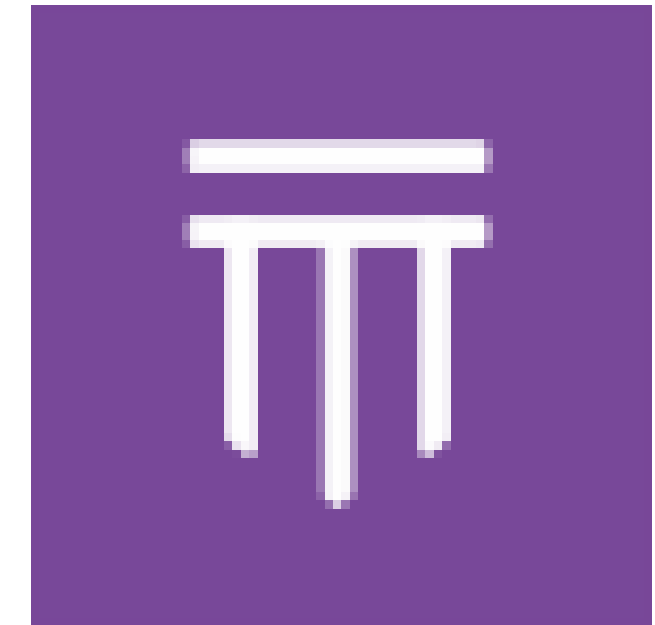


Brno, 13 October 2021

ECJ and Human Rights



JUSTIN
Judicial Studies Institute
Masaryk University

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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 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

Article 4

1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

Article 6
(ex Article 6 TEU)

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, **shall constitute general principles of the Union's law.**

Article 7

(ex Article 7 TEU)

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 the Treaties 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.

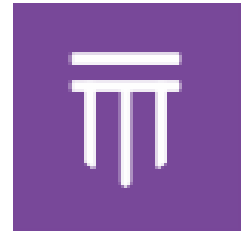
5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union.

EU Charter of FR

Article 51

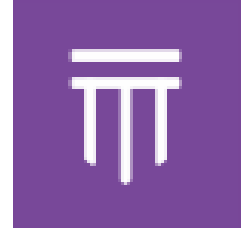
Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.



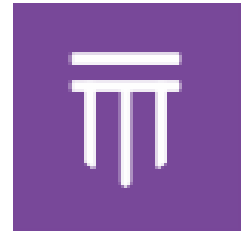
Where do EU fundamental rights constrain the states?

- Common market:
 - principle of non-discrimination
 - Equal pay for men and women
 - General principles
- Migration & Asylum Law
 - Citizenship & Freedom of movement & Protection of rights of migrants
- Justice
 - Criminal law
 - Judicial governance
- Foreign policy
 - FR of third country citizens?



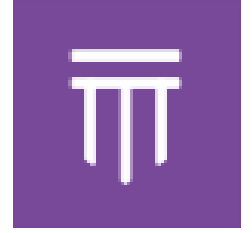
FR Beyond the Single Market

- II. And III. Pillar
 - II. Pillar: principle of nondiscrimination
 - **Tanja Kreil**
 - **Alexander Dory**
 - III. Pillar
 - **Maria Pupino**
 - Accused of a crime (mistreating children). Prosecutor asked for evidence of children. Should the national law be interpreted in light of a Council's Framework Decision, or does the duty of harmonious interpretation relate only to the first pillar?
 - ECJ: the interpretative duty applies to pillar 3 decisions too.



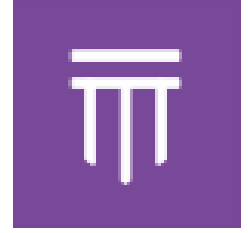
EU Charter of Fundamental Rights

- Why the Charter?
 - Alternative strategy to the accession to ECHR
- Proclaimed in 2000
- Initiator: European Council, aiming to strengthen the protection of FR in Europe by making them more visible
- Until Lisbon: merely a source of inspiration, not binding force
- Since it draws on many sources -> Explanations!
 - Not legally binding
 - Due respect when interpreting the Charter...



EU Charter of Fundamental Rights

- What changes did the Charter bring?
 - No generations of rights
 - Innovative rights (rights of Child)
 - Some rights missing
- Codification of existing case-law: the problem of authority?
- Rights v principles
- What is the added value of the Charter?



EU Charter of Fundamental Rights

- I. Dignity
- II. Freedoms
- III. Equality
- IV. Solidarity
- V. Citizens' Rights
- VI. Justice
- VII. General provisions on interpretation and application



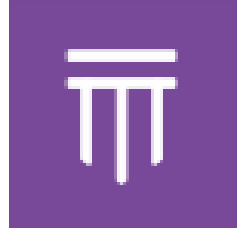
Application of Charter by MS?

- 4 general principles
 - 1. It is addressed to the Union and applies to MS only **exceptionally**
 - 2. Not all provisions in Charter are rights
 - 3. Charter rights can be restricted by EU legislation
 - 4. Harmony among Treaties, Convention and MS



Hard Rights vs Soft Principles

- What are rights?
 - Direct effect
 - Can be invoked before a court
- What are principles?
 - Title VII
 - To be implemented by legislative and executive acts
 - Judicially cognizable only when these acts are interpreted by courts
 - E.g. environmental protection A37
 - Not a limit on government, but stated aim of governmental action
 - Careful! Not source of objectives for EU institutional activity!



Application of Charter by MS?

- Article 51: implementation of EU law
 1. **MS as agents implementing and applying EU measures**
 - Minimum standards for refugees
 - Fransson case: implementation vs application [later narrowed down by Siragusa case]
 2. **MS derogating from EU rules**
 - A) MS's measures derogating from free market must comply with Charter [Sayn-Wittgenstein]
 - B) FR can justify derogation from the free market [Omega, Dynamic Medien]
 - Protection of FR – legitimate restriction of EU free movement
 3. **MS actions within the scope of EU law**

What is outside the scope?

- **Craig-De Burca:** Treaties do not provide any general power to enact rules on human rights (apart from anti-discrimination)
- Exclusive national competences and legislation
- A 4 TEU
- Residence permits e.g.



Limits of FR limitations in the Charter

- Article 52
 - *Any limitation on the exercise of the rights and freedoms recognised by this Charter must be **provided for by the law** and **respect the essence of those rights and freedoms**.
Subject to principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.*
 - i.e. 3 constitutional principles of limitations:
 - 1. provided by the law
 - IA of executive power?
 - 2. Proportionality principles -> necessary in light of general interests of Union or others
 - 3. independent existence of the absolute limit to public interferences: respect to the essence of the limited right. I.e. essential core doctrine



Opt-outs

- Same binding force as EU Treaties, although it is not in the Treaties
- But: Poland and UK: protocol related to the Charter's application
 - Czechia: President requests an opt-out at the very end of the ratification process
 - Other MS agree that Czechia will be able to enter the Protocol during the next treaties revision 😊
 - What is the Protocol about?
 - Social rights directly applicable (justiciable) before courts [UK]
 - Discrimination on the basis of sex [Poland]
 - Beneš decrees on return of property [Czechia]
- Relevance of Protocol 30?
 - Merely a political declaration. Vague, states that Charter does not extend the competence of the CJEU, or domestic or other courts, to state that actions of POL and UK are in violations of HR reaffirmed by the Convention
 - Not a real opt-out
 - Repetition of A51



Key post-Lisbon case

Case C-133/15, Chavez-Vilchez

Article 20 TFEU (mixed family)

- ✓ the Dutch parent is (partly) unable to take care of the children
- ✓ TCN-parent is able to take care of the children
- ✓ CJEU refers to the EU Charter

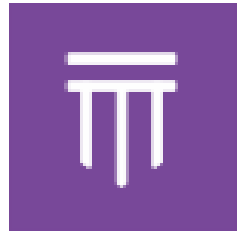
‘The fact that the other parent, an EU citizen, could assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but is not in itself a sufficient ground to refuse a residence permit. It must be determined that there is not, between the child and the third-country national parent, such a relationship of dependency that a decision to refuse a right of residence to that parent would compel the child to leave the EU.’

‘[...] the competent authorities must take account of the right to respect for family life, as stated in Article 7 of the Charter of Fundamental Rights of the European Union, that article requiring to be read in conjunction with the obligation to take into consideration the best interests of the child, recognised in Article 24(2) of that charter.’

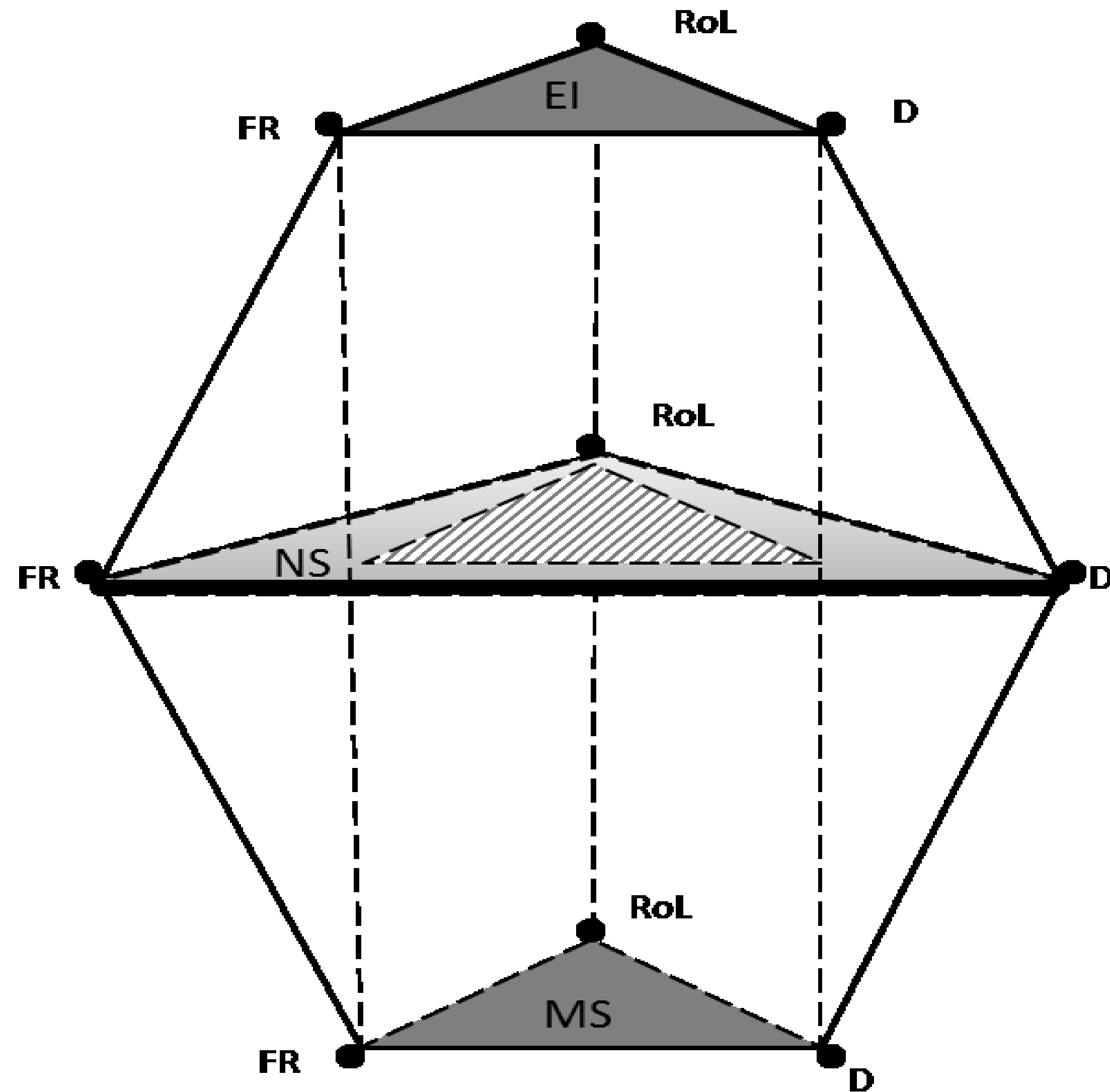


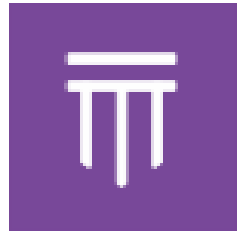
A2 Control

Policy instruments	Sanction mechanism, Article 7 TEU	Control
	International peer pressure	Convergence
	Evaluation reports of the accession process/CVM	Conditionality
	Issue linkage (loans, package negotiations)	Control (indirect influence)
	Pre-accession influence + networking (social learning)	Contagion
Legal instruments	Infringement	Control (indirect influence)
	Preliminary ruling procedure	Control

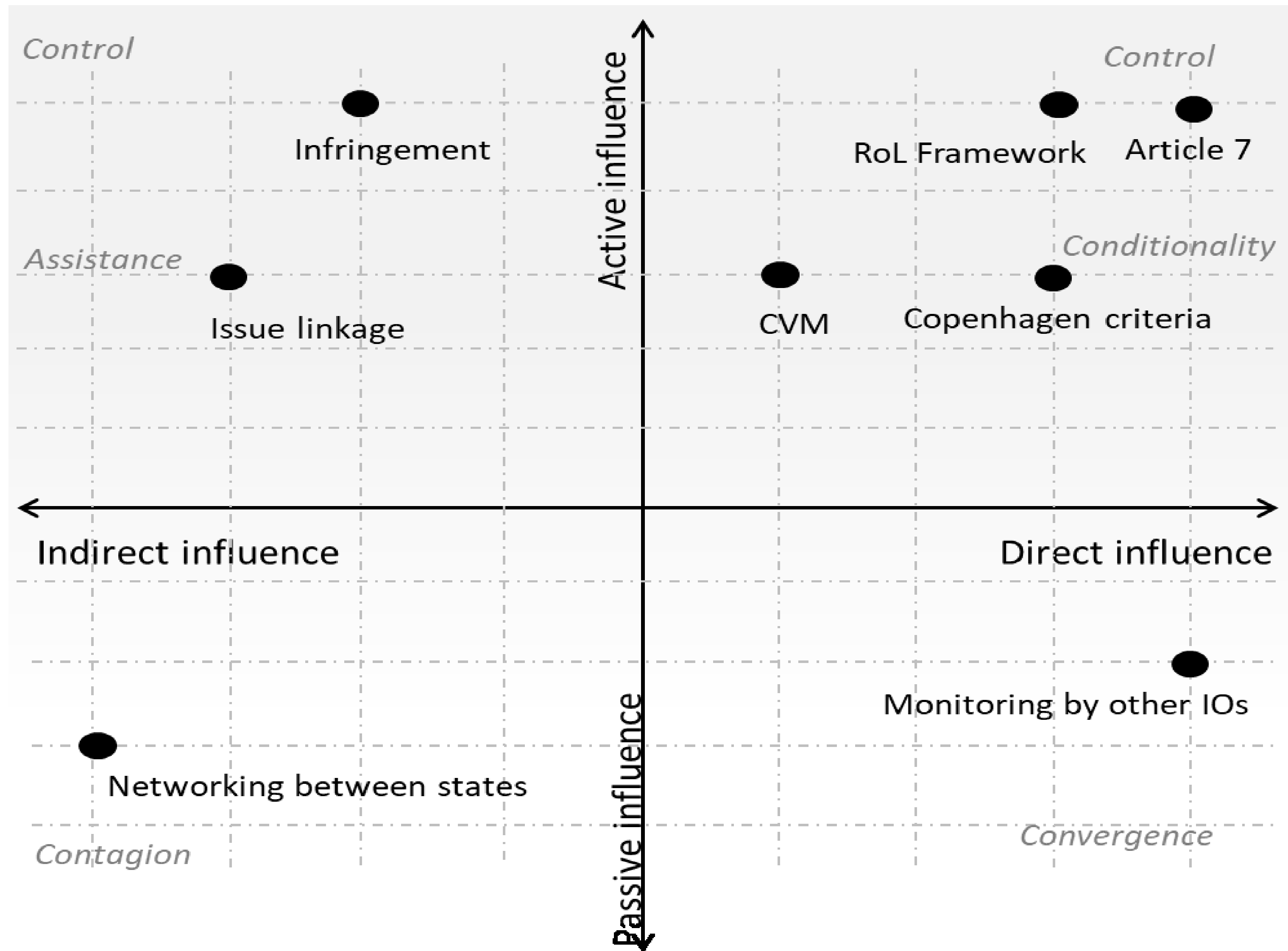


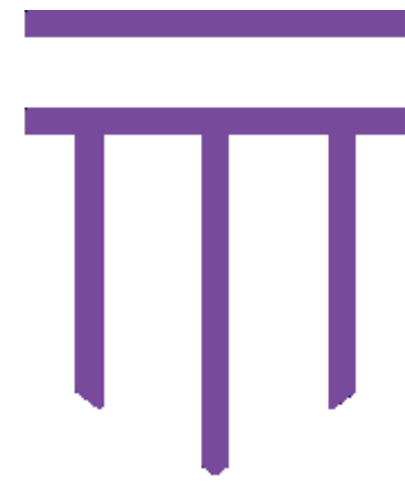
A2 triangular protection





A2 Control





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