CEU Democracy Institute
Rule of Law Clinic

Rule of Law beyond the EU Member States

Assessing the Union's Performance

2025

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Executive Summary

The rule of law remains a cornerstone of the European Union, essential for the proper functioning of both Member States and EU institutions. While progress has been made in areas such as mutual trust and media freedom, significant challenges persist, particularly in access to justice, migration management, and enforcement of rule of law obligations.

While examination of the rule of law dimension of the Internal market is to be welcomed in the European Commission's Annual Rule of Law Report, it nevertheless faces important geopolitical challenges at EU level in the field of EU digital policy, undermining effective enforcement of the EU own legislation. Inconsistent judicial protection, and shortcomings in ensuring civil society engagement continue to undermine transparency, accountability, and democratic oversight. External migration policies and Frontex operations reveal gaps between EU legal commitments to human rights and the rule of law and practice, while digital rule enforcement risks the politicisation and erosion of regulatory independence.

Strengthening oversight of legal standards, ensuring consistent application of legal standards, and protecting media freedom and civil society are essential to uphold the EU's credibility and effectively defend its foundational values. By addressing deficiencies, the EU can become a stronger rule of law actor capable of defending EU values throughout the EU and its Member States.

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1. Introduction

The rule of law is critical to democracy and the functioning of the EU Member States. Deteriorating standards in several EU Member States threaten anti-corruption, fair elections, and erode mutual trust between EU Member States. While EU institutions are responsible for safeguarding the rule of law,the European Commission's Annual Rule of Law Reports fail to assess the EU's own rule of law Performance. In 2024 the Rule of Law Clinic at the Central European University Democracy Institute in Budapest published the first independent report assessing the state of the rule of law in the European Union at the supranational level.[1] It highlighted the main shortcomings with the degree to which the rule of law is ensured by the EU institutions in the same fields which are assessed by the European Commission in its annual rule of law report.

Work on the report was initiated by the Rule of Law Clinic at the CEU Democracy Institute in Budapest, and was supported by the contributions of a team of experts throughout Europe. The second edition of this report discusses recent developments in access to the Court of Justice of the EU, main issues in the anti-corruption framework, state of implementation of the main EU legislative acts in the field of media pluralism and freedom of speech as well as other issues related to the checks and balances. As the report follows the original structure of the Commission's annual report, the second edition also discusses problems in the internal market dimension of the rule of law at the EU level and examines how geopolitical factors influence the enforcement of the rule of law by EU institutions, as well as the enforcement of the EU's own laws.

The work on the report is driven by the principle that the EU institutions 'must be held – at the very least – to the same Article 2 TEU standards as they demand from the Member States to not appear thoroughly hypocritical'.[2] While the state of the rule of law in the European Union remains outside the scope of the annual rule of law report, the EU is still facing significant new and ongoing challenges - both internally and globally.

The quality and commitment that the EU makes to addressing the 'rule of law deficit'[3] will have a significant impact on the way EU institutions are able to respond and adapt.

1 B. Grabowska-Moroz, and J Grogan (eds), Rule of Law beyond the EU Member States 2024 (Central European University Democracy Institute, Rule of Law Clinic, 2024).

2 *Rule of Law beyond the EU Member States 2024*; S. Carrera, J. Pőcze, D. Colombi, *A Rule of Law Agenda for 2030. Priorities for a principled area of freedom, security and justice,* CEPS October 2024, 16.

3 A. Schout, M. Luining, *Diagnosing the EU's Rule of Law deficit Towards a Public Management approach* (Draft policy paper, 6 December 2016) - https://www.clingendael.org/sites/default/files/pdfs/Diagnosing%20the%20EUs%20Rule%20of%20Law%20deficit%20-Discussion%20Paper-%20SchoutLuining.pdf. S. Carrera, et al., *A Rule of Law Agenda for 2030.*, 3.

2. Judiciary

2.1 Judicial Appointments

The first edition of the report pointed at significant concerns as regards the functioning of the Court of Justice from the perspective of the rule of law in the appointment procedure of the Court's members. Since the last reporting period, judicial appointment of the Court was discussed in the Court's ruling in *Valančius* case,[4] in which the crucial role of '255 Committee' was highlighted.[5] The Court found that '[t]he fact that the panel provided for in Article 255 TFEU gave a favourable opinion on the candidate […] is such as to confirm that the decision of the governments of the Member States to appoint that candidate meets the requirements laid down in the third subparagraph of Article 19(2) TEU and the second paragraph of Article 254 TFEU'.[6] This wording suggests that almost any shortcomings and irregularities during the national stage of the selection process, can be disregarded if the '255 Committee' gives a positive opinion on the candidates list.[7] Such an approach could undermine the public perception of the Court's independence if there are any irregularities at the national stage of selection of judges and 'create inconsistencies between the Union law standards for EU judges versus national judges'.[8]

2.2 Access to justice

A point of continued criticism with regards to access to justice is the restrictive stance adopted by the Court of Justice when it comes to the standing requirements which natural and legal persons must satisfy when they seek judicial review of EU measures. As underlined in last year's report,[9] the Court's interpretation poses challenges for the EU principle of effective judicial protection, and has created a 'two-speed effective judicial protection' system as the CJEU has been considerably less accommodating when it comes to the Member States' remedies systems.[10]

The Court of Justice's '*Plaumann* test' has evidenced apparent contradictions within the system. The Court has for instance made it easier for non-EU countries and environmental NGOs to bring direct annulment actions against the EU in the name of the rule of law and effective judicial protection, however individuals or associations of judges or prosecutors continue to face challenges in establishing standing when they seek 'to protect common values from within the EU'.[11]

In an order of 4 June 2024, the General Court found inadmissible the actions brought by several organisations of European judges in respect of the Council decision approving Poland's Recovery Plan.[12] Prior to this decision, several members of the European Commission had indicated that the rule of law milestones included in Poland's Recovery Plan did not comply with the CJEU's rule of law case law. The Commission President and subsequently the Council moved ahead in any event with the General Court's inadmissibility order preventing any substantive examination of these milestones. This order is however the subject of a pending appeal[13] on account *inter alia* of the General Court's (alleged) failure to interpret Article 263(4) TFEU in light of the EU fundamental right to effective judicial protection as codified post Lisbon Treaty and the *KlimaSeniorinnen* jurisprudence of the European Court of Human Rights (ECtHR).[14]

4 Case C-119/23 *Valančius*.
5 M.E. Bartoloni, 'The '255 Committee' and the Procedure for Appointing EU Judges. The (Perhaps Unintended) Implications of the Valancius Judgment', *European Papers* 2024 no. 3, pp. 846-850.
6 *Valančius*, para. 65.
7 F. Bandini, 'On judicial Independence and the Appointment Procedure to the CJEU: Insights and Paradoxes from the Valančius case' (C-119/23), *EU Law Live* 25 October 2024 - https://eulawlive.com/op-ed-on-judicial-independence-and-the-appointment-procedure-to-the-cjeu-insights-and-paradoxes-from-the-valancius-case-c-119-23/.
8 S-Ch. Lemmer,M. Kappé, 'Carte Blanche for Judicial Appointments?: Standards for Judicial Appointments to the Luxembourg Court', *VerfBlog* 31 January 2025 - https://verfassungsblog.de/carte-blanche-for-judicial-appointments/.
9 *Rule of Law beyond the EU Member States 2024*, p. 5.
10 See L. Grozdanovski, 'Evidence as Enabler – of Filter – of Actions Brought by Private Parties Directly before the EU Courts', in M. Fink (ed.), *Redressing Fundamental Rights Violations by the EU* (CUP, 2024).
11 K. Szepelak, 'Does the Court of Justice Practice What It Preaches? Upholding the Value of Rule of Law in the Interpretation of Article 263(4) TFEU', *European Law Blog* 21 May 2025, https://www.europeanlawblog.eu/pub/wga8jjtx/release/1.
12 Order of the General Court of 4 June 2024 in Joined Cases T-530/22 to T-533/22, *Medel et al.*
13 C-555/24 P, *Medel and Others v Council* (pending).
14 ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*.

In February 2025, the General Court also dismissed an annulment action brought this time by a professional association of Romanian prosecutors against the Commission decision repealing the cooperation and verification mechanism.[15] For the General Court, the association does not have standing to bring proceedings either in its own name or on behalf of the prosecutors whose interests it defends. In this order, the Court has not acknowledged the reality of the rule of law situation in Romania,[16] in a similar trend to its response to the rule of law situation in Poland, nor acknowledged relevant ECtHR's findings on the same issues. As regards the case law of the Strasbourg Court, the General Court failed to engage with relevant Treaty obligations before concluding that the ECHR does not yet constitute 'a legal instrument which has been formally incorporated into EU'.[17]

This trend has continued prior case law regarding actions brought by a forcibly dismissed CJEU Advocate General[18] and a national prosecutor who was denied appointment to the EPPO on the back of allegedly false information provided to the Council by the relevant Member State.[19] In the rule of law sphere, this accountability gap is compounded by the considerable barriers to submitting amicus curiae briefs or third-party interventions—procedures that remain comparatively accessible before the European Court of Human Rights.[20]

In the pending appeal case of *Medel and others*, the CJEU President rejected the applications for leave to intervene submitted by three NGOs specialising in the defence of the rule of law in the EU on the ground that they have no 'interest in the result' of what is arguably the most important case to date raising violations of EU judicial independence requirements by the EU itself.[21]

15 Order of 3 February 2025 in Case T-1126/23, *Asociația Inițiativa pentru Justiție*.
16 B. Lobina and C. Meera Maharaj, 'The Dismissal of the Romanian Prosecutors Annulment Action: A Critical Take', *VerfBlog*, 27 February 2025 - https://verfassungsblog.de/romanian-association-of-prosecutors/.
17 *Asociația Inițiativa pentru Justiție*, para. 79.
18 *Rule of Law beyond the EU Member States* 2024, p. 6.
19 See Order of the General Court of 8 July 2021 in Case T-75/21, *Mendes de Almeida v Council*, and Order of the Court of Justice of 20 October 2022 in Case C-576/21 P.
20 See A. Alemanno, *A Guide to Amicus Curia Briefs in EU Courts' Proceedings*, The Good Lobby, 28 February 2025: https://www.thegoodlobby.eu/a-guide-to-amicus-curiae-briefs-in-eu-courts-proceedings/.
21 Order of the President of 4 February 2025 in Case C-555/24 P, *Medel and others*.

According to the order, the defence of judicial independence against adverse EU action is not viewed as a transversal public interest which can be defended by NGOs specialising in the defence of the rule of law. The paradox here is that the order suggests only associations of judges could be granted leave to join a case lodged by associations of judges found previously to lack standing to bring the case. This is in contrast with the comparatively easier access given to environmental protection NGOs.

Justification for these positions flow from the unwillingness of the Court of Justice to review the 'strict requirements for direct access of private litigants to the Community judiciary' it established in 1963 notwithstanding the ample constitutional changes the EU legal order has seen over the following decades.[22]

An Advocate General has recently called on the Court of Justice to be more consistent considering its own case law on the principle of effective judicial protection: 'what is required of the national courts must also be required of the EU Courts. A timid approach to the application of the principle of effective judicial protection by the Court in that regard could give the impression of double standards'.[23] The above developments further underline the concern that the EU system of remedies is not complete nor effective.[24]

2.3 Mutual trust

The 2024 report highlighted concerns with regards to the deprioritisation of fair trial rights against the expectations of mutual trust between EU Member States. Mutual trust and mutual recognition under EU law are an expression of judicial cooperation between the Member States. The 2025 report highlights significant developments as regards to the duties owed by Member States to ensure consideration of fundamental rights, and procedural safeguards, even in light of the duties owed under the principles of mutual trust and sincere cooperation.

In the field of criminal law, the Court ruled in *Kamekris*[25] that a Member State is not bound by

22 Opinion of AG Emiliou delivered on 12 June 2025 in Case C-731/23 P, *Nicoventures Trading Ltd*, para. 131.
23 Ibid., para. 140.
24 See most recently, M. Fink (ed.), *Redressing Fundamental Rights Violations by the EU* (CUP, 2024).
25 Case C-219/25 PPU, *Kamekris*.

the decision regarding an extradition request made in another Member State under the principles of mutual recognition, however it was obliged to take into account the reasoning and evidence underlying it, particularly where risks to fundamental rights were identified. Further decisions have underlined that while mutual trust is the baseline of cross-border judicial cooperation, it is not absolute: recognition may yield in exceptional circumstances where it would undermine the essence of EU fundamental rights.[26] In *Real Madrid Club de Fútbol v Le Monde*[27] , the CJEU held that while mutual trust under the Brussels I Recast Regulation[28] normally requires automatic recognition of civil judgments across Member States, Article 45 permits refusal where enforcement would cause a manifest breach of a fundamental right protected by the Charter, such as freedom of expression (Article 11 CFR). As a result of the CJEU ruling, the French *Cour de cassation* applied this guidance, confirming that French courts could invoke the public policy exception to refuse enforcement of the Spanish defamation judgment obtained by Real Madrid against *Le Monde*.

In the context of asylum procedures, the Court has signalled that national authorities cannot erode the uniformity and reliability that underpin trust in cross-border asylum cooperation (including the Dublin system). In *Zimir*,[29] a national authority repeatedly prolonged the examination period mandated under the Asylum Procedures Directive, raising questions about the compatibility of such practices with EU law. The Court held that while the Directive allows extensions of the standard time limit in exceptional circumstances, these cannot become a systematic practice. The Court underlined that Member States are bound by Article 4(3) TEU (sincere cooperation), which requires them to give full effect to EU secondary legislation and to respect the procedural safeguards it contains. The case evidenced that the functioning of the Common European Asylum System relies on reciprocal confidence that all Member States apply EU-mandated timeframes and guarantees in good faith.

One of the most significant rulings in this area is *Commission v Malta,*[30] in which the CJEU struck down Malta's citizenship by investment on the basis of the principle of mutual trust. The Court held that 'marketisation' of Union citizenship undermines the 'special relationship of solidarity and good faith'[31] between a state and its nationals and thereby breaks the mutual trust on which the recognition of Union citizenship across Member States depends. This explicit linkage shifted the meaning of EU citizenship and mutual trust in the Union, reframing EU citizenship not only as a derivative of national citizenship but also a constitutional status grounded in shared EU values and reciprocal confidence between states. By anchoring citizenship rights in mutual trust, the judgment suggests that other Member States might, in theory, question or even refuse to recognise the EU rights of individuals who acquired nationality through schemes deemed incompatible with EU values. This could create legal uncertainty and a potential clash between protecting EU values and safeguarding individual rights.[32] The judgment has come under significant criticism. Critics have questioned the competence of the Court to make this decision, and highlighted the lack of primary or secondary authorities cited in support of the judgment[33] as well as apparent departure from prior practice in favour of extra-legal considerations.[34]

A potentially groundbreaking case in the enforcement of the EU fundamental values is *Commission v Hungary*.[35] Advocate General Ćapeta argued that Hungary's 2021 "anti-LGBTIQ+ law" breaches multiple provisions of EU law and, crucially, amounts to a negation of Article 2 TEU values such as equality, dignity, and non-discrimination.

Ćapeta stressed that these values are not political aspirations but legally binding foundations of the Union, and that Member States' mutual trust depends on their respect.[36] Although she did not

26 G. Anagnostaras, A. Tsadiras, 'Freedom of the Press as a Public Policy Reason Restricting the Principle of Mutual Trust: Lessons from the Real Madrid Preliminary Ruling' *European Papers* (2024) no. 3, 1296-1314 ; "French Supreme Court Rules After Preliminary Ruling in Real Madrid v Le Monde" *EAPIL Blog* 10 June 2025, https://eapil.org/2025/06/10/french-supreme-court-rules-after-preliminary-ruling-in-real-madrid-v-le-monde/.

27 Case C-633/22, *Real Madrid Club de Fútbol*.

28 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, pp. 1–32.

29 Case C-662/23, *Zimir*.

30 Case C-181/23, *Commission v Malta*.

31 *Commission v Malta*, Para. 96-101

32 D. Kochenov and G. Íñiguez, 'EU Citizenship's New Essentialism' 50 *ELRev* 2025, 455.

33 M. van den Brink, 'Why Bother with Legal Reasoning?' *VerfBlog*, 5 May 2025 https://verfassungsblog.de/why-bother-with-legal-reasoning/.

34 Ibid.; Kochenov and Íñigues (n 32).

35 Case C-769/22, *Commission v Hungary (Valeurs de l'Union)*

36 Opnion of AG Ćapeta delievered on 5 June 2025 in Case C-769/22.

foreground the term "mutual trust," her reasoning makes it implicit: systemic violations of EU values corrode the reciprocal confidence necessary for the functioning of the Union's legal order.[37] While this will depend on the final judgment, this Opinion signals the possibility that the Court could rely directly on Article 2 TEU.

2.4 EU legal order and international law

In 2025, the European Commission authorised its Legal Service to request an opinion from the Court of Justice on the compatibility of the draft EU-ECHR Accession Agreement with EU law.[38] This has been a long awaited step in a path to implement the obligation under Article 6(2) TEU.[39] There are also some indications that the CJEU could approve the new draft agreement despite prior objections.[40] However, the CJEU approach to the ECtHR case-law remains unclear, particularly with regard to cases regarding judicial independence. For instance, in *Daka*,[41] the Court of Justice ruled that unlawfully appointed judges (in the light of the ECtHR case-law), although presumably unable to adjudicate without a violation of Article 6 ECHR, can nevertheless be accepted under EU law as domestic court administrators.[42]

The implementation of the ECtHR and CJEU judgments remains a crucial topic for securing meaningful EU accession to ECHR. Last year's study conducted by the European Implementation Network (EIN) and Democracy Reporting International (DRI) on implementation of ECHR and CJEU judgments shows how diverse is the level of implementation of the CJEU judgments. The study suggests that the Commission should consider closer monitoring of the implementation of CJEU judgments, including preliminary rulings, and explore ways to support national-level mechanisms for their implementation.[43]

While the accession to the ECHR could be considered as a step to improve the human rights protection in the EU by creating a uniformity in standards, there are concerning developments regarding undermining the status of the International Criminal Court. Hungary's withdrawal from the ICC is the main, but not the only sign of such deterioration. The EU's position on the role of the ICC in international law is part of its Common Foreign and Security Policy (CFSP) and the EU's commitment to achieve universality and full implementation of the Rome Statute is a tenet of its external action.[44] It was suggested that the EU should make use of the so-called Blocking Statute[45] to counter[46] actions intended to undermine the position of the ICC by Member States' authorities.[47]

37 G. Athanassiou, 'Rethinking Article 2 TEU: AG Ćapeta's Opinion in the Context of Recent CJEU Case Law', *VerfBlog*, 20 June 2025 - https://verfassungsblog.de/rethinking-article-2-teu/.

38 N. Ionta, 'Commission seeks EU court nod for ECHR bid after years of gridlock', *Euractiv* 25 July 2025. Commission Decision on a request for an opinion of the Court of Justice pursuant to article 218(11)TFEU in relation to the draft agreement providing for the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms C(2025)3950.

39 T. Lock, 'Implications of the Revised Draft EU Accession Agreement for the ECHR', *European Convention on Human Rights Law Review* (2025) 65-101.

40 D. Sarmiento, S. Iglesias Sánchez, 'KS and Neves 77: Paving the Way to the EU's Accession to the ECHR', *EU Law Live* 12 September 2024 - https://eulawlive.com/insight-ks-and-neves-77-paving-the-way-to-the-eus-accession-to-the-echr/.

41 Joined Cases C-422/23, C-455/23, C-459/23, C-486/23, C-493/23, *Daka*.

42 D. Kochenov, 'Fake Judges are Great Administrators! A New Word on Judicial Independence from CJEU in T.B. v. C.B.', *EU Law Analysis* 2 October 2025 https://eulawanalysis.blogspot.com/2025/10/fake-judges-are-great-administrators.html.

43 *Justice Delayed and Justice Denied: Non-implementation of European Courts Judgments and the Rule of Law. 2024 Edition*, EIN & DRI 2024 https://www.einnetwork.org/blog-five/2024/9/20/justice-delayed-and-justice-denied-report-on-the-non-implementation-of-european-judgments-and-the-rule-of-law.

44 P. Van Elsuwege, 'How Hungary's Withdrawal from the International Criminal Court Affects the Credibility of the European Union', *VerfBlog* 9 April 2025 - https://verfassungsblog.de/how-hungarys-withdrawal-from-the-international-criminal-court-affects-the-credibility-of-the-european-union/.

45 Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, OJ L 309, 29.11.1996, pp. 1–6

46 'EU Should Defend the ICC: International Criminal Court Under Attack by US, Others', *Amnesty International* 4 April 2025 https://www.amnesty.eu/news/eu-should-defend-the-icc-international-criminal-court-under-attack-by-us-others/.

47 In January 2025 the ICC issued an arrest warrant against Al-Masri, a Libyan national, for inter alia crimes against humanity against migrants. Al-Masri was arrested in Italy, but instead of surrendering the first person to ever be arrested for ICC crimes against 'migrants' to the Hague, the Italian authorities released him and returned him on a government plane back to Libya where he is now a fugitive.

3. Anti-corruption framework

The major institutional development in the field of anti-corruption since the last reporting period has been the adoption of an inter-institutional agreement on establishment of the Interinstitutional Body for Ethical Standards for Members of Institutions and Advisory Bodies of the EU.[48] The body was tasked with 'the development of new ethical standards – the so-called "common minimum standards" – that each of the participating institutions would then apply on its own members'.[49] The limited scope of the body's powers has been the main point of concern.[50] The body is prohibited from deciding on individual cases, however through its independent experts it may play an advisory role in dealing such cases.[51] In practice the body has not started its work yet, due to an opposition from the European Parliament,[52] which faces new allegations regarding potential conflict of interests and corruption in the 'Huawei bribery scandal'.[53]

The European Parliament 2025 resolution on rule of law report highlighted the importance of finalising negotiations on the EU's membership of the Council of Europe's Group of States against Corruption (GRECO). The Parliament underlined that the membership in GRECO would 'ensure greater transparency, accountability and efficiency in the management of EU funds, the legislative process and the work of the EU institutions, and demands that the annual rule of law report cover EU institutions'.[54]

While there are some signs of increasing investigation, for example, the annual report of European Public Prosecutor's Office (EPPO)[55] shows an almost 10% increase in the number of new investigations, concerns remain. According to the report most of the cases were reported to EPPO by private parties or national authorities and less than 1% from OLAF - the EU anti-fraud body.[56] Transparency International EU has also argued that the European Parliament's rules on the whistleblowers' protection are the weakest of all the EU institutions and does not meet the standards of the EU's Whistleblower Directive applied to Member States.[57] In September 2024 the General Court ruled in *TU v Parliament*[58] that the Parliament has not demonstrated that it took all the measures

48 Agreement between the European Parliament, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the European Committee of the Regions, establishing an interinstitutional body for ethical standards for members of institutions and advisory bodies referred to in Article 13 of the Treaty on European Union, ST/8735/2024/INIT, OJ L, 2024/1365, 17.5.2024.

49 A. Alemanno, 'Unboxing the EU Body for Ethical Standards', *VerfBlog* 7 May 2024, https://verfassungsblog.de/unboxing-the-eu-body-for-ethical-standards/.

50 A. Alemanno, 'The EU interinstitutional body for ethical standards: A legal and policy analysis', *European Law Journal* 2024 (30) 545–558; D. Petropoulou Ionescu, A. Năstase, 'Much Ado About Nothing? Reflections on the European Commission's Proposal for an Inter-institutional Ethics Body', *European Journal of Risk Regulation* 2024 (15), 179-190.

51 A. Alemanno, 'Unboxing the EU Body for Ethical Standards' (n 49).

52 V. Genovese, 'European Parliament blocks new EU transparency rules', *Euronews* 14 May 2025 https://www.euronews.com/my-europe/2025/05/14/european-parliament-blocks-new-eu-transparency-rules; J. Rankin, 'Von der Leyen survives censure vote but faces calls to reverse EU's rightward drift', *The Guardian* 10 July 2025 - https://www.theguardian.com/world/2025/jul/10/ursula-von-der-leyen-censure-vote-european-parliament.

53 A. Roussi, E. Braun, M. Griera, M. Pollet, 'Huawei bribery scandal rocks European Parliament', *Politico* 13 March 2025 - https://www.politico.eu/article/belgian-police-raid-huawei-lobbyists-as-new-scandal-rocks-eu-parliament/.

54 European Parliament resolution of 18 June 2025 on the Commission's 2024 Rule of Law Report (2024/2078(INI)), para. 22.

55 EPPO annual report 2024: https://www.eppo.europa.eu/assets/annual-report-2024/index.html.

56 See also 'Prosecuting crime in the EU: the state of the EPPO in 2025, Transparency International EU 17 April 2025 - https://transparency.eu/prosecuting-crime-in-the-eu-the-state-of-the-eppo-in-2025/. TI provide an example of alleged corruption by a senior EU official. Case was initiated by EPPO after a report by the *Libération* was published, despite OLAF having been aware of the case for months. OLAF had failed to report this to both the EPPO and the Belgian authorities. (see: 'Corruption investigation opened into high-ranking EU official', *The Brussels Times* 1 November 2024 - https://www.brusselstimes.com/1294643/corruption-investigation-opened-into-a-senior-eu-official).

57 'Transparency International EU welcomes European Court of Justice ruling: European Parliament did not sufficiently protect whistleblower', *Transparency International* EU 11 September 2024 - https://transparency.eu/transparency-eu-welcomes-european-court-of-justice-ruling-european-parliament-did-not-sufficiently-protect-whistleblower/.

58 Case T-793/22 DEP, *TU v Parliament*.

necessary to ensure an informant did not suffer any prejudicial effects due to whistleblowing on financial irregularities and harassment by an MEP, and furthermore that the Parliament had infringed its duty of confidentiality by disclosing without permission their status as an informant, thereby exposing them to retaliation.

Commitment to anti-corruption at EU institutional level is critical, particularly in light of findings at Member State level. According to 2024 Corruption Perception Index (CPI)[59] corruption across EU countries has gotten worse for a second consecutive year.[60] The CPI report highlighted a direct link between the state of corruption and level of rule of law protection in EU Member States, but also between corruption and attempts to deal with the current major challenges, such as the climate crisis.[61]

59 Compiled annually by Transparency International. Source: https://www.transparency.org/en/cpi/2024.

60 See also K. Guilbert, 'Corruption is getting worse across the EU, Transparency International index warns', *Euronews* 11 February 2025 - https://www.euronews.com/my-europe/2025/02/11/corruption-is-getting-worse-across-the-eu-transparency-international-index-warns.

61 'Roll backs and weak enforcement are an ongoing problem, with some governments undermining or politicising anti-corruption frameworks and allowing erosion of the rule of law' ('2024 Corruption Perceptions Index: Western Europe sees declining score at a critical time', *Transparency International* 11 February 2025 - https://www.transparency.org/en/press/2024-corruption-perceptions-index-western-europe-sees-declining-score-at-a-critical-time).

4. Media freedom and media pluralism

4.1 European Media Freedom Act

The European Media Freedom Act (EMFA)[62] is a landmark media regulation that came into force in May 2024, and is the first comprehensive EU regulation introducing minimum standards for the media within the Member States. It is aimed at establishing a coherent regulatory framework to promote the independence of media regulators and public service media, to safeguard editorial independence in both public and private outlets, to ensure transparency of media ownership, and to strengthen media pluralism across the single market. The Regulation reflects not only the Union's ambition to create an integrated internal media market, but also its determination to ensure more effective protection of EU values within the Member States.

A challenge to the effectiveness of the European Media Freedom Act (EMFA) lies in its uneven implementation, which risks entrenching existing disparities in the protection of media freedom and pluralism across the European Union. This was underlined in the European Commission's 2025 Annual Rule of Law Report (ARoLR) demonstrates that the alignment of national legal frameworks with the EMFA varies considerably across the Union.

The EMFA holds considerable potential to reinforce the protection of the Union's foundational values by establishing enforceable standards for media independence and pluralism. It provides a new legal basis for the European Commission to initiate infringement proceedings under Article 258 TFEU, and for subsequent judicial review by the Court of Justice of the European Union (CJEU), in cases where a Member State fails to fulfil its obligations under EU law.

An important distinction must be drawn between formal and meaningful compliance in this context. While many Member States may meet the formal, procedural requirements of the EMFA—such as adopting legal provisions on the independence of media regulators or public service media—they often fall short of ensuring functional independence in practice. This gap between law and implementation could become a focal point for future infringement actions. The politicisation of public broadcasters, for instance, frequently results from partisan appointments to management boards, opaque financing structures, and systematic editorial bias in news coverage—all factors that undermine the factual autonomy required under EU standards.

A core challenge is the role of national media regulators in the framework. These bodies are tasked with supervising Member States' fulfilment of their obligations under the EMFA and the Digital Services Act (DSA). Yet, the independence and effectiveness of such regulators vary markedly across the Union. It is notable on this point that an action for annulment against the Regulation was launched by Hungary in 2024 arguing that the EMFA infringes upon national sovereignty and lacks an appropriate legal basis under Article 114 TFEU concerning the establishment and functioning of the internal market.[63] Furthermore, a preliminary reference was submitted by the Budapest Metropolitan Court in *Orbán v. Editorial Board of 24.hu*, which concerns the interpretation of EMFA provisions in the context of a defamation dispute initiated by the Hungarian Prime Minister against the online news portal 24.hu.[64]

According to the Media Pluralism Monitor 2025, three Member States—Cyprus, Hungary, and Spain—are assessed as being at very high risk in the area of media ownership transparency, while six others—Belgium, Czechia, Finland, the Netherlands, Romania, and Slovenia—score at the high-risk level. Despite EMFA's requirement that Member States establish centralised, publicly accessible registers of media ownership, several countries have yet to do so. Others have created such registers, but their functionality or institutional independence remains limited. The success of regulation in this area will depend on the willingness of the Commission to

62 Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU(European Media Freedom Act), OJ L, 2024/1083.

63 Case C-486/24, *Hungary v Parliament and Council* (pending).

64 Case C-843/24, *24.hu* (pending). Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 9 December 2024 – *Viktor Orbán v Editorial board of 24.hu*.

exercise its enforcement powers proactively and of the CJEU to interpret its provisions robustly in light of the Union's constitutional values.

4.2 Anti-SLAPP

The EU Anti-SLAPP Directive[65] introduces vital safeguards for journalists, academics, NGOs, and other public participants, such as early case dismissal, cost-shifting, and compensation mechanisms, including extraterritorial application. Transposition for the Directive should take place by 7 May 2026. According to the European Anti-SLAPP Monitor and the European Commission's 2025 Rule of Law Reports, a majority of Member States have begun implementation either through legislative bills (Belgium, Germany, Ireland, Malta, the Netherlands, Poland, Romania, and Sweden) or through preparatory steps such as public debates and the creation of working groups (Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, France, Greece, and Slovenia).

A report by the Civil Liberties Union for Europe, drawing on input from 43 organizations, warns that press freedom and pluralism face an "existential battle" across the EU, including threats from SLAPPs.[66] According to Council of Europe experts, safeguarding academic freedom against SLAPPs requires a comprehensive approach that goes beyond the EU Directive. Despite the Directive and Council of Europe Recommendation CM/Rec(2024)2, there is credible evidence that academics are still threatened.[67]

Experts recommend adopting anti-SLAPP provisions covering civil, criminal, and administrative proceedings with explicit recognition for academics, coupled with the decriminalisation of defamation or, at minimum, clear exceptions for academic speech.[68] To strengthen resilience, they call for a Council of Europe monitoring framework to track legal threats, measures to prevent cross-border litigation abuses, and the extension of protections to individual scholars, universities, NGOs, and presses. Judicial training and awareness-raising are also seen as essential, alongside reinforced university autonomy through legal defence funds, independent governance, and institutional support. Finally, experts highlight the importance of systematic reporting and data collection, in cooperation with civil society networks such as CASE and Scholars at Risk, to ensure effective protection of academics and the democratic value of free inquiry.[69]

65 Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'),

66 *Liberties Media Freedom Report 2025*, Civil Liberties Union for Europe April 2025 – https://www.liberties.eu/f/oj-aem.

67 SLAPPs and other Legal Threats Against Academics – https://www.coe.int/en/web/education/-/slapps-and-other-legal-threats-against-academics.

68 Ibid.

69 Ibid.

5. Checks and balances

5.1. Access to information in the EU and the inclusiveness, quality and transparency of law-making

Access to information in the EU has come under renewed attention since the last period, where critics have pointed to apparent obstructionism and violations in the principle of good administration engaged by the Commission as was also highlighted by the EU General Court in a particularly damning judgment in case *Stevi and the New York Times v Commission*.[70] This judgment was issued in a broader context of "systemic and significant delays in the Commission's processing of requests for public access to documents, including in respect of "cases of great public importance" according to the European Ombudsman.[71]

As summarised by the European Parliament, "in 85 % of the reviewed cases, the Commission did not take a decision within the legal time limits and that, in 60 % of the cases, the delay amounted to more than 60 working days".[72] The Parliament was forced to regret "that the Commission failed to comply with Regulation (EC) No 1049/2001 through its systematic breaching the legal time limits for public access to documents and its failure to communicate its decision to the requesters in a timely manner, as shown in the Ombudsman's special report" before underlining that "these delays amount to maladministration by the Commission".[73]

While insufficient staffing resources might be a mitigating factor, in a study published in August 2024, two experts referred to a broader "troubling trend" affecting more than the sole Commission: "While the legal framework demands transparency, practical implementation by institutions frequently lags behind with systemic delays and reluctance to comply with rulings and recommendations."[74]

In the case of *Pech v Commission* – an action brought by one of the contributors to this report – the General Court ordered the Commission to pay the applicant's costs after it failed to respond to his request concerning the Commission's closure of Article 7(1) TEU proceedings in respect of Poland until after he lodged his action.[75] The Commission sought to justify its repeated violations of statutory deadlines on account of "the lower availability of staff during the summer period",[76] even though the access to document request was filed on 10 May 2024. By delaying access, the Commission made it possible to close an exceptionally important Treaty-based procedure without MEPs, MPs and the public being able to properly scrutinise the Commission's reasoning.[77]

In another rule of law-related case brought by an NGO specialising *inter alia* in the defence of judicial independence,[78] the Commission did not comply with statutory deadlines to reply to the confirmatory application until after the NGO filed an annulment action. While some documents were eventually made public in respect of the Commission's unfreezing of EU funding on account of 'judicial reforms' in Hungary – the European Parliament's annulment action alleging a misuse of

70 Case T-36/23, *Stevi and the New York Times v Commission*.
71 Special report of the European Ombudsman of 21 September 2023 in her strategic inquiry concerning the time the European Commission takes to deal with requests for public access to documents (OI/2/2022/OAM), https://www.ombudsman.europa.eu/en/special-report/en/175425.
72 European Parliament resolution of 14 March 2024 on the time the European Commission takes to deal with requests for public access to documents (2023/2941(RSP)), P9_TA(2024)0172, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0172_EN.html, para. 4.
73 Ibid.
74 See also D. Curtin and A. Rubio, *Regulation 1049/2001 on the right of access to documents including the digital context*, Study requested by the PETI Committee, PE 762.890, August 2024, p. 5.
75 Order of 27 January 2025 in Case T-485/24, *Pech v Commission*. For a brief commentary, Editor, 'European law professor wins transparency case over EU rule of law policy – again', *Open Government in the EU*, 30 January 2025: https://www.eu-opengovernment.eu/?p=3708.
76 Order of 27 January 2025, ibid., para 21.
77 I. Kirova and L. Gall, 'European Commission Prematurely Ends Rule of Law Scrutiny of Poland', *Human Rights Watch*, 30 May 2024, https://www.hrw.org/news/2024/05/30/european-commission-prematurely-ends-rule-law-scrutiny-poland.
78 Order of 16 June 2025 in Case T-546/24, *Reclaim and Martínez González v Commission*.

power is pending[79] – the Commission still refused to publish multiple documents concerning its exchanges with Hungary's government.

What appear to be strategically organised denials of access have enabled the Commission in the two instances outlined above could further indicate the politicisation of rule of law enforcement, with one procedure prematurely closed for political reasons and funding similarly prematurely unfrozen in response to unanimity voting extortion tactics. Continuing systemic disregard of the time limits to process and reply to access to document requests is bound to lead to an increasing number of annulment actions which the Commission is likely to lose, with legal costs borne by the taxpayers. More fundamentally, "access delayed is effectively access denied",[80] with citizens being denied the effective ability to participate in the EU's decision-making processes "access delayed is effectively access denied", with citizens being denied the effective ability to participate in the EU's decision-making processes.

According to Päivi Leino-Sandberg, "legal time limits are ignored as a matter of policy", with the Commission also denying "the existence of documents, even when this is obviously a big fat lie".[81] Due to the adoption of new rules arguably in violation of CJEU case law relating to proactive disclosure of legislative documents, Leino-Sandberg together with Emilio De Capitani and NGO Access Info Europe challenged the new rules before the General Court on account of their lack of compliance with several provisions of the EU Charter, Article 15(3) TFEU, Regulation 1049/2001 and the case-law of the CJEU.[82]

In the Resolution of 14 March 2024, the European Parliament recalled with concern the Commission's failure to respect EU law and a failure to address the Ombudsman's finding of maladministration as regards the access requests concerning the text messages between Commission President Ursula von der Leyen and the CEO of a pharmaceutical company regarding the Commission's purchase of COVID-19 vaccine at a cost of €35bn.[83]

Faced with the claim that the Commission "neither confirmed nor denied"[84] their existence, a position which the Court described inter alia as preventing the applicant as well as the Court to understand why the requested documents could not be found, the Grand Chamber held that the Commission violated the principle of good administration by failing to provide *any credible or plausible explanations*. The Court placed repeated emphasis on the need for EU institutions, and in particular the Commission, to act "in a non-arbitrary and predictable manner" when it comes to facilitating the effective exercise of the right of access to EU documents.

The European Parliament's endorsement of the Commission's decision to withdraw a proposed revision of Regulation 1049/01[85] further reinforces doubts about the strength of the EU institutions' commitment to transparency.

In the area of access to legislative documents, a December 2024 study has noted the persistent lack of progress when it comes to 'access to key documents relating to comitology procedures; access to legal opinions, impact assessments and other preparatory documents predating the adoption of a formal legislative proposal; and access to key documents relating to trilogues'.[86] There is also evidence of EU institutions not giving prompt and full effect to the CJEU case law on public access to legislative documents.[87] For the European Ombudsman, the Council and the Commission are applying the exceptions under relevant rules too

79 For the European Parliament, the Commission misused its power to decide on the fulfilment of the horizontal enabling condition under the Common Provisions Regulation as a trade-off for Hungary lifting its veto over certain urgent decisions that required unanimity in the European Council. See Case C-225/24, *Parliament v Commission* (pending).

80 European Parliament resolution of 14 March 2024 on the time the European Commission takes to deal with requests for public access to documents, para. 7.

81 P. Leino-Sandberg, 'The EU Commission's drift towards authoritarianism', *EU Observer*, 13 May 2025, https://euobserver.com/rule-of-law/ar038e6ec2.

82 See Case T-146/25 *De Capitani and Others v Commission* (pending).

83 European Parliament resolution of 14 March 2024 on the time the European Commission takes to deal with requests for public access to documents, paras. 6 and 16.

84 *Stevi and The New York Times v Commission*, para 44.

85 EU Parliament Accepts Withdrawal of 33 Legislative Proposals, Including Key Transparency File by the von der Leyen Commission', The Good Lobby 14 May 2025, https://www.thegoodlobby.eu/eu-parliament-accepts-withdrawal-of-33-legislative-proposals-including-key-transparency-file-by-the-von-der-leyen-commission/.

86 D. Curtin and A. Rubio, *Regulation 1049/2001 on the right of access to documents including the digital context* (n 74), p. 13.

87 European Ombudsman, Decision on how the European Parliament, the Council of the EU and the European Commission handle requests for public access to legislative documents, Case OI/4/2023/MIK, 3 December 2024, https://www.ombudsman.europa.eu/en/decision/en/196680.

broadly in addition to continuing to use reasoning which has already been dismissed by the EU Court.

This "failure to be consistent with EU case law" is not only "deeply concerning in a Union based on the rule of law",[88] It also provides cover to those who refuse to comply with CJEU case law regarding judicial independence while more broadly undermining the EU's credibility and the rule of law culture on which the sustainability of any modern legal system rests.

5.2 EU Enlargement

While the political discourse surrounding enlargement is primarily, if not exclusively, influenced by geostrategic considerations, the accession process is anchored in the legal framework articulated in Article 49 of the Treaty on the European Union (TEU).[89] The Copenhagen criteria for EU membership require the establishment of stable institutions that uphold the rule of law, democracy, and respect for human rights, including the protection of minority rights. The presence of such institutions is essential for the effective functioning of the European Union, particularly given the challenges associated with rectifying inadequate rule of law standards once a candidate country has attained EU membership.

The Commission's 2025 Rule of Law Report has incorporated country-specific chapters addressing four prospective enlargement candidates: Albania, Montenegro, North Macedonia, and Serbia, excluding Bosnia and Herzegovina, Georgia, Moldova, Turkey, and Ukraine. The inclusion of only four out of the nine candidate countries in the Commission's 2024 Rule of Law Report was justified by the designation of these countries as "the most advanced in the process".[90] A year later, the situation remains unchanged, as the Commission's 2025 Rule of Law Report continues to focus on the four candidate countries previously mentioned.

All four candidate countries incorporated in the Report face challenges related to weak rule of law performance. While EU enlargement has always been inherently political, the rule of law is essential to enlargement policy, with predictability being a key aspect of the procedural rule of law outlined in the enlargement regulation. Where political considerations are more influential than stated accession criteria and the rule of law,[91] progress reports and recommendations issued by the European Commission do not consistently serve as reliable indicators of the advancement of candidate countries towards membership.[92] Both the progress and accession of states are subject to the discretion of the Union and its Member States.[93]

The extent to which accession countries have fulfilled the relevant benchmarks, as assessed by the European Commission, may hold less significance than the consensus reached among Member States in the Council. Political blockades affected Albania prior to the commencement of the negotiation process, despite contrary recommendations from the European Commission. Similarly, North Macedonia faced delays in initiating negotiations with the European Union, remaining at a standstill for two decades since receiving candidate status, largely due to political considerations that contradict the European Commission's recommendations. Additionally, Serbia has been hindered from opening the third cluster in its negotiation process by the Council, despite the European Commission's positive assessment of the country's preparedness. Furthermore, Montenegro is currently experiencing a political blockade imposed, which has impeded its ability to close a relevant stage of the process.

These aspects have not been addressed within the 2025 Rule of Law reports pertaining to the four candidate countries. While emphasising the significance of establishing rule of law standards within the candidate country seeking EU accession, a persistent concern remains that the politicisation of this process is compromising both the efforts to uphold the rule of law and the EU's own established standards in this regard.

88 European Ombudsman, Ombudsman asks Council and Commission to improve compliance with EU case law on access to legislative documents, Case OI/4/2023/MIK, 6 December 2024, https://www.ombudsman.europa.eu/en/news-document/en/196745.

89 D. Kochenov and E. Basheska, 'Ukraine and the EU Enlargement: What Is the Law and Which Is the Way Forward?' European Journal of Risk Regulation (2025), 1–17.

90 European Commission, 'Rule of Law Report 2024: with the 5th edition, the EU is better equipped to face rule of law challenges' (24 July 2024), https://enlargement.ec.europa.eu/news/rule-law-report-2024-5th-edition-eu-better-equipped-face-rule-law-challenges-2024-07-24_en accessed 22 August 2025.

91 E. Basheska, 'The Western Balkans and the EU: Genuine and Sincere?: The Story of Bilateral Disputes and Pretence', *European Journal of Risk Regulation* (2025), 1–16.

92 E. Basheska, 'EU Enlargement in Disregard of the Law: A Way Forward Following the Unsuccessful Dispute Settlement Between Croatia and Slovenia and the Name Change of Macedonia' *Hague Journal on the Rule of Law* 2022 (14), 221–256

93 D. Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law* (Kluwer Law International, Alphen aan den Rijn 2008) 15.

5.3 Enforcement of rule of law by the EU institutions

A continuing trend of the past twelve months is the politicisation of the EU's rule of law toolbox when it comes to enforcement. A pattern of failure to act on systemic violations of the rule of law or adjusting – in some cases ending – rule of law procedures is continuing, giving the impression that the determining factors are political expediency or geopolitical considerations.

In September 2025 it was reported that the "European Commission plans to unfreeze about €550mn in EU funds to Hungary […] to overcome Prime Minister Viktor Orbán's veto against more sanctions that will target Russian energy imports".[94] This would represent another misuse of powers similar to the one committed in December 2023 when the Commission unlocked €10.2bn under the false pretence of alleged judicial progress in Hungary. In reality, the Commission "misused its power to decide on the fulfilment of the horizontal enabling condition under the Common Provisions Regulation as a trade-off for Hungary lifting its veto over certain urgent decisions that required unanimity in the European Council".[95] The Court of Auditors had warned that "although decisions not to block or to release EU funds should be based on technical and legal analysis […] political considerations may ultimately play a major role."[96]

The closing of Article 7 TEU procedure and the release of EU funding previously frozen as far as Poland provide another example of political considerations overriding legal ones. The premature nature of these actions was stressed at the time and to this day, the legislative commitments made by the Polish government have yet to be followed through more than a year later, proving critics right.[97] Key systemic rule of law issues such as the situation of the irregularly composed Constitutional Tribunal and the inherently defective appointment of more than 3,000 individuals to judicial positions due to the involvement of the unconstitutionally recomposed National Council of the Judiciary (NCJ) remain to be addressed.

Slovakia provides a more recent example of the Commission's failure to act when warranted, even in a situation where it had received a formal request to activate the EU's Rule of Law Conditionality Regulation from the EPPO.[98] The Commission not only failed to act in the face of overwhelming evidence of democratic and rule of law backsliding, it agreed to release €799 million in October 2024 on the back of cosmetic changes.[99] This has been perceived as an error on the part of the European Commission, where funds were given to "an authoritarian government that restricts fundamental rights of its citizens, puts independent institutions under political control, exploits fast-track legislative procedures, and threatens the judges of the constitutional court."[100] The Commission has also recently welcomed new measures adopted in Greece at face value "without investigating whether real progress has actually been made on the ground".[101]

In the rare instances where the Commission has brought Article 2 TEU related infringement actions to the Court of Justice, there is evidence of an unwillingness to make a prompt use of all available legal options. For example, the Commission has refused to apply for interim measures in relation to the Hungarian Office for the Defence of Sovereignty notwithstanding its 'profound chilling effect on civil society members' and the potential disappearance of NGOs like Transparency International Hungary the EU relies on in its fight against anti-corruption.[102] The Commission has ignored all calls asking it to apply for interim measures, including the one

94 P. Tamma, 'EU plans to unlock €550mn for Hungary to secure Russian energy sanctions', *Financial Times*, 19 September 2025.
95 Third plea in law in Case C-225/24, *Parliament v Commission* (pending).
96 European Court of Auditors, "EU's finances not yet immune to rule-of-law breaches", press release, 21 February 2024: https://www.eca.europa.eu/en/news/NEWS-SR-2024-03.
97 Anna Wójcik, *Rebuilding the Rule of Law in Poland*, FES (Friedrich-Ebert-Stiftung), February 2025, p. 15: https://library.fes.de/pdf-files/bueros/warschau/21873.pdf.
98 See EPPO, Statement regarding the legislative amendments proposed by the Slovak government, 18 December 2023: https://www.eppo.eauropa.eu/en/media/news/statement-regarding-legislative-amendments-proposed-slovak-government.
99 E. Braun, 'EU to release €799M to Slovakia after rule-of-law dispute', *Politico*, 24 October 2024 - https://www.politico.eu/article/eu-release-799-million-euro-slovakia-rule-of-law-robert-fico/
100 P. Čuroš, 'Authoritarians Who Hate Judicial Accountability', *VerfBlog* 5 September 2025 - https://verfassungsblog.de/authoritarians-who-hate-judicial-accountability/
101 N. Nielsen, 'EU 'blindfolded' by Greece on rule of law, rights watchdog says', *EU Observer*, 8 May 2025.
102 F.G. Nicola, J.D. Cameron, 'First Time as Tragedy, Second Time as Farce: The Chilling Effects of the Hungarian Law Protecting National Sovereignty', *VerfBlog*, 5 September 2024: https://verfassungsblog.de/second-time-as-farce/

originating from the European Parliament[103] and most recently, the call was made in an open letter of May 2025 endorsed by more than 300 national and international civil society organisations.[104]

As regards the Council of the EU, notwithstanding eight hearings since Article 7(1) TEU was activated by the European Parliament in September 2018 in respect of Hungary – the last formal hearing took place on 27 May 2025 with the next one due to take place on 21 October 2025. The Council has not delivered any recommendations to be addressed to the Hungarian government. Instead, the Council has reinterpreted Article 7 hearings as a mere opportunity to get a (confidential) "up-to-date picture of the situation in Hungary",[105] depriving this procedure of any usefulness and rendering it essentially toothless by design.

5.4 Migration

5.4.1 Abuses and Absence of Effective Checks and Balances in the Use of EU Funds and Resources

Over the past year, concerns have persisted regarding the allocation of EU funds under the Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI), particularly in relation to enduring transparency deficits, the lack of democratic oversight and the systematic neglect of human rights considerations. The continued investment of EU funds in external migration management activities conducted beyond the Union's borders, often in contexts where human rights protections are not guaranteed, raises serious concerns regarding the accountability of EU decision-making and practices, allowing speak of the EU's 'human rights responsibility gap'[106] , a situation that has also been described as 'EU Lawlessness Law'.[107] The previous report highlighted the case of the EU Emergency Trust Fund for Africa (EUTF), which operated outside the EU budget and was characterised by a lack of transparency and accountability. The function of this fund has since been normalised into the EU budget through the NDICI.[108] Concerns continue that, as with the EUTF, projects and activities funded under the NDICI provide no systematic ex-ante or ex-post assessment of the human rights impact of EU funding, which creates an accountability gap within the Union's external migration policy. This is the case even in contexts where no formal partnership exists between the EU and the third country concerned, as illustrated by developments in Turkey and Libya.[109] An incident reported in summer 2025 illustrates this clearly: patrols of the Libyan Coast Guard, financed and equipped by the EU, opened fire on a civilian search and rescue vessel operating in international waters north of Libya.[110] Human rights violations occurring in Libya have been characterised as crimes against humanity by a United Nations fact-finding mission.[111] In full knowledge of these violations, the Council decided to extend the mandate of the EU Border Assistance Mission in Libya (EUBAM) for a further

103 European Parliament resolution of 24 April 2024 on ongoing hearings under Article 7(1) TEU regarding Hungary to strengthen the rule of law and its budgetary implications (2024/2683(RSP)), para. 3.

104 Open letter dated 22 May 2025 is available here: https://transparency.eu/wp-content/uploads/2025/05/OPEN-LETTER-ON-THE-HUNGARIAN-BILL-.pdf

105 General Affairs Council, Main results, 27 May 2025: https://www.consilium.europa.eu/en/meetings/gac/2025/05/27/.

106 J. De Coninck, *The EU's Human Rights Responsibility Gap* (Hart Publishing, 2024).

107 S. Ganty and D. Kochenov, 'EU Lawlessness Law', *CJEL* 30 (2024-2025) 78.

108 Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009, 2021 O.J. (L 209) 1 (hereafter: 'NDICI Regulation').

109 M. Gkliati, J. Kilpatrick, 'Exporting Borders: Frontex and the Expansion of Fortress Europe in West Africa', *Transnational Institute*, July 2025 https://www.tni.org/files/2025-07/Exporting-Borders-Report-web.pdf; 'Turkey's EU-Funded Deportation Machine', *Lighthouse Reports* 11 October 2024) https://www.lighthousereports.com/investigation/turkeys-eu-funded-deportation-machine/.

110 'EU-funded aggression: How years of impunity led to the attack on the Ocean Viking', *Statewatch* 1 September 2025 https://www.statewatch.org/analyses/2025/eu-funded-aggression-how-years-of-impunity-led-to-the-attack-on-the-ocean-viking/; 'Attaque de l'Ocean Viking: retour sur les faits et compilation des éléments', SOS MEDITERRANEE 18 September 2025 - https://sosmediterranee.fr/regards-sur-la-mediterranee-centrale/attaque-de-locean-viking-retour-sur-les-faits-et-compilation-des-elements-publies-par-sos-mediterranee-2/.

111 UN Human Rights Council, Report of the Independent Fact-Finding Mission on Libya (27 March 2023) https://www.ohchr.org/en/hr-bodies/hrc/libya/index.

two years, including support to the so-called Libyan Coast Guard.[112]

Additional resources that were not originally intended for migration-related purposes are increasingly being redirected towards migration externalisation, notably within the framework of the Common Security and Defence Policy (CSDP).

An examination of the European Commission's proposal for the forthcoming long-term EU budget (2028–2034) reveals a shift towards the externalisation of border control and the instrumentalisation of developmentfunds for migration managemen purposes—continuing patterns that have already resulted in human rights violations in partner countries such as Turkey, Tunisia, and Libya.[113] The Global Europe Instrument would grant greater discretion to Member States while simultaneously weakening democratic oversight.[114] A €14.8 billion "emerging challenges and priorities cushion" would allow the Commission to deploy these resources at its discretion, with only an obligation to "inform" the Parliament and the Council, rather than to seek their formal approval.[115] In addition, a proposed amendment to the EU's external action framework would enable the Commission to suspend development aid to third countries deemed insufficiently cooperative on migrant returns.[116] This would effectively transform development assistance into a strategic instrument of leverage, conditioning aid on compliance with EU migration control objectives. Rather than addressing their well-documented shortcomings in terms of transparency, accountability, and respect for human rights, the new proposed framework reproduces the same language and instruments—and, in doing so, exacerbates these deficiencies.

5.4.2 Soft law in Migration and Asylum Policy and other means of pressure

The 2024 report has highlighted the rapid proliferation of *soft law* instruments in the field of migration externalisation. These instruments circumvent the traditional framework of binding international agreements concluded under Article 218 TFEU.[117] Contemporary soft "partnerships" in EU migration policy mobilise significant financial and political resources with the primary aim of preventing migrants from reaching EU territory and facilitating their return to countries of origin or transit.[118] Since 2023, the EU has increasingly relied on such soft instruments in its external migration policy. Examples include the Memorandum of Understanding with Tunisia; the Comprehensive Partnerships with Egypt and Jordan; the cooperation and financial support package with Lebanon; and a migration-specific partnership with Mauritania concluded in 2024.[119] The Commission recently published an *Update on the State of Play of External Cooperation in the Field of Migration Policy*, which maps the full range of these partnerships while also assessing third countries' levels of cooperation.[120]

112 Council of the European Union, 'EUBAM Libya: Council extends mandate for two further years' (26 June 2025) https://www.consilium.europa.eu/en/press/press-releases/2025/06/26/eubam-libya-council-extends-mandate-for-two-further-years/. Further actions and related funding are being discussed for Libya under the Annual Action Plan for Migration in the Southern Neighbourhood for 2024 (overall amount EUR 208 million).

113 The proposal foresees a steep increase in funding for "external action", amounting to EUR 200 billion (a 75% increase), under a new "Global Europe Instrument" aimed at "improving the visibility of EU external action in partner countries". European Commission, Europe's Budget — Global Europe (July 2025) https://www.statewatch.org/media/5038/eu-com-mff-global-europe-budget.pdf.

114 T. Odin, 'EU budget proposals: more external migration control, less democratic scrutiny', *Statewatch* 1 September 2025 - https://www.statewatch.org/news/2025/september/eu-budget-proposals-more-external-migration-control-less-democratic-scrutiny/.

115 Articles 6 and 7 of Article 12(3), (4) and (5) of European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing Global Europe COM(2025) 551 final, 2025/0227 (COD), Brussels, 16 July 2025.

116 Article 12(3), (4) and (5) of Proposal for a Regulation of the European Parliament and of the Council establishing Global Europe COM(2025) 551 final, 2025/0227 (COD), Brussels, 16 July 2025.

117 A. Dashwood, 'EU Acts and Member State Acts in the Negotiation, Conclusion, and Implementation of International Agreements' in M. Cremona, C. Kilpatrick (eds), *EU Legal Acts: Challenges and Transformations* (Oxford University Press 2018).

118 C. Castillejo, 'The EU Migration Partnership Framework: Time for a Rethink?', *German Institute of Development and Sustainability (IDOS), Working Paper* No 28, 2017.

119 Council of the European Union, Presidency to Strategic Committee on Immigration, Frontiers and Asylum, Cooperation with third countries in the area of migration – Role of strategic and comprehensive partnerships, Brussels, 4 April 2025, 7569/2 https://www.statewatch.org/media/4953/eu-scifa-migration-partnerships-discussion-paper-7569-25.pdf.

120 European Commission, Update on the State of Play of External Cooperation in the Field of Migration Policy (Brussels, 4 July 2025) 10306/25 https://www.statewatch.org/media/5054/10306_25_115359.pdf.

Under soft arrangements, third countries receive substantial financial and material support from the EU, as well as, in some cases, additional incentives such as facilitated procedures for the issuance of short-term visas. However, there is no robust or independent human rights monitoring of how these states implement migration control measures to prevent migrants from reaching EU territory. This lack of oversight has resulted in the widespread perpetration of human rights violations financed by the EU, extensively documented by civil society organisations, international bodies, and even EU institutions themselves.[121] For example, reports have documented violent practices by Tunisian authorities, including pushbacks, arbitrary detention, and collective expulsions, which amount to serious human rights violations and have been referenced by the EU itself.[122] These actions have taken place within the framework of the 2023 Memorandum of Understanding between the EU and Tunisia, through which hundreds of millions of euros in EU funding have been channeled to support Tunisian migration and border control policies.[123] The role of agreements and arrangements concerning the return of migrants is likely to increase in the coming years. In May 2025, the European Commission published a proposal to amend the EU rules on the definition of a "safe third country".[124] The proposal would make it possible for the EU to deport individuals to a third country with which they have no meaningful connection, provided that an appropriate "agreement or arrangement" is in place, posing serious legal and moral concerns.[125]

5.4.3 Frontex

A number of significant developments before the Court in regards to the operation of Frontext have occurred over the course of the last reporting period. In February 2025, the Grand Chamber of the CJEU held a hearing on *front*-LEX's appeal in the case *Hamoudi v Frontex*[126] and Prakken d'Oliveira's appeal in *WS v Frontex*.[127] Both cases concerned the responsibility of Frontex for damages the victims incurred as a result of the agency's policies in Greece, pursuant to Article 340(2) TFEU. The *Hamoudi* case was the first time the responsibility of Frontex for allegedly serious and persistent violations of fundamental rights and international protection obligations under Article 46 of Frontex Regulations were examined by the CJEU.[128]

In October 2024, *front*-LEX and *Refugees in Libya* filed a legal action against Frontex to the the General Court of the CJEU on behalf of FM, an asylum seeker from Sudan who is trapped in Libya, in need of international protection and at risk of being subjected to numerous crimes against humanity. In this case the applicant is challenging Frontex's policy of sharing the geolocation of refugees fleeing Libya with Libyan para-state entities such as the 'Libyan Coast Guard'. Digitally disclosing the location of members of the targeted group to Libyan actors is a breach of Frontex regulations, the

121 See recent examples: M. Gkliati, J. Kilpatrick, 'Exporting Borders: Frontex and the Expansion of Fortress Europe in West Africa', n 109. 'Turkey's-EU Funded Deportation Machine', *Lighthouse Reports* 11 October 2024 - https://www.lighthousereports.com/investigation/turkeys-eu-funded-deportation-machine/.

122 Council of the European Union, Presidency to Working Party on External Aspects of Asylum and Migration (EMWP), Brussels, 7 May 2025, 8073/25, https://www.statewatch.org/media/4951/eu-emwp-central-mediterranean-route-pres-paper-8073-25.pdf.

123 Under the NDICI–Global Europe instrument, the EU allocated approximately EUR 175 million to Tunisia for the period 2021–2023, focusing on migration programmes in the areas of border management, anti-smuggling, protection, and the socio-economic integration of Tunisian returnees: European Commission services, Update on the state of play of external cooperation in the field of migration policy (Brussels, 4 July 2025) 10306/25, 51 - https://www.statewatch.org/media/5054/10306_25_115359.pdf.

124 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept, COM (2025) 259 final.

125 'EU Wants to Deport People to Countries with Which They Have No Connection', *Statewatch* 22 September 2025 - https://www.statewatch.org/news/2025/september/eu-wants-to-deport-people-to-countries-with-which-they-have-no-connection/. See also: 'EU Council Seeks Swifter Deportations with Even Lower Standards on "Safe" Countries', *Statewatch* 3 October 2025 - https://www.statewatch.org/news/2025/october/eu-council-seeks-swifter-deportations-with-even-lower-standards-on-safe-countries/; S Peers, 'Towards a Euro-Rwanda Policy? The Proposed New EU Asylum Law Rules on "Safe Third Countries"', *EU Law Analysis*, 21 May 2025 - https://eulawanalysis.blogspot.com/2025/05/towards-euro-rwanda-policy-proposed-new.html.

126 Case C-136/24 P, *Hamoudi v Frontex* (pending). Hamoudi appealed the General Court's Order of 13 December 2023 in case T-136/22. See also Opinion of Advocate General Norkus delivered on 10 April 2025.

127 Case C-679/23 P, *WS and Others v Frontex* (pending), WS appealed the General Court's Order of 6 September 2023 in case T-600/21. See also opinion of the AG Ćapeta delivered on 12 June 2025.

128 For more context, see *Rule of Law beyond the EU Member States 2024*, p. 20.

EU Charter of Fundamental Rights, and the Treaty on the Functioning of the European Union. The applicant requested the CJEU to order Frontex to partially suspend or terminate its aerial surveillance activities in the Central Mediterranean. In April 2025, the General Court decided to reserve its decision on Frontex's procedural plea of inadmissibility until it rules on the substance of the case. For the first time in such judicial proceedings, the Agency will be required to respond to the merits of the case, and the Court to decide on its substance.[129]

In October 2024, the Court of Justice of the European Union (CJEU) rejected the appeal in *ST v Frontex*.[130] The case relied *inter alia* on the findings of the EU's own OLAF report, and sought the termination of Frontex activity in relation to serious and persistent violations of fundamental rights of asylum seekers in the Aegean Sea. Subsequently, Frontex requested the victim in this case to cover its costs (€7,680) in the proceedings before the General Court.[19] The victim, an asylum seeker, was an unaccompanied minor when he was pushed back seven times in the Aegean Sea. This is the first time that Frontex – with a budget of 1 billion Euros in 2024 – requested an individual victim to pay its legal costs.

5.5 Civil society

The threat of targeting NGOs, detected at Member State level,[131] has also been identified also at EU level.[132] Since the last reporting period, the European Parliament has established a working group to probe European Union funding of nongovernmental organizations, while at the same time blocking the functioning of the new EU ethics body.[133] The claims about possible irregularities in the EU funding NGOs were not confirmed by the European Court of Auditors (ECA), however, the ECA formulated several recommendations on how to improve transparency of EU funding.[134]

In February 2025, the European Commission announced its plan to adopt an 'EU Strategy to support, protect and empower the civil society'.[135] According to the call for evidence, it aims at 'fostering effective engagement with civil society organisations and ensuring their protection at all levels' and would be applicable both to Member States and EU.[136] The call highlighted that "Action at EU level will focus on engaging with civil societyorganisations, as well as on protecting and supporting them. It will include dedicated actions to support, protect and empower those organisations that are a key part of the checks and balances in our democracies and who are active in promoting and protecting EU values." While it is not clear what this will mean in practice, it is essential that the EU Strategy will improve the inclusiveness of CSOs at the EU level, not only at the domestic level.

Civil society organisations should be for instance recognised as partners in the RoL procedures, which often take place behind closed doors. It could be also linked with strengthening the role of the Fundamental Rights Agency in those proceedings. A CEPS study published this year pointed at institutionalised dialogue with civil society as a particularly successful platform allowing CSOs to engage with the EU institutions.[137]

129 Case T-511/24, *FM v Frontex* (pending).
130 Case C-62/24 P, *ST v Frontex*.
131 *Civic Space Report 2024*, European Civic Forum, Civic Space Watch May 2024, 9-10.
132 M. Gros, L. Guillot, G. Coi, 'EPP's war on NGOs is driving a wedge through Europe's political center', *Politico* 5 May 2025 https://www.politico.eu/article/european-peoples-party-epp-ngo-funding-civil-society-far-right/.
133 J. Rankin, Von der Leyen survives censure vote but faces calls to reverse EU's rightward drift, *The Guardian* 10 July 2025 – https://www.theguardian.com/world/2025/jul/10/ursula-von-der-leyen-censure-vote-european-parliament.
134 European Court of Auditors, *Transparency of EU funding granted to NGOs. Despite progress, the overview is still not reliable*, Special Report 11/2025 – https://www.eca.europa.eu/en/publications?ref=SR-2025-11; 'ECA Report: no scandal – but the Commission needs to invest in a more understandable database', *Transparency International EU* 8 April 2025 – https://transparency.eu/eca-report-no-scandal-but-the-commission-needs-to-invest-in-a-more-understandable-database/.
135 Communication from the Commission to the European Parliament, the Councilm the European Economic and Social Committee and the Committee of the Regions, Commission work programme 2025 Moving forward together: A Bolder, Simpler, Faster Union, COM/2025/45 final.
136 European Commission, *EU civil society strategy, Call for evidence*, 13 June 2025 – https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14588-EU-Civil-Society-Strategy_en.
137 *Mapping civil dialogue in the EU institutions*, CEPS 2025 (a study commissioned by the EESC at the request of the Civil Society Organisations' Group): 'One interviewee from FRA pointed to the National Rule of Law Dialogues as particularly successful civil dialogues facilitated in a participatory way with everyone contributing at the same level. However, it was also pointed out that these dialogues are primarily among the stakeholders at the national level with the Commission listening in and facilitating, but not actively participating' (p. 65).

6. Internal market, rule of law and EU digital policy

The 2025 rule of law report for the first time analysed 'the Single Market dimension of the rule of law', as it was highlighted in the Commission's Political Guidelines. It aimed to 'address rule of law issues affecting companies, especially SMEs [small and medium-sized enterprises], operating across borders'[138] and was a reaction to numerous recommendations suggesting that such an additional element should be added to the annual rule of law report.[139] The link between the rule of law and the market has been highlighted in writings analysing the impact of an uncontrolled public power on the Member State's economic life.[140] Research has indicated that EU competition law could be used as an element of the rule of law toolbox. However, the potential of the competition law has not been realised when dealing with problematic developments in some Member States.[141] The link between the rule of law and competition rules was highlighted also in the *Sped-Pro* case, in which the General Court held that right to fair trial before an independent court (under Article 47 of the Charter) is 'of particular importance for effective application of Articles 101 and 102 TFEU' dealing with the EU competition rules.[142]

There are already numerous measures in the EU dealing with the economic conditions of Member States, such as the European Semester. The 2025 rule of law report heavily relied on those findings within the European Semester, as well as on Justice Scoreboard, and tried to analyse the link between the single market and fights against corruption, media environment and even checks and balances. Making a connection between rule of law principles with the core aspect of the EU integration (creation and development of the single market) is a way to strengthen the legitimacy of the EU actions aimed at tackling rule of law backsliding at the Member State domestic level. It might be also a sign of redefining economic governance, however potential risk of adding the Single Market dimension into the rule of law report is overlooking the core elements of the rule of law, such as judicial independence or separation of powers.[143] Furthermore, there are practical differences in enforcing values and single market norms.[144]

Numerous developments in the internal market at the EU level raise rule of law concerns, in particular with respect to the EU digital policy. The European Union's flagship digital regulations—the Digital Markets Act (DMA), Digital Services Act (DSA), and Artificial Intelligence (AI) Act—are each anchored in Article 114 TFEU as a legal basis. These instruments serve as expressions of the EU's rule of law commitment: combatting the arbitrary exercise of power, providing legal certainty, and ensuring equal enforcement. Yet recent developments raise concerns that these legal regimes are being politically compromised in response to escalating pressure by the United States under the Trump

138 Ursula von der Leyen, *Europe's Choice. Political Guidelines for the Next European Commission 2024-2029*, p. 24 - https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf.

139 Opinion of the European Economic and Social Committee, The economic dimension of the rule of law (own-initiative opinion) (C/2025/3190); J. Plottk, Y. Albrecht, 'How the new Commission should improve the rule of law report', *Foundation for European Progressive Studies* 30 January 2025 - https://feps-europe.eu/how-the-new-commission-should-improve-the-rule-of-law-report/.

140 K. Cseres, Y. Albrecht, 'The Authoritarian Market Playbook', *VerfBlog* 31 January 2025 - https://verfassungsblog.de/the-authoritarian-market-playbook/.

141 K. Cseres, *European competition law, an overlooked element of the EU's rule of law toolbox*, SIEPS November 2024, p. 11-14. See also 'TGL Profs urge DG Competition to review acquisition of Vodafone Hungary', The Good Lobby May 2023 - https://www.thegoodlobby.eu/good-lobby-profs-urge-review-of-vodafone-acquisition/.

142 Case T-791/19, *Sped-Pro S.A. v European Commission*. B. Van Rompuy, 'Independence as a prerequisite for mutual trust between EU competition enforcers : case T-791/19, Sped-Pro v Commission', *Journal of European Competition Law & Practice* 2022 no. 6, 413-415; M. Bernatt, 'Economic frontiers of the rule of law : Sped-Pro v. Commission : case T-791/19', *Common Market Law Review* 2023, no 1, p. 199-216.

143 See K. Cseres, 'Rethinking the Rule of Law in EU Economic Governance: Insights from the 2025 Report', *Kluwer Competition Law Blog* July 29, 2025 https://legalblogs.wolterskluwer.com/competition-blog/rethinking-the-rule-of-law-in-eu-economic-governance-insights-from-the-2025-report/.

144 D. Kochenov, 'The Acquis and Its Principles The Enforcement of the 'Law' versus the Enforcement of 'Values' in the EU' in: A. Jakab, D. Kochenov (eds), *The Enforcement of EU Law and Values: Ensuring Member States' Compliance* (OUP 2017).

administration, threatening the EU's digital sovereignty[145] and casting doubt over the 'Brussels Effect'.[146]

There is mounting evidence that EU digital rule enforcement has also become increasingly politicised. The first sign that the EU was yielding to US pressure was when Vice-President JD Vance's widely reported anti-regulation remarks at the AI Action Summit were quickly followed by the AI Liability Directive's withdrawal—prompting accusations that the Commission was jumping on the 'deregulatory bandwagon'.[147] While the Commission has insisted that 'the DMA and DSA are not on the table'[148] in transatlantic trade negotiations, numerous leaks and public statements have contradicted this. In June 2025, the European Commission signalled flexibility in relation to the digital rulebook to avoid triggering retaliatory U.S. tariffs.[149] A draft US-EU trade agreement circulated that same month was reported to include provisions exempting US tech giants from DMA enforcement during bilateral implementation talks.[150] If realised, such exemptions would neutralise one of the EU's most important modern legal instruments. Indeed, most gatekeepers subject to these instruments are US companies: six out of seven undertakings currently designated as gatekeepers under the DMA are American. Meanwhile, US officials are also pushing for a new DMA advisory body that would give tech firms a formal role in oversight[151]—undermining the independence of enforcement and the integrity of EU regulatory processes. Even absent formal legal amendments, enforcement has already been softened. In that regard, investigations into Elon Musk's X platform have been stalled throughout the trade negotiations. Officials concede that enforcement of the digital rules may be delayed until a new trade framework is agreed.[152]

This selective enforcement undermines the principle of equality before the law, a cornerstone of rule of law. Moreover, Article 1(1) of the DSA highlights the need for a 'safe, predictable and trustworthy online environment,' which demands that rules be applied effectively.[153] Yet recent developments reveal enforcement hesitancy, opaque delays, and potential concessions to foreign interests. Hence, Members of the European Parliament have expressed concern that regulatory decisions are being subordinated to geopolitical considerations.[154] If enforcement is perceived as politically negotiable, the deterrent power of the digital rules is undermined.

A potential erosion of credibility comes at a time when the EU's own Rule of Law Report recognises that the rule of law is essential for the functioning of the Single Market. As the Commission acknowledges in the report, legal certainty and the effective application of EU law are not abstract ideals—they form the backbone of fair competition, economic resilience, and investor confidence. Any undue external influence or regulatory backsliding undermines these goals.

In this light, the Commission's emerging and broader deregulatory shift—seemingly motivated at least in part by trade negotiation tactics—marks a rule of law regression. The Commission's dual role as trade negotiator and the enforcer of digital

145 H. Qin, 'Regulatory Conflict and the Struggle for Digital Sovereignty: A Critical Analysis of the EU-U.S. Data Privacy Framework' (2025) 4 *Studies in Law and Justice,* 46.

146 A. Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2020); A. Alemanno, J. Veraldi, 'Musk, Power, and the EU: What – If Any – Legal Responses to Plutocracy?' in A. Alemanno, J. Veraldi (eds.), *Musk, Power, and the EU* (Verfassungsbooks, 2025) 15–16.

147 H. Ruschemeier, 'The De-Regulatory Turn of the EU Commission', *VerfBlog* 18 February 2025) https://verfassungsblog.de/the-de-regulatory-turn-of-the-eu-commission/.

148 F. Yun Chee, P. Blenkinsop, 'EU says its tech rules are not on the table in US trade talks', *Reuters*, 30 June 2025 - https://www.reuters.com/sustainability/boards-policy-regulation/eu-tech-rules-not-included-us-trade-talks-eu-commission-says-2025-06-30/.

149 C. Gijs, F, Micheletti, D. Busvine, 'Fears grow EU will cave on tech rules amid Trump pressure' *Politico* 23 June 2025 - https://www.politico.eu/article/grow-us-eu-rules-tech-donald-trump-pressure-brussels/.

150 G. Bade, K. Mackrael, 'U.S., EU Near Deal on Nontariff Trade Irritants', *Wall Street Journal* 21 June 2025 - https://www.wsj.com/economy/trade/u-s-eu-near-deal-on-non-tariff-trade-irritants-455c42f1.

151 P. Corlin, C. Kroet, 'US pitches special role in EU regulatory surveillance in trade deal', Euronews 15 July 2025,

152 B. Moens, H. Foy, 'Brussels stalls probe into Elon Musk's X amid US trade talks', *Financial Times* 17 July 2025) https://www.ft.com/content/8f38514b-3265-496e-91e2-f8a44daa0ab6.

153 J.-O. Harfst, T. Mast, 'Independence as a Desideratum: DSA Enforcement by the EU Commission', *VerfBlog* 16 July 2025 - https://verfassungsblog.de/dsa-enforcement-commission/.

154 P. Haeck, 'Don't go soft on US Big Tech, European Parliament urges', *Politico* 20 January 2025 - https://www.politico.eu/article/parliament-tech-eu-european-commission-us-president-donald-trump-meta-mark-zuckerberg/.

rules can be perceived as becoming politically entangled, which can raise concerns about its institutional independence as an enforcement body. The Commission's credibility depends on legal certainty as well as consistent and apolitical enforcement. The rule of law demands more than well-drafted legislation; it requires the courage to uphold those laws, even in the face of geopolitical threats or corporate lobbying.[155] As lawmaking and enforcement discretion becomes a geopolitical bargaining chip, the EU risks undermining the integrity of the Single Market, which the Commission itself forwards is essential to the rule of law. The melding of political bargaining with legal enforcement risks weakening the rule of law.

155 J. Veraldi, A. Alemanno, 'Does the EU Have What it Takes to Counter American Plutocratic Power?' in A. Alemanno, J. Veraldi (eds.), *Musk, Power, and the EU* (Verfassungsbooks 2025), 158.

7. Conclusion

The rule of law remains a foundational value of the European Union, essential for the effective functioning of both Member States and EU institutions. Since the last reporting period, notable progress has been made, particularly in strengthening mutual trust, safeguarding fundamental rights, and reinforcing media freedom and pluralism, as well as in identifying rule of law issues within the Internal Market. Nevertheless, significant concerns persist across multiple areas, including access to justice, migration management, enforcement of rule of law standards, and transparency in EU decision-making.

Access to justice continues to face challenges due to restrictive standing requirements and inconsistent treatment of third-party interventions, resulting in systemic deficiencies and a two-tier system of judicial protection. Similarly, enforcement of rule of law obligations by the Commission has been inconsistent, with delayed or prematurely closed infringement procedures exacerbating rule of law erosion in some Member States. The politicisation of the EU enlargement process also threatens the credibility of accession assessments and undermines adherence to established legal benchmarks.

Persistent shortcomings in migration management, including transparency and accountability deficits in NDICI funding, the instrumentalisation of development aid, reliance on soft law partnerships, and operational practices of Frontex, highlight a growing disconnect between the EU's legal commitments, particularly with regard to the protection of human rights, and its external actions. In parallel, the targeting of civil society and limited protection for NGOs underscore the need for institutionalised mechanisms that guarantee genuine participation and safeguard democratic checks and balances.

The integration of the Single Market and digital regulation into the rule of law framework reflects a broader effort to link economic integrity with legal certainty. However, the politicisation of digital rule enforcement, particularly under external pressure, risks undermining regulatory independence, equality before the law, and the credibility of the EU's legal framework.

Only by addressing these deficiencies through strengthened enforcement, robust oversight mechanisms, and consistent application of legal standards at both EU and Member State levels can the Union maintain its credibility as a defender of the rule of law and effectively uphold its foundational values throughout the European Union.

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