

ICON•S 2026 ANNUAL CONFERENCE

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Panel 5.25 - In Search of the Final Word: Reappraising the Separation of Powers in Europe's Multilevel Polity

30.06.2026 | 09h45 – 11h15

Sutherland · L226

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Transnational Constitutional Identity? The Emergence of a Constitutional Identity of the European Union

Abstract

Can the European Union be said to possess its own constitutional identity - one that Member States are bound to respect? We argue in the affirmative, grounding our claim on the recognition of the EU as a constitutional legal order.

Although the EU lacks a classic constituent moment, it undoubtedly exercises supranational public authority, shaping the rights and obligations of individuals and companies. The CJEU has consistently characterized the Treaties and the Charter of Fundamental Rights as the constitutional charter of a “Community based on the rule of law” (C-294/83). Core elements of constitutionalism – the rule of law, democracy, and the protection of fundamental rights – structure and legitimize the exercise of EU powers.

Today, the Union’s constitutional identity is enshrined in Article 2 TEU, the so-called “values clause”, which encompasses human dignity, freedom, democracy, equality, the rule of law, and respect for fundamental rights. In its 2022 conditionality judgments, the CJEU clarified that these values define the very identity of the EU as a common legal

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order and are binding upon Member States, justifying EU action to defend them – even against those States (C-156/21 and C-157/21). More recently, in *Commission v Hungary* (C-769/22), the CJEU reinforced its *identity rationale*.

We argue that recognizing the EU's transnational constitutional identity reshapes constitutional pluralism. Under Article 4(2) TEU, national identity no longer operates without limits; it must be balanced against, and constrained by, the Union's own identity. The EU's constitutional identity, therefore, acts as a collective, supranational counter-limit, preventing post-accession backsliding and the exploitation of national identity in a fragile constitutional landscape.

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