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UNITED IN VALUES, ENLARGED IN DIVERSITY?

PRESERVING THE RULE OF LAW IN AN ENLARGED EUROPEAN UNION

POLICY BRIEF

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United in values, enlarged in diversity? Preserving the rule of law in an enlarged European Union

Saskia Hollander and Marta Riggio, 10 July 2025[1]

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This policy brief is written within the framework of the Horizon-funded research program, Respond to Emerging Dissensus: SuPranational Instruments and Norms of Liberal European Democracy (RED-SPINEL). It investigates how mounting dissensus over liberal democracy has shaped the social and political legitimacy of the EU's Rule of Law governance instruments.

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Abstract

A stable and liberal democratic European Union (EU) and neighbourhood where the Union's core values are upheld is not only morally desirable, but also essential in the current geopolitical context. Yet, across the Union, its core values are under pressure. At home, several Member States experience full-blown democratic and rule of law backsliding, while in others, pressure on the rule of law is less severe but nevertheless present. Moreover, up till now, the instruments that the EU has at its disposal to tackle rule of law violations are largely ineffective due to inconsistent and politicized use. In this context, an enlargement of the EU to include countries where democratic institutions and the rule of law have not been consolidated comes with risks. It would risk undermining the functioning of the single market and lead to an erosion of the values on which the EU was built. However, these risks can be contained if the EU enlargement is implemented in such a way that geopolitical interests and values are mutually reinforcing. This means, among others, that the EU and its Member States should i) strengthen conditionality in the EU-accession process, ii) pro-actively support candidate countries (including civil society) in their democratic transformation process and iii) ensure a more consistent and depoliticized use of the Union's instruments to protect the rule of law in its Member States.

[1] This policy brief is largely based on Red-spinel's working paper D5.4 'Saskia Hollander. "Economic Governance and the Rule of Law in the European Union", working paper RED-SPINEL and on Saskia Hollander. 'In waarden verenigd of verdeeld? De impact van EU-uitbreiding op de democratie en rechtsstaat in de Unie en haar lidstaten', Clingendael report, 2024.

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The outcome of Poland's presidential elections in June – with the victory of Karol Nawrocki, independent candidate backed by the Law and Justice party (PiS) – gives little hope that the rule of law will be fully restored in the country in the short term. This once again underscores how difficult it is for the EU to uphold its core values among its members. With the EU on the verge of enlarging towards countries with weak democratic institutions and rule of law score, it is vital that the EU has a strong toolbox - and that it used effectively - to protect the core values on which it is built and which it promotes. Especially in the current geopolitical context in which authoritarianism is on the rise across the continent, this is more pressing than ever.

Introduction

The geopolitical necessity of an enlarged European Union (EU) has perhaps never been clearer. Russia's aggression against Ukraine, the growing instability in its neighbourhood, and a withdrawing United States (US) from the international rules-based order have reinvigorated the urgency of a bigger and stronger Union.[2] Seven candidate countries have a chance of becoming EU members in the foreseeable – or less foreseeable – future. These are the five Western Balkan candidates – Montenegro (candidate since 2010 and the closest to EU-accession), North Macedonia (candidate since 2005), Albania (candidate since 2014), Serbia (candidate member since 2012), and Bosnia and Herzegovina (candidate since 2022), as well as Ukraine and Moldova (both candidate since 2022). Of these candidates, Montenegro is furthest along in the accession process and will likely join the Union within the next few years. In addition to these seven candidates, Turkey has been a candidate country since 1999, but its accession process has been stalled due to backsliding on democracy and the rule of law; Georgia, which gained candidate status since 2023; and Kosovo, which applied for EU membership in December 2022 but has not yet received candidate status.

In the current geopolitical context, EU enlargement is no longer merely about expanding the single market and exercising soft power; it is now, more than ever, also a security imperative.[3] At the same time, there is a realisation that a bigger EU might not necessary

[2] Korpalo, Kateryna, and Rabinovych, Maryna. "Eastern enlargement 2.0? EU enlargement discourses in the European Parliament before and after Russia's full-scale invasion of Ukraine." *Journal of Contemporary European Studies* (2025): 1-27.

[3] Braun, Mats, Asya Metodieva, Matúš Halás, Daniel Šitera, and Martin Laryš. "The future of EU enlargement in a geopolitical perspective." *Policy Paper, Institute of International Relations Prague* (2024).

mean a stronger one.[4] Increasingly, dissensus is emerging over EU's foundational values – human dignity, freedom, democracy, equality, the rule of law and respect for human rights - as enshrined in *Article 2* of the Treaty on the European Union (TEU). These values are not only under pressure in the well-known examples of backsliding countries like Hungary and, to a lesser extent, Slovakia. In other member states as well, including some of the EU's founding members, these values are no longer endorsed as a matter of course.[5] Throughout the Union, the judiciary is increasingly facing constraints, while minorities rights are increasingly disregarded and press freedom is no longer assured. The EU's core values could face even more pressure in an enlarged EU, particularly when the geopolitical imperative to speed up the accession process or to let countries gradually integrate in the Union, implies that countries join the EU when not (yet) fulfilling rule of law requirements.[6]

An enlargement that compromises the Union's core values would undermine its moral authority as community of values and weaken its ability to act strategically and protect the well-being of its citizens. The dilemma, therefore, is not whether to enlarge, but *how* to do so without further compromising the EU's identity as a union of values. Furthermore, in light of growing dissensus over the EU's core values, a redefinition of the EU's policy instruments to protect the rule of law is essential, both in its neighbourhood and at home. More specifically, this implies that the EU and its Member States remain committed to pre-accession rule of law conditionality, pro-actively supporting democratic transformation in accession countries and substantially improving the EU's toolbox to protect the rule of law in the Member States.

Bigger, but also stronger?

Enlargement is seen as the EU's strongest foreign policy tool to bring democracy, stability and prosperity to its neighbourhood.[7] This applies to the Southern European joiners in the 1980s, as well as – and perhaps more prominently – to the Central and Eastern European (CEE) countries that joined from 2004 onwards. Especially the Baltic States are "excellent proof" of how membership in the EU leads to impressive modernization and economic progress.[8] Estonia, notably, is one of the brightest examples of EU membership having a major positive impact, with the country having attained a level of

[4] René Cuperus and Saskia Hollander, 'Beyond the EU enlargement paradox: Optimising opportunities and minimising risks, Clingendael Report, March (2024).

[5] European Commission. "2025 Rule of Law Report. The rule of law situation in the European Union", July 2025.

[6] Zweers, Wouter, and Rossokhatska, Milena. Towards an EU geopolitical approach on transformative terms in the Western Balkans, Clingendael Policy Brief, February (2024); Hollander, Saskia. "Ready, set, go? How to prepare EU democracy for enlargement" in Sieps, Post 8, December (2024).

[7] Ágh, Attila. *Eastern Enlargement and the future of the EU27: EU foreign policy in a global world*. Kossuth Kiadó Zt., 2006; Sedelmeier, Ulrich. "EU enlargement, identity and the analysis of European foreign policy: identity formation through policy practice." (2003).

[8] Nausėda, Gitanas, Alar Karis, and Edgars Rinkēvičs. Presidents: Baltic states 'excellent proof' EU enlargement works, in ERR, opinion, May 1st (2024).

democracy that surpasses that of many Western European countries.[9] In fact, the country has been placed 8th worldwide in concerning rule of law performances.[10]

At the same time, the EU accession process is no guarantee of linear democratic and rule of law transformation. As highlighted in the annual progress reports of the European Commission, some of the Western Balkans, like Serbia, have experienced a process of deterioration, even while undergoing the transformation process to join the EU.[11] Currently, only Montenegro has a clear perspective on joining the Union in reasonably short-term. Albania and North Macedonia have made important steps with respect to democratic institutional reforms but still need to implement fundamental rule of law reforms in order to be ready for EU accession. On top of it, North Macedonia faces a political blockade of its accession by Bulgaria, which is seriously hampering its reform and integration process.[12] In the meantime, in Serbia and in Bosnia and Herzegovina the accession process is hampered due to stagnating reform processes and even democratic backsliding.[13] Moreover, soon after being granted candidate status, Georgia experienced significant democratic backsliding, particularly in areas such as judicial independence, freedom of press and human right. As such, Georgia has joined Turkey as candidate country with which the accession process has been *de facto* stalled.[14]

Moreover, empirical values research carried out by the European Values Study (EVS) shows that the EU's core liberal-democratic values, such as pluralism, non-discrimination, tolerance, justice, solidarity and gender equality are not widely embedded in the societies of candidate countries.[15] In fact, the EVS points to key differences in value patterns between the candidates on the one hand, and the (Western European) Member States on the other. At the same time, it should be noted that value patterns are obviously not country dependent. While there are indeed differences between (groups of) countries, value patterns also differ within countries themselves between different groups of people. In addition, they may also fluctuate over time. Yet,

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[9] European Parliament, The Situation of Article 2 TEU values in Estonia. In-depth analysis Requested by the LIBE committee, Policy Department for Citizens' Rights and Constitutional Affairs. February (2024).
[10] Raik, Kristi. Kristi Raik: Having doubts about the value of EU enlargement? Look at Estonia, in ERR, opinion, May 1st (2024): European Commission. "2025 Rule of Law Report – Country Chapter Estonia", July 2025.
[11] European Commission. '2024 Communication on EU enlargement policy' October 2024; See also: Wouter Zweers et al., "The EU as a promoter of democracy or 'stabilitocracy' in the Western Balkans?", Clingendael and Think for Europe report, Chapter EU effects on stabilitocracy formation in the Western Balkans, February (2022).
[12] European Commission. 2024 Rule of Law Report. Country Chapter on the rule of law situation in Albania, SWD(2024) 828 final, Brussels, July 2024; Hoxhaj, Andi. 'Albania-Italy: migration deals risk becoming a requirement for EU membership', in The Conversation, December 2024; EWB (2024). Bilateral disputes harmed EU accession of North Macedonia, current framework unsustainable, in European Western Balkans, Belgrade, November (2024).
[13] Pirri, Beatrice and Filipa Cvetanova. At a Crossroads: Serbia's Prospects and Future in the EU Enlargement, European Policy Centre, April (2025).
[14] Hale, William. "Human rights, the European Union and the Turkish accession process." *Turkish Studies* 4, no. 1 (2003): 107-126.
[15] See for an extensive analysis: Saskia Hollander. "In waarden verenigd of verdeeld? De impact van EU-uitbreiding op de democratie en rechtsstaat in de Unie en haar lidstaten", Clingendael report (2024).

with the accession of current candidate countries, the group of Member States and citizens in the EU who do not subscribe to its core values might, hence, increase further.[16]

The vulnerability of EU values

Taking into consideration such divergence in terms of value-patterns is important since the EU's core values are already under pressure in current Member States. The developments in several Member States of the EU – as well as in its main ally, namely the US[17] – showcase how difficult it is to protect democracy and the rule of law. Over the past decade, several Member States have drifted from core liberal-democratic principles.[18] Despite years of EU scrutiny, real corrective impact has been minimal.

Hungary, for instance, represents the most visible and persistent case of democratic erosion within the EU.[19] Under Prime Minister Viktor Orbán, in power since 2010, the country has found itself with gradually dismantled key checks and balances and restricted fundamental rights of minorities, like the LGBTQI+ community and asylum seekers. The issues in the country have become so fundamental that experts no longer consider the country a full constitutional democracy, but rather an electoral autocracy.[20] While not yet as extreme as Hungary, Slovakia has also shown rule of law downfalls and aspects of democratic vulnerability.[21] Issues concerning political interference in the judiciary, corruption and inconsistent implementation of anti-discrimination laws have raised concerns about the resilience of democratic institutions due also to the return to power of Robert Fico.[22]

Once grouped with Hungary as part of a broader authoritarian drift in the region, Poland has shown tentative signs of rule of law restoration following the 2023 election of a pro-European government, led by Donald Tusk. Nonetheless, following the steady dismantling of the rule of law by the Law and Justice party (PiS) since 2015, fundamental institutional issues remain, particularly concerning judicial independence and the politicisation of constitutional oversight.[23] The rapid release of frozen EU funds soon after the parliamentary elections illustrates the instrumental use of rule of law tools for

[16] Ibid.

[17] Scheppele, Kim Lane, and Weissmann, Andrew. "The Rule of Law in America. Executive Power from Robert Jackson to Donald Trump. A conversation.". Humboldt-Universität zu Berlin, June 20th (2025).

[18] European Commission. "Communication – 2024 Rule of Law Report – the rule of law situation in the European Union", July 2024.

[19] European Commission. "2024 Rule of Law Report – Country Chapter Hungary", July 2024; European Commission. "2025 Rule of Law Report – Country Chapter Hungary", July 2025

[20] European Parliament. "MEPs: Hungary can no longer be considered a full democracy". Press release, September 15th (2022).

[21] European Commission. "2025 Rule of Law Report – Country Chapter Slovakia", July 2025;

[22] European Commission. "2024 Rule of Law Report – Country Chapter Slovakia", July 2024.

[23] European Commission. "2024 Rule of Law Report – Country Chapter Poland", July 2024; European Commission. "2025 Rule of Law Report – Country Chapter Poland", July 2025.

political signalling, rather than structural reforms.[24] This release took place prior to the full restoration of the rule of law.. And with the outcome of the presidential elections that sees the new elected Nawrocki positioning in line with PiS doing, there is little hope that the rule of law will be restored in the nearby future. In fact, under the Polish Constitution the president holds veto power, and the current governing coalition lacks the supermajority required to override it.[25]

These examples show that the consolidation of democracy and the rule of law takes time and that backsliding after accession is a concrete possibility even when the countries fulfil the criteria at the time of accession. Yet, in its Annual Rule of Law Report of 2025, the Commission also points out vulnerabilities in for example the justice system and the media landscape in other EU countries, including some of the founding members, like Italy and the Netherlands.[26] Moreover, across the EU, hate speech can thrive freely on social media and is even stimulated and protected by those in power, giving room to more extremist and illiberal views.[27] This demonstrates that the EU should prioritize protecting its core values across the entire EU, not just in countries like Hungary that have completely slipped.

The Copenhagen-dilemma

Without robust mechanisms in place and applied, there is a real risk that such democratic and rule of law backsliding will replicate itself in new Member States.[28] Once inside the Union, reversing rule of law violations becomes exponentially harder. This is known as the Copenhagen-dilemma. [29] When a country joins, the EU's leverage significantly diminishes since it no longer holds the "carrot" of membership to enforce reforms, losing the control on the compliance of Member States.

This dilemma exposes furthermore the limitations of the EU's RoL toolbox.[30] For instance, post-accession monitoring significantly lacks teeth. [31] Such monitoring applied for

[24] Scheppele, Kim Lane, and John Morijn. "Money for nothing? EU institutions' uneven record of freezing EU funds to enforce EU values." *Journal of European Public Policy* 32, no. 2 (2025): 474-497.; Hollander, Saskia. "Economic Governance and the Rule of Law in the European Union", working paper RED-SPINEL, June (2024); Fasone, Cristina, Adriano Dirri, and Ylenia Guerra, eds. *EU Rule of Law Procedures at the Test Bench: Managing Dissensus in the European Constitutional Landscape*. Springer Nature, (2024).

[25] Wójcik, Anna (2025). In Uncertain Waters: The Restoration of the Rule of Law in Poland, in RevDem – The Review of Democracy, June 2025.

[26] European Commission. "2025 Rule of Law Report – Country Chapter Italy", July 2025; European Commission. "2025 Rule of Law Report – Country Chapter Netherlands, July 2025.

[27] Riggio, Marta and Saskia, Hollander. Die EU-Rechtsstaatskrise anpacken – jenseits der Ost-West-Spaltung, in Das Magazin der Europäischen Bewegung Schweiz | Nr. 1/2025, p. 5 (2025).

[28] Kochenov, Dimitry. "EU Enlargement and the Failure of Conditionality." (2008): 1-400; Kmezic, Marko. *EU rule of law promotion: judiciary reform in the Western Balkans*. Routledge (2016).

[29] Reding, Viviane. "Safeguarding the rule of law and solving the 'Copenhagen dilemma': Towards a new EU-mechanism." *European Commission Press Release* 22 (2013); Alexander Strelkov. 'EU Justice Scoreboard: a new policy tool for "deepening" European integration?', Journal of Contemporary European Studies, 27:1, 15-27 (2019).

[30] For an extensive analysis of the rule of law toolbox see: Hollander, Saskia. "Economic Governance and the Rule of Law in the European Union", working paper RED-SPINEL (2024).

[31] Darvas, Zsolt, and Heather Grabbe. "Memo to the commissioner responsible for enlargement." *Bruegel Memo* (2024).

example to Romania and Bulgaria in the form of the Cooperation and Verification Mechanism (CVM). The CVM was a transitional measure put in place to facilitate judicial reform and the fight against corruption after having granted access to the EU.[32] Designed to keep these countries on a reform path, these instruments failed to secure long-term compliance, particularly in judicial independence and anti-corruption efforts.[33] It over-relied on box-ticking dynamics, just like enlargement itself, and did not include clear sanctions or material consequences for non-compliance.[34]

Other instruments in the EU's rule of law toolbox all have their limitations. This applies for example to Article 7 TEU, which provides for a procedure to suspend certain rights from a Member State in case of rule of law breaches. It is perceived as "nuclear option" for serious and persistent breaches of EU values and has proven politically paralysed since unanimity is required to trigger it in whole.[35] The infringement procedures under Articles 258-260 TFEU, provide for sanctioning of breaches of the entire body of EU law. Yet, the procedures have often resulted in delayed or symbolic penalties.[36] Since 2020, the EU developed tools of spending conditionality, meaning that EU funds can be suspended in case Member States violate the rule of law and fundamental rights.[37] These are promising tools, but are mired in political trade-offs, as when funds were released to Poland, and Hungary, despite unresolved issues and ongoing violations.[38]

Fundamentally reforming the EU's rule of law toolbox takes time and political will. Notably, reforming Article 7 of the TEU by making the procedure easier to trigger (i.e. letting go of the unanimity requirement) requires a Treaty change, which in the current political context is not realistic. Yet, in the meantime, it is crucial that the instruments that the EU does have, especially the instruments of spending conditionality, are applied more consistently and following clear and transparent procedures. This is especially relevant since a political use of the tools undermines their effectiveness.[39] Furthermore, so far the Commission has tended to use them in cases of severe structural violations, in countries completely out of line, rather than also against countries that while violating

[32] European Parliament. Cooperation and Verification Mechanism, Parliamentary Question - E-003380/2021. July (2021).
[33] Dimitrov, Georgi, and Anna Plachkova. "Bulgaria and Romania, Twin Cinderellas in the European Union: How They Contributed in a Peculiar Way to the Change in EU Policy for the Promotion of Democracy and Rule of Law." *European Politics and Society* 22 (2): 167–84 (2020).
[34] Dimitrov, Georgi, Kaloyan Haralampiev, and Stoycho Stoychev. "The Adventures of the CVM in Bulgaria and Romania." *Has the EU's eastern enlargement brought Europe together* 213 (2016).
[35] Pech, Laurent. "Article 7 TEU: From 'Nuclear Option' to 'Sisyphean Procedure'?," in Belavusau, U., & Gliszczynska-Grabias, A., (eds.), Constitutionalism under Stress, 2020, Oxford, Oxford University Press, 157-174 (2020).
[36] Anders, Lisa H. and Sonja Priebus. "Does It Help to Call a Spade a Spade? Examining the Legal Bases and Effects of Rule of Law-Related Infringement Procedures Against Hungary'. In: Lorenz, A. & Anders, L.H., (eds.), Illiberal Trends and Anti-EU Politics in East Central Europe, 2021, Palgrave, Cham, 235-262 (2021).
[37] Coman, Ramona. "The three "C"s response: credibility, consistency and concrete change", in How can an enlarging EU best protect rule of law and democracy? in TEPSA, February (2024); Saskia Hollander. "Economic Governance and the Rule of Law in the European Union", working paper RED-SPINEL (2024).
[38] Scheppele, Kim Lane, and John Morijn (2025). Op. Cit.
[39] Ibid.

the rule of law are otherwise performing relatively well, or in the case of a pro-EU government in power. Hence, it is crucial that the Commission uses these instruments more a-politically, following technical guidelines rather than political schemes and power plays.

Recommendations: Reconciling geopolitics and values

The inconsistent and ineffective use of post-accession tools to protect the rule of law is especially worrying in light of upcoming enlargement(s). It is therefore crucial that the EU starts implementing enlargement in such a way that geopolitics and values are mutually reinforcing. A stable, democratic neighbourhood that may become part of the EU itself where the EU's core values are upheld is not only morally desirable - it is also strategically essential.[40] Weak democracies are more susceptible to external influence, corruption, and internal conflict. Conversely, strong institutions and a resilient rule of law make for more reliable allies and partners.[41] In a context where freedom and respect for human rights are increasingly crumbling, the EU is *the* appropriate actor to offer and foster an alternative against autocratic tendencies.

Since a secure Europe cannot be built on weak institutions of democracy and the rule of law, the EU's enlargement policy must ensure that it supports both its geopolitical interests *and* its foundational values. To this end, it is recommendable that the EU and its Member States:

- Improve the application of strong conditionality in the accession process with no compromises on the political accession criteria for geopolitical or economic interests.
- Ensure that initiatives to speed up the EU accession process or current candidate countries – or to let them gradually integrate in the Union – do not lead to a situation in which countries joining the Union (fully or partially) when not fulfilling the rule of law conditions.
- Pro-actively support candidate countries in their democratic transformation processes. Not only by supporting governments in implementing institutional reforms, but also by supporting civil society and (independent) journalists.
- Make more consistent and effective use of the EU's rule of law toolbox. Ideally, this toolbox is strengthened by reforming Article 7. Yet, as this would require treaty reform, this portrays an unrealistic path at the moment. Yet, the EU and its Member States could make more effective use of the existing instruments for

[40] Gözkaman, Armağan. "When values meet enlargement: framing Ukraine's future in the European Union through the lens of the logic of appropriateness." *Global Discourse* (2025): 1-15; Schimmelfennig, Frank. "The community trap: Liberal norms, rhetorical action, and the eastern enlargement of the European Union." *International organization* 55, no. 1 (2001): 47-80.

[41] Mehmood, Sultan. *The rule of law approach for more resilient institutions: Judicial accountability and independence, and global economic activities*. No. 1418. ADBI Working Paper (2023).

spending conditionality. It is crucial that these instruments are applied more consistently – not only to severe cases of rule of law backsliding, but also to tackle rule of law violations in countries that perform well in general.

- Ensure that the instruments for spending conditionality are used in an a-political manner. This means that withholding or releasing funds is based on clear criteria that are verifiable.
- Ensure that spending conditionality is be extended to more (or even all) funds in next Multiannual Financial Framework.

With strategic reform and a recommitment to values, enlargement can become not only a geopolitical success, but a democratic one as well.

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