

TOWARDS AN ENLARGED UNION: UPHOLDING THE RULE OF LAW

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Abbreviations

CJEU	Court of Justice of the European Union
CPR	Common Provisions Regulation
CSO	Civil society organization
CVM	Cooperation and Verification Mechanism
DG	Directorate-General
DG DIGIT	Directorate-General for Digital Services
DG ECFIN	Directorate-General for Economic and Financial Services
DG EMPL	Directorate-General for Employment, Social Affairs and Inclusion
DG JUST	Directorate-General for Justice and Consumers
DG NEAR	Directorate-General for European Neighbourhood and Enlargement Negotiations
DG REFORM	Directorate-General for Structural Reform Support
DG REGIO	Directorate-General for Regional and Urban Policy
ECOFIN	Economic and Financial Affairs Council
EIGE	European Union Institute for Gender Equality
ENISA	European Union Agency for Cybersecurity
EPPO	European Public Prosecutor's Office
EUROJUST	European Union Agency for Criminal Justice Cooperation
EUROPOL	European Union Agency for Law Enforcement Cooperation
EYCS	Education, Youth, Culture and Sport Council
FRA	Fundamental Rights Agency
JHA	Justice and Home Affairs Council
GSoD	Global State of Democracy
MEP	Member of the European Parliament
MFF	Multiannual Financial Framework
OECD	Organisation for Economic Co-operation and Development
PIF	Protection of the Union's financial interests
QMV	Qualified Majority Voting
RRF	Recovery and Resilience Facility
TEU	Treaty on the European Union (2009)
TFEU	Treaty on the Functioning of the European Union (2009, amended 2011)

EXECUTIVE SUMMARY

Europe is at a critical juncture. Russia's aggression against Ukraine has shaken the continent's geopolitical foundations. The new security context has brought the European Union's enlargement policy back to the very top of the agenda, and with it a complex and pressing question: how to ensure that EU enlargement swiftly brings about security and stability in all interested countries—while upholding the values on which the Union is built, namely the rule of law, democracy and fundamental rights? While seeking a structurally challenging enlargement the EU also has to tackle its own internal struggles on rule of law; ensuring that its fundamental values are not weakened necessitates careful preparation. To meet that objective, the next EU leadership emanating from European elections in June 2024 will have to take concrete action to guarantee that internal and external reforms remain driven by EU values.

This Policy Paper examines how to bolster efforts in both the EU and countries with a perspective on EU membership (hereafter: enlargement countries) to see to it that the rule of law operates effectively at the core of an enlarged Union. Authored by the International Institute for Democracy and Electoral Assistance (International IDEA), the paper was made possible thanks to the support and cooperation of the Belgian Presidency of the Council of the EU. It offers a basis to guide ministers' discussions at the informal General Affairs Council (GAC) on 29–30 April 2024. The findings presented here are based on extensive research and in-depth discussions with 44 representatives of civil society organizations and institutions from the EU and enlargement countries.

Reflecting on how to uphold the rule of law for an enlarged Union, the Policy Paper provides (i) a brief overview of the rule of law in enlargement countries and within the EU. It then details steps to (ii) bolster rule of law efforts in ongoing EU enlargement negotiations, (iii) fortify EU rule of law activity within the Union, and (iv) equip an enlarged Union to uphold fundamental values. The paper ends with key conclusions and recommendations.

The main findings and suggestions for policy actions formulated in the paper can be summarized in five key recommendations as follows:

1. The EU could optimize its rule of law and enlargement toolbox

In the last two decades, rule of law reforms in enlargement countries have not yielded expected results, and the EU has not been able to fully address rule of law setbacks and backsliding in some of its Member States. Substantial steps have been taken in recent years to increase the EU's activity on rule of law both internally and externally; however, more can be done to enhance monitoring, deepen reporting, revise relevant procedures, and boost the rule of law ecosystem. To that end, the EU could optimize its rule of law and enlargement toolbox by:

- Making the European Public Prosecutor's Office an essential pillar in protecting the EU's financial interests.
- Restoring the transformative and communicative impact of EU enlargement reports.
- Refining the EU enlargement policy and its associated decision-making procedures.
- Strengthening and expanding the scope of the Rule of Law Dialogue, including on issues such as electoral integrity, disinformation and anti-corruption.

2. The EU could strengthen EU conditionality and funding on the rule of law

Conditionality in EU funding has increasingly been used to support rule of law reforms in enlargement countries, and to protect the EU's financial interests when EU Member States have not upheld EU values. Budgetary conditionality may well be considered the most efficient and effective mechanism to address rule of law deficiencies and drawbacks, as it has immediate and tangible impact and does not require unanimity among EU Member States. The EU could therefore consider additional steps to strengthen EU conditionality and funding on the rule of law by:

- Making the release of new funding to enlargement countries conditional to the implementation of the latest rule of law acquis.
- Justifying more thoroughly why and how conditionality is applied in the Conditionality Regulation and in other relevant legislation.
- Reviewing the Common Provision Regulation to strengthen the enforcement of rule of law and democracy standards.
- Introducing suspensive financial conditionality in the Protection of the Union's financial interests (PIF) directive.

- Ensuring sufficient rule of law resources in the next EU budget.

3. The EU could adapt the EU's institutional set-up responsible for the rule of law

The rule of law is part of the mandate of a wide number of European bodies active within and/or outside the EU. There is scope to increase synergies among these bodies, and to gradually integrate enlargement countries in the relevant EU rule of law forums. The June 2024 European elections and subsequent designation of new EU leadership is an invaluable opportunity to raise the rule of law on the EU agenda and to streamline its associated EU decision-making processes. To that end, the EU could adapt the EU's institutional set-up responsible for the rule of law by:

- Strengthening the presence of enlargement countries in the relevant EU agencies and networks that handle rule of law matters.
- Launching an annual forum on the rule of law and enlargement.
- Bringing the rule of law higher on the EU agenda including by strengthening coordination among Council configurations and by designating an executive vice-president for rule of law and democracy in the European Commission.
- Introducing an automatic transition on voting rights about rule of law matters in the Council.

4. The EU could deepen its support to civil society as an essential actor in monitoring and upholding the rule of law

Civil society organizations (CSOs) play a critical role in holding institutions accountable by monitoring local developments and reporting breaches of fundamental values, presenting an important countervailing force when their own governments disrespect the rule of law. CSOs are therefore an invaluable interlocutor for the EU, especially since EU monitoring capacities are limited locally. The EU could deepen its support to civil society as an essential actor in monitoring and upholding the rule of law by:

- Facilitating the participation of CSOs in the EU accession negotiations by deepening triangular dialogues and maintaining a more continuous and systematic dialogue on rule of law with local civil society.
- Guaranteeing adequate funding for CSOs active on rule of law matters.

5. The EU could broaden and specify the scope of EU competence on the rule of law

With a Union of 36 members or more on the horizon, steps will be needed to guarantee that EU institutions can function effectively and fully uphold fundamental values. The rule of law measures established during the enlargement process will need to be maintained and strengthened even after accession. To ensure equality among EU countries, such measures should not only apply to new EU Member States but should eventually be expanded to all

of them, meaning that the rule of law mandate of the EU institutions will also need to be strengthened. To that end, the EU could broaden and specify the scope of EU competence on the rule of law by:

- Using the EU legislative arsenal to further promote rule of law and expand EU hard law on issues such as standards for electoral integrity, building on recent experiences with the Digital Markets Act and the European Media Freedom Act.
- Designing accession treaties and revising EU treaties to strengthen and specify further rule of law commitments by the EU and its Member States, including through the introduction of an explicit link between rule of law and the internal market.
- Clarifying the EU primary law on rule of law.

The above guidance is further detailed in Chapter 5: Conclusion and recommendations at the end of the paper. All recommendations are accompanied by concrete steps for action that are addressed to specific institutional actors.

Given the technicity of certain EU notions mentioned in the paper (marked in the text by an asterisk), a glossary provides additional background information on each of these concepts. Acronyms and abbreviations also benefit from a dedicated section.

Chapter 1

INTRODUCTION AND METHODOLOGY

How can an expanding EU maintain and strengthen rule of law at its core?

Russia's war of aggression against Ukraine triggered a new political momentum around EU enlargement as a means to anchor enlargement countries* in the EU family. This momentum involves countries from not only the Eastern neighbourhood (Georgia, Moldova and Ukraine) but also the Western Balkans, where the enlargement process had been in limbo for more than a decade. In December 2023, the EU committed to expand to new members as a 'geo-strategic investment in peace, security, stability and prosperity', stating also that reforms within the EU must 'be fit for the future... based on the values on which the Union is founded' (European Council 2023: 4–6). With this decision, the EU set its long-term strategic objectives. But the path to reach them is still to be defined. How can an expanding EU maintain and strengthen rule of law at its core, a key principle for any functioning democratic political community? When enlarging, how can the EU make sure that political and security considerations do not take precedence over respecting the rule of law? How can enlargement countries meet all accession criteria and be ready to join the EU as early as possible? Ultimately, how can the effective functioning of an enlarged Union be ensured?

This tension among enlargement objectives, and the influence of geopolitics on EU accession, is not new. The two enlargements to the south in the 1980s were driven by the need to anchor and stabilize countries that were still consolidating their democratic transitions. The accession of neutral countries in 1995 and the big bang enlargement of 2004/2007 were only made possible because of a major geopolitical shift, the fall of the Iron Curtain. The will to reunite both sides of Europe came with the EU's affirmation of common values explicitly proclaimed in the Maastricht and Amsterdam Treaties. This also translated in the establishment of the Copenhagen criteria in 1993, which for the first time brought attention to rule of law in the accession process. Since then, respect for the rule of law has increasingly been challenged around the globe, especially in recent years (International IDEA 2023a; World Justice Project 2023). The EU has accordingly developed a stronger response to ensure that its founding values are upheld by new members. For example,

it revised the enlargement methodology (European Commission 2020), putting fundamentals* first and paying extra attention to issues such as public administration reform and anti-corruption. Another recent example is the European Commission's Communication on pre-enlargement reforms and policy reviews, which underlines that enlargement reforms must lead to the lasting respect of fundamental values before and after EU accession (European Commission 2024).

In the past decade or two, rule of law challenges have also affected the EU's internal functioning. Several EU Member States have struggled, to varying degrees, with rule of law shortcomings. In response, the EU has launched myriad initiatives including monitoring mechanisms such as the European Semester*, the annual Rule of Law Dialogue* and the EU Justice Scoreboard*. They also include corrective measures and procedures (e.g. launch of infringement procedures*, adoption of the Conditionality Regulation*, possible initiation of article 7* TEU (Treaty on the European Union, 2009) procedure) and new legislation encapsulating a strong rule of law dimension such as the Digital Markets Act (European Union 2022) and the European Media Freedom Act (European Commission 2022).

Assessing how the EU can be ready for enlargement while standing firm on its values requires a dual approach: analysing its rule of law promotion through the enlargement policy, while also examining its internal rule of law. Building such an enlarged Union will take time. If the work to reach that objective has partly begun, it is expected to accelerate in the coming years. The next European Parliament's term and the next European Commission's mandate will be crucial from this point of view. Most of the decisions and much of the preparation work will take place during this period, including the adoption of a new Multiannual Financial Framework (MFF) for 2028–2034 which will need to capture these new enlargement ambitions.

Reflecting on how to uphold the rule of law for an enlarged Union, this paper provides (i) a brief assessment of rule of law in enlargement countries and within the EU; it then offers steps to (ii) bolster rule of law efforts in ongoing EU enlargement negotiations, (iii) fortify EU rule of law activity within the Union, and (iv) equip an enlarged Union to uphold fundamental values. It ends with (v) conclusion and recommendations.

Assessing how the EU can be ready for enlargement while standing firm on its values requires analysing its rule of law promotion through the enlargement policy, while examining its internal rule of law.

1.1. METHODOLOGY

The present Policy Paper was drafted as a key contribution to guide discussions at the informal meeting of the General Affairs Council (GAC), hosted by the Belgian Presidency of the Council of the EU on 29–30 April 2024. The paper's findings are the result of several research activities held during the second semester of 2023 and first quarter of 2024. They include a desk review and semi-structured interviews with 17 EU institutional stakeholders, 7 experts from European civil society and academia, and 20 civil society representatives

from the Western Balkans and Eastern Europe regions. The latter included two exchange of views workshops with CSOs from enlargement countries. In total, 44 persons were consulted (Figure 1.1).

Figure 1.1. Methodology



Chapter 2

THE RULE OF LAW IN ENLARGEMENT COUNTRIES AND THE EU: A BRIEF OVERVIEW

The rule of law and functioning democratic institutions are key conditions for accession to the EU. To describe the current situation in both enlargement countries and EU Member States, and to frame the arguments and recommendations of this paper, this section uses findings from International IDEA's Global State of Democracy (GSoD) Indices. The data consists of the GSoD Indices Rule of Law category and its factors—Absence of Corruption, Judicial Independence, Predictable Enforcement, Personal Integrity and Security—and part of the Rights category, namely Access to Justice and Freedom of the Press. This assessment is made with the caveat that it does not fully correspond to the revised EU enlargement methodology clusters or the EU Rule of Law Dialogue methodology. While it comprehensively covers developments until the end of 2022, it does not capture the latest reforms and progress made by enlargement countries and some EU Member States. Nevertheless, the GSoD Indices data indicates several important trends and challenges and is complemented by the observations of interviewees who contributed to this paper.

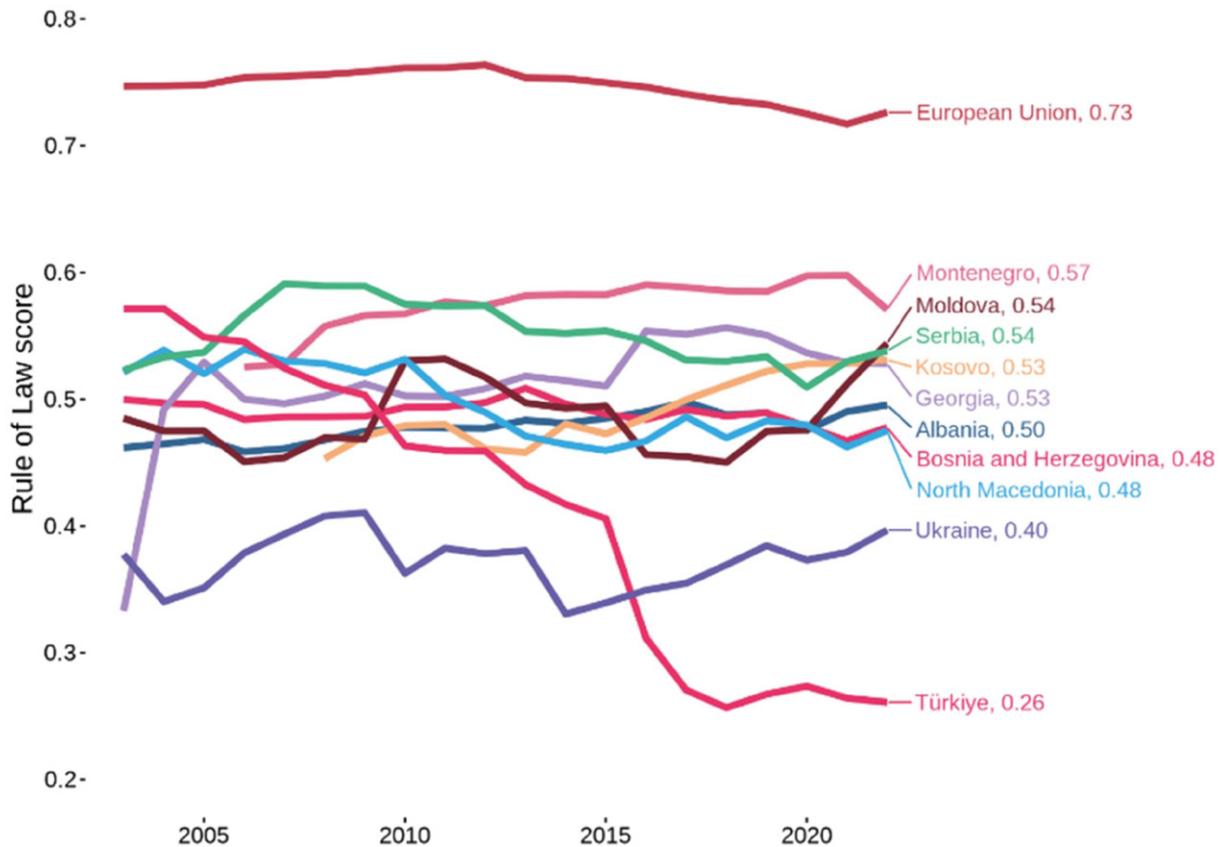
According to the GSoD Indices Rule of Law category, Europe remains the best performing region globally and EU Member States dominate the top positions in the global classification (International IDEA 2023a). In 2022, 13 EU Member States (48.1 per cent) were 'high-performing' in Rule of Law and 14 (51.9 per cent) were 'mid-performing'. Denmark, Germany, Sweden, Finland, Luxembourg and Estonia were the best EU performers, whereas Poland and Hungary were the weakest.

Montenegro was the best performing enlargement country in the Rule of Law category, followed by Moldova, which made the most progress in 2022; Moldova emerged as one of the leading countries globally in terms of overall democracy advancements, this category included. Serbia followed, then Kosovo, Georgia, Bosnia and Herzegovina, North Macedonia, Ukraine and Türkiye. Most enlargement countries (77.8 per cent) performed in the mid-range of the Rule of Law category.

The gap in the overall performance between the best performing enlargement country and the EU average remains significant.

Figure 2.1 shows that the gap in overall performance between the best performing enlargement country and the EU average remains significant. It also illustrates an erosion of the EU's performance in the last decade.

Figure 2.1. Performance on Rule of Law over time: EU average and enlargement countries



Source: International IDEA, The Global State of Democracy Indices v7.1, 2023.

Important similarities appear between EU Member States and enlargement countries faring in the Rule of Law mid-range performance category.

When comparing countries within the mid-range performance category in Rule of Law, important similarities between EU Member States and enlargement countries appear. Performance in several Member States—including Austria, Bulgaria, Croatia, Greece, Hungary, Malta, Poland and Romania—is comparable to one or more enlargement countries. In fact, some EU Member States and enlargement countries share mid-range performance in the Rule of Law. Hungary and Poland score similarly to Kosovo. Montenegro performs slightly better than Hungary, Poland and Romania in this area.

In 2024, for the first time, four Western Balkan candidate countries—Albania, Montenegro, North Macedonia and Serbia—will undergo the EU internal Rule of Law Dialogue alongside all EU Member States. As a concrete illustration of what such comparison could resemble, we briefly examine their respective performance in one of the four pillars monitored, namely media pluralism and

freedom. As per GSoD Indices data, Serbia stands out with low performance in Freedom of the Press, contrasting with the mid-range performance of the other three candidate countries in the Western Balkans. Despite the apparent performance gap between EU Member States and the four Western Balkan EU candidate countries in this pillar, a closer examination reveals commonalities between specific countries. Several Member States, namely Bulgaria, Hungary, Poland and Romania, closely align with the scores of enlargement countries. In 2022, Albania showed similar scores to Poland and Romania, while North Macedonia and Montenegro were on par with Bulgaria's performance. These similarities underscore widespread and common challenges in this area and highlight the necessity for continuous vigilance in safeguarding media freedoms within the EU, as well as in the candidate countries.

This section aimed to provide an overall picture rather than a comprehensive and in-depth analysis of each Rule of Law factor or specific situation in every country. While Europe remains the best performing region globally in terms of Rule of Law, the challenges pertaining to individual EU Member States in various Rule of Law factors translate into minor progress for the bloc as a whole. For an enlarged Union to live up to the highest rule of law standards, the EU should pursue further intensive work to safeguard the rule of law internally.

Despite some positive developments, convergence between the Western Balkans region and the EU in the rule of law area has not progressed well during the last decade. Developments have been uneven and marked by many setbacks. Interviewees for this paper could not clearly correlate various stages of the accession process with improvements in rule of law. They also insisted on the important distinction between reforms being technically adopted and their implementation actually having an impact on the systemic rule of law culture in candidate countries.

In the Eastern Europe region, Moldova and Ukraine have shown an increased dedication to progress with rule of law reforms (i.e. namely implementation of the 7 and 13 respective steps, posed as preconditions for obtaining candidate status by the EU in 2022, many of which concerned rule of law reforms). At the same time, the performance gap between the EU average and these new candidate countries remains significant. Some interviewees pointed out that all these countries may be struggling with limited capacity, in both their administrations and civil society, to address the complexity and pace of EU accession. The gaps and commonalities between the EU Member States and candidate countries identified in this section justify putting rule of law even more prominently at the centre of the enlargement process and the EU's internal agenda during the next mandate of the EU institutions.

Convergence between the Western Balkans and the EU has not progressed well. Developments have been uneven and marked by many setbacks.

The performance gap between the EU average and the Eastern Europe countries remains significant, despite increased dedication to reforms.

Chapter 3

BOLSTERING RULE OF LAW EFFORTS IN ONGOING EU ENLARGEMENT NEGOTIATIONS

The EU has invested substantially in promoting the rule of law in the Western Balkans and in the Eastern neighbourhood but with mixed results. As demonstrated in the previous section, the Western Balkans countries have not caught up with the EU and, while the new candidate countries have made significant progress recently, they remain far from reaching the rule of law requirements set to join the EU. This limited progress can be explained by a multitude of factors, some of which are examined below. But the new momentum around EU enlargement is an opportunity to review the policy's effectiveness on rule of law and introduce adjustments where necessary.

EU enlargement reports have over time lost some of their transformative power and communicative impact.

3.1. REFINING THE EU ENLARGEMENT REPORTS

This could start with refining the EU enlargement reports*. Interviewees confirmed that the annual EU enlargement reports for individual countries in the Western Balkans have over time lost some of their transformative power and communicative impact. Though they are considered comprehensive and very valuable for experts, enlargement reports are also seen as overly technical. While they factually describe developments across numerous indicators relevant to the rule of law, they could better demonstrate how these relate to each other; a more holistic picture of the various sectors (e.g. justice, fundamental rights, democracy) and their interdependence is lacking. Interpretation of the substance of these reports can therefore vary significantly from one actor to another: enlargement countries' governments tend to dwell on positive developments while civil society will often pick up on more critical elements. The rule of law assessments in the enlargement reports would gain from being more qualitative, focusing on the details of implementation measures adopted by governments. This, along with clear political messages from the EU institutions and Member States on expected rule of law reforms, would serve to hold elites in enlargement countries more accountable.

Interviewees also mentioned that the follow up of enlargement reports' recommendations could be improved. This might entail increasing the number of peer review missions on the ground, on given thematic topics. Another way would be to strengthen public communication around the reports' release by securing the active involvement not only of EU institutions but also of EU Member States. They could join forces to communicate the key highlights of the enlargement reports, partnering when relevant with local CSOs and independent media. The Presidency of the Council of the EU could take a leading role in this endeavour to restore the communicative impact of EU enlargement reports and foster follow up on recommendations.

3.2. BETTER CONNECTING THE EU'S POLITICAL DISCOURSE WITH ITS TECHNICAL WORK

Furthermore, the EU could better connect its political engagement and discourse with its technical work on rule of law led by EU services and implemented through dedicated EU programmes and projects. Most if not all systemic shortcomings in the area of rule of law are politically driven rather than caused by technical issues. Many interviewees called on the EU to adopt a clear political stance and political messaging on what they consider necessary rule of law reforms, which should then be accompanied by clear technical and qualitative benchmarks to measure their progress.

In that spirit, the modalities triggering the enlargement's reversibility* process (when fundamental values are compromised) warrant clarification. The EU introduced a principle of reversibility in the accession process (European Commission 2020), but its application is yet to be spelled out. This could be done by defining the practical and specific steps of initiating the reversibility procedure, possibly using the EU internal infringement procedure (articles 258, 259, 260 of the Treaty on the Functioning of the European Union (TFEU), 2009, amended 2011) as a source of inspiration. Finally, to avoid the political instrumentalization of the enlargement process—whereby rule of law reforms might become hostage to unrelated considerations—the EU could discontinue the customary use of unanimity for intermediate steps in the enlargement negotiations.

3.3. BETTER COORDINATING THE WORK OF RULE OF LAW ACTORS

The research also revealed that while the EU's rule of law initiatives are significant and plentiful, they are not optimally coordinated. The EU Court of Auditors, for example, released several reports on related topics in the enlargement countries. But interviewees argued that the reports did not lead to significant follow-up. The EU and enlargement countries could consider ways to stimulate greater interaction between relevant EU bodies (e.g. the European

Systemic rule of law shortcomings are more often politically driven than caused by technical issues. Clear political messaging should therefore accompany technical and qualitative benchmarks.

The EU's rule of law initiatives are significant and plentiful, but not optimally coordinated.

Anti-Fraud Office, the EU Court of Auditors, EU agencies in charge of rule of law matters) and to better join forces with other international partners dealing with rule of law and democracy. This could, for example, lead to the establishment of an annual rule of law forum where common understanding and systemic cooperation on rule of law priorities could be reached between all enlargement countries and international actors (i.e. the whole range of EU actors but also organizations such as the Council of Europe and the Organisation for Economic Co-operation and Development (OECD)).

The unique position of local CSOs can serve to address the EU's limited monitoring capacities in enlargement countries.

3.4. INVOLVING CSOS MORE CLOSELY

When reflecting on how to improve its work with partners, the EU could explore ways to more closely involve CSOs active on rule of law issues. Currently, the European Commission invites CSOs to send written contributions to inform enlargement reports, which should be treated with utmost consideration. In addition, the European Commission could organize preparatory meetings with civil society in Brussels to gather further inputs ahead of the drafting of EU enlargement reports. The unique position of local CSOs can serve to address the EU's limited monitoring capacities in enlargement countries, which were underlined by many interviewees. As already alluded to, the challenge with rule of law reforms very often lies not in their legislative adoption but in their implementation. A close monitoring of the spirit and the form in which reforms are implemented is thus crucial.

To that end, several avenues to improve cooperation with civil society might be explored. First, EU delegations in enlargement countries could maintain a more systematic dialogue with the local civil society. Research and interviews revealed that exchanges on rule of law matters do exist, but that their scope and intensity vary considerably from one place to another, as well as over time. Secondly, EU Member States could also actively take part in such dialogue: all EU high level missions to enlargement countries, including those by Member States, could systematically start by meeting local CSOs. This would help to set the context and define which sensitive rule of law topics should be discussed with the governments. In the same vein, a meaningful triangular dialogue between the EU, the government and civil society should continue (ensuring the participation of independent CSOs and being aware of government or oligarch-organized non-governmental organizations). Many interviewees acknowledged the important role played by the EU in legitimizing civil society's role in this way and facilitating its constructive engagement with its own government.

Strengthening the conditionality of EU funding would increase the likelihood of rule of law reforms being successfully implemented in enlargement countries.

3.5. STRENGTHENING THE CONDITIONALITY OF EU FUNDING

Strengthening the conditionality of EU funding would also increase the likelihood of rule of law reforms being successfully implemented in

enlargement countries. Such work is already ongoing with the establishment of new EU financial instruments: the Ukraine Facility, designed to provide predictable financial support for Ukraine over the period 2024–2027, and the new Western Balkans Reform and Growth Facility, established to support a comprehensive set of socio-economic and fundamental reforms in the region in the next three years (European Commission 2023a, 2023b). Conditionality, including new clauses on ex-ante conditionality*, should be a central element of both facilities, meaning that without the requested reforms including on rule of law, financial assistance from these instruments would not be released or would be stopped. The implementation documents of these facilities should be designed in an inclusive way (e.g. involving civil society), but should also ensure quick delivery or suspension of funds.

Interviewees underlined that the application of conditionality in existing EU financial instruments sometimes takes too long, rendering it ineffective. The timeframe for the design, disbursement and implementation of EU funds and programmes conditional on rule of law reforms often takes years. By that time, the resulting projects may no longer correspond to actual needs. In addition, the political cycle in enlargement countries often being shorter, their political leaderships may be indifferent to these incentives. A deeper reflection on conditionality in previous EU programmes would thus be useful. For instance, it is often difficult for the EU, implementing partners, or the government to openly acknowledge when such sensitive programmes or projects have failed. Lessons learnt also show that new instruments with a conditionality clause should be backed with sufficient financial resources to match the offers of other competing actors and should be accompanied with the right political messaging on expected reforms.

3.6. GRADUALLY INTEGRATING ENLARGEMENT COUNTRIES IN THE EU'S INTERNAL RULE OF LAW

Measures to involve enlargement countries more actively in the EU's internal work on rule of law can be envisaged in the immediate and short term. Some initial steps have been taken to that end, and four candidate countries (Albania, Montenegro, North Macedonia, Serbia) were invited in January 2024 to join the EU's Rule of Law Dialogue. Such an invitation could be extended to all candidate countries as soon as they open negotiations.

The gradual integration of enlargement countries in the EU's internal rule of law could also be achieved by encouraging or strengthening their participation in relevant EU agencies, be it via ad hoc collaboration, secondment, observership or full membership. This recommendation, though not new, was raised repeatedly during the consultations informing this paper. To accelerate progress, the EU could map the existing participation of enlargement countries, identify opportunities for scaling up their presence and dedicate necessary resources. Agencies to consider would include the European Union Agency for Criminal Justice Cooperation (EUROJUST), the European Union Agency for

More measures to involve enlargement countries in the EU's internal work on rule of law can be envisaged in the immediate and short term.

The EU could map the existing participation of enlargement countries, identify opportunities for scaling up their presence and dedicate necessary resources.

Law Enforcement Cooperation (EUROPOL), the Fundamental Rights Agency (FRA), the European Institute for Gender Equality (EIGE), the EU Agency for Cybersecurity (ENISA), the Anti-Money Laundering Authority (AMLA) and networks such as the European Cooperation Network on Elections (ECNE). This gradual integration in EU bodies should be accompanied by a full and effective participation in international tribunals such as the International Criminal Court, as stated in the association agreements between the EU and enlargement countries.

As to the European Public Prosecutor's Office, many interviewees stated that enlargement countries should be encouraged to participate in its work to the maximum extent and take the necessary structural measures in their legal and institutional systems to guarantee full and effective cooperation by the time they join the EU. Regarding the European Parliament, candidate countries are usually granted observer Members of the European Parliament (MEPs) after the signature of the accession treaty. In the future, these observer MEPs could be deployed as soon as the accession negotiations are closed.

A reflection could be launched on the structure of the EU's institutional set-up for enlargement during the next legislative term.

3.7. LAUNCHING A REFLECTION ON THE EU'S INSTITUTIONAL SET-UP FOR ENLARGEMENT

The progressive inclusion of enlargement countries in the EU's internal rule of law bodies and mechanisms could be accompanied by a reflection on the structure of the EU's institutional set-up for enlargement during the next legislative term. One option could be the reintroduction of a Directorate-General (DG) in the European Commission solely dedicated to enlargement matters, with rule of law at the core of its mandate. The EU would thereby signal that enlargement countries are no longer just part of the neighbourhood but do have a clear pathway to join the EU in the near future. Such a DG could in particular facilitate the involvement of all relevant line-DGs in the enlargement negotiations and work.

Several interviewees highlighted that taking part in enlargement discussions was not always a priority for line-DGs, or that they lacked enough capacity to do so. However, line-DGs' active and systematic involvement in rule of law matters related to their thematic mandate would certainly bring additional expertise. It would also signal a broader commitment from within the entire Commission. Finally, the profile of the next Commissioner in charge of enlargement will play a key role in upcoming negotiations. Proper consideration should be given to selecting a Commissioner who strongly champions the EU's values and brings political commitment, seniority and EU experience to firmly steer the enlargement process.

Chapter 4

FORTIFYING EU RULE OF LAW ACTIVITY WITHIN THE UNION

Compared to the efforts deployed in the enlargement process framework, the EU's internal toolbox on the rule of law is rather recent and still being elaborated. The public debate on the EU's institutional setting and action on the rule of law has been flourishing among the EU institutions, academia, media and civil society.

4.1. ADJUSTING THE RULE OF LAW DIALOGUE'S METHODOLOGY

While the scope and the process of the Rule of Law Dialogue have evolved noticeably in the past few years, the process could benefit from certain adjustments and updates to its methodology in the short term. Several interviewees underlined that tremendous efforts were expended assessing and reporting on the rule of law situation in EU Member States, but much less attention was subsequently paid to following up on the implementation of these recommendations. The EU could set up a dedicated instrument to assess the follow-up of the recommendations formulated in the Rule of Law Reports*. In addition, to make evaluations more comprehensive, the methodology could incorporate new topics such as on electoral integrity, disinformation, organized crime, public administration reform and the implementation of the EU Charter of Fundamental Rights. Across the world, democratic backsliding is increasingly undertaken by actors undermining or attacking several democratic factors simultaneously, that is, electoral integrity, media freedom, operating space for civil society and judicial independence—all of which ultimately affect the rule of law. Most of these issues require close monitoring in enlargement countries as well, and are to an extent already covered in the enlargement monitoring process. Considering that some enlargement countries have become part of the EU's internal Rule of Law Dialogue, the two methodologies should be aligned as closely as possible.

Tremendous efforts are made to assess the rule of law situation in EU Member States, but less attention is paid to the implementation of recommendations.

The simultaneous application of internal and external rule of law monitoring methodologies to enlargement countries risks creating duplication and overlaps.

4.2. ALIGNING THE INTERNAL AND EXTERNAL RULE OF LAW MONITORING METHODOLOGIES

The simultaneous application of internal and external rule of law monitoring methodologies to an increasing number of enlargement countries, combined with their regular revision, risks creating duplication and overlaps in the coming years. Linking the two so that they complement each other, with a clear division of labour as to substance and somehow coordinating their schedules, is therefore crucial. Interviewees warned that many enlargement countries, especially smaller ones with limited capacities, were already struggling to provide qualitative reporting given the multiplication of reporting requirements.

With the Rule of Law Dialogue open to some candidate countries, participants will also have to ensure that the reviews remain focused on the self-assessment dimension of the exercise and avoid instrumentalizing it to criticize others. Since EU Member States' annual reports are formally discussed in the Council, of which the candidate countries are not part, their participation in the Dialogue's institutional procedures will have to be clarified. Finally, once accession negotiations are closed and enlargement reports cease to be issued, the candidate country should automatically be fully covered by the Rule of Law Dialogue (i.e. as if it were already a fully-fledged EU Member State) to ensure that there is no monitoring gap between that point and formal accession to the EU.

4.3. PROMOTING RULE OF LAW BEYOND THE RULE OF LAW DIALOGUE

Beyond the annual rule of law cycle, one should look at other avenues that the EU has at its disposal. Having a comprehensive vision for EU action to protect and promote the rule of law is essential to ensure that all policy and implementation tools are properly aligned. The European Semester, the EU Justice Scoreboard, the infringement procedures and the procedure stipulated in article 7 TEU on the suspension of certain Member States' rights are all part of this toolbox. But further entry points exist for applying and supplementing these tools in the service of wider EU rule of law objectives.

4.4. CONSOLIDATING THE EU'S LEGISLATIVE ARSENAL ON RULE OF LAW

Strengthening the EU's legislative arsenal is one avenue to pursue the EU rule of law agenda. Rule of law impact assessments could be introduced for any new piece of EU legislation to assess how it could impact the EU's rule of law. In addition, similarly to the Digital Markets Act (European Union 2022) and the European Media Freedom Act (European Commission 2022), which partly address legislative gaps in protecting the rule of law, the EU could introduce

new legislation based on article 114 TFEU (covering the harmonization of laws and standards for the functioning of the internal market). This could be leveraged to build or strengthen the EU's legal framework on pertinent topics essential to the rule of law such as electoral integrity. For example, the Commission Recommendation on inclusive and resilient electoral processes, which is part of the Defence for Democracy package (European Commission 2023c), could form a blueprint for the EU's legislation on supporting electoral frameworks in the next EU mandate. Expanding internal EU legislation on rule of law would also deepen the *acquis* that enlargement countries need to absorb. The commitment to align with the most recent EU legislation pertinent to the rule of law could be explicitly reflected in the national reform plans that enlargement countries will present to access the newly available EU funds. This legislation would therefore be adopted sooner and put into practice before accession.

4.5. INCREASING TRANSPARENCY IN THE APPLICATION OF CONDITIONALITY

In recent years the EU has adopted important measures to protect its budget from rule of law breaches in its Member States. This was mainly accomplished with three pieces of legislation: the Conditionality Regulation (European Union 2020), the Common Provisions Regulation* (European Union 2021b) and the Recovery and Resilience Facility Regulation* (European Union 2021a), which was the legal basis to freeze the EU post-Covid-19 recovery funding for Hungary and Poland. The European Court of Auditors assessed that these new regulations marked an improvement in the EU's rule of law framework but that their application could be enhanced (European Court of Auditors 2024). In particular, the reasoning and criteria used by the European Commission to identify and investigate rule of law breaches in Member States could be more transparent. This issue could be addressed ahead of the adoption of the next MFF to inform the design of the next financial instruments.

4.6. STRENGTHENING RULE OF LAW CONDITIONALITY IN INTERNAL FINANCIAL INSTRUMENTS

In parallel, the EU could further strengthen rule of law conditionality in its internal financial instruments. Budgetary conditionality is likely the most efficient way to uphold the rule of law. It has immediate and tangible impact whereas the article 7 procedure ultimately requires unanimity in the Council, the infringement procedures are very time-consuming and the Rule of Law Dialogue consists of peer-to-peer exchanges. Strengthening conditionality could be done ahead of the next MFF when reviewing the relevant regulations.

For the Common Provisions Regulation (European Union 2021b), the revision could strengthen the enforcement of rule of law and democracy standards,

Expanding internal EU legislation on rule of law would deepen the *acquis* for enlargement countries.

The EU adopted important measures to protect its budget from rule of law breaches in Member States but their application could be further improved.

Budgetary conditionality is likely the most efficient way to uphold the rule of law.

including by consolidating the applicability of the horizontal enabling conditions*—namely, compliance with the EU Charter of Fundamental Rights and its rule of law and democracy related elements. In doing so, the EU institutions would be allowed to suspend funding when a breach of the Charter is established without having to demonstrate how the breach impacts the management of EU funds specifically.

The review of the relevant regulations would need to be accompanied by sufficient resources and staff to adequately monitor actual compliance with the rule of law standards by EU Member States. In this light, to support the European Commission in its monitoring tasks, the role of the EU's Fundamental Rights Agency could be expanded. Finally, the EU could consider reviewing its legislation on the protection of the Union's financial interests (European Union 2017) to introduce directly applicable suspensive financial conditionality. Currently, the Directive does not allow the suspension of funding and, in cases of infringement, the EU Member State at fault can only be fined.

Rule of law issues will have to appear higher on the EU institutions' agenda.

4.7. PUTTING RULE OF LAW HIGHER ON THE EU INSTITUTIONS' AGENDA

Rule of law issues will also have to appear higher on the EU institutions' agenda. In the Council of the EU, this means ensuring that relevant Council formations address rule of law issues more regularly and in a more coordinated fashion. Budgetary issues that are addressed in the Economic and Financial Affairs Council (ECOFIN), when it approves the European Semester for example, should also be brought to the attention of the General Affairs Council, where rule of law dialogues take place. Given the essential role that education plays to anchor rule of law within society, the Education, Youth, Culture and Sport Council (EYCS) could also discuss the matter more frequently. The Justice and Home Affairs Council (JHA) as well can tackle rule of law through the lens of anti-corruption. It is thus essential that coordination and cross-fertilization among the various Council formations is ensured, including through a close cooperation between the appropriate preparatory bodies and working parties.

For the European Parliament, this might entail increasing its oversight role by adopting some elements of the proposal to establish an EU mechanism on democracy, rule of law and fundamental rights (European Parliament 2020). For the European Commission, this might be done by adjusting the institutional set-up during the next legislative term (2024–2029) to place rule of law front and centre of its mandate. This could, for example, mean establishing an executive vice-president in charge of article 2 TEU values. This figure would lead the Directorate-General for Justice and Consumers (DG JUST) and coordinate the work of relevant line-DGs, as the ones in charge of the neighbourhood and enlargement, of economic and financial affairs, of structural reforms support, of regional and urban policy, of employment, social affairs and inclusion, and of digital services. Such coordination would ensure

a full and consolidated steer on rule of law matters including in enlargement negotiations.

4.8. DEDICATING PROPER FUNDING FOR RULE OF LAW IN THE NEXT MULTIANNUAL FINANCIAL FRAMEWORK

Finally, the EU could ensure proper funding for rule of law matters in the next MFF. This could be done by establishing a dedicated EU fund for rule of law covering both enlargement countries and EU Member States. Such a fund would support (a) capacity building of administrations in enlargement countries to reach their rule of law targets, as well as EU Member States' deployment of national rule of law experts in enlargement countries requesting support; (b) CSOs and intergovernmental organizations playing a monitoring role within the Rule of Law Dialogue and reporting cycle; and (c) academia, think tanks and CSOs developing long-term capacities and expertise on rule of law matters including through training, exchange of best practices, provision of legal assistance and joint advocacy. Such a fund would ensure the link between the internal and external dimensions of rule of law. The fund would be maintained after accession to preserve the enlargement reforms and to maintain support to all key actors in the rule of law ecosystem.

Proper funding for rule of law matters should be ensured in the next MFF.

Chapter 5

EQUIPPING AN ENLARGED UNION TO UPHOLD FUNDAMENTAL VALUES

Beyond the short- and medium-term solutions mentioned above, and to ensure that a Union of 36 members or more can function, the EU will have to consider structural and sustainable solutions to address rule of law challenges that could linger or arise. The rule of law measures established during the enlargement process will need to be maintained and strengthened even after accession. In that logic, and to ensure equality among EU countries, such measures should not only apply to new EU Member States but should eventually be expanded to all of them.

Some key rule of law principles that newcomers commit to uphold should be reflected in the accession treaties.

5.1. REFLECTING KEY RULE OF LAW PRINCIPLES IN ACCESSION TREATIES

The first step could be to reflect in the accession treaties some key rule of law principles that newcomers commit to uphold. This could include the introduction of a principle of non-regression on rule of law, by which the country commits not to amend its legislation (including its constitution) in a way that would lower the rule of law standards that were in place when it joined the EU. Accession treaties could also embed a principle of cooperation between national courts and the Court of Justice of the EU (CJEU) to ensure more cohesive and efficient legal frameworks and interactions between the courts. This cooperation principle could specify that requests for preliminary rulings made from national lower courts to the CJEU cannot be hindered by higher courts (Judgment in Case C-564/19) (CJEU 2021). It could also detail what article 19 TEU (on the role of the Court of Justice of the EU) practically entails for the organization of independent justice systems in new EU Member States. In addition, the full and effective participation in the European Public Prosecutor's Office (EPPO) could be explicitly mentioned to guarantee that this target of enlargement negotiations has been met. Finally, enlargement countries could join without a right of veto on rule of law matters, replicating the logic of the confidence clause on future enlargement by which a country

joining the EU would agree not to block future enlargements (President of the European Council 2023).

5.2. EU MEMBER STATES MAKING SIMILAR POLITICAL UNDERTAKINGS

All EU Member States would make similar political undertakings, starting by committing to join EPP and by agreeing to streamline and simplify the EU decision-making process related to rule of law. The latter could be done using the passerelle clauses described in article 48 TEU, which allow for modification of the EU decision-making process without changing the EU treaties. The limited success of the Cooperation and Verification Mechanism* for Bulgaria and Romania has diminished interest in introducing similar transitional measures for newcomers. An option could therefore be to reverse the approach. EU Member States could agree to abandon unanimity on rule of law matters by a given date and move to Qualified Majority Voting. EU Member States could also politically commit to establish an informal European constitutional dialogue between the Court of Justice and Member State highest Courts' presidents to discuss and informally clarify legal matters related to the values mentioned in the EU treaties (Calliess 2023).

5.3. REVISING EU TREATIES

Some of the commitments made by candidate countries in the accession treaties (e.g. the adoption of the principle of non-regression on rule of law, clarification of what article 19 TEU entails for the organization of independent justice systems) would require a modification of the EU treaties before they can apply to EU Member States as well. However, given the magnitude of institutional and policy changes expected—for an enlargement by potentially 10 new members—it is likely that treaty revisions will be necessary within the next decade or so. This opportunity could be seized to further specify the scope of rule of law and other related values enshrined in the EU treaties.

The likely-needed treaty revision should be seized to further specify the scope of rule of law and other values.

5.4. CLARIFYING THE LEGAL IMPLICATIONS OF ARTICLE 2 TEU

The precise legal implications of article 2 TEU, which states the values on which the EU is founded, are still being discussed. Some of the values mentioned have been partly clarified through case law, such as the concepts of rule of law and human rights, which have been refined by complementary law (e.g. the EU Charter of Fundamental Rights) and by extensive jurisprudence from the Court of Justice (e.g. including the 2019 case, European Commission v Republic of Poland (CJEU 2019)). The latter found that article 19 TEU, providing the right to effective judicial protection, gives concrete expression

The precise legal implications of values in article 2 TEU still need to be substantiated.

to the value of rule of law affirmed in article 2. But other values have not been substantiated so explicitly. This is the case of democracy, which paradoxically has been characterized extensively, but only for external purposes.

This was done through article 49 TEU providing the basis for joining the EU and the Copenhagen criteria deriving from it. These criteria set clear rule of law, democracy and human rights targets to achieve before a country can join the EU. However, once the country has joined the EU, the Commission no longer possesses the legal means to check that these thresholds are upheld. This is the so-called 'Copenhagen dilemma'. One might therefore consider substantiating the value of democracy described in article 2 TEU by linking it explicitly to article 10, which grounds the principle of representative democracy in the functioning of the EU. Holding free and fair elections necessitates a continuous commitment from all European countries, whether current EU Member States or not. Detailing the EU's competence on democracy and electoral integrity might prove useful, not least to preclude any questioning of the EU institutions' democratic legitimacy in the future. This would certainly strengthen the EU's ability to combat democratic backsliding, in which democratic regression and a weakening of the rule of law very often go hand in hand.

A direct and undisputable link between the EU's values and its competences is lacking, which prevents its institutions from fully protecting and upholding them.

5.5. LINKING EU VALUES WITH THE EU'S COMPETENCES

A direct and undisputable link between the values (described in the Treaty on the EU) and the EU's competences (bestowed in the Treaty on the Functioning of the EU) is apparently lacking, which prevents its institutions from fully protecting and upholding these values. An explicit connection could therefore be introduced in the next revision of the treaties. It could in particular underline that the internal market can only function if the EU's fundamental values are respected, going so far as to deny market access to EU Member States that fail to respect the minimum rule of law standards, and in practicable ways.

Chapter 6

CONCLUSION AND RECOMMENDATIONS

The EU can only fulfil its assigned internal and external roles when it acts in ways that fully respect the fundamental values enshrined in its treaties. It has a strong model to offer aspirant members, provided that these values are upheld at home. Hence, the EU must ensure that democracy and the rule of law remain at the centre of its functioning, its activities and its enlargement process and prospect.

This Policy Paper has looked at different options to bring geopolitical and internal imperatives into conformity with respect for the rule of law. Its suggestions for consideration by the EU and enlargement countries can be summarized in five key recommendations as follows:

1. Optimize the EU's rule of law and enlargement toolbox.
2. Strengthen EU conditionality and funding on the rule of law.
3. Adapt the EU's institutional set-up responsible for the rule of law.
4. Support civil society as an essential actor to monitor and uphold the rule of law.
5. Broaden and specify the scope of EU competence on the rule of law.

Discussion and debate on EU enlargement and the legal obligations accompanying EU membership cannot be limited to an inner circle of experts handling these matters. Advancing and upholding EU values is the work of whole generations, current and future. A long-term and sustainable effort to secure the rule of law demands the mobilization of society, involving its citizens and securing their support. Consequently, showcasing rule of law and enlargement success stories will be essential, especially so where the previously stalled enlargement process has left negative perceptions, as has been the case in the Western Balkans.

The EU must ensure that democracy and the rule of law remain at the centre of its functioning, its activities and its enlargement process and prospect.

Advancing and upholding EU values is the work of whole generations, current and future, and it requires a change of mindset.

The road ahead may be bumpy, but compromising the rule of law would both prolong the journey and ultimately risk a different destination: a much weakened Union.

The formidable task of upholding fundamental values while seeking to enlarge the Union also requires a change of mindset. For enlargement countries and their political leaderships, this means achieving a clear and unequivocal commitment to fully embrace the values on which the Union is founded. For the EU, it means acknowledging that rule of law issues at home could become as much of an obstacle to enlargement as current issues in enlargement countries. The EU will have to take bold and swift action to address both sets of deficiencies. In the coming years, substantial EU reforms, including institutional ones, should also be launched to strengthen the EU's rule of law mandate. The road ahead may be bumpy, but compromising the rule of law would both prolong the journey and ultimately risk a different destination: a much weakened Union.

Recommendations

1. Optimize the EU's rule of law and enlargement toolbox

A.

Make EPPA an essential pillar in protecting the EU's financial interests

Enlargement countries

- Commit to join EPPA (European Public Prosecutor's Office) and meet all criteria for full EPPA cooperation by the time of accession.

EU Member States

- If not yet participating, join EPPA as soon as possible.

B.

Restore the transformative and communicative impact of enlargement reports

European Commission

- Provide a qualitative and comprehensive analysis of the rule of law in enlargement countries.

EU institutions and Member States

- Team up to communicate the key highlights of the enlargement reports, partnering when relevant with local civil society organizations (CSOs) and independent media.

EU and enlargement countries

- Increase the number of peer review exercises and missions.

C.

Further refine the EU enlargement policy and its decision-making procedures

European Commission

- Detail the procedural steps of the proclaimed reversibility process in the accession negotiations, possibly using the EU internal infringement procedure (article 258 TFEU) as a source of inspiration.
- Fully apply the Rule of Law Dialogue to enlargement countries as soon as the negotiations are closed (before formal accession).

EU institutions and EU Member States

- Discontinue the customary use of unanimity for intermediate steps in the accession negotiations process.

D.

Strengthen and expand the scope of Rule of Law Dialogue

EU institutions and EU Member States

- Expand the rule of law reports to new topics such as electoral integrity, disinformation, organized crime and implementation of the EU Charter of Fundamental Rights.

EU and enlargement countries

- Operationalize the informal peer review exercises by organizing regular in-country missions.
- Open the rule of law review exercise to all enlargement countries as soon as they open negotiations.

2. Strengthen EU conditionality and funding on the rule of law

A.

Make the release of new funding conditional on the implementation of the latest rule of law acquis

European Commission

- Ensure that the new rule of law priorities and acquis is reflected in national reform agendas prepared by the governments of enlargement countries (Western Balkans Reform and Growth Facility; Ukraine Facility; negotiating frameworks for the new enlargement countries).

B.

Justify more thoroughly why and how conditionality is applied in the Conditionality Regulation, the RRF and the CPR

European Commission

- Develop a clear methodology and increase transparency on the criteria used to identify and investigate rule of law breaches in EU Member States, which can lead to the application of conditionality in the Conditionality Regulation, the Resilience and Recovery Facility Regulation (RRF) and the Common Provisions Regulation (CPR).
- Provide sufficient resources and staff to properly monitor compliance with the relevant EU Regulations.
- Consider expanding the monitoring support role of the EU's Fundamental Rights Agency.

C.

Review the CPR to strengthen the enforcement of rule of law and democracy standards

European Commission

- Ahead of the next MFF, strengthen the applicability of enabling horizontal conditions, namely the compliance with the EU Charter of Fundamental Rights and its rule of law and democracy elements in the CPR to improve Member States' accountability in the management of EU funds.

D.

Introduce suspensive financial conditionality in the PIF Directive

EU institutions

- Propose and approve the amendment on suspensive financial conditionality to Directive 2017/1371 (EU 2017) to ensure that the European Commission can not only fine EU Member States in breach of the directive but also suspend EU funding.

E.

Ensure sufficient rule of law resources in the next MFF

EU institutions and EU Member States

- Propose and approve a new rule of law fund that would support (a) capacity building of administrations in enlargement countries, as well as EU Member States' deployment of national rule of law experts in enlargement countries; (b) CSOs and intergovernmental organizations playing a monitoring role within the Rule of Law Dialogue and reporting cycle; and (c) academia, think tanks and CSOs developing long-term capacities and expertise on rule of law matters including through training, exchange of best practices, provision of legal assistance and joint advocacy.

3. Adapt the EU's institutional set-up responsible for the rule of law

A.

Strengthen the presence of enlargement countries in relevant EU forums

Enlargement countries

- Join or strengthen presence in relevant EU agencies (EUROJUST, EUROPOL, FRA, EIGE, ENISA).
- Participate in relevant networks (European Cooperation Network on Elections).

EU institutions

- Map the existing participation of enlargement countries in EU agencies and networks, identify opportunities for scaling up their presence and dedicate necessary resources.
- Devise an appropriate procedure to embed observer MEPs from the enlargement countries as soon as the accession negotiations are closed.

B.

Launch an annual forum on the rule of law and enlargement

EU institutions and enlargement countries

- Convene every year a forum where all EU and enlargement countries' rule of law actors meet to develop a common understanding of, and systemic cooperation on, rule of law. The invitation should also extend to other relevant partners such as the Council of Europe and the OECD.

C.

Bring the rule of law higher up the EU agenda

Council of the EU

- Beyond general exchanges in General Affairs Council, initiate regular and substantive rule of law discussions related to the competence covered in other Council formations (e.g. JHA, ECOFIN, EYCS) and ensure full coordination among these bodies.

European Commission (2024–2029)

- Create an executive Vice-President for rule of law and democracy heading DG JUST and coordinating the rule of law work of relevant line-Directorate-General (e.g. ECFIN, EMPL, DIGIT, NEAR, REFORM, REGIO).
- Set up a new Directorate-General for enlargement dealing solely with enlargement countries and having rule of law as a transversal priority.

D.

Introduce an automatic transition on voting rights about rule of law matters in the Council

Enlargement countries

- Accept accession to the EU without a right of veto on rule of law matters, specifically on the article 7 procedure.

EU Member States

- Commit to automatically transition to Qualified Majority Voting on rule of law matters by a given date.

4. Support civil society as an essential actor in monitoring and upholding the rule of law

A.



EU and enlargement countries

- Deepen meaningful triangular dialogues by further empowering CSOs' participation in the negotiations process.

EU delegations

- Maintain a more systematic dialogue with the local civil society on rule of law.
- Ensure oversight of the proper and fair inclusion of CSOs in the accession negotiations' working groups.

EU institutions and EU Member States

- Systematically consult CSOs prior to conducting high-level missions in enlargement countries.

B.



EU institutions

- Enhance funding for capacity building of CSOs active on rule of law matters in enlargement countries.
- Train CSOs in enlargement countries on securing EU financial interests.
- Provide long-term support to CSOs beyond accession to maintain and consolidate adequate capacities and expertise.

5. Broaden and specify the scope of EU competence on the rule of law

A.

Use the EU legislative arsenal to further promote rule of law

European Commission

- Introduce rule of law impact assessments with each new legislative proposal.
- Expand the hard law on rule of law related issues (such as standards for electoral integrity) based on article 114 TFEU covering the harmonization of laws and standards for the functioning of the internal market.

B.

Design accession treaties and revise EU treaties to strengthen rule of law commitments

EU and enlargement countries

- Embed a principle of cooperation between national courts and the Court of Justice of the EU (CJEU) in accession treaties.

EU Member States and enlargement countries

- Include the principle of non-regression in article 2 TEU or into the accession treaties.
- Make explicit the values mentioned in article 2 TEU, including by recognizing that article 10 TEU gives concrete expression to the value of democracy.
- Introduce an explicit link between respect for the rule of law and access to the internal market.

C.

Clarify the EU primary law on rule of law

Court of Justice of the EU and EU Member States

- Establish an informal European constitutional dialogue between the Court of Justice and Member States' highest Court presidents to discuss and informally clarify legal matters related to article 2 TEU values.

Glossary

Article 7

Article 7 TEU lays the procedure to determine if an EU Member State persistently breaches EU fundamental values. If the breach is established, it can lead to the suspension of certain of its rights, including voting rights.

Common Provisions Regulation

CPR is a legal framework governing the use of eight EU funds whose delivery is shared with EU Member States and regions. It establishes common rules and principles for the implementation of EU funding programmes across different policy areas. It aims at ensuring consistency, transparency and accountability in the use of EU resources as well as to promote the efficient achievement of EU policy objectives.

Conditionality Regulation

The Conditionality Regulation is a general regime of conditionality for the protection of the EU budget. It allows the EU to take measures—for example suspension of payments—if the European Commission finds out that breaches of the rule of law principles affect or seriously risk affecting the EU budget or the EU's financial interest in a sufficiently direct way. It has been in place since January 2021.

Cooperation and Verification Mechanism

The CVM was set up as a transitional measure to assist Bulgaria and Romania after they joined the EU. The mechanism led by the European Commission monitored progress made by the two countries to address shortcomings in the areas of judicial reform, corruption and (for Bulgaria) organized crime.

Enlargement countries

The terminology refers to countries with a perspective on EU membership. These entail candidate countries (Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine) and Kosovo as a potential candidate.

Enlargement fundamentals

'Fundamentals' is the first of the six thematic clusters structuring the enlargement negotiations. It covers issues such as rule of law, fundamental rights, democratic institutions, public administration reform and anti-corruption. Negotiations on the fundamentals open first and close last.

Enlargement reports

Individual yearly reports issued by the European Commission that examine the progress made by the candidate and potential candidates on the implementation of reforms needed to join the EU, with a particular focus on the

fundamental reforms. The reports include recommendations and guidance on reform priorities.

European Semester

The EU framework for the coordination and surveillance of economic and social policies. It is a yearly process resulting in country-specific recommendations on macroeconomic and structural issues, including on justice systems and the fight against corruption, aiming to boost economic growth.

Ex-ante conditionality

A type of conditionality that requires the full implementation of reforms set out in individual plans drawn up by the beneficiaries and approved by the Commission before funds are actually released.

Horizontal enabling conditions

Overarching requirements that apply across all the specific objectives of the funding programmes regulated by the CPR. They build on ex-ante conditionality to ensure that the necessary conditions for the effective and efficient use of the funds are in place. If they are not fulfilled, the expenditure will not be reimbursed from the Union budget.

Infringement procedure

Legal action that the Commission may take against an EU Member State that fails to implement EU law, as set out in articles 258, 259, 260 TFEU. The procedure foresees several steps, each ending with a formal decision. They comprise a letter of formal notice, a reasoned opinion, the referral of the matter to the Court of Justice of the EU and the request to the Court to impose financial penalties.

Justice Scoreboard

An annual overview of indicators on the efficiency, quality and independence of justice systems issued by the European Commission. Its purpose is to assist the Member States to improve their national justice systems. The Scoreboard contributes to the European Semester.

Recovery and Resilience Facility Regulation

RRF is a temporary instrument that provides grants and loans to support reforms and investments in EU Member States. The RRF is the centrepiece of the Next Generation EU, the EU's recovery plan launched in the aftermath of the Covid-19 pandemic.

Reversibility in enlargement

In case of serious or prolonged stagnation or backsliding in implementing fundamentals reform and in meeting the accession requirements, the negotiation process can be halted or even reversed. Such decision should be informed by the European Commission and taken by EU Member States.

Rule of Law Dialogue

Preventive tool to promote the rule of law in all Member States through dialogue and exchange of information between them, the Commission, the Council, the European Parliament, national parliaments, civil society and other relevant stakeholders. It is a yearly cycle with an annual Rule of Law Report at its centre.

Rule of Law Report

Key element of the Rule of Law Dialogue, monitoring developments relating to the rule of law in Member States. It covers four pillars: the justice system, anti-corruption framework, media pluralism and other institutional issues related to checks and balances.

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About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with 35 Member States founded in 1995, with a mandate to support sustainable democracy worldwide.

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We develop policy-friendly research related to elections, parliaments, constitutions, digitalization, climate change, inclusion and political representation, all under the umbrella of the UN Sustainable Development Goals. We assess the performance of democracies around the world through our unique Global State of Democracy Indices and Democracy Tracker.

We provide capacity development and expert advice to democratic actors including governments, parliaments, election officials and civil society. We develop tools and publish databases, books and primers in several languages on topics ranging from voter turnout to gender quotas.

We bring states and non-state actors together for dialogues and lesson sharing. We stand up and speak out to promote and protect democracy worldwide.

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Europe is at a critical juncture, with the new security context bringing forth a crucial question: How can an expanding EU maintain and strengthen rule of law at its core? With the support of the Belgium Ministry for Foreign Affairs, International IDEA delved into the interplay between the external and internal dimensions of the rule of law to assess how the EU can be ready for enlargement while standing firm on its values.

This Policy Paper offers a basis to guide ministers' discussions at the informal General Affairs Council on 29-30 April 2024, organized by the Belgian Presidency of the Council of the EU. It details steps to bolster rule of law efforts in ongoing EU enlargement negotiations, fortify the EU's internal rule of law activity and equip an enlarged Union to uphold fundamental values. The findings are based on extensive research and in-depth discussions with 44 representatives of civil society organizations and institutions from the EU and enlargement countries.