A Society of Trust

Mutual Trust as the Horizontal Institutional Grammar of Interdependence

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This contribution investigates a still underexplored element of *Commission v Hungary* and its relevance for the discourse on European society. The judgment undoubtedly matters in terms of the enforceability of Article 2 TEU. Yet its significance reaches further. The Court also recalled that the Union's common values are linked to one of the central mechanisms of EU law: the principle of mutual trust.

In this blog post, I take this link as my starting point to advance an understanding of mutual trust that explores the principle's relevance for European society in light of Georg Simmel's social theory. I submit that mutual trust should not be understood merely as a technical rule of inter-state recognition but as the horizontal institutional grammar of interdependence within European society.

The argument proceeds in five steps. First, I show how *Commission v Hungary* connects Article 2 TEU to mutual trust. Second, I reconstruct European society as a legally mediated web of interdependence. Third, drawing on Georg Simmel, I explain why trust is necessary wherever social interaction takes place under conditions of incomplete knowledge. Fourth, I argue that mutual trust institutionalizes this function in Union law. Finally, I turn to the limits of trust where the values of Article 2 TEU are seriously violated.

Commission v Hungary and the Article 2 Foundation of Mutual Trust

In *Commission v Hungary*, the CJEU stated:

> *"Once a candidate State becomes a Member State, it joins a legal structure that is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, the common values contained in Article 2 TEU, on which the European Union is founded. […] That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised […]." (para. 522).*

The Court had already established this basis of mutual trust in Opinion 2/13 (para. 168) and repeated the passage in its conditionality judgments (Case C-156/21, *Hungary v Parliament and Council*, para. 125 and Case C-157/21, *Poland v Parliament and Council*, para. 143). In *Commission v Hungary*, however, the statement forms part of a broader account of Article 2 TEU as a binding constitutional norm.

The Court then conditioned compliance with Article 2 TEU for the enjoyment of all the rights deriving from EU law by a Member State (para. 523). Respect for the Union's common values is therefore not external to mutual trust. It is its foundation. This link matters because mutual trust does not operate in isolation. Rather, as I will demonstrate, it structures cross-border relations throughout EU law. To understand the significance of that function, it is first necessary to identify the social space in which mutual trust operates: European society.

European Society as a Web of Interdependence

The concept of European society remains contested and can be approached from different perspectives (see here and here). For this blog post, I understand society, following Armin von Bogdandy's engagement with Georg Simmel, as a process of social integration (*Vergesellschaftung*). European society can thus be characterized as the social field where individuals, social groups, and national institutions are constantly drawn into relations with one another. What emerges from these interactions is a complex, legally mediated web of interdependence.

European society can therefore be understood as a form of structured interaction. Individuals obtain a professional qualification in one Member State, work in another, marry in a third, litigate and enforce a judgment in a fourth, often while travelling with European passports. EU law does not merely regulate these relations from the outside. It partly constitutes them. A judgment, passport, or diploma may become socially meaningful across the Union, but only if it can have transboundary legal effects. Yet that transposition of a legal position into another judicial system requires a mechanism. Under EU law, the name for this mechanism is mutual recognition, which is itself based on mutual trust.

Why Do We Need Trust?

To understand why this matters, it is useful to return to Simmel. For him, trust is indispensable because social life always unfolds between knowledge and ignorance (*Philosophy of Money*, p. 177–8). If everything were known, trust would be unnecessary. If nothing were known, trust would be impossible. Trust occupies the intermediate space: It allows actors to act on a hypothesis of future conduct that is sufficiently stable to become the basis of practical action.

Guido Möllering's reconstruction of Simmel captures this through the triad of interpretation, expectation, and suspension. Actors interpret available signs, form expectations, and then suspend the remaining uncertainty in order to act. Suspension is the decisive moment. It does not eliminate uncertainty but rather allows trust to exist without full certainty. Without such suspension, social interaction would be paralysed by the impossibility of complete verification. Similarly, Anthony Giddens – also building on Simmel – has described trust as a "leap of faith".

This model can be transferred to cross-border institutional interactions under Union law. A national court cannot investigate the entire legal order of another Member State before recognising a judgment. An administrative authority cannot review the full legality of every certificate produced elsewhere, and an immigration officer does not have the capacity to check whether every passport was lawfully issued to a person claiming to be a Union citizen. Mutual trust is EU law's answer to that problem. It institutionalises Simmelian suspension by converting limited knowledge into legally required reliance.

Mutual Trust as the Horizontal Grammar of Interdependence

How, then, does mutual trust operate to fulfil this function? As a basic premiss, it requires each Member State to consider all other Member States to be complying with EU law (Opinion 2/13, para. 191). Therefore, Member States' institutions are in principle obliged to recognize legal products (e.g. a judgment) originating in another Member State and to give practical effect to them. As Sacha Prechal has pointed out, mutual trust has risen to the status of a structural principle of EU constitutional law. As such, it has long escaped the confines of the AFSJ (i.e. the field of judicial cooperation in civil and criminal matters) and nowadays permeates the entirety of the EU legal order, especially the internal market. To give another example, the CJEU in 2025 for the first time explicitly based Union citizenship on mutual trust (Case C-181/23 *Commission v Malta*, para. 95).

It would, however, be insufficient to reduce mutual trust to this technical mechanism where Member State A must recognise a legal product from Member State B. This description is correct but too thin. It captures the legal operation of mutual trust, but not its social function. Rather, mutual trust is better understood as the horizontal institutional grammar of interdependence within European society. It is horizontal because it primarily governs relations between Member States. It is institutional because its immediate addressees are public institutions. And it is a grammar because it supplies the basic rule that makes cross-border legal communication possible: Legal acts originating in one Member State are, in principle, to be treated as reliable in another. Mutual trust thereby allows legal diversity and social interdependence to coexist.

Yet the ultimate point of reference of this inter-institutional principle is the individual. Mutual trust allows people to move through the dense web of inter-

actions created by European integration without having to re-establish their status every time they cross a border. The worker does not re-establish her qualification from scratch. The parent does not relitigate every family-law decision. The citizen does not justify, before each authority, why a passport issued by another Member State is valid. Therefore, even though the addressees of mutual trust are national institutions, it is the individual who in the end benefits from the functioning of the system.

At the same time, mutual trust also exposes individuals to public power exercised elsewhere. The European Arrest Warrant (EAW) is the clearest example. There, mutual recognition does not simply facilitate mobility – it enables coercion. A person may be arrested in a foreign Member State and thereby be subjected to a public authority they are completely unfamiliar with. As this example shows, mutual trust is ambivalent for the individual. It enables the practical functioning of European society, but it also transmits risks across borders. This raises the question of where the limits of mutual trust lie.

The Limits of Trust

This brings the argument back to *Commission v Hungary*. If mutual trust indeed rests on the assumption that Member States share and respect the values of Article 2 TEU, then the violation of those values cannot be irrelevant for the operation of trust. The Court's traditional case law has approached this problem mainly through fundamental rights. In the fields of the EAW, the Common European Asylum System, and the Brussels I Regulation, the Court has developed exceptions where mutual trust would expose individuals to serious fundamental rights violations.

These limits are important, but they do not exhaust the problem. *Commission v Hungary* instead invites a more fundamental question: What follows when the value basis of mutual trust itself is seriously undermined? As has already been argued, the connection between compliance with Article 2 TEU and mutual trust can be interpreted to justify the suspension of mutual trust vis-à-vis a Member State that is found to systemically violate European values. Although *Commission v Hungary* did not explicitly deal with this question, the judgment adds two valuable aspects: First, the Court treated Article 2 TEU as capable of generating legal obligations whose breach can be assessed by the Court (paras 520–543). Second, it introduced the standard of a "manifest and particularly serious breach" for determining whether a Member State has violated those values (para. 551). This sets a high threshold. But it also provides a doctrinal vocabulary for connecting Article 2 TEU violations to the possible suspension of mutual trust. If Article 2 TEU is indeed "hard law" and respect for its values is a necessary precondition for the operation of mutual trust, then a manifest and particularly serious breach of Article 2 TEU should have consequences for the operation of mutual trust. In such situations, the suspension of mutual trust vis-à-vis the violating Member State becomes at least conceptually plausible.

Such a suspension would be a significant sanction. It would affect the mechanism through which institutions participate in the horizontal structure of European interdependence. A suspension of mutual trust would also affect individuals connected to that Member State because it would make the cross-border recognition of their legal positions more fragile. Yet where the constitutional basis of trust is manifestly and seriously undermined, the continued operation of trust can no longer be taken for granted.

Conclusion

In this blog post, I was only able to sketch out the relationship between European society, mutual trust, and Article 2 TEU. My goal was to suggest that mutual trust should not be understood merely as a technical rule of inter-state recognition. It is also a social mechanism: the horizontal grammar through which national institutions make European society workable for individuals. *Commission v Hungary* matters in this sense because it reinforces the value-based foundation on which mutual trust ultimately rests. The judgment also provides new impulses for reflecting on the consequences the violation of those values could have for the operation of mutual trust. *Commission v Hungary*

does not fully resolve that question, but it provides a sharper language for addressing it.

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