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Araceli Turmo

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1. Introduction

In its judgment in *French Data Network*, the Conseil d'État has superimposed onto the conflict between the right to privacy and to the protection of personal data and the need to ensure the effectiveness of the fight against crime the old and constantly revived conflict between national supreme courts and the Court of Justice over the primacy of EU law. The French administrative supreme court decided to break with previous case law which seemed to accept, as a general rule, the primacy of fundamental rights standards set by the Court of Justice within the scope of EU law. It did so in order to reject the standards set by the ECJ for the protection of personal data, in favour of an approach which is more amenable to the justifications presented by police and intelligence services for systematic data collection and retention.

This judgment put an end to litigation started in 2016, through which a several NGOs,¹ later joined by Free, a telecommunications company, sought to challenge a number of French provisions on the collection and retention of metadata and the rules regulating access to the same by police and intelligence forces. The claimants asked the Conseil d'État to review the legality, constitutionality and the compatibility with EU law the provisions which require electronic communications providers, internet access providers and web hosting providers to collect user traffic and location data indiscriminately, as well as provisions regulating access to this data and its processing by police forces and intelligence services. Their hopes mainly lay in the growing body of EU law, including the ambitious standards set by the European Court of Justice in cases like *Digital Rights Ireland*² and *Tele2 Sverige*,³ to challenge the compatibility of French law with the rights to privacy and to the protection of personal data.

They succeeded in convincing the *Conseil d'État* to make a preliminary reference. Similar claims had been raised in Belgium, proving the importance of the case law of the ECJ and the impact it could have on national legal systems where indiscriminate data retention has become systematised over recent years. The Court of Justice decided to deal with the French and Belgian references simultaneously and presented a balanced response to the national Courts' concerns in *La*

¹ The Center for Democracy and Technology, French Data Network, La Quadrature du Net, Igwan.net, Privacy International and the Fédération des fournisseurs d'accès à Internet associatifs.

² Joined Cases C-293 and C-594/12, *Digital Rights Ireland Ltd and others*, EU:C:2014:238.

³ Joined Cases C-203 and C-698/15, *Tele2 Sverige & Watson and others*, EU:C:2016:970. On these judgments, see *inter alia* Bréchet, "Clap de fin pour la conversation généralisée des données de connexion en Europe ?", 606 Rev. UE (2017), 178-187; Cameron, "Balancing data protection and law enforcement needs: Tele2 Sverige and Watson", 54 CMLRev. (2017) 1467-1495; Granger and Irion, "The Court of Justice and the Data Retention Directive in *Digital Rights Ireland*: Telling Off the EU Legislator and Teaching a Lesson in Privacy and Data Protection", E.L. Rev. (2014), 835-850; Lyskey, "The Data Retention Directive is incompatible with the rights to privacy and data protection and is invalid in its entirety: *Digital Rights Ireland*", 51 CMLRev. (2014) 1789-1811. For a detailed analysis of the premises of this aspect of EU law, see Lyskey, *The Foundations of EU Data Protection Law* (OUP, 2015).

Quadrature du Net.⁴ In a controversial judgment on 21 April 2021, the Conseil d'État chose to express its dissatisfaction with the standard set at the EU-level in a somewhat less confrontational, but perhaps more insidious, style than the one apparent in the *ultra vires* tests carried out by the *Bundesverfassungsgericht* in *Weiss*⁵ or by other national courts.⁶ Instead of rejecting the EU's competence to set obligations for Member States in matters related to national security concerns, the *Conseil d'État* chose an approach which combines a skewed interpretation of the ECJ's judgment and a new constitutional exception to the implementation of EU law. The *Conseil* held that most of the provisions at issue were compatible with the standards set by the ECJ but added that the implementation of those standards should not lead to a lesser protection of national public security concerns, which could only be defined at the national level. Beneath a thin veneer of compromise, this judgment is yet another example of the *Conseil d'État*'s resistance to the core aspects of European integration, this time in defence of the State's surveillance capacities.

2. Background

French law, in accordance with EU law, provides for the anonymity and erasure of traffic data but it compels operators to collect and retain it for up to a year, so as to make it available for the judiciary in order to allow the identification and prosecution of criminal offences.⁷ It also compels internet access providers and internet hosting providers to retain and make available to judicial authorities all data which can allow the identification of persons involved in creating the contents of services they are providing.⁸ Access to this data was later extended to a number of administrative authorities:

⁴ Joined Cases C-511, 512 and 520/18, *La Quadrature du Net and others*, EU:C:2020:791. See, in the previous issue, the note by Cameron, "Metadata retention and national security: *Privacy International* and *La Quadrature du Net*", 58 CML Rev. (2021) 1433–1472.

⁵ BVerfG Cases 2 BvR 859/15 and others of 5 May 2020. See, *inter alia*, Bobic and Dawson, "National courts Making sense of the "incomprehensible": The PSPP Judgment of the German Federal Constitutional Court", 57 CML Rev. (2020), 1953-1998; Martín Rodríguez, "Y sonaron las trompetas a las puertas de Jericó... en forma de sentencia del Bundesverfassungsgericht", 52 Revista General de Derecho Europeo (2020), RI §423031; Galetta and Ziller, "Les violations flagrantes et délibérées du droit de l'Union par l'arrêt "inintelligible" et "arbitraire" du Bundesverfassungsgericht dans l'affaire Weiss", RTDeur. (2020) no. 4, 855-887.

⁶ See, notably, the judgment of the Czech Constitutional Court of 31 January 2012, Landtová (Pl. ÚS 5/12) and, less decisively, the judgment of the Danish Supreme Court of 6 December 2016, *Ajos* (n° 15/2014). See the notes published in this journal: Zbiral, "Czech Constitutional Court, Judgment of 31 January 2012, Pl. Ús 5/12: A Legal Revolution or Negligible Episode? Court of Justice Decision Proclaimed Ultra Vires" 49 CML Rev. (2012), 1-18; Holdgaard, Elkan and Krohn Schaldemose, "From cooperation to collision: The ECJ's *Ajos* ruling and the Danish Supreme Court's refusal to comply", 55 CML Rev. (2018), 17-54.

⁷ Article L 34-1 of the Code des postes et des communications électroniques, introduced by the loi n° 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne, JORF no. 266, 16 November 2001.

⁸ Article 6 of the Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique, JORF no. 0143, 22 June 2004.

fiscal, police and *gendarmerie* services, intelligence services and the HADOPI.⁹ This access was, belatedly, regulated in 2015 by a statute¹⁰ which introduced checks by an independent administrative authority, the CNCTR¹¹ and a new procedure for judicial review.

The aim of the actions joined under *Quadrature du Net e.a.* before the *Conseil d'État*¹² was to challenge a number of decrees that were introduced in 2015 and 2016¹³ to implement the 2015 statute. An additional case, *French Data Network e.a.*,¹⁴ later joined to the others, challenged the Minister's refusal to repeal a decree¹⁵ and another provision¹⁶ which establish an obligation for telecommunications operators, internet providers and hosting providers to retain data.¹⁷ In both cases, the *Conseil d'État* reviewed the compatibility of the legislative provisions being implemented with the European Convention on Human Rights, in particular Articles 8 and 13, and rejected the claims.

In the *Quadrature du Net* case, the claimants asked the *Conseil d'État* to send a constitutionality question to the Conseil constitutionnel regarding a legislative provision, and the *Conseil constitutionnel* agreed that it was contrary to the right to privacy and to the confidentiality of correspondence under Article 2 of the Declaration of the Rights of Man and of the Citizen of 1789.¹⁸ The *Conseil d'État* nevertheless decided that this declaration of unconstitutionality had no impact on the litigation concerning the decrees which implemented the provision. The *Conseil*

⁹ *Haute autorité pour la diffusion des oeuvres et la protection des droits sur Internet*, the agency monitoring the use of the internet for illegal activities such as unauthorised file sharing. A recent bill being passed through Parliament plans to replace this agency and the Conseil supérieur de l'audiovisuel with a new regulatory agency, the Arcom (*Autorité de régulation de la communication audiovisuelle et numérique*): *Projet de loi relatif à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique*, introduced on 8 April 2021, modified bill introduced before a joint commission on 24 June 2021.

¹⁰ Loi n° 2015-912 du 24 juillet 2015 relative au renseignement, JORF no. 0171, 26 July 2015, whose provisions were codified into Articles L 851-1 to L 851-4 of the *Code de la sécurité intérieure*.

¹¹ *Commission nationale de contrôle des techniques de renseignement* (National commission for the control of intelligence intelligence techniques).

¹² Req. no. 394922, 394925, 397844, 397851.

¹³ Décret n° 2016-67 du 29 janvier 2016 relatif aux techniques de recueil de renseignement (JORF no. 0026, 31 January 2016), Décret n° 2015-1211 du 1er octobre 2015 relatif au contentieux de la mise en oeuvre des techniques de renseignement soumises à autorisation et des fichiers intéressant la sûreté de l'Etat (JORF no. 0228, 2 October 2015), Décret n° 2015-1185 du 28 septembre 2015 portant désignation des services spécialisés de renseignement (JORF no. 0225, 29 September 2015), Décret n° 2015-1639 du 11 décembre 2015 relatif à la désignation des services autres que les services spécialisés de renseignement, autorisés à recourir aux techniques mentionnées au titre V du livre VIII du code de la sécurité intérieure, pris en application de l'article L. 811-4 du code de la sécurité intérieure (JORF no. 0288, 12 December 2015).

¹⁴ Req. no. 393099.

¹⁵ Décret n° 2011-219 du 25 février 2011 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne, JORF no. 0050, 1st March 2011.

¹⁶ Article R 10-13 of the Code des postes et des communications électroniques.

¹⁷ For an analysis of the first rulings made by the Conseil d'État in these cases, see F.-X. BRÉCHOT, *Conservation des données de connexion: la CJUE invitée à reconsidérer sa jurisprudence*, *AJDA* (2018) p. 2027.

¹⁸ Decision no. 2016-590 QPC, of 12 October 2016.

constitutionnel had already ruled that a number of the relevant legislative provisions were constitutional, which restricted the scope of potential claims based on constitutional review.¹⁹

The claims based on EU law referred in particular to the *e-privacy* Directive²⁰ and on Directive 2000/31,²¹ as interpreted by the ECJ in the light of the Charter. The claimants believe that the provisions at issue are incompatible, in particular, with the right to privacy and to the protection of personal data as defined by the ECJ in rulings such as *Digital Rights Ireland* and *Tele2 Sverige*. The *Conseil d'État* was clearly not satisfied with the Court's previous case law and referred questions to the ECJ, which led to the judgment of 6 October 2020 in *La Quadrature du Net*. The contents of this judgment put the French administrative supreme court in a very difficult position, between the standards set by the ECJ and the Government's strong opposition to them.

The Office of the Prime Minister claimed that the ECJ had ruled *ultra vires*, manifestly disregarding the principle of conferral and impinging upon the competences of the Member States. The *Conseil d'État* rejected this claim but did decide to establish a new restriction to the primacy of EU law in French administrative law. The long-standing *Arcelor*²² precedent creates an exception to primacy similar to those which can be found in other Member States in the context of the judicial review of national provisions that implement EU law (in particular directives). In most cases, the *Conseil* will not review the national provisions under national constitutional standards but, rather, will defer to a review of the original EU law provisions under EU primary law, by the ECJ. Only when EU law does not contain a principle equivalent to the constitutional principle which forms the basis for the claim will the national judge carry out a constitutional review of such national provisions. In this ruling, the *Arcelor* rule was modified so as to allow the national judge to check whether implementing EU law would endanger constitutional objectives related to national security. The *Conseil d'État* then proceeded to review all of the provisions with regard to its interpretation of the standard set by the ECJ in *La Quadrature du Net* and to examine whether this, in turn, was compatible with the constitutional requirements raised by the Government. The *Conseil d'État* held that most of the French regulatory framework was compatible with EU law and only demanded minimal adjustments from the Government within six months, holding that the findings that certain provisions must be amended should have no retroactive effects. In doing so, it chose a very different interpretation of *La Quadrature du Net* and attitude towards EU standards than the Belgian Constitutional Court, which issued its ruling in response to the ECJ judgment on the following day.²³ The decision is, however, consistent with the rest of the *Conseil's* recent case law on access

¹⁹ Decision no. 2015-713 DC, of 23 July 2015. The *Conseil constitutionnel* has also already ruled that a number of provisions of the same statute were unconstitutional: both in this decision and in other, later decisions, such as Decision no. 2017-646/647 QPC, of 21 July 2017.

²⁰ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, OJ L 201, 31.7.2002, p. 37.

²¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178, 17.7.2000, p. 1.

²² CE, ass., 8 févr. 2007, n° 287110, *Arcelor*. On this judgment, see *inter alia* Cassia, "Le droit communautaire dans et sous la constitution française", RTDeur. (2007), 378-415; Levade, "Le Palais-Royal aux prises avec la constitutionnalité des actes de transposition des directives communautaires", RFDA (2007), 564-577.

²³ Cour constitutionnelle belge, judgment no. 57/21, *Ordre des barreaux francophones et germanophone e.a.*, 22 April 2021. On this case, see the case note on *La Quadrature du Net* quoted above, note 4.

to personal data by public authorities, which indicates an unwillingness to fully comply with EU standards and a lack of appropriate challenge and review of governmental choices, in service of a national standard which provides less protection of citizens' rights.²⁴

Although it avoided open conflict, the *Conseil d'État* found a way to preserve most of the French regulatory framework (3) and seized an opportunity to establish a new limitation on the implementation of European fundamental standards in French administrative law (2), choosing once again to confirm the Eurosceptic tendencies in its case law (1).

3. Comment

3.1. The *Conseil d'État*'s Continuing Euroscepticism

The *Conseil d'État*'s *French Data Network* ruling is a perfect illustration of a decades-old attitude towards EU law in general, and the ECJ in particular. The *Conseil d'État* persists in what can only be described as a passive-aggressive attitude towards European integration. On the one hand, it sees itself as complying with all the requirements and insists that it is engaging in judicial dialogue and perfectly competent to apply and interpret EU law provisions. On the other, it is plainly apparent that the *Conseil d'État* is either unaware or wilfully ignorant of core elements of EU constitutional law. There is no doubt that the French administrative supreme court has become more accepting of European integration over the past two or three decades. After a long-standing resistance to some of the core aspects of EU institutional law - most famously, a refusal to fully implement direct effect and primacy over national legislation - the *Conseil d'État* shifted to a more moderate attitude.²⁵ Over the 2000s, a number of rulings seemed to signal the end of the eurosceptic *Conseil d'État* with, for instance, the introduction of the *Francovich*²⁶ principle into French law²⁷ or the acceptance of the authority of the Court of Justice's interpretation of EU law even in cases where no preliminary reference has been made.²⁸ Within a few years, the *Conseil d'État* had overturned some of its most markedly anti-EU case law and transitioned to a discourse which was more favourable to judicial dialogue across European systems. More recent case law nevertheless indicates that these decisions were not the sign of a permanently more favourable relationship with European integration.

Rather, it seems that the members of the *Conseil d'État* made the changes that they deemed necessary but did not fundamentally change their attitude to EU law. It is important to note that the *Conseil*'s position was never openly hostile. Rather, it developed its own version of European law which was compatible with the limits it wanted to place on its impact on French administrative law. Importantly, the impact of this perspective on EU law is increased by the strictly hierarchical

²⁴ Teyssedre, "Le droit de l'Union européenne de la protection des données dans le prétoire du Conseil d'État: quels enjeux", RTDEur. (2021) 331.

²⁵ For a more detailed description of the historical evolution of the attitude of French administrative judges towards primacy, see e.g. Blumann and Dubouis, *Droit institutionnel de l'Union européenne*, 6th ed. (Lexis Nexis, 2016) pp. 814-818.

²⁶ Joined Cases C-6 and 9/90, *Francovich and Bonifaci*, EU:C:1991:428.

²⁷ CE Ass., 8 February 2007, *Gardedieu*.

²⁸ CE Ass., 11 December 2006, *Sté De Groot*.

structure of the French administrative court system, in which most judges of first instance courts or even courts of appeal feel that dialogue with the European Court of Justice is reserved for their supreme court and will therefore not send preliminary references themselves. The version of EU law developed by the *Conseil d'État* thus prevails throughout French administrative law.

The reaction of the President of the *Section du Contentieux* (Litigation Section) of the *Conseil d'État* to the infringement finding in Case C-416/17²⁹ offers a perfect example of the court's relationship with EU law and the Court of Justice. The (then) President, Jean-Denis Combrexelle, immediately published an editorial³⁰ in which he explained his understanding of judicial dialogue and of the preliminary reference mechanism. He believes that national supreme courts cannot be restricted to the role of 'interpreting what is evident' but are instead responsible for interpreting both primary and secondary law while complying with the 'broad principles' defined by the ECJ. This position is of course entirely incompatible with the *CILFIT*³¹ criteria which the Court reaffirmed in cases like *Ferreira Da Silva*.³² Even if one were to adopt a less stringent understanding of the obligation of courts of last instance to make preliminary references, the obligation would certainly not be reduced to cases where questions arise as to 'broad principles', with all other issues left to the national courts to decide. The main issue is not, however, that President Combrexelle challenged the *CILFIT* criteria but rather that he was seemingly unaware that he was doing so. His article presents his perspective as the one that used to prevail across national courts as well as the Court of Justice. By contrast, the ECJ judgment in *Commission v France* is reframed as a challenge to this subtle equilibrium.

What is striking in this article, in its contents as well as its tone, is how well it demonstrates that the *Conseil d'État* had been operating under a version of EU procedural law which had little to do with the actual contents of the law. Perhaps more importantly, once this incongruence was pointed out, it did not seem to be able to take in this new information and chose to see the ECJ's ruling as creating new rules rather than simply restating the facts. As judge Gervasoni explained a few months later, the infringement finding and its motivations were relatively easy to explain for anyone familiar with the ECJ's previous case law.³³ Of course the misunderstanding between national supreme courts and the ECJ regarding the scope of *CILFIT*, or rather the fact that the strict conditions set out in that judgment have never really been applied - and cannot be - is a much more general issue and does not indicate a specific problem within the French administrative supreme court. However, President Combrexelle's reaction, read in the broader context of the *Conseil d'État*'s case law and the *conclusions* of its *Rapporteurs publics*,³⁴ is indicative of a problematic attitude towards EU law and ECJ case law in particular.

²⁹ Case C-416/17, *Commission v France*, EU:C:2018:811. On this ruling, see *inter alia* Gervasoni, "CJUE et cours suprêmes: repenser les termes du dialogue des juges?", AJDA (2019), 150; Iliopoulou-Penot, "La sanction des juges suprêmes nationaux pour défaut de renvoi préjudiciel", RFDA (2019) no. 1, 139-147; Turmo, "A Dialogue of Unequals - The European Court of Justice Reasserts National Courts' Obligations under Article 267(3) TFEU", 15 EuConst. (2019), issue 2, 340-358.

³⁰ Combrexelle, "Sur l'actualité du "dialogue des juges", AJDA (2018), 1929.

³¹ Case 283/81, *CILFIT*, EU:C:1982:335.

³² Case C-160/14, *Ferreira da Silva e Brito and others*, EU:C:2015:565.

³³ Gervasoni, *op. cit. supra* note 28, p. 151.

³⁴ The *rapporteur public* is a member of the *Conseil d'État* whose role is to present an opinion on the case, the '*conclusions*', which is much more detailed than the judgment and explicitly relies on case law and other sources. The role of the *rapporteur public*, previously called *commissaire du gouvernement*, was famously a major inspiration for the advocate general before the ECJ.

Just as in 2018, in *French Data Network*, the *Conseil d'État* seems to be unaware that it is operating under a version of EU law which is not consistent with what EU lawyers would recognise. While the *Conseil d'État* pretends to be applying EU law and adopting a moderate compromise which it feels is compatible with the ECJ judgment in *La Quadrature du Net*, it is once again setting aside core elements of EU law. This is apparent in two main aspects of the judgment: first, in the response given to the French Government's extravagant request that the *Conseil d'État* rule that the ECJ judgment was *ultra vires*, second, in the legal motivation, which is explained in the *conclusions* rather than in the judgment.

The *Conseil d'État* may appear very firmly 'pro-European' in its refusal to carry out an *ultra vires* check on the *La Quadrature du Net* judgment of the ECJ.³⁵ This request is quickly disposed of by the *Conseil d'État*, which rules that it does not lie in its purview to check whether EU secondary law or indeed ECJ case law complies with the allocation of competences between the EU and the Member States which is set out in the treaties.³⁶ This is followed by a somewhat disconcerting reference to the binding nature of the judgments of the Court of Justice under Article 91 of its Rules of Procedure: the *Conseil d'État* should not deprive these judgments of their binding force.³⁷ This, rather than a reference to primacy, the competences of the CJEU or the fact that EU membership is enshrined in the French Constitution, is presented as the institutional law basis for the *Conseil d'État*'s inability to carry out an *ultra vires* check. More worrying are the reasons given by the *Rapporteur Public*, Alexandre Lallet,³⁸ for rejecting this demand. Much like Advocate General opinions, the *Conclusions* are not part of the judgment and cannot be presumed to present the *ratio decidendi* relied upon by the judges, however in the absence of a clear and precise reasoning in the judgment they are often referred to in order to interpret rulings when they are followed by the *Conseil d'État*. This is particularly the case when, as in this instance, what is presented in the ruling is insufficient to explain the judges' reasoning.

In his *Conclusions*, Mr Lallet advises the *Conseil d'État* to reject the Government's request not out of goodwill towards the Court of Justice but for more pragmatic reasons. First, he argues, an *ultra vires* check such as the one carried out by the Bundesverfassungsgericht is impractical because it is difficult to know exactly where to place the limits of the check carried out by the national court.³⁹ Where a simpler option exists, it should therefore be preferred: this is the case here with the *Arcelor* 'safeguarding clause'.⁴⁰ However, the *Rapporteur Public* makes it a point to explain that the *Conseil d'État* can, if it so chooses, reject the authority of the ECJ ruling in *La Quadrature du Net*. In essence, his point is not that an *ultra vires* check would be incompatible with EU law but that the *Conseil d'État* does not need to go to such lengths to avoid complying with ECJ case law. Indeed, he writes, the *Conseil d'État* is a 'constitutional court' in its own right⁴¹ and would be

³⁵ See the favourable reading of the judgment by Ziller, "Le Conseil d'État se refuse d'emboîter le pas au joueur de flûte de Karlsruhe", note published on 23 April 2021 on Blog Droit Européen, <https://blogdroiteuropeen.com/2021/04/23/le-conseil-detat-se-refuse-demboiter-le-pas-au-joueur-de-flute-de-karlsruhe-par-jacques-ziller/>.

³⁶ *Conseil d'État* judgment in *French Data Network*, para 8.

³⁷ 'Il ne saurait ainsi exercer un contrôle sur la conformité au droit de l'Union des décisions de la Cour de justice et, notamment, priver de telles décisions de la force obligatoire dont elles sont revêtues'.

³⁸ *Conclusions* A. Lallet, available on the ArianeWeb database of the *Conseil d'État*, <https://www.conseil-etat.fr/ressources/decisions-contentieuses/arianeweb>.

³⁹ *Conclusions* A. Lallet, p. 27.

⁴⁰ *Ibid.*, p. 28.

⁴¹ *Ibid.*, p. 25.

competent under Article 88-1 of the French Constitution⁴² to check whether the EU had gone beyond its competences if the ECJ failed to do so. Moreover, the *Rapporteur Public* explains that the *Conseil d'État* is not the 'prisoner of an irrepressible force' of ECJ judgments but can decide for itself what scope to give to ECJ judgments.⁴³ Since the Court of Justice is 'not their supreme court'⁴⁴, its members are free to accept the authority of its judicial review or interpretations, or not.

This presentation of the relationship between EU law and French administrative law, under which national courts can freely decide which ECJ rulings to follow and to what extent, would have been unsurprising three decades ago. Finding it in *Conclusions* published in 2021 is a worrying indication that the *Conseil d'État*'s acceptance of European integration was not quite as well-established as we thought. However, Mr Lallet seems to believe this is entirely compatible with the Treaties, or that the point of view of EU institutions has no bearing on French courts. This interpretation of the judgment would go some way towards explaining the previous paragraphs, in which the *Conseil d'État* presents a modified version of the *Arcelor* precedent,⁴⁵ previously understood to be a limitation on the primacy of EU law which was to apply when the fundamental rights standards under EU law were clearly inferior to those guaranteed under French law.⁴⁶

An important first stage in the reasoning is that French administrative judges must always seek to interpret EU law in a way that is compatible with French constitutional law.⁴⁷ The judgment proceeds to introduce a new rule according to which, whenever a national provision is within the scope of EU law and a claim is made that it is incompatible with EU standards, the judge must not only carry out a review based on these standards but also consider whether applying them would render a constitutional requirement ineffective. If the provision is indeed contrary to EU law but necessary to ensure the effectiveness of a different requirement which is absent or insufficiently guaranteed under EU law, the claim must be dismissed.⁴⁸ Although the *Conseil d'État* does not explain this and the *Rapporteur Public* presents it as a simple restatement of the *Arcelor* rule, this is in fact a reversal of the initial exception.⁴⁹ Rather than allowing the national courts to apply higher fundamental rights standards in order to set aside a national provision even when the provision which it implements is valid under EU law, this rule allows national courts to set aside EU law standards under which a provision is not valid, in order to make different, national standards prevail

⁴² Article 88-1 enshrines France's membership of the European Union, stating that the Republic participates in the EU, composed of states which have freely decided to exercise some of their competences in common (*La République participe à l'Union européenne constituée d'États qui ont choisi librement d'exercer en commun certaines de leurs compétences*).

⁴³ *Concl.* A Lallet, p. 26.

⁴⁴ *Ibid.*

⁴⁵ Azoulai and Ritleng, "' L'État, c'est moi". Le Conseil d'État, la sécurité et la conservation des données", *RTDeur.* (2021), 349-374, at 354.

⁴⁶ See the presentation of this case law by the *Conseil d'État* itself: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/les-grandes-decisions-du-conseil-d-etat/conseil-d-etat-8-fevrier-2007-societe-arcelor-atlantique-et-lorraine-et-autres>.

⁴⁷ *CE French Data Network*, para 5; *Concl.* A. Lallet, p. 30.

⁴⁸ *CE French Data Network* para 8.

⁴⁹ It is presented as a 'reversed *Arcelor*' (*Arcelor inversé*) in an article authored by two Counsels before the *Conseil d'État* which is very favourable to the judgment: Malverti and Beaufils, "L'instinct de conservation", *AJDA* (2021), 1194-1212, at 1204.

and ‘protect’ the provision.⁵⁰ A crucial point here is that one may rely on any type of constitutional standard to raise an objection to the primacy of EU law: in this case, public order thus becomes a valid justification for an exception to the fundamental rights standards set by the ECJ.

It is interesting to note how the *Rapporteur Public* justifies this approach. First, he explains that the *Arcelor* does not exempt EU law from constitutional review but rather ‘delegates’ it to the ECJ, subject to a safeguarding clause.⁵¹ In other words, rather than abstaining from constitutional review in order to let EU instruments be reviewed according to EU standards, national courts are simply letting the ECJ take charge of the review insofar as it is equivalent to the one they would have carried out themselves. This approach makes it easier to justify coming back to a purely national constitutional review when the standards applied at the EU level do not satisfy the national judge. Second, Mr Lallet does notice and explain that the situation in this case is different from that which gave rise to *Arcelor*, but he immediately follows this by stating that the *Conseil d’État* is being asked to carry out the same type of constitutional review.⁵² Neither the reversal of an exception in order to protect national law from EU law standards, nor the shift from ensuring higher fundamental rights standards to rejecting EU fundamental rights protection, seem to register as significant differences.

The end result is similar to what we find in the judgment: as is often the case, a shift in the case law intervenes without being made explicit or proper justification. More significantly from the point of view of EU law, once again all these changes are presented as compatible with France’s obligations under EU law. Rather than explicitly setting out a disagreement and justifying it on constitutional grounds, the *Conseil* simply ignores the issue and carries on making its own choices while presenting itself as a model pupil and reacting with indignation when the EU reacts.

3.2. Public Security as a ‘Constitutional Identity’ Exception

The basis for the *ratio decidendi* in this case is the reversed *Arcelor* exception, under which a constitutional standard for which there is no sufficient equivalent in EU law can justify maintaining a national provision even when it has been held to be contrary to EU standards. This relies on two core premises: first, the *Conseil d’État* extends the exception to the primacy of EU law to claims relying upon public policy *against* the higher fundamental protection enshrined in EU law, second, it ignores the balance established by the ECJ between security concerns and fundamental rights in order to carry out its own judicial review of the provisions as well as the standards set out in EU law. If the *Rapporteur Public’s Conclusions* are to be trusted, this is based on a frankly antagonistic view of the members of the Court of Justice and the work of EU institutions in policy areas related to the fight against crime.

As the *Conseil d’État’s* own website explains, the main logic behind this exception to the primacy of EU law was to ensure that the rights and liberties enshrined in the Constitution are

⁵⁰ Iliopoulou, "La conservation généralisée des données de connexion validée, le droit au désaccord avec la Cour de justice revendiqué", JCP (2021), 14 June, no. 24, p. 659.

⁵¹ *Conclusions* A. Lallet, p. 30.

⁵² *Ibid.*, p. 34-35.

always protected.⁵³ The new version of the rule set out in *French Data Network* can be used to achieve the opposite result: rejecting the higher protection of fundamental rights under EU law in favour of a different type of constitutional principle. In this case, the Government's claim was based on four 'constitutional requirements' of vastly different scopes: safeguarding the fundamental interests of the nation, preventing breaches of public order, searching for the authors of criminal offences and fighting against terrorism.⁵⁴ The Conseil d'État does not draw a distinction or any kind of hierarchy, which the vast differences in breadth might have justified, between these requirements. The judgment states that these are all 'objectives of a constitutional value' and makes an unconvincing⁵⁵ reference to Article 12 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789 according to which 'To guarantee the Rights of Man and of the Citizen a public force is necessary'.⁵⁶

'Objective of a constitutional value' is not a well-defined concept⁵⁷ and there is no consensus that they should be granted the same normative value as constitutionally protected rights and liberties. The *Rapporteur Public* refers to the case law of the *Conseil constitutionnel*, albeit admitting that there is no clear precedent for this and that the status of concepts such as the 'objective to safeguard public order' remains unclear. Notably, this objective cannot form the basis for a preliminary reference on constitutionality (*question prioritaire de constitutionnalité*)⁵⁸ and it is doubtful whether constitutional review can be carried out on the sole basis of such objectives.⁵⁹ This aspect of the judgment is therefore highly debatable from the point of view of French constitutional law. Moreover, the highly vague nature of this four-part 'objective' is worrying when one considers the potential precedential value of this judgment. The four constitutional requirements relied upon by the Government can indeed all be considered to be related to national security. However, they are clearly vastly different, ranging from general policy goals such as the fight against terrorism to well-established principles of French public law justifying limitations on rights and liberties (public order), to the vague notion of 'safeguarding the interests of the nation'. As noted by Shahin Vallée and his anonymous coauthor in April 2021, these notions are so loose that they could justify opposition to virtually any piece of European legislation.⁶⁰ Even in a purely national context, the potential consequences of this constitutional innovation are difficult to predict and the way in which the *Conseil d'État* applied them here is not particularly reassuring.

⁵³ <https://www.conseil-etat.fr/ressources/decisions-contentieuses/les-grandes-decisions-du-conseil-d-etat/conseil-d-etat-8-fevrier-2007-societe-arcelor-atlantique-et-lorraine-et-autres>.

⁵⁴ CE *French Data Network*, para 9.

⁵⁵ Dubout, "Le Conseil d'État, gardien de la sécurité", *Revue des droits et libertés fondamentaux* (2021), chron. 18.

⁵⁶ *La garantie des droits de l'homme et du citoyen nécessite une force publique : cette force est donc instituée pour l'avantage de tous, et non pour l'utilité particulière de ceux auxquels elle est confiée*.

⁵⁷ De Montalivet, "Les objectifs de valeur constitutionnelle", *Cahiers du Conseil constitutionnel* 20 (2006).

⁵⁸ Since the review can only be based on the rights and liberties guaranteed by the Constitution (under Article 61-1 of the French Constitution), to the exclusion of other types of constitutional norms. See Jacqué, *Droit constitutionnel et institutions politiques*, 13e éd. (Dalloz, 2020), pp. 258-259.

⁵⁹ Rather, public order is used in the context of constitutional review as an objective which the legislator must balance with other constitutional norms (*i.e.* rights and liberties): Drago, "L'ordre public et la constitution", 58 *Archives de Philosophie du Droit* (2015) no. 1, pp. 199-214.

⁶⁰ Vallée and Genevoix, "A Securitarian Solange", note published in *Verfassungsblog* on 25 April 2021, <https://verfassungsblog.de/a-securitarian-solange/>.

These concerns can only be increased by the *Conseil d'État*'s reference to Article 4(2) TEU,⁶¹ which seems to be an attempt to justify the compatibility of this reasoning with EU primary law. Although this is not clearly stated in the judgment, the reference seems to indicate that the national security concerns being referred to are not merely 'objectives of a constitutional value' but also, in the context of EU primary law, part of France's 'national' or 'constitutional identity'. Indeed, the *Conseil constitutionnel* had previously established that the implementation of EU law must not infringe upon 'a rule or principle inherent to the constitutional identity of France'.⁶² The only other reasonable interpretation seems to be that the *Conseil d'État* believes that the Article 4(2) exception can be used for any aspect of national constitutional law, although this is clearly incompatible with the wording of the provision, or that the division of competences set out in the Treaties can be disregarded altogether. In any case, it would be impossible to prove that there is a specifically 'French' constitutional idea of national security or that these concerns are, in any way, unique to the French legal system.⁶³ The reasoning underlying it is much more insidious: the *Conseil d'État* is simply choosing to ignore that the public policy concerns it is referencing have already been taken into account by EU institutions, in order to make its own appraisal of the appropriate balance between security and privacy prevail.

This is clearly apparent in the single paragraph devoted to examining the issue from the point of view of EU primary law. After mentioning Article 4(2), the judgment quotes Article 52(1) of the Charter and explains that the ECJ has ruled that objectives related to national security and the fight against serious crime can justify limitations on fundamental rights in EU law. The *Conseil d'État* nevertheless then states that the constitutional requirements raised in this case cannot be considered to have a level of protection under EU law equivalent to the one which the Constitution guarantees.⁶⁴ Unsurprisingly, the *Conseil d'État* does not attempt to justify this statement beyond a quick mention of the fact that these concerns apply in areas of competence which belong exclusively or primarily to the Member States. It would be pointless to engage with the judgment on the validity of this appraisal of the division of competences within the EU legal order. It is easy to find mentions of public order and security in EU law, starting with Article 3(2) TEU,⁶⁵ and the role of EU institutions and agencies in the fight against organised crime has steadily increased over the past decades.

As the *Conclusions* indicate, this position is not based on a deep analysis of EU legislation or case law on issues related to public policy or the fight against organised crime. Instead of trying to prove that France has a specific understanding of any of the specific constitutional requirements at issue, the *Conseil d'État* follows its *Rapporteur Public* in simply stating that EU law is essentially unable to guarantee a sufficiently high level of protection of these requirements. The basis for this is a very basic reasoning according to which national security interests and concerns can, by definition, only be identified at the Member State level. Additionally, the ECJ is much too concerned with fundamental rights and can therefore not be trusted to establish an acceptable balance. Mr Lallet writes that the ECJ neglects the issues posed by the fight against serious crime for 'theoretical' and 'psychological' reasons. These reasons are essentially that the Court of Justice

⁶¹ CE *French Data Network*, para 10.

⁶² CC, 30 November 2006, *Loi relative au secteur de l'énergie*, no. 2006-543 DC, para 6.

⁶³ Simon, "Retour des monologues juridictionnels croisés? - A propos de l'arrêt du Conseil d'État dans l'affaire "French Data"", *Europe* (June 2021) no. 6, étude 3.

⁶⁴ "Les exigences constitutionnelles mentionnées (...) ne sauraient être regardées comme bénéficiant, en droit de l'Union, d'une protection équivalente à celle que garantit la Constitution."

⁶⁵ Iliopoulou, op. cit. *supra* note 49.

shares the ideology of the claimants such as NGO La Quadrature du Net, notably a general distrust of public authorities.⁶⁶ The members of the Court (and those of the Belgian Constitutional Court) will doubtless be pleased to find out that they are no more than a band of naive e-privacy campaigners, obsessed with protecting the good citizens of Europe from Big Brother, while only the French administrative supreme court is rational enough to be capable of understanding the needs of police and intelligence services. The *Rapporteur Public* then proves the superiority of his legal reasoning by arguing that the collection and conservation of personal data by security forces is necessary to protect... the right to privacy.⁶⁷

Mr Lallet presents his ‘conviction’ that EU law is ‘structurally’ unable to grant the safeguarding of national security and the search for criminal offenders the same level of protection as the Constitution.⁶⁸ He does provide a half-hearted attempt to justify this belief, according to which the fact that Article 4(2) TEU states that the EU shall ‘respect’ essential State functions is an indication that it is not meant to ‘ensure’ that those functions, including safeguarding national security, are discharged.⁶⁹ The Court explained in *La Quadrature du Net* itself that according to settled case law, ‘*although it is for the Member States to define their essential security interests and to adopt appropriate measures to ensure their internal and external security, the mere fact that a national measure has been taken for the purpose of protecting national security cannot render EU law inapplicable and exempt the Member States from their obligation to comply with that law*’.⁷⁰ The *Rapporteur Public* does not take this into account and, instead, explains that because the EU is not the ‘guardian’ of national security under Article 4(2), only the national judge is competent to ensure it.

The assertion that the EU is inherently unable to take into account the security concerns raised by Member States allows the *Conseil d’État* to set aside the balance chosen by the ECJ between those concerns and fundamental rights. The judgment of the ECJ is presented as basically taking sides with the NGOs, with no true regard for public order and security concerns, hence the standard it established must be reviewed by national judges on the basis of national definitions of these constitutional requirements. The *Conseil* sets out to carry out its own examination of whether the EU standards are compatible with French national security concerns. Thus, for each provision, the *Conseil d’État* examines whether it is compatible with the standard set out in *La Quadrature du Net* (as it understands it), but then it determines whether applying the EU standard makes it impossible to guarantee that the four constitutional objectives raised by the Government are met.

Under this reversal of the *Arcelor* exception, the *Conseil d’État* has empowered itself to preserve national instruments that are contrary to EU law on the basis of ill-defined constitutional requirements. A national provision which violates EU fundamental rights standards may be maintained and applied in the French legal order if the Government convinces the administrative courts that it serves national security interests. The way in which the two-pronged test is applied in this judgment does not provide much reassurance as to the potential scope of this new exception to the primacy of EU law in France. In fact, the French understanding of the appropriate balance

⁶⁶ *Conclusions* of the *Rapporteur Public*, p. 16.

⁶⁷ *Ibid.*, p. 43. As E. Dubout notes (op. cit. *supra* note 54), this attempt to reframe the balancing act between security and privacy as an internal conflict within the right to privacy is utterly unconvincing and is part of the broader reasoning meant to present the national security concerns at issue as autonomous constitutional requirements which can justify such a review of EU law.

⁶⁸ *Ibid.*, p. 45.

⁶⁹ *Ibid.*, p. 46.

⁷⁰ ECJ *La Quadrature du Net*, para 99.

between security concerns and fundamental rights, as presented in the *Conseil's* case law, mainly seems to hinge on a deferential attitude towards the governmental position and a lack of willingness to challenge the justifications presented for the ways in which data is collected and accessed.⁷¹

3.3. An Unconvincing Review of the French Regulatory Framework

Most of the judgment is devoted to the review of each of the provisions under the new double test established by the *Conseil d'État*: first, the judges apply their interpretation of the EU standard, then, they determine whether this could affect the constitutional requirements raised by the Government. The *Conseil* chooses a highly debatable interpretation of *La Quadrature du Net* in order to rule that most of the provisions under review are compatible with EU law and attempts to present a compromise with the constitutional objectives in other cases. Although the end result of the review is not egregiously incompatible with the standards set by the ECJ, it does lead to a broad validation of the existing provisions, including indiscriminate data collection and retention based on broadly defined national security justifications. The only aspects of the regulatory framework which were held to be incompatible with EU law were the fact that the obligation to collect and retain all traffic and location data is not subject to a periodical reevaluation and permitted under justifications other than the preservation of national security, and the fact that access to data by intelligence forces outside emergency situations is not subject to the assent of the competent independent authority.

In order to reach this decision, the *Conseil d'État* first chooses a broad interpretation of *La Quadrature du Net* regarding the exception to the prohibition of general and indiscriminate data retention in cases in which there is a serious threat to national security.⁷² According to the judgment, such a threat exists in France because the country faces a 'high and persistent terrorist threat' in its territory, which it proves by reference to a number of terrorist attacks or plots which took place in 2020 and 2021. This may appear reasonable, but the *Conseil d'État* adds two more types of threats which also justify applying the exception: according to the judgment, France is 'particularly exposed to the risk of espionage and foreign interference, notably due to its military capacity and engagement and to its technological and economic potential.' Moreover, 'France is also facing serious threats to the public peace related to an increase in the activity of radical and extremist groups.'⁷³

Neither of these two threats seems particularly well-defined nor limited in time. Justifications based on the fact that foreign military interventions, or France's 'technological potential', make it particularly susceptible to security threats could be used at any point in time. They are not proof of a specific and momentary threat to national security. For example, France's military involvement in conflicts against Islamic extremist groups such as AQIM (Al Qaeda in the Islamic Maghreb) has lasted for years. The *Conseil d'État* does at least concede the point that the obligation to retain the data should be subject to a periodical reevaluation, at least once a year, of the existence of the threat and is satisfied that this requirement would not affect, in and of itself, the

⁷¹ As noted by Julie Teyssedre in the article quoted above (*supra* note 24), the *Conseil d'État's* order on the French Health Data Hub (CE, ord. réf. 13 October 2020, n° 444937, *Le Conseil national du logiciel libre e.a.*) is indicative of a similar lack of willingness to adequately challenge the Government and disregard for the importance of EU standards on personal data protection, this time in relation to the *Schrems* line of case law.

⁷² ECJ judgment *La Quadrature du Net*, para 139.

⁷³ CE *French Data Network*, para 44.

constitutional requirements raised by the Government.⁷⁴ It therefore rules that the Government should, within six months, modify the provisions in order to include this periodical reevaluation.⁷⁵ However, the interpretation of the exception set out in *La Quadrature du Net* is so broad as to allow the Government to easily establish the existence of a threat at any point in time. NGOs such as La Quadrature du Net have therefore harshly criticised this aspect of the judgment,⁷⁶ which seems to set in stone the indiscriminate collection and retention of personal data under a thin veneer of judicial supervision.

Second, the Conseil d'État clearly expresses its disagreement with the ECJ's encouragement of targeted data retention. Like the Rapporteur Public, the judges once again present themselves as much more aware of the concrete issues which police and intelligence forces have to contend with and they affirm the necessity of generalised, indiscriminate data retention to ensure the effectiveness of criminal investigations. The judgment retains a similarly broad interpretation of *Tele2 Sverige* concerning the access of intelligence agencies to traffic and location data. The ECJ had held that access should as a general rule be subject to a prior review by a court or an independent administrative body and that national legislation must lay down precise conditions governing it and establish objective criteria, adding that '*access can, as a general rule, be granted, in relation to the objective of fighting crime, only to the data of individuals suspected of planning, committing or having committed a serious crime...However, in particular situations, where for example vital national security, defence or public security interests are threatened by terrorist activities, access to the data of other persons might also be granted where there is objective evidence from which it can be deduced that that data might, in a specific case, make an effective contribution to combating such activities.*'⁷⁷ The Conseil d'État rules that the access of French intelligence services to collected data is compatible with this case law insofar as it is permitted in order to pursue specific objectives which are all related to safeguarding national security.⁷⁸ Although the judgment does insist on the requirement of prior review, the criteria for the justification are significantly more vague and general than was intended by the ECJ.

Third, the ECJ judgment allows the retention of IP addresses in order to fight against serious crime or to prevent serious threats against public safety, only for the amount of time that is strictly necessary. According to the Conseil d'État, this does not mean that national law must clearly identify the categories of offences whose seriousness justifies this type of data retention: the seriousness of an offence may be assessed on a case-by-case basis, *in concreto*. Moreover, the fact that the relevant provisions make no reference to a limitation of these processes to the fight against serious crime is not an issue. It is enough that the first Article of the Code of Criminal Procedure establishes a general requirement of proportionality for investigative measures.⁷⁹ This part of the reasoning is particularly unconvincing: the practical result of this judgment is a rejection of any kind of systematic requirement that lawmakers restrict the most invasive practices to particularly serious forms of crime.

⁷⁴ *Ibid.*, para 45.

⁷⁵ *Ibid.*, para 46.

⁷⁶ See, e.g., the text published on 21 April 2021 by La Quadrature du Net, titled "Le Conseil d'État valide durablement la surveillance de masse", <https://www.laquadrature.net/2021/04/21/le-conseil-detat-valide-durablement-la-surveillance-de-masse/>.

⁷⁷ ECJ judgment in *Tele2 Sverige*, paras 119-120.

⁷⁸ CE *French Data Network*, paras 67, 69.

⁷⁹ CE *French Data Network*, paras 38-39.

The Conseil d'État concludes the ruling by circumventing the clear prohibition set out in *La Quadrature du Net* to stop national courts from limiting the temporal effects of possible findings of illegality of national provisions. On the indiscriminate retention of data, since the justification related to the safeguarding of national security remained valid throughout the time period concerned, the fact that the provisions are partly invalidated to the extent that they include other objectives does not have any practical consequences. The Government was entitled to require operators to retain the data.⁸⁰ On the access to, and use of, data by intelligence services, the finding that the existing provisions do not require the assent of an independent administrative authority is also toothless as regards past actions because the Conseil d'État finds that the positions of the competent authority have always been followed. As for the future, the judgment imposes a temporary framework under which these positions are to be treated as binding, until the Government introduces new regulatory provisions.⁸¹ Having thus established that no aspect of the judgment really has any impact on the past, the Conseil d'État can safely state that there is no need to delay its effects.

4. Concluding remarks

It will be plain to any reader of the *French Data Network* judgment that the *Conseil d'État* has chosen a position which is much more favourable to the requests of police and intelligence services than the European Court of Justice.⁸² Although this position is defensible in principle, the way in which it is justified and applied in this case does not bode well for the future. Not only did the French administrative supreme court choose to review the provisions at issue in a very conciliatory fashion, it did so while introducing a potentially far-reaching exception to the primacy of EU law and to the protection which European fundamental rights standards offer the citizens and residents of the Member States. Once again presenting itself as the protector of the interests of the State,⁸³ the *Conseil d'État* chose sides and introduced a worrying precedent under which these interests are seen as incompatible with the concern shown by the ECJ for the protection of personal data. It presented these interests as requiring protection at the national level from the nefarious influence of European judges who are ignorant of the real needs and achievements of security forces. Although one does not expect the *Conseil d'État* to set an example to follow with regard to the acceptance of France's membership of the European Union, this judgment seems to signal an unfortunate regression towards an anti-European position which seemed to have been overcome. At a time when the cross-pollination of lines of reasoning opposed to EU law primacy is a legitimate cause for concern⁸⁴ the *Conseil d'État* is providing an additional source of inspiration which has the added advantage of avoiding direct conflict. Significantly, this decision was followed a few months later by the first activation of a similar 'constitutional identity' exception by the French *Conseil*

⁸⁰ *Ibid.*, para 96.

⁸¹ *Ibid.*, paras 97-98.

⁸² Malverti and Beaufile, op. cit. *supra* note 48, pp. 1204-1208.

⁸³ Azoulai and Ritleng, op. cit. *supra* note 45, p. 365.

⁸⁴ See the reference to the BVfG *ultra vires* decision (5 May 2020, 2 BvR 859/15 and others) in the infamous 7 October ruling by the Polish Constitutional Court (K 3/21).

constitutionnel, in its *Air France* decision.⁸⁵ Although the exception was established long ago, it had never before been implemented, nor its scope defined. Here, the *Conseil constitutionnel* found that any principle which exists in French constitutional law but is not equally protected in EU law constitutes a principle ‘inherent to France’s constitutional identity’ which can form the basis for the constitutional review of a provision derived from a directive. It is difficult not to read this decision as an answer to the *French Data Network* ruling and an indication that the other *Conseil* is ready to follow its neighbour in the Palais Royal in the affirmation of a broadly defined constitutional identity as an exception to the primacy of EU law.

Araceli Turmo⁸⁶

⁸⁵ Conseil constitutionnel, Decision n° 2021-940 QPC, 15 October 2021, *Société Air France [Obligation pour les transporteurs aériens de réacheminer les étrangers auxquels l'entrée en France est refusée]*.

⁸⁶ Associate Professor of EU Law at the University of Nantes (araceli.turmo@univ-nantes.fr).