

REINFORCING RULE OF LAW OVERSIGHT IN THE EUROPEAN UNION

This book provides the definitive reference point on all the issues pertaining to dealing with the ‘crisis of the Rule of Law’ in the European Union. Both Member State and EU levels are considered. Particular attention is paid to the analysis of the concrete legal bases and instruments that the EU may avail of enforcing Rule of Law, and the volume clearly demonstrates that a number of legally sound ways of Rule of Law oversight are available. Contributors are leading scholars who assess the potential role to be played by the various bodies in the context of dealing with the EU’s Rule of Law imperfections.

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Edited by Carlos Closa , Dmitry Kochenov

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PREFACE

What to do when the Rule of Law in the Union is apparently crumbling under pressure from Member States deviating from the foundational values on which the whole edifice of European integration rests? What kind of tools do we have at our disposal, able to go beyond the established Treaty mechanisms, which have seemingly been proved ineffective by the recent developments and ongoing persistence of fundamental deviations from EU norms? Should the EU be more proactive and why?

This book aims to discuss the normative issues related to the role of the EU in the Rule of Law enforcement field and to list and scrutinise innovative tools of potential use for the Union in asserting its own values. The key scholars behind virtually all the most important proposals have participated in this volume to outline their position firsthand. In addition, the book also considers and discusses the complexity of the broader landscape of European constitutionalism to warn against any course of action which would not be extremely carefully thought over, considering the key strengths and, crucially, also notable weaknesses of the EU's legal-political edifice.

This collection of essays aims at a broad, positive outline: *there are* tools to solve the outstanding problems, all the words of caution notwithstanding. The detailed presentation of these tools is the core mission of this book and its key added value as we designed it. Where there are many proposals, there are bound to be many disagreements – such is life. The editors fully realise this, and one of the key strengths of the book was allowing the participating scholars to engage with each other's methods for overcoming the common problem, the assumption being that such a dialogue, at times very polemical, will result in a more comprehensive description of the key avenues for *Reinforcing Rule of Law Oversight in the European Union*.

The project thus started with a vivid meeting of the majority of the contributing scholars at the European University Institute in Florence at a one-day seminar co-sponsored by the EUI and University of Groningen,

which occurred in January 2014 and was opened by the EUI President, Professor J. H. H. Weiler. All the chapters have been profoundly updated and reworked since then, so this book should not be regarded in any sense as a set of conference proceedings.¹ We are overwhelmingly grateful to the Global Governance Program at the Robert Schuman Centre for Advanced Studies of the Institute as well as to the Groningen Centre for Law and Governance for co-sponsoring the event, and to all those colleagues who participated in the seminar without contributing a chapter, including but not limited to: Laszlo Bruszt, Clare Kirkpatrick, Brigid Laffan, and Bruno de Witte, as well as our assistants who worked with us on this project at different stages, in particular Elena Basheska, Martijn van den Brink, Ryan Chavez, Justin Lindeboom, Harry Panagopoulos, and Suryapratim Roy. Grisha Kochenov painted the blue-wheeled whale of the EU for the cover.

The book does not aim to be merely a piece of academic scholarship detached from the perils and problems of the ‘real’ world. Rather, concerns with events in some European states have prompted reflections on possible action with a clear guideline: the Rule of Law, democracy and human rights should not be taken as a foregone conclusion within the EU. A time during which thousands of people are fleeing conflict and die trying to reach European shores while some European states are busy dismantling their democracy and Rule of Law guarantees reminds us that engagement with values should not be a mere and empty exercise of academic rhetoric and eloquence but should be meaningful to the lives of the persons whose welfare depends precisely on the stringent enforcement of these values. We therefore make a case for Union action, list its tools, but voice a note of caution against overestimating the Union’s abilities. As you will notice, it is up to the reader to choose the most convincing tool for herself: this collection is a cookbook without a suggested menu, which is, we believe, also one of its strengths.

C.C., D.K.
Florence and Princeton

¹ The main outcome of the seminar was an EUI working paper, which is a natural accompanying text to this volume: C. Closa, D. Kochenov and J. H. H. Weiler, ‘Reinforcing Rule of Law Oversight in the European Union’, EUI Working Paper No. 2014/25, RSCAS.

ABBREVIATIONS

CFR	Charter of Fundamental Rights of the EU
<i>CJEL</i>	<i>Columbia Journal of European Law</i>
<i>CMLRev</i>	<i>Common Market Law Review</i>
CRPD	UN Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECJ	Court of Justice of the European Union
<i>EJIL</i>	<i>European Journal of International Law</i>
<i>ELJ</i>	<i>European Law Journal</i>
<i>ELRev</i>	<i>European Law Review</i>
<i>EUConst</i>	<i>European Constitutional Law Review</i>
FRA	Fundamental Rights Agency of the European Union
HRQ	<i>Human Rights Quarterly</i>
<i>I-CON</i>	<i>International Journal of Constitutional Law</i>
<i>ICLQ</i>	<i>International and Comparative Law Quarterly</i>
<i>JCMS</i>	<i>Journal of Common Market Studies</i>
<i>JEPP</i>	<i>Journal of European Public Policy</i>
ODIHR	OSCE Office for Democratic Institutions and Human Rights
<i>OJLS</i>	<i>Oxford Journal of Legal Studies</i>
OSCE	Organisation for Security and Cooperation in Europe
TEU	Treaty of European Union
TFEU	Treaty on the Functioning of the European Union

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