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Hitting the mark? academic freedom and the enforcement of EU values

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[Olga Ceran](#)

This article belongs to the debate » [Mapping Article 13: Academic and Scientific Freedom under the EU Charter](#)

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Academic Freedom and the Enforcement of EU Values

6 October 2020 marked an important milestone for academic freedom protection in the EU. On this day, the European Court of Justice delivered its [judgment in the so-called *Lex CEU* case \(C-66/18\)](#), the only case to date to discuss academic freedom. Arising from infringement proceedings against Hungary over its new higher education law, the judgment clarified that Article 13 CFR protects both the individual and institutional dimensions of academic freedom – and confirmed that EU law can be meaningfully mobilised for their protection. While democratic backsliding was clearly “[at the heart of this case](#)”, only [35 of the judgment’s impressive 244 paragraphs discuss fundamental rights](#) and none democracy or the rule of law. Developments surrounding the case nevertheless showed what scholars have long argued: that [academic freedom intertwines with democracy and the rule of law](#). However, despite considerable attention paid to the EU’s action for safeguarding the two EU values (Article 2 TEU), academic freedom has not been methodically discussed in this context – despite its protection consistently seen

as insufficient and requiring [a new legislative framework](#). Five years after the *Lex CEU* judgment, it is thus time for a systematic – and holistic – approach to academic freedom in EU law, treating it also (but not exclusively) as a democratic value. This can have potential consequences for its integration into the EU’s rule of law toolbox.

Academic freedom, democracy, and the rule of law

Academic freedom is often justified in reference to its service to democracy. Three strands of such arguments for its protection can be identified in the broader literature: (1) academia’s role in civic education and the development of “[a democratic citizen](#)”; (2) its [truth-verifying function in the marketplace of ideas](#); and (3) [its position as a watchdog](#), similar [to the media or courts](#). While EU law has not yet explicitly engaged with the normative weight of this justification, [it does align](#) with many pronouncements of EU policy and some jurisprudence of the European Court of Human Rights, relevant for EU law in light of Article 52(3) CFR. Further, the European Commission’s Legal Service – [albeit not acting in an official capacity](#) – mentioned Article 13 CFR among provisions expressing the EU value of democracy. It can be argued, therefore, that the democratic justification for academic freedom is embedded in Article 13 CFR – though [this may rest on the epistemological justification](#) (the pursuit of truth) and intertwine with other possible interests underpinning the freedom. On the other hand, the links between academic freedom and the rule of law are less direct. While both can be seen as partially underpinned by similar concerns ([checks on power](#)), the rule of law in EU law is often [conceptualised more narrowly](#), and – in to the context of the EU Charter as such – primarily in reference to Articles 47 and 48 (the right to an effective remedy and to a fair trial, and the right to defence). Neither primary nor secondary law offers clear grounds for establishing a straightforward relationship between academic freedom and the rule of law. Nonetheless, [many have argued](#) that the rule of law assumes adherence to the other values outlined in Article 2 of the TEU, with academic freedom falling within the scope of the provision [as one of human rights and freedoms](#). Academic freedom, however, arguably holds a distinct position within this broader category because it takes on a special role in democratic governance and accountability mechanisms. This explains why violations of academic freedom may at times overlap with rule of law violations – best illustrated [by the case of Hungarian higher education institutions being placed under the management of “public interest trusts”, raising concerns over lacking institutional autonomy and reduced legal accountability simultaneously](#). Whether this relationship is recognised conceptually or only at a factual level, it nevertheless makes these different values mutually reinforcing and opens new interpretative pathways for academic freedom protection in the context of the EU’s toolbox for democracy and the rule of law.

The EU’s value protection toolkit

The EU’s toolbox to protect its foundational values encompasses a range of preventive, enforcement, and corrective instruments – some tailored to these specific threats, others more general. Many of these instruments indirectly contribute to academic freedom by supporting broader safeguards, such as judicial independence. However, if academic

freedom is understood in reference to its democratic justification, it could be treated as interdependent with other democratic values and more directly “mainstreamed” within the existing mechanisms, with implications for how the EU’s toolbox is used and interpreted.

Firstly, soft law tools available in the Rule of Law Toolbox – particularly the Rule of Law Reports – provide for systemic reporting and dialogue activities unknown to any of the [academic freedom soft law documents](#). However, the reports have not so far meaningfully addressed academic freedom – even though its democratic rationale closely mirrors that of media freedom, which features prominently in the reports. This is why [several stakeholders](#) have advocated for an explicit inclusion of academic freedom in the Rule of Law Report. While substantial revisions of the reports’ methodology may be unlikely to happen in the nearest future, it is nevertheless notable that the 2025 Rule of Law Report introduced [a new Single Market dimension](#), suggesting that an academic freedom dimension may also be conceivable down the line. Simultaneously, the current thematic areas of the Rule of Law Report – such as media freedom or institutional checks and balances – already allow for a more explicit discussion of certain dimensions of academic freedom, e.g. in reference to [the implementation of the Anti-SLAPP Directive](#), applicable to academics, or the autonomy of academic authorities. The remaining gaps could be addressed by [new monitoring proposals](#) for the European Research Area and the European Higher Education Area, which should be complementary in nature.

Second, infringement proceedings are one of the classical tools of EU law enforcement. They were launched in reference to Article 13 CFR only once, in the so-called *Lex CEU* case (C 66/18). As already mentioned, the CJEU found a violation of academic freedom in circumstances clearly arising from Hungary’s democratic backsliding. This broader context also triggered numerous other proceedings against Hungary. Nevertheless, enforcing democracy or the rule of law through infringement proceedings has long been seen as inadequate, as [many structural issues cannot easily be framed as violations of individual Charter rights](#) or other Treaty provisions. At the same time, this is not equally the case for Article 13 CFR that includes an institutional dimension, capable of encompassing many such issues. Despite the limited scope of application of the Charter, academic freedom protection can be grounded in various strands of EU law, such as – next to “traditional” free movement provisions – [public procurement or competition law](#). Existing discussions about measures available in these fields [as rule of law tools](#) may also provide inspiration for academic freedom action. Further, it has been argued that Article 2 TEU could be enforced autonomously [beyond a direct link with EU competences](#) or in [“mutual amplification” with a specific provision](#). While these suggestions have not yet been authoritatively accepted, the connection between academic freedom and EU values could help address the limited scope of application of the Charter in the context of academic freedom protection. Their relationship could also be leveraged for [“systemic” infringement proceedings](#), combining various violations resulting from a pattern of unlawful behaviour. There are therefore different ways in which the protection of academic freedom, democracy, or the rule of law can be mutually reinforcing in this context.

Thirdly, Article 7 TEU sets out a three-dimensional enforcement procedure for cases where there is a (risk of) “serious and persistent breach” of values by a Member State. The difficulties in its application, owed to the political nature of the provision, are widely known. Nevertheless, because of its relationship to Article 2 TEU values, it can be mobilised for the protection of academic freedom. Academic freedom was one of the reasons behind the European Parliament’s calls on the Council to trigger Article 7(1) TEU against Hungary in [2018](#) and [2022](#), but no sanctions were ever imposed under Article 7(3) TEU. However, as the provision extends beyond the scope of application of the Charter, it allows to circumvent the known constraints of Article 13 CFR enforcement. Academic freedom’s relationship to Article 2 TEU values can also be considered in the assessment of the “seriousness” of the breach. Given the wide range of sanctions that can be imposed under Article 7 TEU, it could – should political will ever arise – be strategically triggered for a complementary protection of different rights and values.

Lastly, funding plays an increasing role in the enforcement of both EU values and fundamental rights, [including academic freedom](#). In recent years, conditionality measures in the academic context [have been applied](#) due to essentially the same circumstances under both the Common Provisions Regulations, in reference to Article 13 of the Charter, and the Rule of Law Conditionality Regulation, referencing broader rule of law concerns. This occasionally overlapping – and thus mutually reinforcing – relationship can inform the interpretation of the relevant instruments, partially applying to different funds. For example, “proper functioning of effective and transparent financial management and accountability system” under the Rule of Law Conditionality Regulation can be interpreted in light of funding accountability principles embodied in academic freedom soft law such as the [UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel](#). This also helps to overcome the limited scope of application of the Charter, as all situations covered by the Regulation fall within the scope of EU law. Simultaneously, conditionality measures are the most controversial aspect of the action for the protection of EU values and fundamental rights. In most EU Member States, academia is predominantly publicly funded, making financial support a key factor in both strengthening and weakening the sector. Academic freedom [debates](#) and [soft law instruments](#) have highlighted how funding cuts can undermine autonomy and further push academia towards alliances with illiberal regimes. The picture is further complicated by the complex and context-dependent interplay of institutional and individual considerations. While the role of EU funding in this context should not be overstated – nor the application of conditionality measures to academia dismissed – the EU’s supranational framework may nonetheless open new avenues for supporting the sector, including through targeted funding. At the same time, general conditionality mechanisms may not always be best suited to accommodate the context, including also its cross-border dimension and the EU’s own research and education objectives. Specific academic freedom conditionality or a complementary [„solidarity mechanism to support European researchers“](#) could therefore be explored further, potentially allowing to better address the varying situations of different (institutional and individual) academic freedom rights-holders. Such proposals could also help bridge the protection of democratic values with the epistemic foundations of academic freedom – both essential to academia’s democratic mission.

Toward a more systematic and holistic engagement

This brief discussion highlights that academic freedom has not been overlooked in the EU's efforts to protect democracy and the rule of law. However, a more systematic engagement with its democratic justification in EU law could elevate it to a more strategic role, both in its own right and as part of the EU's broader action for the protection of Article 2 TEU values. This would place academic freedom along other rights explicitly recognized in EU action as having rule of law or democratic implications, e.g., media freedom. At the same time, admittedly, framing academic freedom solely in terms of its service to democracy risks distorting its normative content, since it is arguably academia's epistemological mission that underpins much of the democratic contribution it can make. Therefore, a comprehensive conceptualisation of academic freedom in EU law requires a holistic, contextual approach. This task remains as urgent as it was five years ago, with an action for annulment alleging a violation of Article 13 CFR in relation to conditionality measures [pending at the CJEU](#), [new legislative proposals under discussion](#), and [various academic freedom challenges growing across the Union](#).

This blog post summarizes selected key points of my article "[The Democratic Justification of Academic Freedom in EU Law: Article 13 of the EU Charter, the Rule of Law Toolbox, and the Scope for EU Action](#)" (European Constitutional Law Review (2025): 1–33, FirstView). An earlier version of these ideas appeared in Olga Ceran, "[EU Values and the EU's Rule of Law Action: What Place for Academic Freedom?](#)", TRAFO – Blog for Transregional Research, 17 October 2024.



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