



POLICY POSITION

Rule of Law

INTRODUCTION

The rule of law is a founding principle of the EU and has been a key element in the development and integration of the Union since its foundation. It is enshrined under Article 2 of the Treaty of the European Union (TEU). In recent times, it has been under immense pressure in some European Union (EU) Member States, where we have witnessed widespread interference in the judiciary, unfair dismissal of judges, state control of the media, nepotism and corruption. While the governments in Hungary and Poland are the main culprits of these violations, other countries are also experiencing the occurrence of serious democratic backsliding. The EU has not been able to prevent this systematic erosion of democratic values and defend the rule of law in all Member States, with its existing toolbox for managing these challenges being put to the test. Also, too often the EU institutions have taken into consideration a too narrow definition of Rule of Law, which does not include social rights.

UPHOLDING THE RULE OF LAW IS OF THE UTMOST URGENCY

Compliance with the rule of law is essential to protecting and fostering democracy in the European Union. Furthermore, violations of the rule of law

have extensive implications on economic activity at large, the competitiveness of member states, the appropriate use of EU funds. Violating the rule of law also undermines trust in democracy. So, the EU needs an independent and adequately equipped authority to monitor compliance with the EU's fundamental values and the respect for the rule of law in all EU Member States. In this context, the annual rule of law reports by the European Commission should be further institutionalised, with the Member States required to respond to and take actions to address the Commission's recommendations without delay and by including countries negotiating accession in the Rule of Law Mechanism.

Member States must ensure that their judicial systems effectively apply EU law and are their national judiciaries are independent, or face consequences. For this reason, we call for the full application of the rule of law conditionality to the Multiannual Financial Framework and retroactively to any violations of the rule of law or of judicial independence, which have occurred since its introduction on 1 January 2021. This should be done as soon as possible to protect the misuse of European funds, as well defend the rule of law.


No government is above the law. Weaker checks and balances risk deteriorating the rule of law and citizens' fundamental rights. Governments in Hungary and Poland, in particular, need to ensure that their judiciaries are independent and their judicial systems apply EU law effectively. The European Rule of Law Mechanism was born out of the real danger that political interference on the independence of the judiciary, systemic and unchecked corruption, the deterioration of media pluralism as well as the continuous attacks against civil society in EU member states can threaten the EU's financial interests. We therefore welcome the European Commission's decision to trigger the European Rule of Law Mechanism against Hungary. No EU taxpayers' money shall be granted to governments that undermine European values and do not respect the rule of law. The EU must not transfer EU funds to the Hungarian government until it takes corrective measures against the continuous breaches to the rule of law. With respect to the situation in Poland, the European Commission needs to trigger the same mechanism in response to concerns with regards to the rule of law in the country.

But as the [2021 Rule of Law Report](#) and

the [2022 Rule of Law Report](#) show, the rule of law is under pressure in other Member States also. The Commission has singled out various Member States for high-level corruption, police brutality as well as lack of independence of the judiciary and pressure on media freedom. It is imperative that all EU Member States referenced in the Rule of Law report heed its call and address the issues raised.

RULE OF LAW VIOLATIONS AS A THREAT TO THE ENVIRONMENT

In light of the climate emergency, violations of the rule of law pose a serious threat to climate action. A key objective for the Union is the implementation of the European Green Deal (EGD) to achieve its decarbonisation targets. However, challenges to the rule of law could erode the scope of the Green Deal. In order to reach the goals of the European Green Deal, decision-makers need to commit to an ambitious and comprehensive framework that permeates all policy areas. Rule of law safeguards need to be included in all legislation, in particular environmental law, to ensure effective implementation. Rule of law safeguards would protect the enforceability of the European Green



Deal. The introduction of a right to a healthy environment would strengthen the implementation and enforcement of the European Green Deal.

OVERCOMING UNANIMITY

The rule of law framework enshrined in Article 7 TEU enables the EU to suspend certain membership rights if it can be established that there has been “a serious and persistent breach” or “clear risk” of a breach of European values by a Member State. As the mechanism requires unanimity in the Council, effective action is rendered unattainable due to Member States vetoes. Experience has shown that unanimity undermines the rule of law when individual Member States dilute, delay and veto decisions which benefit the EU as a whole.

For this reason, building on the results of the Conference on the Future of Europe and the [resolution](#) adopted by the European Parliament in June 2022, EU decision-making needs to shift from unanimity to qualified majority voting (QMV) in the Council for the enforcement of the rule of law framework at least and for the policy areas to which competences have been conferred by the Treaties to the EU.

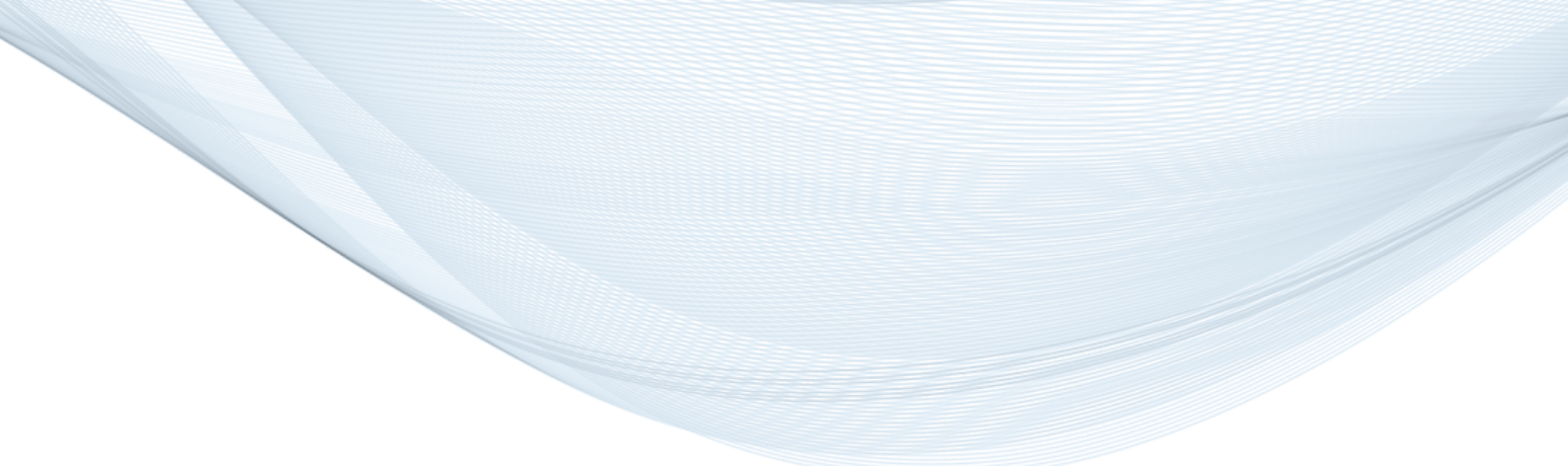
Shifting from unanimity to qualified majority voting in the Council would ensure not just the improvement of the democratic functioning of the EU but it will also help address more effectively violations of the rule of law in Member States.

ENHANCING THE ROLE OF CIVIL SOCIETY AND SOCIAL PARTNERS

Civil society organisations and social partners play a vital role in the protection of the rule of law principles. Their expertise and their ability to function as a watchdog can provide checks and balances to government.

The Rule of Law is essential for the proper functioning of the European Union, its institutions, its Single Market, labour market and society. It is an important guarantee for European citizens, employers and workers. The attractiveness of Europe as one of the best places to live, work and do business is highly dependent on a coherent and reliable application and enforcement of our common set of rules and values.

The Rule of Law also requires effective, independent and impartial institutions (e.g., courts, inspection services and bodies) and mechanisms of redress so



that these rights are justiciable, and their legal protection can be ensured. The longstanding role of social partners in setting, applying and enforcing these rights, particularly through social dialogue and collective bargaining, should be fully recognised.

Civil society also promotes active participation, good governance, transparency, and accountability. The EU should support civil society and social partners in their work and strengthen civil society's capacity to monitor the rule of law in Member States (and beyond). Any monitoring authority feeding into an annual cycle on democracy, the rule of law and fundamental rights, should draw on the input provided by civil society organisations and social partners.

Investment in civil society organisations and social partners is critical to ensure they can successfully undertake their duties. The EU should increase its support for the work of civil society at the European and national level and its capacity to promote a functioning rule of law.


Furthermore, the rule of law report methodology should include a chapter

on civic space and democracy at work. Inclusion of such a focus would add to the country specific recommendations, providing knowledge and accountability for Member State responses and a link to citizens.

In addition, it is important to implement the citizens' CoFoE recommendation to organise annual conferences on the rule of law, following the publication of the annual Rule of Law Report, and recommend institutionalising the rule of law dialogue, with the inclusion of civil society organisations and social partners.

THE RULE OF LAW INCLUDES SOCIAL RIGHTS

The respect for the Rule of Law must include a strong focus also on the respect for social rights: workers' and trade union rights are key human rights. This must be reflected in all rule of law mechanisms and safeguards at EU level. Promoting and ensuring the rule of law in the EU also includes the protection, implementation and enforcement of fundamental social rights in UN treaties (in particular the International Covenant on Economic, Social and Cultural Rights), ILO Conventions, Council of Europe treaties (in particular the European



of Human Rights, the Revised European Social Charter and the European Code of Social Security) as well as the EU Charter of Fundamental Rights and the European Pillar of Social Rights.

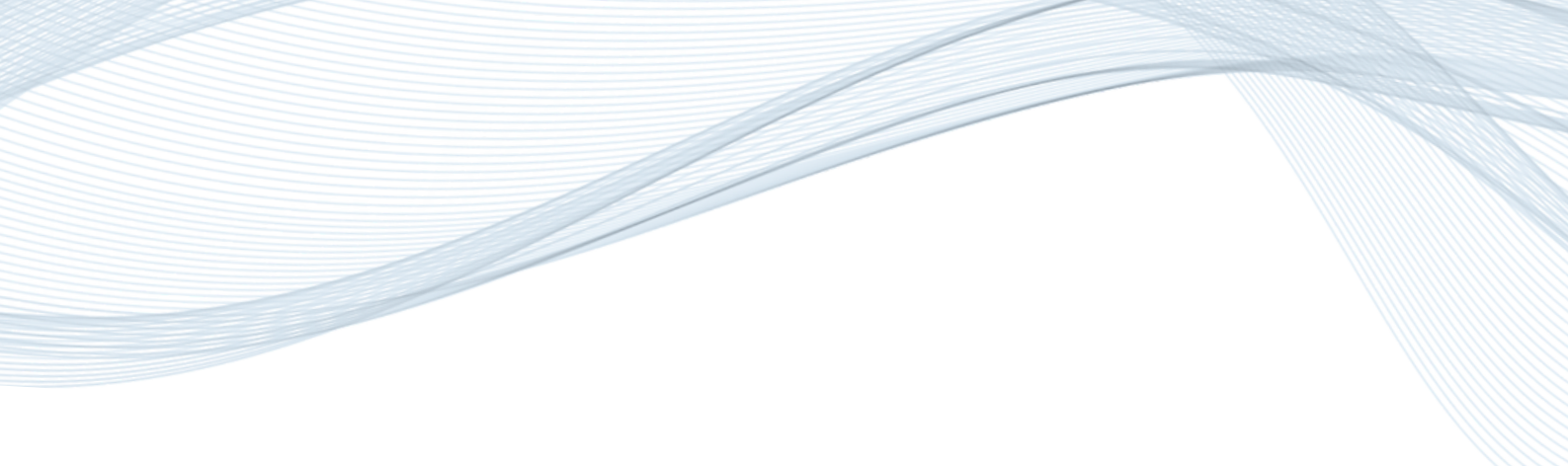
THE RULE OF LAW BEYOND THE EUROPEAN UNION

The EU has a responsibility to ensure that the rule of law, and democracy at large, are safeguarded and enhanced beyond its borders. With respect to its relations with those countries who wish to join the European Union, membership of the Union must be kept conditional inter alia upon adherence to the rule of law and founding EU values. In accession negotiations, the chapters concerning the rule of law and democracy should, therefore, be negotiated as a matter of priority, including with regard to social rights. Moreover, support for independent media, investigative journalism in local languages and local civil society advocating for the promotion of the rule of law and the accession should take a more prominent role.

EU values are not a box ticking exercises and accession to the EU requires significant change. The EU and the

Western Balkans are too interlinked for the EU to allow further decline into autocracy. If the EU wants to be considered a player in the promotion of its own values internationally, it needs to step up, defend and promote these values in practice. The EU cannot be such a global player if it cannot address the democratic backsliding in the Western Balkans.

With authoritarianism and nationalism in some countries undermining democracy, the EU should encourage the necessary reforms to ensure that European values are upheld. In Serbia for example, there are significant rule of law challenges. Whereas from 2000 to 2014 Serbia had taken significant steps towards democratisation and respect of EU fundamental values (it was considered in 2014 as a [free country with a semi-consolidated democracy](#)), the situation has dramatically worsened in the last few years. According to Freedom House, Serbia has lost the status of free country and semi-consolidated democracy and is now considered a partially free country with a hybrid regime, while [Transparency International](#) reduced Serbia's rank by 16 positions to 94th place out of 180 on the global corruption scale. Under these circumstances, Serbia



possesses the main features of a captured state: institutions are not performing their duties; power is concentrated outside the Constitutional framework in the hands of the President; there is only one major TV outlet that is not under control of the government only visible to no more than 50% of the population; investigative journalists are persistently under pressure; civil society is being illegally investigated for money laundering, through the misuse of international instruments intended to prevent the financing of terrorism.

THE GLOBAL CONTEXT

Strengthening the political, social and economic relations, ties and cooperation with the Southern Neighbourhood and the Eastern Partnership countries is crucial to enhance the regions' stability and peace, and to promote democracy and the rule of law outside of European borders. The Strategic Compass needs to provide a road map for how the EU can defend the stability of the rule of law in its neighbourhood. A stronger and more independent EU in the areas of security and defence will contribute to the protection of fundamental rights and the threats and challenges to the rule of law happening all over the world.

BACKGROUND

In 2020, the European Commission published the first report of its new annual rule of law review cycle, covering developments across the EU and in Member States in the areas of the justice system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances, highlighting persisting challenges to the rule of law in the EU. In 2018, the Commission proposed to link EU funds to the respect for the rule of law and in November 2020, in the framework of the negotiations on the next Multiannual Financial Framework, the European Parliament and Member States agreed on the text for the rule of law conditionality.

In February 2022, the European Court of Justice, ruled on the actions taken before the Court by Poland and Hungary, who argued that there is no legal basis for the conditionality mechanism in the TEU and TFEU, with the European Union having exceeded its powers. The ECJ confirmed that “the ‘conditionality mechanism’ is capable of falling within the power confirmed by the TEU”. The Court also commented that the “Union budget is one of the principal instruments for giving practical effect” to the fundamental principle of solidarity.

Finally, the Court confirmed that compliance with the values upon which the Union is founded “cannot be reduced to an obligation which a candidate State must meet in order to accede”. The court rejected the idea that the rule of law cannot be used as a standard for assessing the conduct of states.

This ruling is a significant step forward in monitoring and enforcement of the rule of law. The EU now has a definition of the rule of law which can be legally enforced. The Commission took the first step following this ruling on 27th April, when it launched the new rule of law disciplinary procedure against Hungary, with a formal letter issued to the state to which it has two months to respond. The measures the Commission put forward to Hungary must be approved by the Council using qualified majority voting. If these measures are approved, the Commission may include a suspension of EU funds to Hungary.

In May 2022, the European Parliament’s [Committee on Civil Liberties, Justice and home Affairs adopted its review](#) of the European Commission’s [2021 annual rule of law report](#). MEPs were disappointed that the Commission did not address concerns by the EP in the reporting system.

The EP called for the report to differentiate between systemic and individual breaches of EU values. It was also noted that the current report does not clearly recognise the ‘deliberate process of the rule of law backsliding’ in Poland and Hungary and fails to identify deficiencies in other EU countries. The Parliament also proposes setting up a ‘rule of law index’ based on a quantitative assessment of each country’s performance by independent experts.

WANT TO KNOW MORE?

Only by working together can we provide common solutions to the challenges Europe faces and ensure that Europeans’ ambitions mirror the future work of the European Union. By bringing our member organisations together in our Political Committees, we continuously develop new policy positions and put existing ones to good use. Please visit our website www.europeanmovement.eu to take a look at our main policy positions that guide our current work and get in touch if you would like to join us or support our work.



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