



EUROPEAN UNION RULE OF LAW MECHANISM

EUROPEAN UNION RULE OF LAW MECHANISM¹

Introduction

The European Union (EU) has not defined a hierarchy of values; however, the rule of law is considered particularly significant. It is recognized as a fundamental matter outlined in the treaties and serves as a basic foundation for the functioning of the EU as such.² Respect for laws is fundamental for fostering trust between member states, which is essential for living in a community.

The rule of law embodies the principles of justice, freedom, and security. Broadly defined, it serves as a safeguard against arbitrary governance and promotes a system where authority is exercised in accordance with established laws. This concept encompasses philosophical, sociological, political, and cultural dimensions. While its abstract nature and frequent invocation for political purposes are widely recognized, the significance of the rule of law remains undisputed.

The legal principle of the rule of law encompasses: (1) adherence to the law, (2) certainty in legal regulations, (3) prevention of arbitrary exercise of government authority, (4) presence of unbiased and independent courts, (5) robust judicial oversight, including protection of fundamental rights, and (6) equal treatment under the law for all individuals.³ The European Union possesses its own legal identity acknowledged as the *Acquis Communautaire* (or *Acquis*), which encompasses a collection of legislation, legal measures, and judicial rulings from the European Court of Justice, constituting the body of European Union Law. In light of the significance of the EU's legal framework (as articulated in Article 2 of the Treaty on European Union-TEU) and the importance of the national legal identities of its Member States (as defined in Article 4), the principle of subsidiarity is applied (as per Article 3). This principle stipulates that national legislation takes precedence over European legislation if decisions made by the EU do not align with the capacities at the national, regional, or local levels. At the heart

¹ Authors:

Mileva Gjurovska, Professor at the University “Ss Cyril and Methodius” Faculty of Philosophy – Skopje, President of European Movement North Macedonia and National Coordinator of National Convention on European Union in North Macedonia (NCEU-MK).

Aleksandra Deanoska – Trendafilova, Professor at the University “Ss Cyril and Methodius”, Faculty of Law “Iustinianus Primus” – Skopje, Coordinator of NCEU-MK for the Chapter 23, Judiciary and Fundamental Rights.

² In Article 2 of the Treaty on European Union, [TREATY ON EUROPEAN UNION CONSOLIDATED VERSION, Official Journal of the EU, C 326/13](#), and Lisbon Treaty (2009), [Treaty of Lisbon, Konrad-Adenauer-Stiftung in the Republic of Macedonia, 2010](#).

³ Laurent Pech, [The Rule of Laws a Well-Established and Well-Defined Principle of EU Law](#), SpringerLink , Volume 14, pp. 107–138, (2022).

of the European community lies the national identity clause, which asserts the presence of an inviolable national core that must be safeguarded against Europeanization. The founding treaties of the European Union outline the general normative framework to be embraced and implemented by national justice systems, assuming that they adhere to a solid level of implementation of the fundamental principles of the rule of law, with a strong emphasis on the independence and impartiality of judges, prosecutors, and other actors within the judicial system.

Following the significant enlargement of the EU in 2004, involving the accession of 10 new Member States, several with varied legal traditions, it became evident that some Member States were not upholding the principles of the rule of law. Issues such as the control of national public media by entities strongly associated with ruling structures, arbitrary allocation of public funds to governmental and non-governmental organizations, nepotism in state-owned enterprises, corruption, and encroachments on the rules governing the single market and university curricula gained both domestic and international criticism. However, the assault on the systemic foundations of the state, notably the separation of powers and the independence of the courts, prompted European institutions to take stringent measures to rectify the rule of law situation.

For instance, in Poland, distinct alterations in the process of appointing judges and prosecutors led to a judiciary under significant influence from the Ministry of Justice. A pivotal moment was the restructuring of the Judicial Council, which instead of functioning as a shield against undue political influence on the judiciary, "evolved into a body comprised of politicians."⁴ Similarly to Poland, Hungary, along with other Member States, faced challenges that urged European institutions, particularly the European Commission, to seek solutions for the effective implementation of the European Acquis. One such solution is the Rule of Law Mechanism, designed to address issues concerning adherence to the rule of law within the European Union.

[The European Rule of Law Mechanism](#) acts as a preventive tool, seeking to uphold the rule of law, address emerging challenges, and preempt potential setbacks. Central to this mechanism is an annual dialogue involving the European Commission, the Council of the EU, the European Parliament, Member States, national parliaments, civil society, and other stakeholders focused on the rule of law. According to information from the European Commission, it is anticipated that countries in the Western Balkans aspiring to EU membership will soon be incorporated into the European Union's Rule of Law Mechanism. Aligning the European mechanism for the rule of law with the citizens of aspiring states and their path to membership holds significant importance, particularly as this principle becomes indispensable in the accession process.

⁴ Maciej Taborowski, [The Identity of the EU Legal Order as a "Shield" for Judicial Independence in the \(Polish\) Rule of Law Crisis](#), [FORUM TRANSREGIONAL STUDY](#) VERÖFFENTLICHT, 30 January 2024.

The matter of the rule of law has been a significant concern for the candidate states seeking EU membership,⁵ which are regularly monitored and evaluated in this regard. Nevertheless, the aforementioned assessments are directed towards the members of the Union itself. This principle is of a vulnerable nature and has consequences of a wider scale in the functioning of the European Union.⁶ After numerous attempts to adopt the Rule of Law Mechanism, which were obstructed by vetoes from Hungary and Poland, the Mechanism was successfully approved in 2020 during the European Council meeting. This decision coincided with the adoption of the EU budget and the Recovery Plan (2021–2027 [Multiannual Financial Framework](#) (MFF) and the [Next Generation EU](#) (NGEU) recovery package).⁷ Considering the plans for the enlargement of the European Union with nine new countries, strengthening the foundations of the rule of law should be a priority of the Union, but also of the aspirant countries.

The rule of law has assumed an even greater significance for countries aspiring to EU membership in this decade compared to previous years. Following the fall of the Berlin Wall, Eastern European countries interested in joining the Union focused their reforms on meeting the necessary criteria for accession, including [Copenhagen criteria](#). Among these reforms, the political criteria have been of initial significance and remain crucial. These criteria involve ensuring the stability of institutions that uphold democracy, the rule of law, human rights, and the respect and protection of minority rights. Establishing a solid foundation in these areas is essential for candidate countries as they seek EU membership, as they reflect the core values of the European Union and are vital for fostering a stable and democratic society. Following the substantial enlargement in 2004, with 10 new countries predominantly from the former socialist bloc, and the subsequent addition of two new members (Romania and Bulgaria), the European Union implemented alterations to the negotiation framework. Under these changes, Croatia, which became a member in 2013, and other countries that had initiated negotiations, such as Serbia and Montenegro, were included in this new framework. These adjustments reflected the evolving dynamics of enlargement and accession processes within the European Union. The Revised Negotiating Framework specifies that while all chapters carry weight, the negotiation process primarily revolves around the importance of specific clusters. Cluster 1, labeled "Fundamental values," is segregated due to its pivotal role in guaranteeing the

⁵ The issue of the rule of law is traditionally the subject of Chapter 23: Judiciary and fundamental rights, which, within the framework of the new negotiation methodology, is part of Cluster 1: Fundamental values; In more detail see: [EU Accession process, step by step](#), European Commission 2022.

⁶ In April 2022, the EC activated the mechanism against Hungary for the first time. On 18 September 2022, the EC proposed to the Council to take budgetary protection measures against Hungary in the amount of 7.5 billion euros due to violations of the rule of law. On 15 December 2022, the European Council by a qualified majority passed a decision against Hungary freezing 6.3 billion euros from the funds that the country receives from the Union.

⁷ Thu Nguyen, Policy Fellow, [The EU's new rule of law mechanism, How it works and why the 'deal' did not weaken it](#), 2020.

This changed during the adoption of the 2021–2027 [Multiannual Financial Framework](#) (MFF) and the [Next Generation EU](#) (NGEU) recovery package.

implementation of European foundational values. Within this cluster, the importance of the rule of law, safeguarding fundamental rights and freedoms, access to justice, and the responsible management of public resources through transparency in public procurement and financial control is underscored. This emphasizes the critical significance of these fundamental values in the accession process and reflects the European Union's commitment to upholding these principles. Establishing negotiations with Cluster 1 and monitoring the rule of law throughout the entire negotiation period underscores the pivotal importance of progress in this area for the overall negotiation process. It is evident that the negotiation processes for EU membership have significantly influenced the evolution of the Rule of Law Mechanism that is currently implemented across all Member States. This underscores the deep intertwining of accession negotiations and the development of mechanisms to ensure the rule of law within the European Union.

The text that follows below resulted from the citizens' initiatives united in a project of a regional nature "Let's make justice rule the region" supported by the Kingdom of the Netherlands through MATRA.⁸ As part of the activities undertaken through this partnership, three conferences were organized, bringing together various stakeholders.⁹ During the recent expert meeting in Tirana, senior representatives from institutions, civil sector organization, and other stakeholders gathered to deliberate on the following topic:¹⁰ "Reflections on the Rule of Law Mechanism of the EU and its application in the candidate countries of the Western Balkans." The discussions held during the two-day meetings made a significant contribution to raising awareness about the rule of law mechanism within the EU, a concept previously unfamiliar to the general public in the Balkans. The primary aim of these discussions was to underscore to decision-makers the critical role of political will in achieving favorable outcomes regarding the rule of law. Additionally, emphasis was placed on the binding nature of the mechanism on Member States, highlighting the importance of compliance with its principles and requirements. This engagement sought to promote a deeper understanding of the mechanisms shaping legal frameworks and governance practices within the EU.

Also, the National Convention on the European Union in the Republic of North Macedonia held a special session of the working groups active in Chapter 23 (Justice and Fundamental Rights) and in Chapter 24 (Justice, Freedom, and Security) on the topic: "Fundamental rights, justice, and freedoms through the prism of the Rule of Law Mechanism

⁸ The goal of the project is to strengthen regional networks and regional dialogue for the exchange of positive practices and expertise on the rule of law and other issues of the negotiation process for EU membership. Project partners are the National Convention on the EU of North Macedonia, the National Convention - Serbia and the National Convention - Albania. The project has started in December 2022.

⁹ The first meeting of experts and the workshop with representatives of civil society organizations took place on 11 April 2023, in Belgrade. About 30 regional experts from all stakeholders participated. The second meeting was held in Skopje on 19 October 2023, while the third meeting took place in Tirana on 11-12 March 2024.

¹⁰ "Reflections on the EU Rule of Law Mechanism and its future application in the Western Balkans accession countries".

of the European Union". This initiative sparked significant interest in fostering dialogue among all relevant stakeholders.¹¹ This session yielded conclusions, which will be detailed below.

ASSESSING RULE OF LAW MECHANISM WITHIN EUROPEAN UNION: A HISTORICAL REVIEW AND FUTURE OUTLOOK

The necessity for enhanced control and assessment of the situation with regard to the rule of law in the Union was underscored in the Communication of the European Commission to the European Parliament, the European Council, and the Council of the EU (April 2019).¹² The document elaborates on the existing mechanisms and offers insights into potential future steps to promote the development of new tools. In July 2019, the Commission published a new communication accompanied by an action plan.¹³ The introductory points state that the viability of a democratic system is contingent upon the presence of an independent judiciary that safeguards the fundamental rights and civil liberties of its citizens. Furthermore, the vitality of a democratic state is enhanced by the existence of an active civil society and a free press that foster a diverse and pluralistic discourse.¹⁴ As indicated by the European Commission, the matter of the rule of law is not upheld in all EU Member States, which gives rise to concern and the necessity for the development of new instruments to enhance resilience of the rule of law. Among the problematic situations are noted instances of attacks on the independence of judicial processes, the weakening of constitutional courts, instances of interference from one branch of government to another, instances of corruption, and instances of abuse of office at a high level. Additionally, there have been other attempts by political power to circumvent the rule of law by weakening the guardians of democracy, such as civil society and independent media.¹⁵

Following the publication of the April Communication (April 2019), a series of debates was initiated. Subsequently, the European Commission received in excess of 60 written opinions (recommendations and similar forms of contribution) from a diverse range of national, international, and European stakeholders. Furthermore, a Eurobarometer survey revealed that over 80% of citizens from EU Member States acknowledge the significance of the rule of law, and over 85% of them believe that the media and civil society should operate freely and without

¹¹ The session took place on 26 April 2024.

¹² COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, Further strengthening the Rule of Law within the Union, State of play and possible next steps, COM (2019) 163 final.

¹³ [COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS](#) Strengthening the rule of law within the Union. A blueprint for action, COM /2019/343 final.

¹⁴ Ibid.

¹⁵ Ibid.

intimidation.¹⁶ Likewise, 89% of respondents indicated that respect for the principles of the rule of law and the principles on which the EU was built is a prerequisite for their support.¹⁷

The development of the Rule of Law Mechanism occurred with remarkable swiftness. In 2022, the European Union's efforts to address infringements of the rule of law within its Member States advanced at a notable pace. The focus remained on Poland and Hungary. The Polish government exercised considerable influence over the judiciary, which led to concerns about the independence of judges. Additionally, strict disciplinary procedures were introduced with the intention of intimidating judges, a situation that was extensively documented and condemned by the European Court of Justice and the European Court of Human Rights. In 2023, the Constitutional Court of Poland rejected all judgments from European courts as unfounded and did not implement corrective measures to ensure the rule of law. Hungary was censured for its lack of transparency in public procurement, high levels of corruption, and the enactment of legislation that was deemed incompatible with European standards.¹⁸

Some commentators have suggested that the introduction of new instruments designed to reinforce the tenets of the rule of law, in response to developments in Poland and Hungary, has not succeeded in addressing the issue of autocratic governance. Similarly, the question is posed as to whether the tactics of conditioning and coercion on which the Rule of Law Mechanism of the EU is based—which are effective in achieving one-time solutions—will actually serve to strengthen the principle of the rule of law in the EU. However, analysts have also raised further questions. For instance, it has been queried whether democracy can be strengthened by conditioning and applying undemocratic methods, including those employed in relation to EU Directive 2020/2092. Additionally, it has been questioned whether the EU itself and its institutions are not facing a democratic deficit in order to resolve certain political issues.¹⁹ In consideration of other factors, it can be observed that the EU has thus far employed this instrument in a relatively reserved manner. It has yet to become a genuine defense mechanism against the pervasive anti-democratic currents that threaten the democratic process. In many instances, the deployment of this strategy is influenced by political considerations rather than objective facts.²⁰ Recent analyses indicate that the efficacy of the conditionality mechanism remains to be evaluated. However, it appears that direct assaults on the rule of law are merely a manifestation, not the root cause, of the issue. The underlying problem is the reinforcement of autocratic systems and the deterioration of democratic institutions.²¹

¹⁶ Ibid.

¹⁷ Special Eurobarometer 489, Rule of Law, April – July 2019, p. 19.

¹⁸ Eric Maurice, [The Rule of Law: the uncertain gamble on conditionality](#), Schuman Papers n°660, March 2023.

¹⁹ Laurent Pech, [The Future of the Rule of Law in the EU](#), VerfBlog, 2023/12/14.

²⁰ Daniel Freund, Social Europe, 4 April 2024, [Defending the rule of law in the EU](#).

²¹ Maria Skóra and York Albrecht, [Strengthening the Resilience of the Rule of Law through Democracy](#), VerfBlog, 2024/4/04.

A breach of the principles of the rule of law has ramifications that extend beyond the immediate parties involved. It affects individuals, enterprises, and their liquidity, the quality of life, the environment, and, in sum, the overall social environment. It also has the effect of eroding citizens' trust in institutions.

In numerous countries, the comprehension and delineation of the concept of the rule of law are constrained, resulting in the exclusion of social rights from the conceptual framework.²² It is imperative that the rule of law mechanism be further strengthened and institutionalized. Moreover, countries engaged in negotiations for EU membership should be included in this process.²³

The Union is committed to the advancement of the rule of law and its implementation, providing financial assistance to civil society organizations in this regard. However, the Rule of Law Mechanism, and the so-called EU Justice Scoreboard represent one of the instruments for ensuring an effective response to violations of the rule of law. The new mechanism serves to supplement existing tools with measures designed to safeguard the Union's budget in the event of violations of the principles of the rule of law. In Article 2 of the Regulation of the European Parliament and of the European Council 2020/2092,²⁴ the rule of law is inextricably linked to the safeguarding of the Union's financial interests. Article 7 underscores the indispensable role of the rule of law in upholding the tenets of stable financial management.²⁵ The Regulation introduces the principle of conditionality; whereby economic sanctions are introduced in cases where a violation of the rule of law is assessed in a Member State. This entails the suspension of due installments for payments from the EU budget. This conditioning mechanism has been demonstrated to be an effective approach. Analysts have observed that this principle of budgetary conditionality differs from other tools in that it shifts procedures from the domain of values, which can foster political relativism, to the domain of finance. This shift exposes corruption through the mechanisms through which it operates.²⁶

In evaluating an infraction of the rule of law, a meticulous and comprehensive methodology is employed. The mechanism incorporates comparative data from a range of recognized sources and institutions, including: the Court of Justice of the EU, the reports of the Court of Auditors, the Annual Report of the Commission on the Rule of Law, and the EU

²² Ibid.

²³ Ibid.

²⁴ [REGULATION \(EU, Euratom\) 2020/2092 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, of 16 December 2020](#) (the Regulation or the Conditionality regulation).

²⁵ According to Article 8 of Regulation 2020/2092, "...good financial management is when public authorities act in accordance with the law. If cases of fraud, including tax fraud, tax evasion, corruption, conflict of interest or other violations of the law are not effectively pursued by investigative authorities and prosecutors, as well as arbitrary or illegal decisions of public authorities, including enforcement authorities of the law, may be subject to effective judicial review by independent courts and the Court of Justice of the European Union."

²⁶ [Eric Maurice, The Rule of Law: the uncertain gamble on conditionality](#), Schuman Papers n°660, March, 2023

Justice Scoreboard, the reports of the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO), as well as the conclusions and recommendations of relevant international organizations and networks, including Council of Europe bodies such as the Council of Europe Group of States against Corruption (GRECO) and the Venice Commission, in particular its checklist of the rule of law, and European networks of supreme courts and councils for the judiciary, are all included in the mechanism. Furthermore, pertinent sources of information include the submission of citizen complaints.

The European Commission's Rule of Law Report represents a key component of the mechanism. It is the culmination of extensive preparatory work conducted with the Member States. The 2021 reports are prepared on a regular basis and published annually.

These observations indicate the evolvability and vulnerability of each segment of the complex system that constitutes the concept of the rule of law. For example, the adoption (and application) of laws that are not an expression of the protection of universally recognized human freedoms and rights would disrupt the entire system of the rule of law. Furthermore, the practice of selective justice, which entails the application of just laws (when they are not universally applicable), can also lead to a deterioration in the level of rule of law within a country.

The rule of law is of paramount importance in the negotiations between the European Union and its prospective Member States. As a matter of great sensitivity and fragility, it represents a fundamental objective for both the EU and its Member States.

MAIN COMPONENTS OF EU RULE OF LAW ASSESSMENT CYCLE

As previously stated, the Communication of 17 July 2019, serves to confirm and establish the rule of law evaluation cycle within the European Union. The document underscores that the entire process is a legitimate objective of the Union, yet it also asserts that the national mechanisms for safeguarding the rule of law remain the primary instrument for its protection. Furthermore, it is underscored that the process should be impartial and equitable for all Member States. It will not initially result in sanctions but rather in an effort to identify an appropriate solution through collaboration and assistance.

The protection of the rule of law is a process that is executed in three stages, which may be conceptualized as pillars:

1. Promotion: The objective is to establish a corpus of knowledge and a common culture of the rule of law,
2. Prevention: The objective is to reinforce the rule of law at the national level through the promotion of collaboration and assistance,
3. Response: In instances where national mechanisms prove to be ineffective, the EU may implement measures of its own.

In the promotion stage, activities are planned to increase public awareness of the rule of law and the fundamental values of the European Union. In light of the fact that a considerable proportion of EU citizens are lacking in sufficient information regarding this matter, the necessity for action is underscored, particularly in terms of professional and general public engagement, with a view to enhancing the visibility of this issue in political discourse and strengthening the role of civil society, the media, and educational institutions in this regard. Additionally, there is a call for reinforced financing by the Union of such projects and initiatives. It is proposed that European networks in the field of justice, in collaboration with national parliaments and the Council of Europe, particularly the European Court of Human Rights in Strasbourg, assume a pivotal role in this process.²⁷ The Commission made a specific call for the development of interparliamentary cooperation and dialogue on the rule of law, as well as further monitoring by civil society, the academic community, and social partners.

In the initial stages of prevention, communication is conducted with the national institutions that are primarily responsible for ensuring the rule of law. In particular, the citizens of the Member States are directly affected by the consequences of the way the law is applied. However, the EU has a legitimate right to get involved and ensure that any negative phenomenon for the rule of law will be addressed and prevented at an initial stage in order to avoid significant damage. In this regard, the so-called Rule of Law assessment cycle is conducted through the mechanism of in-depth observation. In this stage, assessments are conducted based on a number of indicators, including the implementation of legislation, the efficacy of judicial protection by an independent and impartial court, the separation of powers, electoral processes, media pluralism, the implementation of EU law, the protection of citizens' rights, and other indicators of the rule of law. The monitoring encompasses all Member States, with an intensified emphasis on those that exemplify issues within this domain. In the evaluation cycle, consideration is given to existing sources of information, particularly those of the Council of Europe, the OSCE, the OECD, the EU Agency for Fundamental Rights, and other relevant authorities. Furthermore, the Member States are engaged in the provision of pertinent information, while the dialogue is conducted and intensified through the establishment of a network of national contact points.

In order to maintain the rule of law as a prominent item on the political agenda of the EU, the Commission publishes an annual report on the rule of law. This report identifies and assesses relevant developments in each Member States with regard to the advancement or regression of the rule of law, with the aim of sustaining the momentum of ongoing discussions and the creation of tools that facilitate the advancement of this value.²⁸

²⁷ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Strengthening the rule of law within the Union. A blueprint for action, COM /2019/343 final, p. 7.

²⁸ Ibid, pp. 11-12.

In the response stage, action is anticipated, and measures are implemented only if all other instruments from the preceding stage yielded unfavorable results, particularly in instances of ineffectual feedback activity at the national level. This policy is founded upon the precedent set by the Court of Justice, which, through its rulings, underscores the significance of judicial autonomy and the suspension of national legislation in instances where it contravenes the principles of judicial independence. In the event of significant challenges to the rule of law within a Member States, it is essential to conduct impartial assessments and evaluations. The Commission serves as an independent and objective evaluator of the situation, particularly given its role as the guardian of the agreements.

The European Rule of Law Mechanism represents the second component of the comprehensive rule of law process, which encompasses promotion, prevention, and response. Through this mechanism, an annual dialogue is conducted between the Commission, the Council, and the European Parliament, in collaboration with the Member States, national parliaments, civil society, and other stakeholders, with the objective of fostering a constructive exchange on matters pertaining to the rule of law.²⁹

RULE OF LAW REPORTS

The reports constitute a fundamental aspect of the processes encompassed by the Mechanism. From 2020 until the present, the reports have been published on an annual basis. The report includes a section that refers to the EU, as well as separate chapters for each Member States. For instance, the 2023 Report on the Rule of Law comprises a general overview section and 27 chapters dedicated to each member country. These chapters examine and elaborate on positive and negative developments in the field of the rule of law across four key areas, which serve as the pillars of the report. The following areas are examined in the aforementioned report: 1) the judicial system, 2) the anti-corruption framework, 3) pluralism and media freedom, and 4) other institutional issues related to the system of checks and balances.

The inaugural Rule of Law Report was released in September 2020.³⁰ The document indicates that the perception of judicial independence in six Member States is above 75% in the given year, while in four Member States, it is below 30%. Notable activities have been observed in Malta, the Czech Republic, Cyprus, Latvia, and other countries with regard to the implementation of reforms. Additionally, an increasing number of discussions have been identified pertaining to the potential enhancement of the independence of the public

²⁹ In more detail, see: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en.

³⁰ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, 2020 Rule of Law Report. The rule of law situation in the European Union.

COM /2020/580 final.

prosecutor's office from the executive power, with the objective of reinforcing the fight against organized crime and corruption.³¹ In the same report, the Union's concern about the independence of the judiciary in certain Member States is highlighted, with specific reference to Hungary, Poland, and, in certain segments, to Bulgaria, Romania, Croatia, and others.

In terms of anti-corruption efforts, the enhancement of legal and penal frameworks in Latvia, Italy, Spain, Greece, and other countries is a notable development. The issue of criminal prosecution for acts of high corruption has been observed to present challenges in a number of countries, such as Bulgaria, Croatia, Slovakia, the Czech Republic, and others.³²

The Commission has expressed concern about the potential politicization of media bodies in Hungary, Malta, Poland, and other countries. Additionally, the adoption of legislation in Poland and Romania has been observed to have occurred through abbreviated or expedited procedures.

The 2022 report marks a significant departure from previous iterations, incorporating new content and a more comprehensive approach to the subject matter. This includes the inclusion of public media and an overview of the implementation of judgments of the European Court of Human Rights.³³ Moreover, for the first time, concrete, specific recommendations have been provided for all Member States.

In consideration of the aforementioned details, the report indicates that although there is a discernible variation in performance among Member States, approximately 40% of the most significant judgments rendered by the ECHR over the past ten years have not been duly implemented by the respective Member States.³⁴

As a newly emerging and concerning phenomenon that is being observed with increasing frequency within the European Union, the 2022 Report identifies the phenomenon of strategic lawsuits against public participation (SLAPP) as a significant issue.³⁵ Such actions are regarded as a distinct form of pressure and intimidation directed towards journalists and other individuals engaged in human rights advocacy. This rising intimidation phenomenon, along with other forms of pressure and abuse of judicial procedures, has been observed in Lithuania, Poland, Croatia, Malta, Italy, Ireland, Slovakia, and other countries.³⁶

In the context of the specific recommendations that are, as such, for the first time part of the 2022 Report, the following could be identified as illustrative examples:

³¹ Ibid, p. 9.

³² Ibid, p. 16.

³³ [2022 Rule of law report, European Commission.](#)

³⁴ [COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, 2022 Rule of Law Report](#)

³⁵ Strategic Lawsuits Against Public Participation – SLAPPs.

³⁶ Ibid.

- It was recommended that Bulgaria take steps to align the composition of the Supreme Judicial Council with the relevant European standards, as well as to enhance transparency in state advertising, particularly when it is conducted through intermediaries.
- It was recommended that the Czech Republic take steps to reinforce the integrity framework of its Members of Parliament, conclude the revision of the legislation pertaining to the declaration of assets and conflicts of interest, and establish a precise definition of the term "beneficial owner."
- It was recommended that Denmark adopt a new legal framework for financing of political parties, with particular attention to the issue of multiple and anonymous donations. Additionally, the recommendation included the implementation of sanctions for violations of the law pertaining to these matters.
- It was recommended that Greece implement an effective and systematic verification process for the declarations of the assets status of public office holders.
- France was advised to persist in its efforts to effectively investigate, prosecute, and sanction high-level corruption cases.
- It was recommended that Croatia implement the Ombudsman's suggestions, including the establishment of a legal framework for lobbying activities.
- It was recommended that Luxembourg continue with reforms to facilitate greater access to legal aid.
- It was recommended that Hungary comply with the obligations set forth in the judgments of the European Court of Justice pertaining to the rule of law and the procedures outlined in Article 7 of the Treaty on European Union. The aforementioned measures include the removal of obstacles for the civil sector and the reinforcement of the role of the National Judicial Council.
- Malta was recommended as a means of bolstering efforts to enhance the efficacy of the judicial system, with a particular focus on curbing the duration of legal proceedings.
- It was recommended that Poland implement a separation of functions between the Minister of Justice and the State Prosecutor, as well as ensure the functional independence of the Public Prosecutor's Office from the government. Additionally, it was recommended that improvements be made to the framework for the functioning of the civil sector and the Ombudsman, etc.
- It was recommended that Romania implement new lobbying regulations for Members of Parliament (MPs) to guarantee efficacious public hearings prior to the enactment of legislation, etc.

THE 2023 RULE OF LAW REPORT

The 2023 Report is based on a qualitative assessment conducted by the Commission, which analyzes the progress made in relation to the preceding year's report. This entails an examination of how the Member States responded to the challenges identified in the previous report.

The EU Rule of Law Report 2023 indicates that the general public's perception of the independence of the judiciary has improved in 12 Member States (based on individual responses). However, among legal entities (companies and others), there has been a notable decline in the perception of judicial independence in 13 Member States. Consequently, in Finland, Denmark, Austria, Germany, and Luxembourg, positive perceptions of judicial independence are markedly higher among the general public (exceeding 75%), whereas in Poland and Croatia, they are significantly lower (less than 30%).³⁷

The results of the Corruption Perceptions Index (CPI) indicate that nine Member States are among the top twenty globally in terms of perceived levels of corruption. Nevertheless, other Member States exhibit a considerable discrepancy from the mean. As evidenced by data from the Eurobarometer survey conducted in 2023, corruption continues to represent a significant concern for both citizens and the business community within the European Union. The same source indicates that 70% of Europeans believe that corruption is pervasive in their respective countries. A majority of citizens (60%) perceive the efficacy of their government's anti-corruption initiatives to be inadequate. Approximately half of European companies believe that it is unlikely that corrupt individuals or businesses in their country will be apprehended, reported, and brought to justice. In fact, 67% of Europeans believe that corruption cases are not prosecuted at the highest levels.³⁸

Additionally, the 2023 Report diverges from its predecessors in terms of the specific recommendations it puts forth. For each country, the report first identifies which recommendations from the previous period have been implemented and which have not. It then sets out new recommendations for the period following the publication of the report. To illustrate, it is stated that Bulgaria has not achieved any progress in aligning the composition of the Judicial Council with the relevant European standards. Consequently, this recommendation has been transferred to the list of new recommendations for this country for the next year.³⁹

³⁷ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. 2023 Rule of Law Report. The rule of law situation in the European Union.

COM (2023) 800 final, p. 4

³⁸ Ibid., p. 11.

³⁹ ANNEX to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, 2023 Rule of Law Report, COM(2023) 800 final, p. 2.

The methodology employed in the production of reports on the rule of law in EU Member States is established on a four-pillar approach.

The first pillar is the observation (monitoring) of the rule of law process, which encompasses four domains: (a) the judicial system, (b) the anti-corruption framework, (c) media pluralism and media freedom, and (d) other institutional issues pertaining to the system of checks and balances. For example, the term "justice system" encompasses civil, administrative, and criminal courts, including all instances, all branches, and all stages, from initial prosecution to the execution of judgments. Furthermore, the subject matter encompasses the independence of the judiciary, including matters of appointment, dismissal, promotion, the powers of the body responsible for protecting the independence of the judiciary, the disciplinary regime and ethical rules, the independence/autonomy of the prosecution, and the perception of independence. In this context, the quality of justice, accessibility to legal aid, digitalization, resources, use of assessment tools and standards, as well as efficiency, length of procedures, execution of judgments and other indicators also warrant consideration.

As part of the third pillar, the anti-corruption agenda encompasses the institutional framework of the state, its capacity to combat corruption, and the prevention and integrity issues that arise. It also includes asset reporting rules, whistleblower protection, and incentives to report corruption. Additionally, it addresses measures to prevent corruption in high-risk sectors, such as public procurement, health, and others. Furthermore, it covers repressive measures, the criminalization of corruption and related acts, and the imposition of sanctions. Finally, it addresses potential obstacles to the investigation and prosecution of complex and high-level corruption cases. The aforementioned sources, along with others, are listed in the following section.

The third pillar pertains to the concepts of media pluralism and media freedom. Information is gathered on the ownership structure of the media and potential governmental interference in their operations, the transparent distribution of state funds, and the regulations pertaining to the transparency of media ownership. Furthermore, a framework exists for the protection of journalists, encompassing rules and practices designed to safeguard them, as well as the state's capacity to investigate attacks on journalists.

The fourth pillar addresses institutional issues pertaining to checks and balances, particularly the following subsections: the process of preparation and adoption of laws, consultations and public hearings, and the utilization of expedited or emergency procedures. This framework also encompasses the regime of constitutional review of laws, as well as the accessibility and judicial review of administrative decisions and other aspects, including the involvement of civil society.

Additionally, the report presents recommendations derived from the monitoring and evaluation conducted. The recommendations are country-specific and are designed to provide guidance and assistance in the implementation of reforms and the appropriate response to

emerging challenges. The implementation of these recommendations is monitored and documented in subsequent steps and reports.

Throughout the entirety of the Rule of Law Mechanism, Member States are engaged in an active and instrumental role. The national contact points serve to facilitate dialogue between the Commission and the relevant national institutions. Furthermore, the network provides a forum for the exchange of best practices and the discussion of horizontal issues pertaining to the rule of law. On an annual basis, the Commission, through the designated contact points, anticipates the submission of written contributions from the Member States. These contributions may include data from existing reports, evaluations, and other pertinent sources, provided that they are properly referenced. The Commission maintains an ongoing dialogue with the states and conducts visits to verify the facts and gather evidence. Prior to the publication of the report, the Member States are afforded the opportunity to provide commentary on the analytical section of the document.

Stakeholder input constitutes an integral component of the mechanism. The opinions expressed by the relevant parties in each of the reports are to be regarded as valid. The findings from the various sources are cross-checked with those received from the Member States.⁴⁰

The Rule of Law Reports have prompted the implementation of new initiatives, which are discussed in detail in the 2023 Report. These initiatives are primarily focused on enhancing standards and facilitating the advancement of the rule of law within the European Union. In this regard, the EU has reinforced the inter-institutional dialogue, with a view to enhancing the role of all stakeholders in the implementation of the fundamental principles of the rule of law. Consequently, in May 2023, a series of measures were adopted with the objective of reinforcing the legal and institutional framework for the fight against corruption. This resulted in the emergence of a new proposal for a directive on fighting corruption.⁴¹ In the preceding year, a proposal for the adoption of a European Act on Freedom of the Media was published.⁴²

HOW TO INCREASE RESILIENCE OF RULE OF LAW IN EUROPEAN UNION AND CANDIDATE COUNTRIES

The objective of all initiatives aimed at reinforcing the rule of law is to ensure that governments, that is to say, institutions, act within the limits set by law, in accordance with democratic values and respect for fundamental rights, under the control of independent and impartial courts. The Report on Resilience of the Rule of Law provides a response to the

⁴⁰ Ibid.

⁴¹ [Joint Communication on the fight against corruption , JOIN \(2023\) 12 final , 3 May 2023; and a Proposal for a Directive on combating corruption , COM \(2023\)234 final , 3 May 2023.](#)

⁴² [Proposal for a regulation establishing a common framework for media services in the internal market \(European Media Freedom Act\), COM \(2022\)457.](#)

question of how to safeguard the rule of law in contexts where it is contravened.⁴³ The text underscores the interconnection between the rule of law and democracy. When authoritarian tendencies in a society suppress democratic processes, typically with the rationale of "acting according to the will of the people," an erosion of democracy occurs, which also poses a threat to the rule of law.⁴⁴ In essence, the rule of law requires the existence of robust institutions whose primary objective is to safeguard the collective public interest, to ensure the delivery of reliable public services, and to facilitate the recruitment of personnel according to a merit-based system, conducted through democratic procedures and with due regard for transparency in the appointment of those in managerial roles.

A comprehensive examination of the variables that shape the resilience of the rule of law is presented in the RESILIO Project Report.⁴⁵ The research encompasses all 27 Member States and represents a novel instrument for enhancing the efficacy of the EU Rule of Law Mechanism. In addition to a precise and operational definition of the rule of law that will include empirical benchmarks and common standards for the rule of law, the project develops tools for implementing the recommendations set forth in the Rule of Law Mechanism. It also establishes a rule of law index that provides greater visibility of data and encourages horizontal dialogue on the rule of law for each EU Member State. Furthermore, the recommendation for a comprehensive dialogue extends to the EU membership candidate countries, with the specific objective of disseminating and exchanging successful practices.⁴⁶

The term "resilience" is defined as the system's capacity to withstand external shocks while maintaining its functionality, structural integrity, and ability to achieve its intended outcomes. In other words, the rule of law is capable of anticipating, absorbing, adapting to, and responding to potential threats.⁴⁷

The data from the aforementioned research substantiates the assertion that the presence of healthy and functional institutions is a pivotal determinant of resilience of the rule of law. Therefore, public administration and the judiciary that adhere to the principles of independence from political pressure are of paramount importance. The transparency of appointments and the absence of corruption are also of considerable significance. In essence, the toolkit prepared by the "Resilio" project places particular emphasis on the prevention and fight against corruption through the creation of cooperation networks, the adoption of the proposed Directive on fighting corruption, and mandatory membership of the European Public Prosecutor's Office (EPPO) during the stage of formally becoming a full-fledged EU Member State. Nevertheless,

⁴³ Maria Skóra and York Albrecht, [Strengthening the Resilience of the Rule of Law through Democracy](#), 4 April 2024, Verfassungsblog.

⁴⁴ Ibid.

⁴⁵ "[What makes the rule of law resilient ? Evidence from EU27](#)", summarizing the 2- year - long research project "RESILIO" carried out by the Institute for European Politics in Berlin and funded by Stiftung Mercator and the Citizens, Equality, Rights, and Values Programs of the European Commission.

⁴⁶ https://iep-berlin.de/site/assets/files/3756/iep_resilio_toolbox_final.pdf.

⁴⁷ [Resilio Monitor , What makes the rule of law resilient ? Evidence from EU27 , IEP , Berlin , Full Report , 2023](#)

the resilience of the rule of law is also strongly associated with the implementation of appropriate sanctions for offenders, accountability, and responsibility. The report identifies the particular significance of the civic space, which is conceptualized as an arena where active and informed citizens with a high level of association and awareness do engage in meaningful and informed discourse.

In order to ensure the resilience of the rule of law, it is of the utmost importance to maintain an independent and impartial media that is capable of providing objective coverage of populist policies, offering information, education, and a reasoned analytical discourse. The media not only influence the quality of public debate but can also serve as a supervisory body, acting as guardians of public goods and holding authorities to be accountable to their electorate. To show this point, in Poland, for example, the media assumed a distinctive function in the mobilization of citizens, whereby it exposed the undemocratic actions that precipitated a change of government in the elections. Furthermore, the report suggests the implementation of the European Act on Freedom of the Media and recommends the organization of encouraging activities for journalists with the objective of increasing their interest in the rule of law.

IMPORTANCE OF THE RULE OF LAW MECHANISM: WHAT SHOULD WE LEARN AND PREPARE FOR?

In conclusion, it can be stated that the rule of law is a value and condition that is subject to constant evaluation and monitoring by the European Union, irrespective of the status of the Member State in question. The European Union maintains a vigilant watch over its Member States and candidate countries to ensure the continued adherence to the rule of law, which is a fundamental tenet of democratic governance.

The rule of law is subject to regular challenges, constant development, and evolution, as evidenced by practice. The four pillars that represent elements of the EU Rule of Law Report encompass areas that are essentially evaluated by the European Commission in progress reports, screening reports, and other documents for countries that are part of the screening and negotiation process. Nevertheless, the proposition that the rule of law mechanism should be extended to candidate countries in the future represents a challenge for us, requiring, in the first instance, an evaluation of the methodology employed by this mechanism. It is evident that each subsequent report is structured and of a higher quality than the previous one. Consequently, the initiatives set forth within its framework, which represent the Union's policy in specific areas, should be given serious consideration especially by candidate countries undergoing screening or negotiations. In this regard, it is advisable to adopt an initiative-taking stance. In light of the aforementioned proposed Directive on fighting corruption, it would have been prudent for the Republic of North Macedonia to refrain from adopting the disputed amendments to the Criminal Code, which were scheduled to take effect in September 2023. These amendments

contain provisions on criminal offenses related to holding public office that are in direct conflict with the legal arrangements set forth in the aforementioned EU proposed Directive.

RECOMMENDATIONS FOR ENHANCING RULE OF LAW IN WESTERN BALKAN – CANDIDATE COUNTRIES

1. In recent times, the civil sector organizations in the Western Balkan countries have exerted considerable influence in underscoring the pivotal role and importance of the rule of law within society. This has resulted in enhanced transparency in the activities of judicial institutions. In light of the aforementioned, it is recommended that cooperation (dialogue) between civil society organizations and institutions in the field of justice administration and law enforcement (Ministry of Justice, Ministry of Interior, courts and prosecutor's offices, Ombudsman, and other bodies with competence in these areas) be continued and strengthened as such.
2. In order to achieve enhanced outcomes in the national rule of law discourse, it is of paramount importance to possess a comprehensive understanding of the current initiatives and exemplary practices that are being implemented in the various Member States of the European Union. The subject matter of *the EU Rule of Law Mechanism* demonstrates that both the general public and a number of experts were previously unaware of this issue. This recommendation pertains to the diplomatic missions of the European Union in the candidate countries, which could enhance the Mechanism's broader promotion by furnishing suitable expertise in civil platforms dialogue. This would facilitate greater citizen engagement with the Union. The provision of expert support from the EU will make a substantial contribution to the implementation of this core value of the EU.
3. In light of the relatively low level of implementation of legislation in the region, it is recommended that regular consultations be held between civil society organizations and the relevant institutions and bodies responsible for creating public policies (strategies, action plans). These consultations should take place prior to the formalization of said policies. By employing a distinctive approach that entails monitoring public policies, conducting analyses, reporting on structured dialogues, and offering contributions to public policies, civil society associations can instead of offering critiques of plans after the fact, provide timely commentary that can inform the adoption of pertinent and viable solutions, thereby reducing the implementation period as such.
4. It is recommended that national parliaments of countries in the Western Balkans assume an initiative-taking role in raising awareness of the role and importance of the rule of law. Furthermore, they should promote the Rule of Law Mechanism in the European Union as a core value. This may be achieved through the convening of special sessions of the pertinent parliamentary committees for the purpose of discussing the Mechanism and the recommendations that have emerged from the

assessment of the situation in the Member States of the Union, in addition to those that pertain to the Republic of North Macedonia. Furthermore, as recommended by the European Commission, the activities conducted in the context of inter-parliamentary cooperation are deemed effective in enhancing the legitimacy of this value, which serves as a cornerstone in the construction of European unity. This approach can also be implemented as a practice initiated at the national level.

5. It is imperative that the prospective Member States of the Western Balkans give due consideration to the recommendations set forth in the reports on the rule of law in the EU. These recommendations should be incorporated into new mechanisms designed to safeguard the fundamental values and tenets of the rule of law concept. Furthermore, it is essential that these recommendations be acted upon in an initiative-taking manner. In light of the perceived necessity to act on the recommendations, the relevant institutions should take the initiative to comply with the proposed Anti-Corruption Directive 2023/234 and the existing criminal legislation, as well as propose amendments to the criminal legislation with the aim of strengthening sanctions and ensuring the adequate protection of judges and prosecutors when implementing activities to prevent and combat corruption.
6. The European Union's Rule of Law Mechanism has the objective of reinforcing the democratic capabilities of Member States through the observation of advancements and obstacles encountered by Member States in the domain of the rule of law. In light of the fact that the candidate countries for EU membership (North Macedonia, Albania, Serbia, and Montenegro) are included for the first time in the annual Rule of Law Report for 2024, it is recommended that the topic be discussed in the public domain in order to ensure that the general public is aware that the situation is subject to constant evaluation, assessment, and monitoring due to the significant challenges that continue to emerge. This recommendation also extends to the journalistic profession, which should be encouraged to regularly monitor reports. In addition to data on Member States, journalists will also convey messages to the domestic public on ways to improve the existing state of affairs if it is assessed that it has deteriorated.⁴⁸ The rule of law is a fundamental tenet that facilitates the functioning of the European Union (EU). Its absence, however, activates the principle of conditionality, which

⁴⁸ So far, four reports have been published arising from the Rule of Law Mechanism in the EU (2020, 2021, 2022, 2023), based on four pillars that are relevant for comparative analysis: Judiciary, Anti-Corruption Framework, Pluralism and Media Freedom, Other institutional issues related to so-called checks and balances – where the framework for the civil sector has also been moved. About the Mechanism and the mentioned reports, in more detail at: [Annual Rule of Law Cycle](#)

- effectively precludes the utilization of certain benefits afforded by the EU. This, in turn, represents a crucial impediment to the progress of the negotiation process.
7. In light of the fact that the EU accession process is a merit-based process and that its pace will depend on the success in implementing the necessary reforms, it is imperative that the countries of the Western Balkans prioritize the strengthening of the fundamental driving force behind the implementation of said reforms, namely the public administration. Given the aforementioned, it can be argued that a fundamental prerequisite for the rule of law is the establishment of functional, independent, and accountable state institutions that are free from political influence. It is essential to enhance the quality and quantity of these institutions, implement a system of professional career development, and provide specialized training for the implementation of the very European Acquis as such.
 8. It is incumbent upon the governments of the Western Balkan countries to implement the principles of the rule of law. In this regard, they must invest all political capital to meet the obligations set forth in the European Agenda. It is essential to demonstrate, in practice, a genuine political commitment with concrete outcomes in the realm of the rule of law. This may be evidenced by an increase in the number of court cases pertaining to corruption and organized crime, as well as by the presentation of compelling arguments in favor of the independence of the judiciary and other initiatives that can be quantified through the indicators of the rule of law. Additionally, favorable assessments of the judiciary by the public may serve as a valuable indicator of progress.
 9. A substantial indicator of success in the fight against organized crime is the confiscation of assets obtained through illicit means. This approach conveys the message that criminal activities are not financially lucrative and that the perpetrators can be held accountable through the timely identification, financial investigation, and subsequent confiscation of their illicit assets. For these reasons, it is recommended that the countries of the Western Balkans reinforce their capabilities for conducting effective inter-ministerial financial investigations in conjunction with criminal investigations. This should be done in a manner that determines provisional measures for the safeguarding of such illicit assets for subsequent court confiscation, as well as the establishment of Asset Recovery Offices (ARO Offices).