed in December 1995 in the final report by a Reflection Group and discussed during the Intergovernmental Conference throughout 1996 (Sadurski 2010: 390). The need for a sanction clause was regularly justified with reference to the Eastern enlargement, suggesting that the EU should safeguard its democratic *status quo* in anticipation of the accession of new and potentially unstable democracies (Sadurski 2010: 391–396; Merlingen et al. 2000: 5; Dinan 2001: 37). These concerns were shared not only among politicians but also among

4 Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, OJ L 151, 10.06.1997, p. 1–7.

5 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.07.2000, p. 22–26.
Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 02.12.2000, p. 16–22.
Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, p. 37–43.

6 Council Decision of 27 November 2000 establishing a Community action programme to combat discrimination (2001–2006), OJ L 303, 02.12.2000, p. 23–28.
Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity — Progress, OJ L 315, 15.11.2006, p. 1–8.

scholars, who maintained that “[w]ith enlargement, the Union will be importing a new set of unresolved minority issues as well as additional human rights challenges, whose solutions will test the strength of many Community policies” (Alston and Weiler 1998: 672).

The prevention mechanism added to Article 7 TEU by the Treaty of Nice (2001) came in response to an internal rather than external event. Following the Austrian general elections of 1999, Wolfgang Schüssel of the Austrian People's Party (*Österreichische Volkspartei*, ÖVP) formed a coalition government with the Austrian Freedom Party (*Freiheitliche Partei Österreichs*, FPÖ), a right-wing populist party whose politicians and especially its chairman, Jörg Haider, were known for racist and xenophobic statements and positions. European politicians warned against forming this coalition, and even before the government was sworn in, a declaration by the EU Presidency on behalf of the other 14 member states threatened diplomatic sanctions. These unilateral sanctions were then applied in February 2000, affecting bilateral relations between Austria and the other EU member states but not Austria's representation within the EU. Article 7 did not allow for an EU response to the situation in Austria because the FPÖ's inclusion in the government as such did not represent a “serious and persistent breach” of the EU's fundamental principles. However, the broader public and the governments of the other EU member states felt it necessary to act upon their disapproval. It is controversial whether European governments were driven by a concern for the future of democracy and human rights, owing to a specific European sensitivity (Bogdandy 2000: 1318), or whether they were driven by the “self-interest of power-hungry politicians” (Merlingen et al. 2001: 61) as right-wing parties grew stronger in Western Europe.⁷ Regardless of the underlying motivation, the harsh reaction must be understood in light of the increasingly likely and ever closer Eastern enlargement:

The uncertainties about what level of populism, irrationality, or bigotry the new Member State may bring into the European Union, and the anxieties stemming from those uncertainties, may explain why it was actually useful for the E.U.-14 to focus on a particularly nasty example of a West European political leader, and castigate him relatively severely, to make a statement about the threshold of political commonality, and limits of diversity, in the enlarging Union. (Sadurski 2010: 405)

The sanctions were lifted in September 2000 on the basis of a report by “three wise men” appointed by the President of the European Court of Human Rights at the request of the EU Presidency, highlighting the Austrian constitutional court's domestic control over the respect for fundamental rights and democratic standards (Menéndez 2002: 483; Sadurski 2010: 405). The legality of the sanctions is highly controversial, as is their impact. While they did not bring about change in the democratically elected government, which effectively would have removed the FPÖ from political power in Austria, they may have had a moderating influence on the FPÖ ministers and served as a warning signal to right-wing populist parties in other member states

⁷ “Haiderism was not an isolated phenomenon in Western Europe at the time” (Sadurski 2010: 399); also Andreev 2009: 385.

(Dinan 2001: 41). It is clear, however, that the incident directly resulted in the creation of the Nice prevention mechanism, allowing the EU to act upon a “clear risk of a serious breach” at an earlier stage in order to prevent an erosion of the EU’s principles (Sadurski 2010: 397; Bogdandy 2000: 1309; Merlingen et al. 2000: 483).

The Treaty of Nice also included the “Charter of Fundamental Rights,” which, however, only took full legal effect with the Lisbon Treaty’s entry into force in December 2009. It remains to be seen to what extent the Charter of Fundamental Rights will provide a foundation for the ECJ to impose sanctions in response to violations of human rights and democratic standards as well as take preventive measures and/or punitive action under Article 7 (Sadurski 2010: 419; cf. Bogdandy 2000; Menéndez 2002).

The Eastern enlargement gave another boost to the EU’s internal governance transfer once the long-time candidate countries finally became the “new” member states. When 8 of the 10 CEE countries joined in 2004, the EU extended a pre-accession instrument—used *inter alia* for external governance transfer to accession countries—into the post-accession period, turning assistance under PHARE and twinning (TAIEX) into instruments of internal governance transfer (Königová 2006: 13; Nikolova 2008: 94). The so-called “Transition Facility” (post-accession financial assistance) was included in the 2003 (Art. 34) and 2005 (Art. 31) acts of accession. For the ten new member states of 2004, the Transition Facility encompassed appropriations covering three years after accession, amounting to EUR 380 million from 2004 to 2006. By contrast, the Transition Facility for Bulgaria and Romania was limited to one year after accession, worth EUR 82 million in total. Allocations were made in chapter 22-03 of the EU’s budget, which defined the Transition Facility’s purpose to “address the continued need for strengthening institutional capacity in certain areas through actions which cannot be financed by the Structural Funds.”⁸ This included the area of “justice and home affairs (strengthening of the judicial system, external border controls, anti-corruption strategy, strengthening of law enforcement capacities)” (*ibid.*), which reflects a central interest in strengthening the rule of law. The 2010 budget foresaw the final payments and the implementation of projects beyond the periods indicated, but chapter 22-03 was no longer included in the 2011 budget.⁹ The European Commission only reports on projects carried out in the ten new member states of 2004, whereas it is difficult to come by any information on the use of the Transition Facility in Bulgaria and Romania.¹⁰ Apart from projects related to justice and home affairs, ranging from drug policies to customs control, the Transition Facility funded projects in any policy area, such as agriculture, internal market, environment, and social policy. In addition, occasional projects touched upon civil society or “political criteria,” for example to improve the situation of Roma in the Czech Republic in 2006.

⁸ Final adoption of the general budget of the European Union for the financial year 2007, OJ L 77, 16.03.2007, p. 1–1565, here 1214.

⁹ Definitive adoption of the European Union’s general budget for the financial year 2010, OJ L 64, 12.03.2010, p. 1–1718, here 1220, and Definitive adoption of the European Union’s general budget for the financial year 2011, OJ L 68, 15.3.2011, p. 1–1277.

¹⁰ European Commission, Enlargement, Financial Assistance – Transition Facility, http://ec.europa.eu/enlargement/how-does-it-work/financial-assistance/transition_facility_en.htm, last access August 12, 2011.

In the case of Bulgaria and Romania, whose accession had been postponed by three years for a lack of sufficient progress particularly with regard to the rule of law and the fight against corruption, “[t]he introduction of post-accession benchmarks and the intensification of monitoring process [sic] represent the logical steps in the evolution of EU enlargement policy based on the lessons learnt from the previous experiences” (Gateva 2010: 21). Building on the safeguard clauses incorporated into the Act of Accession, the European Commission created a specific Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania (Gateva 2010: 6; Trauner 2009: 6).¹¹ The CVM establishes a rule of law protection (and promotion) mechanism by setting a number of country-specific benchmarks and providing regular monitoring with biannual progress reports upon accession to the EU.

Like the 2003 accession treaty, the 2005 Act of Accession included a number of safeguard clauses (Trauner 2009: 5).¹² Among them, the internal market and the justice and home affairs safeguard clauses (Articles 37 and 38, respectively) allowed for the adoption of “appropriate measures” for up to three years after accession if there were shortcomings in the new member states. The CVM was an innovation in that it extends the EU’s systematic monitoring and reporting system beyond the date of accession for a set of benchmarks that aim to strengthen an independent judiciary in order to fight corruption and, in the case of Bulgaria, organized crime. The countries’ performance in achieving these benchmarks has been monitored by the European Commission in biannual progress reports from June 2007 onward.¹³ The CVM is explicitly linked to the safeguard clauses of articles 37 and 38 of the Act of Accession and the possibility they leave for sanctions. In addition, it foresees technical assistance and an exchange of information in order to facilitate compliance.

Albeit geared toward a specific purpose (the fight against corruption and organized crime), the CVM helps promote and protect an independent judiciary, one of the essential features of the rule of law. However, the overall slow progress made in Bulgaria and Romania in achieving the benchmarks casts doubt on the effectiveness of the CVM, in particular when considering the two states’ otherwise unexpectedly good compliance with EU law (Gateva 2010: 6, Trauner 2009:

¹¹ COMMISSION DECISION of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (notified under document number C(2006) 6569) (2006/928/EC), OJ L 354, 14.12.2006, p. 56–57 and COMMISSION DECISION of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (notified under document number C(2006) 6570) (2006/929/EC), OJ L 354, 14.12.2006, p. 58–59.

¹² ACT concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L 236, 23.09.2003, p. 33–49 and ACT concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded, OJ L 157, 21.06.2005, p. 203–220.

¹³ European Commission, Secretariat General, Mechanism for Cooperation and Verification for Bulgaria and Romania, The reports on progress in Bulgaria and Romania, http://ec.europa.eu/cvm/progress_reports_en.htm, last access June 19, 2013.

11). During the three-year period following accession, the European Commission only once imposed sanctions under the CVM. Based on its second progress report in February 2008 and an ensuing fraud investigation by the European Anti-Fraud Office (OLAF), the Commission temporarily froze open payments under various pre-accession instruments, including ISPA, SAPARD, and PHARE (Trauner 2009: 9-10). While most of the funds were ultimately disbursed, the measure was deemed at least partially effective because “[t]he loss of EU funds marked a low in the EU-Bulgarian relations, which prompted Bulgaria to step up efforts to reform” (Trauner 2009: 10). While this might indicate the success of linking safeguard clauses to an “improved approach towards establishing conditions and monitoring compliance” (Gateva 2010: 21), the three-year limit imposed by the accession treaty has left the EU without the option of sanctions since 2010. There is a (remote) possibility that the European Commission may continue to use the CVM conditionality on future funding under structural and agricultural funds (Markov 2010: 4). This does not attenuate the assessment that “the limited penalizing power of the remedial and preventive sanctions established in the framework of the CVM produces very weak negative incentive structure which diminishes the effectiveness of post-accession conditionality” (Gateva 2010: 21).

2.6 EU Governance Transfer: A Case *Sui Generis*?

The EU is not the only regional organization that engages in governance transfer. Regional organizations as diverse as the ECOWAS, Mercosur, the Association of South East Asian Nations (ASEAN), and the Council of Europe (CoE) have developed increasingly detailed prescriptions of standards for human rights, the rule of law, the fight against corruption, and more recently democracy. They have also established similar instruments to promote these standards for “good” governance, including the legal protection of human rights, democracy clauses, membership conditionality, election observation missions, and election assistance (Börzel et al. 2013). The EU diverges from this general trend among major regional organizations in two important respects. First, the EU is unique in having developed a comprehensive toolbox of external governance transfer to non-members in the late 1980s. With the exception of Mercosur, other regional organizations primarily seek to shape the governance institutions of their members. Only the EU uses its external relations to promote human rights, democracy, the rule of law, and the fight against corruption in countries that are not candidates for membership. Moreover, while references to democracy, human rights, and the rule of law as “fundamental principles” or “common values” have spread among regional organizations since the 1990s, few link them explicitly to preconditions for joining their “club.”¹⁴ The EU is the only organization with an extensive pre-accession policy that aims to promote and consolidate change in the governance institutions of prospective members.

¹⁴ The Council of Europe is the only regional organization that has a similar clause as the EU – predating the EU’s Treaty of Amsterdam by almost 50 years. Nevertheless, in contrast to the EU, “the Council of Europe’s approach is not based on strict conditionality and effective gatekeeping, but on post-membership socialization” (Dimitrova and Pridham 2004: 99).

Second, for a long time, the EU did not systematically engage in internal governance transfer. Unlike the Council of Europe, the OAS, or the Organization of African Unity/African Union, the EU did not establish a regional human rights regime based on a human rights charter and judicially protected by a specific human rights court. When the ECJ established human rights as a fundamental principle of the European Communities in the 1960s, it referred explicitly to the European Convention on Human Rights (ECHR) as common legal heritage. All EU member states are also members of the Council of Europe and thus signatories to the ECHR. With an amendment to the ECHR (Protocol 14, 2010) and the Treaty of Lisbon, the EU's accession to the ECHR became not only possible but also obligatory (Art. 6 TEU), and the European Commission and the Council of Europe started talks in 2010.¹⁵ The EU enacted a range of antidiscrimination policies, which have been protected and promoted through legal coercion by the ECJ. Yet, these policies emerged as side products or functional spillovers of economic integration rather than explicitly prescribing and actively promoting the establishment or modification of governance institutions within the member states. Only in the late 1990s did the EU start to specify and prescribe standards and establish policies and instruments for their promotion and protection; these included a democracy clause, which allows for sanctions in response to breaches of human rights, democracy, and the rule of law. As we will see in the remainder of this paper, this safeguard is much broader in scope than the democracy clauses of other regional organizations. Yet, its institutional design is also weaker and hardly qualifies as “user-friendly.”

3. Article 7: Effectively Protecting the EU's Founding Principles?

In addition to election observation and assistance, democracy clauses are relatively common instruments used by regional organizations for internal governance transfer. As “multilateral mechanisms for protecting and defending democracy when it is unconstitutionally interrupted or threatened by autocratic rulers” (Piccone 2004: 8), they serve as an enforcement mechanism for a joint commitment to certain norms, foreseeing some form of sanctions in the event of non-compliance.

The EU is not the first regional organization to include a democracy clause in its treaties. Yet, the nature of that clause seems to be unique in two respects: broader scope but weaker institutional design. First, the scope of the commitment made in Article 2 TEU (ex Article 6.1 TEU), subject to the enforcement mechanism of Article 7, is much broader than in most other regional organizations, which focus on the threat of *coups d'état* and massive human rights violations. Since the Treaty of Amsterdam (1997/1999), the EU can adopt sanctions against member states in response to a “serious and persistent breach” (Article 7.1 TEU Amsterdam, Article 7.2 TEU Nice and Lisbon) of the EU's founding “principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law” (Article 6.1 TEU Amsterdam and

¹⁵ Council of Europe: EU accession to the European Convention on Human Rights, <http://www.coe.int/lportal/web/coe-portal/what-we-do/human-rights/eu-accession-to-the-convention>, last access August 12, 2011.

Nice).¹⁶ The Council of Europe had already included a similar clause in its founding treaty in 1949. However, sanctions are limited to the “serious violation” (Article 8, Treaty of London) of “the principles of the rule of law and of ... human rights and fundamental freedoms” (Article 3, Treaty of London).¹⁷ By comparison, the enforcement mechanisms of regional organizations in the Americas and Africa build on “a strong anti-coup norm” (Legler and Tiekou 2010). The OAS Washington Protocol (1992) focuses on the overthrow of a “democratically constituted government” (Article 9, OAS Charter). Similarly, South American regional organizations such as Mercosur (Ushuaia Protocol, 1998) and the Andean Community (Additional Protocol, 2000) modified their treaties to protect member states against disruptions of the democratic order. The African Union institutionalized mechanisms to impose sanctions against unconstitutional changes to (democratically elected) governments in 2000 (Constitutive Act, Lomé Declaration). Sub-regional organizations such as ECOWAS and SADC (South African Development Community) placed their democracy clauses in the context of their conflict prevention policies. The respective protocols adopted in 2001 allow for sanctions against any situation that might put regional security at risk, including *coups d'état* and massive human rights violations. The EU, like other regional organizations, added a preventive mechanism that would allow the organization to address the “risk” of non-compliance with its founding principles, adding a preventive dimension to the enforcement mechanism (see above).

Second, while the scope of Article 7 is very broad, its focus on the potential suspension of membership rights is very much in line with the sanctions envisaged by many other regional organizations: the suspension of membership rights based on (mostly) intergovernmental decisions. Yet, unlike in some of the other regional organizations, the negative conditionality of Article 7 allows for neither harder sanctions, such as full exclusion (Council of Europe), nor for military coercion (ECOWAS, SADC). Moreover, the degree of legalization is relatively low (Abbott et al. 2000). While the standards are legally binding and rely on clearly defined procedures, they remain rather imprecise. There is neither a definition nor an operationalization of the values specified in Article 2 TEU, their breach, or the risk thereof. The criteria for the application of Article 7 are therefore open to political interpretation. This is all the more problematic because monitoring and enforcement have not been delegated to the European Commission or the ECJ but are left instead to the member states and the European Parliament (EP). In contrast to regional organizations, such as the Council of Europe or the OAS, the EU lacks a systematic monitoring mechanism, and judicial protection has only slowly developed. Enforcement is further weakened by majority requirements. Most regional organizations require a unanimous decision to apply their democracy clause by their highest intergovernmental decision-making body, bringing together all member states (minus the one in question) at the level of heads of state or government (Börzel et al. 2013). ECOWAS is probably the only regional organization that delegates decisions on sanctions and military intervention to a special body, the Media-

¹⁶ The Lisbon Treaty changed the text to read: “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” (Article 2 TEU Lisbon).

¹⁷ In its Communication on Article 7, the European Commission explicitly refers back to this clause (European Commission 2003: 6).

tion and Security Council (MSC) created in 1999 (Hartmann 2012). The MSC is composed of representatives from 9 out of SADC's 15 member states and takes decisions with a two-thirds majority vote. On behalf of the SADC Authority, it implements "the Mechanism," including the democracy clause, which means that six heads of state or government are enough to decide on enforcement measures. In the EU, by contrast, the decision to apply Article 7 is not left to the member states alone; it also requires the consent of the EP, making it necessary to obtain two majorities. Any decision on a "risk" or a "breach" has to be supported by a two-thirds majority vote in the EP in addition to agreement among four-fifths of the EU's member states (minus one) in the Council of the EU (on a risk) or a unanimous decision (minus one) by the European Council (on a breach).

3.1 The Dog That Has Not Barked: Cases of Article 7's Non-Application

With Article 7, the EU has developed a formidable instrument not only to promote but also to protect the governance institutions of its member states. Interestingly, despite several incidents in new and old member states that caused public concern and could have triggered at least the preventive mechanism of Article 7, it has never been invoked.

In 2009 and 2010, developments in Italy and France, respectively, caused public debates on whether these governments respected fundamental rights: the freedom of the press in the case of the Berlusconi government (new laws) and non-discrimination of Roma in the case of the Sarkozy government (expulsion). Concerning Italy, the EP discussed the idea of an EU directive on the freedom of the press rather than invoking Article 7, but the Commission declined to take any action at the European level as long as national institutions were in place to deal with infringements of fundamental rights. In the French case, Commissioner Reding initially voiced her criticism in terms of fundamental rights, but after an *éclat* with the French government, she turned her focus to French (non-)compliance with the Free Movement Directive. The Commission sent a letter of formal notice, but a final ultimatum allowed France to avoid further infringement proceedings. The EP adopted a resolution with votes from the left, greens, and liberals condemning the expulsion on the grounds of the EU's Fundamental Rights Charter and EU antidiscrimination and free movement directives; the resolution did not make reference to Article 7.

In Hungary in 2010 and 2011, the adoption of a new media law and various constitutional reforms raised even more serious concerns about the government's respect for the EU's founding principles. The power struggle between Prime Minister Ponta and President Basecu in Romania in 2012 elicited similar concerns. The EP discussed Article 7 on various occasions, but the resolutions adopted were only supported by either of the two main camps: the socialists (together with the greens and liberals) in the case of the Hungarian constitutional reforms, and the conservatives in the case of Romania. The Commission, in turn, resorted to alternative means in each case and ruled out Article 7 as a "nuclear option." In 2012, the Commission brought legal action against Hungary under the infringement proceedings of Article 258 TEU for violating the Equal Treatment Directive (Directive 2000/78/EC) and the Data Protection Di-

rective (Directive 95/46/EC). The ECJ ruled against Hungary concerning the reform of the judiciary in November 2012, striking it down for age discrimination; the ruling on data protection is still pending. The Commission also started an infringement proceeding against the reform of the Hungarian central bank at the same time as the other two, but withdrew the case after the Hungarian government quickly relented. Together with the International Monetary Fund, the Commission exerted additional pressure by making accession to the Schengen area conditional upon the status of the central bank. Regarding the new media law, the Commission lacked a legal basis for an infringement procedure—as was the case for Italy. Instead, it could only suggest amendments that were then adopted by the Hungarian government before the Hungarian constitutional court ruled the media law as such unconstitutional. Finally, the Commission dealt with the situation in Romania using the framework of the CVM. In its regular report in July 2012, the Commission criticized the Romanian government for systematically violating the rule of law—one of the EU’s founding norms protected by Article 7. Instead of referring to the democracy clause, however, the Commission issued eleven recommendations on the rule of law and the reform of the judiciary to be further monitored through the CVM. On the basis of the next report in 2013, which was still critical but acknowledged some improvements, the Commission decided to continue the monitoring process twice a year for Romania beyond the five-year period foreseen by the CVM. By contrast, monitoring of Bulgaria’s performance only occurs now on a yearly basis. The report also coupled Romania’s access to the Schengen area and the Euro zone to the government’s respect for the rule of law.

The most recent and, arguably, most serious challenge to the values protected by Article 7 is the forth constitutional reform that the Hungarian prime minister, Victor Orban, convinced the Hungarian parliament to adopt in March 2013. The changes circumscribe the powers of the Constitutional Court and the freedom of the media, particularly with regard to electoral competition. For the first time, not only the (socialist) President of the EP, Martin Schulz, but also Commissioner Reding called for the invocation of Article 7. The European Council, by contrast, which convened right after the Hungarian parliament adopted the constitutional reform, did not issue any statement.

In sum, the application of Article 7 has never been seriously considered by the Council or the Commission. If at all, the two institutions have used it as an implicit threat to indicate that all options are on the table. Only the EP has continuously debated Article 7, but has failed to form the cross-party majority needed for its activation.

3.2 Why the Dog Has Not Barked: Reasons for the Non-Application of Article 7

The non-application of Article 7 might be explained by any of three different factors: institutional design, institutional self-interest, or party politics.

One could argue that the majority requirements in both Council and EP constitute an almost insurmountable institutional hurdle. Moreover, the lack of sufficiently precise criteria to define a serious breach of liberal democratic values leaves ample room for political interpretation,

which adds a further obstacle to building the required majorities. This institutional design may reflect the member states' intention to use Article 7 only as a last resort. After all, the member states did not support Article 7 with a monitoring mechanism of any kind. In 2002, the Commission created an EU Network of Independent Experts on Fundamental Rights (European Commission 2003: 9; Sadurski 2010: 417). The member states then replaced this network with the newly created Fundamental Rights Agency (FRA), the EUMC's successor, in 2007. However, the FRA has no mandate to monitor compliance under Article 7. Likewise, the member states failed to link Article 7 to the EU's human rights policies based on the principle of antidiscrimination and the Fundamental Rights Charter (Sadurski 2010: 395).

Although the institutional design of Article 7 as the "nuclear option" goes against the preventive dimension of the article itself, the Commission has fostered this restrictive interpretation by using alternative instruments to respond to situations that raised concerns about member states' (potential) violations of the EU's fundamental values. The use of infringement proceedings, the CVM, issue linkage, and other instruments at the Commission's disposal is not only a way of circumventing party politics that block majorities in the Council and EP; it also corresponds to the Commission's institutional self-interest and self-understanding as the guardian of the treaties. Framing issues in terms of national policies' non-conformity to EU Law is also in line with the Commission's strategy, together with the ECJ, to invoke EU legislation aimed at creating a Single European Market to protect and promote human rights.

Interestingly, the EP's institutional self-understanding as the advocate of human rights and democracy (Sadurski 2010), as well as its institutional self-interest in flexing new powers to strengthen its position in EU decision-making processes, has not prevented the members of the EP from engaging in petty party politics. Somewhat unexpectedly, the two party families' assessment of the situation in member states causing concern seems to be informed by the party affiliation of the incumbent government rather than a common interest in protecting liberal democracy and trying out the EP's new powers.

In sum, Article 7 is the only treaty provision that allows the EU to engage in internal governance transfer beyond the scope of Community legislation. Yet, instead of activating the potential of this broad mandate, the EU continues to rely on a much older approach, ensuring that member states respect fundamental rights in their implementation of European policies and developing a narrower human rights policy based on the principle of antidiscrimination.

4. Conclusion

The EU is unique in actively engaging in external governance transfer. Unlike other regional organizations, it initially focused on shaping the governance institutions of third countries and accession candidates rather than member states. Only with its "big bang" Eastern enlargement has the EU turned the patchwork of individual Community policies and the judicial protection of the fundamental rights of its "market citizens" into a more comprehensive approach to internal governance transfer. Its goal is to lock in democratic standards in new and even in old

member states. In addition to post-accession instruments based on conditionality and assistance, the EU has strengthened the constitutionalization of the very principles it has sought to protect and promote externally; its new antidiscrimination legislation and the Charter of Fundamental Rights oblige not only EU institutions but also the member states to respect human rights when they apply and enforce EU Law. Moreover, Article 7 and the FRA provide sanctions and monitoring mechanisms that apply equally to old and new member states. While these policies and instruments certainly provide a basis for internal governance transfer, they focus on human rights and the rule of law rather than democratic standards. Furthermore, the (old) member states have been reluctant to even allow for effective monitoring of compliance with the principles enshrined in Article 2 and protected by Article 7. No instruments are in place to match the toolbox the EU has developed in the framework of external democracy promotion and protection. As a result, the internal dimension has largely remained confined to protecting democratic and human rights, evolving through a “spillover” effect from Community legislation to create a Single European Market; this could be observed in the fields of environmental and social regulation or Justice and Home Affairs (Börzel 2006). Not surprisingly, the EU member states have been criticized for using double standards, being “very willing to police human rights and democracy in their eastern backyard—but less interested in having European institutions nosing about in their own affairs” (Sadurski 2010: 395; cf. Heidbreder and Carrasco 2003: 16; Albi 2009; Johns 2003).

While standing out as a pace setter in external governance transfer, the EU’s attempts to shape the governance institutions of its member states are less remarkable in comparison to governance transfer by other regional organizations around the globe. This should not come as a surprise, since the EU has always been a community of democracies. Democracy has always been a condition for joining the EU. The Europeanization of domestic structures through the adoption of the *acquis communautaire* and integration into the Single European Market was considered a sufficient measure to elevate governance standards in the new member states to the level of their older counterparts (Whitehead 1996). The EU’s approach to internal governance transfer only changed with Eastern enlargement, when the EU took on 10 new democracies in Central and Eastern Europe. Not least due to the rise of right-wing populist parties in the EU 15, the mechanisms originally intended to safeguard democratization in the new member states spilled over, making all member states equally subject to democracy protection and promotion policies. Yet, member state governments have been reluctant to accept the control of the EU over their democratic institutions. As a result, the EU’s attempts at internal governance transfer still remain modest, driven by efforts of the European Commission and the ECJ to protect the human rights of EU citizens through individual Community policies. Still, despite resistance by the member states to implementing a comprehensive approach that would mirror its external governance transfer, the EU is no laggard compared to other regional organizations: Going beyond formal provisions for governance transfer, European integration provides an institutionally dense environment with a web of obligations and enforcement mechanisms that may be more effective than political declarations and formal procedures—a proposition that recent events in Hungary put to the test.

Annex: Provisions for Governance Transfer in the EU's Treaties

Treaty on European Union (TEU, 2009)

Article 2

The Union is founded on 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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 7

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure. The Council shall regularly verify that the grounds on which such a determination was made continue to apply.
2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.
3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.
4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.
5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union.

Article 21

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights

and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: ...

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law; ...

Article 49

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Treaty on the Functioning of the European Union (TFEU, 2009)

Article 19 (ex Article 13 TEC)

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

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Governance has become a central theme in social science research. The Collaborative Research Center (SFB) 700 *Governance in Areas of Limited Statehood* investigates governance in areas of limited statehood, i.e. developing countries, failing and failed states, as well as, in historical perspective, different types of colonies. How and under what conditions can governance deliver legitimate authority, security, and welfare, and what problems are likely to emerge? Operating since 2006 and financed by the German Research Foundation (DFG), the Research Center involves the Freie Universität Berlin, the University of Potsdam, the European University Institute, the Hertie School of Governance, the German Institute for International and Security Affairs (SWP), and the Social Science Research Center Berlin (WZB).

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