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*PhD Thesis: The European Union's Policy of Rule of Law
Conditionality in the Western Balkans: Design, Effectiveness and
Future Directions*

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Contents

Executive Summary	3
Preface	5
Introduction	7
Chapter 1: Basic Methodology and Terminology	8
1.1 Introduction	8
1.2 Literature review and research question	9
1.3 Research Method	11
1.4 RoL meaning and definition in general.....	12
1.4.1 A short history on Rule of Law	12
1.4.2 First attempts for definitions and meaning	17
1.4.3 Comparative perspectives on the Rule of Law: Anglo-Saxon and Continental	22
1.5 Rule of Law as a Development Concept	27
1.5.1 International Organizations and the development of the Rule of Law concept	28
United Nations (UN)	28
Council of Europe (CoE)	31
1.6 Concluding Remarks	32
Chapter 2: The Rule of Law of the European Union	35
2.1 The notion ‘Rule of Law’ in the EU treaties	35
2.2 EU’s hurry to define the rule of law	39
2.3 CJEU on the rule of law	42
2.4 EU external meaning of the rule of law	45
2.5 Core elements of the Rule of Law for ‘within’ and ‘outside’ the EU	48
2.6 Conclusion	50
Chapter 3: Measuring the Rule of Law	52
3.1 Conceptual considerations	52
3.2 Types of rule of law measurements	54
3.3 Measuring the rule by World Justice Project	56
3.4 Rule of Law Checklist of the CoE/Venice Commission	59
3.5 Rule of Law Measurement policies by the EU: where do we look at?	61
3.6 Conclusion	67
Chapter 4: EU conditionality in Enlargement	69
4.1 Introduction	69
4.2 EU Enlargement Perspective and Conditionality	69
4.3 Background information on the Western Balkans relations with EU	73
4.4 Some historical background impacting values of the Balkans and the Western Balkans	74

4.5	<i>Western Balkan Integration Perspective at a glance</i>	77
4.6	<i>Russian influence as an external accelerator to the EU enlargement, a de déjà vu for the EU</i>	79
4.7	<i>Back to the promise, a new momentum for the Western Balkans</i>	80
4.8	Rule of Law Criteria, some specifics	83
4.9	The rule of law as a legally binding concept.....	86
4.10	RoL conditionality's internal and external use: mutually influencing process	91
4.11	Conclusion	95
Chapter 5: State of Play of the Rule of Law in the Western Balkans: where we are and where we want/have to be.....		97
5.1	Rule of Law as a policy for the Western Balkans: from a divergent to a convergent approach	97
5.2	<i>A New Enlargement Methodology for a renewed enlargement promise: rule of law at the core</i>	100
5.3	Country progress and specifics: Rule of Law how do you open the door?	104
5.3.1	Rule of Law State of Play in Albania	105
5.3.2	Rule of Law State of Plain in Montenegro	118
5.3.3	Rule of Law State of Play in North Macedonia	125
5.3.4	Rule of Law State of Play in Serbia	132
5.3.5	Rule of Law State of Play in BIH.....	139
5.3.6	Rule of Law State of Play in Kosovo.....	144
5.4	Conclusion	148
Chapter 6: Appraisal of EU's policy of rule of law conditionality in the Western Balkans		151
6.1	Conditionality Between Promise and Practice	151
6.2	From External Conditionality to Convergent Monitoring.....	152
6.3	The Measurement Dilema: Declarative Progress without clear Baselines	152
Chapter 7: Conclusions and recommendations		154
Annex 1: Clusters and Chapters for Albania.....		157
Annex 2: Clusters and Chapters for Montenegro.....		158
Annex 3: Clusters and Chapters for Serbia.....		159
Bibliography.....		160

Key purpose: To explore and assess the rationale, adequacy and effectiveness of the EU's policy of conditionality as an instrument for promoting and effectuating change and reform in the specific sphere of rule of law. The terrain of investigation will be the Western Balkans region, namely the following EU aspiring countries: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

Executive Summary

This thesis is about the EU policy of the rule of law as a conditionality in the EU Enlargement process with the special focus in the Western Balkan countries. The key purpose is to explore and assess the rationale, adequacy and effectiveness of the EU's policy of conditionality in the specific sphere of rule of law. In answering this question, we rely on a carefully balance a set of doctrinal and normative insights. Thus, the thesis provides a general historical overview of the rule of law concept capturing the most important academic debates therein, reflecting that there is no single, universally agreed upon rule of law definition thus remaining a contested, multidimensional concept shaped by legal, historical, and political contexts. The research further dives into EU's intensified policy efforts to define the core meaning and core elements of the rule of law, identifying different ways it is defined, used and enforced internally and externally.

By building on the academic research and professional debates, the thesis provides perspectives on 'EU's understanding' as to how and when the rule of law criteria is fulfilled, in the long list of requirements for EU membership. The practical terrain for this exercise is the Western Balkan countries: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

The central claim of this thesis is that, while the EU increasingly treats rule of law as a core value and the nominal "first and last" condition of accession, its operationalisation remains declarative. The Union lacks baselines, thresholds, and transparent benchmarks that would allow progress to be measured consistently and linked causally to accession decisions. The thesis conceptualises rule of law primarily as a value rather than a fixed and properly defined checklist. As a value, it travels across contexts and policy fields in the EU. This conceptual flexibility, as concluded by the thesis, is not itself a flaw but without structured measurement, it weakens the precision and predictability of enforcement.

Key findings of the thesis reflect a clear measurement gap pertaining to the rule of law. This means that EU reporting is predominantly event driven and descriptive of rule of law developments rather than baseline driven and outcome measured. Labels such as 'some progress' or 'moderately prepared' are not tied to public thresholds, making country to country comparison difficult. In addition, there is no demonstrable causal chain across the WB6 in the sense that similar or better rule of law signals do not reliably predict movement in clusters/chapters. The thesis warns for a

politicisation risk of the rule of law. The EU revised methodology promise of *credibility, predictability, dynamism, and political steer* has practically amplified the discretion of the EU institutions and, especially, EU Member States. In this regard the absence of public benchmarks, RoL conditionality can be instrumentalised, thus accelerating some candidates while blocking the others without a transparent evidentiary trail. Moreover, the thesis finds out a clear comparability deficit as an essential element especially since candidates countries of the Western Balkans are partly monitored alongside EU Member States. This is shown in the rule of law annual cycle and enlargement track still employing heterogeneous evidence bases and non standardized labels.

This thesis strives to provide an original contribution to improve the EU's current policy and practice in the rule of law as a requirement for EU membership. It reframes rule of law as a value requiring operational scaffolding to be decision shaping, not merely declarative political ideal. In this sense, it demonstrates a practical gap between reported rule of law developments and the accession steps in the long and difficult journey of the Western Balkan countries towards EU membership, if it ever happens.

The thesis tries to make a modest contribution by providing a few practical proposals with the intention to make the rule of law, as a criteria for EU membership, a practical and transparent tool that is credible, measurable, and less vulnerable to politicization both during and after the completion of the accession process. Without a proper system of transparent benchmarks, rule of law conditionality cannot anchor decisions and it invites arbitrariness and erodes trust, both in the Western Balkan region and inside the EU and its Member States.

Preface

In 2008, while working as advisor to the Minister of Justice in Kosovo, I was part of a working group consulted by the EU institutions as part of their preparation for the European Union Planning Team, widely known as EUPT¹. The role of this mission was to prepare an EU Rule of Law Mission in Kosovo, known as EULEX. Ever since then, I have dealt with Rule of Law related projects and engagements and often came across vacancies for experts and or met expert named “Rule of Law Expert”, a jargon widely used and even sometimes misused. Some of the discussions back then, still valid today, raised questions as to what is the core purpose of the ‘Rule of Law’ mission deployed in Kosovo, including questions like how would they ‘rule’ and what type of ‘law’ would they be able to apply. Many debates back then, valid even today as I write this thesis, were and could have not been exhaustive leaving behind some basic question marks.

This experience has triggered my interest in the Rule of Law meaning and development ever since. This is why I have dedicated this thesis to the Rule of Law concept in general by testing it as a measurement tool in the long list of requirements for the Western Balkan countries in their efforts towards membership in the EU.

My intention is to seek a comprehensive understanding of the policy of the EU in using the Rule of Law as an instrument of conditionality for the countries of Western Balkans by testing its effectiveness in the implementation. In order to do so though, we face a preliminary task, namely testing the Rule of Law concept itself by exploring its meaning in general and its notion in the EU jargon, legal instruments and the case law. In so doing, this thesis realizes that there is no internationally recognized concept on the Rule of Law nor is any EU standard or standalone definition on the concept. The EU though continues to see Rule of Law as one of the most important founding principles common to all EU Member States and has agreed to apply it by defining it on case by case basis, and to give meaning based on its contextual² use. So is the case with the use of

¹ EUPT was an EU mission deployed in Kosovo as a preliminary mission to prepare a full EU presence in Kosovo, called EULEX, which was established by the Council Joint Action 2008/124/CFSP of 4 February 2008. EULEX is still present in Kosovo, albeit with a significantly reduced and modified structure and mandate, and no executive powers.

² See Court of Justice of the European Union, judgments in cases C-156/21 (Hungary v. Parliament and Council) and C-157/21 (Poland v. Parliament and Council), 16 February 2022. See also CJEU, judgment in joint cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, 21 December 2021; judgment in case C-156/21, 16 February 2022, paras. 124-125 (“... it should be pointed out that, under Article 2 TEU, the European Union is founded on values, such as the rule of law, which are common to the Member States and that, under Article 49 TEU, respect for those values is a prerequisite for

the notion in the enlargement context pertaining to the Western Balkan countries. This is explored and explained in the following sections of this thesis as part of my personal professional interest and quest for understanding the meaning of the Rule of Law and its applicability by the European Union institutions.

the accession to the European Union of any European State applying to become a member of the European Union”, and that “once a candidate State becomes a Member State, it joins a legal structure that is based on the fundamental premise that each Member State shares with all the other Member States, and recognises that they share with it, the common values contained in Article 2 TEU, on which the European Union is founded.”).

Introduction

Global actors face many global challenges and threats today like never before. So is the case with the European Union. Financial crisis of its member states, internal reforms, deepening and widening, including threats from exits are only a few of many challenges and threats the EU is facing. The COVID 19 pandemic has impacted Europe at a scale that required imposing limits to free movement both within the union and between member states' and the rest of the world. At the outset of initial recovery, the war in Ukraine shook the Union even further exposing it to further threats and challenges. Although many voices have questioned the Union's ability to deal with such threats there are many others who consider the Union has managed to survive well. Yet one thing is undoubtedly true that this experience will mark a time that will influence many decisions of the EU and for sure shape some of its core visions and objectives.

Although the threats the EU is facing today is not the purpose of this PhD thesis, still this context will prove relevant. The thesis focuses on the European integration perspective for the Western Balkan countries with a special focus on the Rule of Law conditionality. It intends to analyze the way the rule of law conditionality is designed and how effective has proved to be so far by looking at both the present and future trends and opportunities.

The thesis is organized into seven chapters. The first chapter provides an introduction to the main methodology and terminology used, including a general and chronological overview of the development of the rule of law concept, as well as its interpretation or meaning given by scholars and international organizations. The second chapter discusses the rule of law in the European Union, while the third chapter explores the models used to measure the rule of law. Chapter four presents the conditionality in the Enlargement process, reflecting the concept and sources of EU rule of law conditionality. Chapter five is dedicated to the Rule of Law in the Western Balkan countries, explaining the state of play of the conditions imposed and results achieved by individual countries therein from the rule of law perspective. The sixth chapter, namely Appraisal of EU's policy of rule of law conditionality in the Western Balkans is followed by the final one, chapter seven, which provides some final conclusions and recommendations for further considerations by academics and professionals.

Chapter 1: Basic Methodology and Terminology

1.1 Introduction

While the European Union has intensified its efforts to promote and export Rule of Law, the concept itself is being challenged within the Union. This is why in our effort to talk about the EU's Rule of Law in relation to the Western Balkans we first need to go back to the beginning and explain the origin and the meaning of the Rule of Law. With this in mind, the first part of this thesis is dedicated to main considerations pertaining to the Rule of Law as a definition and concept in general, explaining its origin and history as the first starting point. This will enable us to move on to the main considerations on Rule of Law in the European Union and then to the perspectives of the Rule of Law in the EU enlargement process. The purpose of this chapter is to offer a general overview of the historical debates on this topic while explaining the aims and objectives of the research and the research methodology therein.

As such, the purpose of this chapter is to provide a foundational framework for the remainder of the thesis by offering a conceptual and methodological overview of the Rule of Law. Establishing a clear understanding of the term is particularly important given its central role in EU enlargement policy and the lack of a universally accepted definition. As the Rule of Law serves both as a legal principle and a political ideal³, its meaning and function can vary across legal systems, historical periods, and institutional contexts⁴. This introductory exploration is necessary to clarify the normative assumptions underlying the EU's approach to Rule of Law conditionality and to evaluate its coherence, consistency, and legitimacy in the context of EU Western Balkans relations. In this context, by grounding the study in key scholarly debates and legal definitions, the chapter enhances the analytical rigor of the research and ensures terminological clarity⁵. Understanding the evolution and contestation of the Rule of Law, both in general terms and within EU discourse, helps to uncover how the concept is deployed as a tool of governance, influence, and conditionality⁶. This background

³ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004).

⁴ May Ch., & Winchester A (Eds.). (2018). *Handbook on the rule of law*. Edward Elgar Publishing, Inc. DOI 10.4337/9781786432445

⁵ Loughlin, M. The Rule of Law: A Slogan in Search of a Concept. *Hague J Rule Law* 16, 509–523 (2024). <https://doi.org/10.1007/s40803-024-00224-5>

⁶ Schimmelfennig, F., & Sedelmeier, U. (2004). Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. *Journal of European Public Policy*, 11(4), 661–679. <https://doi.org/10.1080/1350176042000248089>; and Kochenov, Dimitry “EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law” 2007/01/01 SP-T1 VL -ER.

is particularly valuable for identifying the gap between normative aspirations and practical implementation, which is important in the accession process for candidate countries⁷. As such, this chapter not only frames the theoretical basis of the study but also provides the lens through which subsequent empirical and legal analyses are interpreted.

Looking at 'the Rule of Law' more closely although we do not find a universally accepted definition⁸, nor in EU and or among the Western Balkan countries themselves, the latest trend shows an increased interest and growing debate and, hopefully by it, a better understanding of the meaning and a higher attention to its ideals.

1.2 Literature review and research question

There is a wide range of literature on the rule of law and the academia seems to have treated it extensively. Rule of law has attracted the attention of some of the leading authors, looking at it from the historical, social, philosophical and legal point of view. In this thesis we have presented the views of many authors, to mention here few, such as Brian Z. Tamanaha, who despite his critiques, sets some basic minimum standards of what everyone can agree on the concept of the rule of law⁹. Other like, Judith N. Shklar, calling rule of law a meaningless thanks to ideological abuse and general overuse¹⁰ and Joseph Raz who, in treating the views of other previous leading authors like Friedrich A. Hayek and Lon Fuller, supports the notion and offers a minimalistic or thin conception of the rule of law but criticizes the way it is used¹¹. Or other critiques like Jeremy Waldron, considering a rule of law a contested concept¹². Other authors like Tom Bingham, offer and call for a more substantive

⁷ Grabowska-Moroz, B., Grogan, J., Kochenov, D.V. et al. Reconciling Theory and Practice of the Rule of Law in the European Union. Hague J Rule Law 14, 101–105 (2022). <https://doi.org/10.1007/s40803-022-00183-9>; and Palombella, G. (2010) 'The Rule of Law as Institutional Ideal', Comparative Sociology, 9(1), pp. 4–39. doi:10.1163/156913210X12535202814315.

⁸ UNGA has a special committee on the Rule of Law and is trying to be more vocal at global effort to promote the Rule of Law as a key principle not only for the democracy but as a precondition for the economic development as well. More on this at: <https://www.un.org/ruleoflaw/the-rule-of-law-in-un-intergovernmental-work/>

⁹ Brian Z. Tamanaha, "On the Rule of Law: History, Politics and Theory", Cambridge: Cambridge University Press 2004; "The Primacy of Society and the Failures of Law and Development", Cornell Int'l.L.J.209., 2011; and "The history and Elements of the Rule of Law", Singapore Journal of Legal Studies, December 2012, pp. 232-247

¹⁰ Judith N. Shklar, "Political Theory and the Rule of Law" in Allan C. Hutcheson and Patrick Monahan (eds.) "The Rule of Law: Ideal or Ideology", Toronto Carslaw, 1987. p. 1.

¹¹ Joseph Raz, "The Rule of Law and Its Virtue" DOI:10.1093/acprof:oso/9780198253457.003.0011.

¹² Waldron, J, "The Rule of Law as an Essentially Contested Concept" in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law*; and Jeremy Waldron, *Is the Rule of Law an Essentially Contested Concept*

interpretation of the rule of law. He is supported by a number of other authors like Laurent Pech, trying to demonstrate that rule of law is a well-defined principle and well-established value¹³. There are other scholarly writings treated in this thesis, especially when dealing with the EU rule of law, where we try to bring as many views as possible, including those like Dimitry Kochenov considering EU has misused the rule of law to justify its own supremacy¹⁴ or in the EU context being rather a slogan and a tool of power¹⁵. Building on those wise debates and looking at international efforts through international organizations and, especially, the European Union, we will try to capture only what is necessary for background and contextual knowledge allowing us to understand the developments from early attempts to ruling by law to contemporary ones of governance under the law.

A preliminary review and understanding of those debates are important to comprehend how the rule of law is perceived in contemporary contexts, internationally and in the EU's legal, political and institutional framework. This is important as the debate on the exact meaning is far from being exhaustive, with some authors even arguing that rule of law is often misunderstood in fundamental ways¹⁶. These historical insights also shed light on the challenges and opportunities the EU faces in its efforts to uphold and promote the rule of law externally while developing tools and strategies for measuring it¹⁷ for current and future members, thus shaping the doctrine and EU practice.

There is wide range of literature on the enlargement of the EU and is treated extensively. The rule of law in the enlargement process has received less attention but it is an area of interest where research and literature is developing¹⁸. On the other side though, the rule of law policy, including

(*In Florida*)? Law and Philosophy, Vol. 21, No. 2, *In the Wake of Bush v. Gore: Law, Legitimacy and Judicial Ethics* (2002), pp. 137-164. Springer Nature, URL: <https://www.jstor.org/stable/3505128>.

¹³ Laurent Pech "The Rule of Law as a Well-Established and Well-Defned Principle of EU Law", Hague Journal on the Rule of Law. <https://doi.org/10.1007/s40803-022-00176-8>, page 4.

¹⁴ Kochenov, Dimitry and Kochenov, Dimitry, Restoring the Dialogical Rule of Law in the European Union: Janus in the Mirror (January 22, 2024). 25 Cambridge Yearbook of European Legal Studies 2023 (Forthcoming), Available at SSRN: <https://ssrn.com/abstract=4702710> or <http://dx.doi.org/10.2139/ssrn.4702710>.

¹⁵ Dimitry Kochenov, "The EU's Rule of Law: The Hollow Core," in Closa & Kochenov (eds.), Reinforcing Rule of Law Oversight in the European Union (Cambridge University Press, 2016), p. 7.

¹⁶ Daniel B. Rodriguez, Matthew D. McCubbins & Barry R. Weingast, The Rule of Law Unplugged, 59 EMORY L.J. 1455 (2010).

¹⁷ Jørgen Møller and Svend-Erik Skaaning, "On the Limited Interchangeability of Rule of Law Measures," European Political Science Review, 3 (2011), 371–394.

¹⁸ Laurent Pech, "Rule of law as a guiding principle of the European Union's external action", at CLEER WORKING PAPERS 2012/3; and Schimmelfennig, F., & Sedelmeier, U. (2019). The Europeanization of Eastern Europe: the external

the way to measure it for the ongoing candidate countries in the accession process aspiring to join the EU, needs further attention and research¹⁹. This is why this PhD thesis, following the general historical considerations, will focus on the rule of law of the European Union and its policy in the accession process, respectively in relation to the Western Balkan region. More specifically, the research seeks to provide answers on the rule of law policy of the EU as a requirement for membership and how this criterion is being defined in practice, the way its measured and when and how is considered to be fulfilled?

1.3 Research Method

In answering this question, we rely on a carefully balanced set of doctrinal and normative insights, in that the very nature of this theme implicates the need for going beyond a mere description of the relevant state of affairs as regards rule of law. The thesis deploys doctrinal legal analysis and a comparative case study, drawing similarities and differences among countries being at different stages of accession process. This task involves also one that evaluates the present solutions and explore alternatives in the approach of the rule of law concepts and its practical implications in measuring the progress of the countries towards the EU. This way, the thesis looks into the academic debate and analyzes the treaties and other official legal and policy documents of the EU. Looking at those documents enables us to better understand the centrality of the rule of law debate and the policy impact. It also engages in a broader enterprise of assessing the existing benchmarks or parameters of the rule of law and proposes specific adjustments. This method is limited and cannot able to capture the empirical effects on the ground in the targeted countries as this requires fieldwork. In addressing this we rely on multiple sources, including not only the official documents of the EU but the other international organizations as well. This combination of doctrinal and normative analysis allows us to assess the EUs role to both shaping the rule of law meaning as well as its policies in applying them in relation with other countries, in particular with countries in the Western Balkan region.

incentives model revisited. *Journal of European Public Policy*, 27(6), 814–833. <https://doi.org/10.1080/13501763.2019.1617333>.

¹⁹ Qerim Qerimi, “Operationalizing and Measuring Rule of Law in an Internationalized Transitional Context: The Virtue of Venice Commission’s Rule of Law Checklist”, *Law and Development Review* 2019; and Qerimi, Qerim R., *The Impact of EU Conditionality Policy on Human Rights and Rule of Law in the Western Balkans: An Attempt at a Methodology* (July 24, 2021). *South-East Europe Review*, 24(1): 93-102, 2021, Available at SSRN: <https://ssrn.com/abstract=3892875> or <http://dx.doi.org/10.2139/ssrn.3892875>.

1.4 RoL meaning and definition in general

The understanding about the rule of law has clearly evolved over centuries and so have the meaning and definition. Presenting some of the most important ones would be a good start to understand today's meaning about the concept. In the search for a deeper understanding of the Rule of Law, we refer to the earlier considerations to the concept and the meanings thereof. Efforts to frame the concept, even before it was used as such, take us back to the history of law and the ruling authorities predating today's forms of governments. This is why early considerations about the rule of law are important in order to understand the rationale behind the rule of law or the concept and meaning it encompasses.

1.4.1 A short history on Rule of Law

Tracing rule of law back into the history we may need to go back to the early times of human kind history pertaining to the history of the law itself leading us to millennia ago. This has been an effort for many scholars, especially in the area of anthropology of law, making the rule of law as ancient as the law itself²⁰ and the rule of law is neither universal nor inevitable.²¹ There are other considerations dating back²² to Plato and Aristotle,²³ relating to the meaning of the law and, by extension, to some of the principles of the rule of law as we see them today.

²⁰ Pirie, Fernanda "A 4,000- Year Quest to Order the World", (In her historical study about the rule of law, Fernanda Pirie goes back to the very old forms of rules through law dating back to Mesopotamia and the lands of Bible, Chinese Emperors and the Ancient Rome, referring to Jewish and Islamic traditions and scholars through European Kings and rulers, including the latest forms of governments through the rise of Europe and America to international order. She points out that the laws although used mainly as an instrument of power they have just as often been means of resisting such power and this is why she adds that the rule of law is neither universal nor inevitable)

²¹ *Ibid*, pp. 14

²² See J. W. Jones, "The Law and Legal Theory of the Greeks", Oxford: Clarendon Press, 1956 pp.90, as quoted by Brian Z. Tamanaha, *op cited*, pp7. Moreover see Pirie, F., "The Rule of Laws: A 4,000-Year Quest to Order the World" (2021), Profile Books.

²³ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*", Cambridge University Press (2004), pp 9-10. Tamanaha explains that both Plato and Aristotle asserted that the law should further the good of the community and enhance the development of moral virtue of all citizens.

It is as early as these times that the preoccupation of those authors was the relationship between the rulers and the law, as well as the obedience of the citizens to the law. In this context, both Plato and Aristotle refer to a more robust rule of law, emphasizing the strict application of written rules”²⁴. This is why in the quest to track back the understanding of the rule of law reference should be made to the old Athenian democracy especially regarding the fissure between following generalized rules and doing justice that has haunted debates over the rule of law ever since²⁵. So the ancient Greek roots to the rule of law are well documented by many authors. Demosthenes (384–322), an Athenian orator, invoked the rule of law as part of the ideology of Athenian democracy, claiming that “*the laws are strong through you [i.e., the people] and you through the laws*”²⁶. In Aristotle and Plato understanding that where the law appears to be unable to define, a human being also would be unable to decide.²⁷ They both were of the opinion that if the rulers possess complete wisdom and virtue they should not be subject to higher laws but in their absence the rule of law is necessary for justice in ordinary politics.²⁸

Those early considerations about the power of law in the hands of power have followed the concerns about the law and order and about the tensions between the two. Plato and Aristotle observations about the law and the rulers have served as a good basis for the other authors not only for discussion but for building on and further enhancing such concepts²⁹. Although many authors,

²⁴ Lanni, Adriaan *Classical Athens’ Radical Democratic “Rule of Law”*, in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Cambridge Companions to Law). Cambridge: Cambridge University Press. doi:10.1017/9781108600569, page 38.

²⁵ *ibid*

²⁶ Sellers, M. N. S., and Tomaszewski, Tadeusz, *Ius Gentium. Comparative Perspective on Law and Justice. In The Rule of Law in Comparative Perspective. Vol. 3. New York: Springer, 2010. DOI: 10.1007/978-90-481-3749-7, page 12* (Nevertheless for both Plato and Aristotle is the reference to the law itself that we refer today to an early understanding of the rule of law. Most of the studies in the origin of the rule of law refer to Plato’s and Aristotle’s considerations and reflections regarding the relationship between the political power and the law itself, a relation between the two coexisting ever since).

²⁷ See Wexler, S., & Irvine, A., *Aristotle on the Rule of Law*, (2006) POLIS. Vol. 23. No. 1, pp 132-133.

²⁸ *Ibid. page 18.* Moreover see Costa, P. in May Ch., & Winchester, A. (Eds.). (2018) *Handbook on the rule of law*, stating that “*What is the best way of governing the subjects and what relationship must be established between the political power and the law are problems that have been carefully examined in Plato’s and Aristotle’s seminal reflections, often considered the very point of origin of Western political culture. According to Plato, the best regime does not require the primacy of the law, but relies on the excellence of the ruler, on his superior wisdom. On the contrary, when power is not committed to philosopher kings, to wise men capable of governing according to reason, the regime, whatever its constitutional form, tends to degenerate until its final breakdown and the resulting anarchy*”. May Ch., & Winchester A (Eds.). (2018). *Handbook on the rule of law*. Edward Elgar Publishing, Inc. DOI 10.4337/9781786432445, page 136

²⁹ See Jeremy Waldron, *Is the Rule of Law an Essentially Contested Concept (In Florida)?* Law and Philosophy, Vol. 21, No. 2, *In the Wake of Bush v. Gore: Law, Legitimacy and Judicial Ethics* (2002), pp. 137-164. Springer Nature, URL: <https://www.jstor.org/stable/3505128>, quoting Aristotle’s famous rather mystical observation that ‘*law is reason unaffected by desire*’: [He who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man

as quoted above, have attributed the origins of the rule of law to the ancient Greece, there is little consensus about its origin or the meaning of the concept thereof³⁰. Clearly, even if some elements existed back then, they relate more to general understandings of law, rulers, and rules than to the rule of law as the concept is understood today.

Among many authors, that dealt with the concepts of law, order and the organization of the society in general and forms of government and power in particular, by which we track back elements of the rule of law, is Thomas Hobbes, as a pre-liberal thinker³¹. It is with Hobbes that we see the shift from spontaneous order to the 'rule of law', meaning that peace and order were the necessary preconditions for the pursuit of all other values.³² According to Hobbes, unlimited power should belong to the sovereign (whether monarch or parliament),³³ who rules by law,³⁴ stating "*wherever law ends, tyranny begins*"³⁵.

In addition to the English authors and philosophers, Montesquieu, the French Judge, philosopher and, as often referred, the man of letters, writing about the law, government and, especially, about the separation of powers, is one of the authors to be noted when we write about the rule of law³⁶. Although the term "rule of law" is not a mainstay of Montesquieu's political thought, the concept permeates *The Spirit of the Laws*.³⁷ Credit to Montesquieu is given especially regarding the institutional restraints that prevent governmental agents from oppressing the rest of society³⁸. On

rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men". P. 141.

³⁰ See Waldron, J., "The Rule of Law as an Essentially Contested Concept" in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law (Op cited)*, page 129.

³¹ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), page 47.

³² Sellers, M. N. S., and Tomaszewski, Tadeusz, *Ius Gentium. Comparative Perspective on Law and Justice. In The Rule of Law in Comparative Perspective. Vol. 3. New York: Springer, 2010. DOI: 10.1007/978-90-481-3749-7*, page 67

³³ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), page 47.

³⁴ Thomas Hobbes is the founder of the rule by law tradition in the modern Western Thought. See: "*Thomas Hobbes and the Rule by Law Tradition*", by David Dyzenhaus in *The Cambridge Companion to the Rule of Law*, Cambridge University Press 2021, page 261)

³⁵ Locke "second treatise of government P 103 (as quoted by Tamnaha page 49)

³⁶ Sellers, M. N. S., and Tomaszewski, Tadeusz, *Ius Gentium. Comparative Perspective on Law and Justice. In The Rule of Law in Comparative Perspective. Vol. 3. New York: Springer, 2010. DOI: 10.1007/978-90-481-3749-7*, page 77.

³⁷ See Krause, Sh. R., "The Rule of Law in Montesquieu", in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law (Op cited)*, page 139. In fact not only this chapter but most of the other authors contributing to this Companion refer to Montesquieu (Montesquieu is quoted/referenced 241 times in this volume).

³⁸ See Benhabib, S., & Linden-Retek, P. "*Judith Shklar's Critique of Legalism*" in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law (Op cited)*, page 307.

the other hand he stated that *“liberty is a right of doing whatever the laws permit”*, as a classical statement of the legal liberty identifying it as a *“life lived under the rule of law”*³⁹.

In addition, Rousseau, the Genevan philosopher, especially in his work, the Social Contract, has dealt with aspects of the rule of law as well and thus is another point of reference when we write about the rule of law.⁴⁰ Rousseau explains that putting the law above the man is a problem in politics, but if achieved is the law ruling but if not than is the man ruling⁴¹. Again both of them, although having dealt with the rules, the law and forms of governments and the politics in general⁴², have not used the term ‘rule of law’ per se, at least not in the form and manner we deem to refer to today. Rather they have covered certain elements of the concept, very important though for its history and its development.

Many perceive England as the birthplace and the bastion of the rule of law⁴³ by referring to the Magna Carta (1215) as a significant watershed, thus being the rule of law in an embryo⁴⁴. The significance of, and the main attribution to, the Magna Carta pertaining to its influence in the rule of law is its credit to subordinating the King to the law and for the promotion of the notion of the due process of laws, principles key to today’s understanding and meaning of the rule of law⁴⁵. It is the dispute between the King James I of England in the seventeenth century and the judges of the common courts led by Sir Edward Coke that contributed to the development of the rule of law concept⁴⁶. Sir Edward Coke is the pioneer in the efforts to limit the power of the King James I to

³⁹ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), page 52.

⁴⁰ See Loughlin, M., *“Michael Oakeshott’s Republican Theory of the Rule of Law”* in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law (Op cited)*, page 185.

⁴¹ *Ibid.*

⁴² See May Ch., & Winchester A (Eds.). (2018). *Handbook on the rule of law*. Edward Elgar Publishing, Inc. DOI 10.4337/9781786432445, page 79. Here they explain that *“Montesquieu put at the centre of The Spirit of the Laws the distinction between ‘moderate’ forms of government, which he applauds, and ‘immoderate’ forms, which he loathes. Thus, although both the monarch and despot rule alone, the former does so ‘by fixed and established laws’, whereas the latter, who governs ‘without law and without rule, draws everything along by his will and his caprices’.*

⁴³ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), page 56.

⁴⁴ Tom Bingham, *“The Rule of Law”*, pp. 12. In his brilliant work, Bingham explains that Magna Carta is a source of the rule of law not only for the English legal history and tradition but for the rest of the world explaining that more than 900 citations were made to it in federal and state courts in US and only between 1940 to 1990 the US Supreme court has cited the Magna Carta in more than sixty cases”.

⁴⁵ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), pp 25-27.

⁴⁶ Mattei, Ugo and Nader, Laura *“Plunder – When the Rule of Law is Illegal”* page 12. In fact Ugo and Nader argue that James I were to reform the system and they see it as an obstacle to his reformist agendas. Mattei and Nader argue that King James I encountered significant resistance from the entrenched legal profession, namely the common law judiciary, when he sought to implement reforms. The Rule of Law, rather than being a neutral framework for justice, functioned

participate in the deliberations of the common law courts arguing that according to the laws and customs of England ‘the King in his own person cannot adjudicate any case’⁴⁷. James I basically considered that in addition to being the King he could act both as the legislator and a judge and Sir Coke basically told him that according to the English law he did not have such powers, thus setting the framework for the rule of law in England⁴⁸. Of course, the tension in the English history was even bigger, including the tensions as to who held the power to legislate, the Kings or the Parliament, with the latter ultimately prevailing⁴⁹.

There are certainly many other quests dating back to the ancient and medieval roots of the rule of law considerations. Most of them however highlight two key elements of the concept: the law perceived as a tool to control the power of the rulers and as an instrument to protect some very basic human rights.⁵⁰ To this extent, exploring the initial considerations by digging into the history of the law we may say that the ruling through law, although not expressly mentioned during this time, it included some formal aspects of the rule of law. This is the case especially if we consider the temptation to limit the ruler within the frames of the law but, in addition, by providing some basic human rights that any ruler must respect. These considerations though have led to a common understanding of what is more referred to as the rule by law, a tradition founded by Thomas Hobbes⁵¹.

in this instance as a tool of institutional resistance, safeguarding the autonomy and power of judges against royal attempts at centralization or modernization. The authors suggest that what was presented as a defense of legality was in fact a defense of a particular institutional power structure, thus highlighting the political nature of the Rule of Law.

⁴⁷ Gustaaf van Nifterik (2022) Coke’s Prohibitions del Roy in a European perspective, *Comparative Legal History*, 10:1, 33-51, DOI: 10.1080/2049677X.2022.2063517, page 36.

⁴⁸ See Charles Sampford, *“The rule of law begins at home”*, in the Jeremy Farrall and Hilary Charlesworth (Eds) *“Strengthening the Rule of Law through the UN Security Council”*, Routledge 2016, page 68.

⁴⁹ Nadia E. N., Nicholas, C., *“The Anglo-American Conception of the Rule of Law”* (2019), Palgrave Macmillan Cham, <https://doi.org/10.1007/978-3-030-26361-4>, page 113. It is interesting to note here the author’s reference to *“the Coronation Oath Act of 1688, which mandated that William and Mary and their successors take a solemn oath at their coronation to rule according to the law agreed in Parliament”*.

⁵⁰ For further philosophical discussion see H.L.A. Hart, *The Concept Of Law* 207-12 (Revised edition, 1994). See also Liam Murphy, *The Political Question of the Concept of Law in Hart's Postscript: Essays On The Postscript To The Concept Of Law* 371 (Jules Coleman ed., 2001), as quotes by Jeremy Waldron at the *“The Concept and the Rule of Law”*, New York University, School of Law, Public Law & Legal Theory Research Paper Series Working Paper No. 08-50.

⁵¹ See Jens Meierhenrich, *“Rechtsstaat versus the Rule of Law”*, in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law (Op cited)*, page 47. Thomas Hobbes did not embrace the Rule of Law as a constraint on sovereign power in the liberal or constitutionalist sense. Instead, Hobbes understood law as the command of a sovereign authority, and he viewed the sovereign as the source and enforcer of all legal rules. For Hobbes, legal certainty and public order were paramount, but not liberty in the modern, rights-based sense.

All of these though are reference to the law and legal order which form the basis for the future terminology referred to as 'rule of law' as a separate term encompassing something more than just the meaning of the law and its purpose in the organization of the societies and the forms of governments based on constitutional democracy and law. From the perspective of those early thoughts that shaped the new modern liberal democracies, a binding constitution replaced the role of past divine or natural law, ancient codes or customary law, in providing legal constraints on the sovereign.⁵² All of these lead to the Hayek's observation that rule of law is not itself a legal rule, but a political ideal.⁵³

As it can be seen, looking back to the origins of the rule of law, many authors have agreed that what we understand today by rule of law is something we have been trying to build on from the previous understanding of the role of law in the society in general thus leading to rather a political ideal, principle and or statement that form a model of governance based on law. This is the origin of the rule of law for what has been written a lot and many authors continue debating about this concept. Even if there are debates as to what exactly involves, exploring the concept one thing is clear, there cannot be a modern democratic society showing respect for the human rights that can function without the rule of law.

Based on the historical developments outlined above, it is important to move to the next section, where we examine the use of the term 'rule of law' and what it entailed. From there, we can explore how the concept has evolved to its current meaning, especially from the perspective of the European Union.

1.4.2 First attempts for definitions and meaning

During the early and Renaissance time, there was not a clear reference to the rule of law as a standalone concept; as explained above, what the main authors were referring to meant substantial parts of the meaning of the rule of law. Credit for having used the term 'rule of law' for the first time

⁵² Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), p 56.

⁵³ *Ibid.* p. 58. Friedrich Hayek advanced a similarly formal conception, arguing that the Rule of Law entails the application of general rules known in advance. According to Hayek, the primary function of the law is to create predictability, enabling individuals to plan their actions accordingly. His perspective is grounded in liberal economic theory and places strong emphasis on legal certainty.

has been given to one of the most well-known English authors, namely Albert Venn Dicey, who also played a key role in promoting it.⁵⁴ This is why the term rule of law as initially mentioned by A.V. Dicey, will serve as the starting point to give the first meaning to the rule of law⁵⁵.

The term as described by Dicey of course differs from what we understand today by the term or as we refer to in today's jargon. At that time used by A.V. Dicey many types of discrimination were enshrined in the times legal order, including some of the countries being today the word leaders on democracy. Woman in England for example could enjoy the full voting rights only in 1928, while the bill of rights as adopted by the United States did not disturb the peculiar institution of slavery.⁵⁶ USA adhered to the rule of law even when slavery was legally enforced and racial segregation legally imposed.⁵⁷ In the evolution of and the debates about the rule of law term, there were voices as to whether the term itself has any meaning.⁵⁸ A number of authors have referred to the concept as being misleading or even meaningless as it may fit any form of government and or political system and as such the term is used, overused and or even abused.⁵⁹

⁵⁴ *Ibid.* p. 63. Moreover many other authors refer to A.V. Dicey as having either invented the term 'rule of law' or at least having been the one popularizing and dominating the debate about its meaning. Thus even if some authors do not give this contribution to Dicey, of having invented the exact term of the rule of law, at least they agree that he was the one to popularize the term (Brian Z. Tamanaha, Jens Meierhenrich, and many others). Dicey, building on Edward Coke's concept of the parliamentary sovereignty and his commitment to limit Kings Power, and on the other authors as explained in this thesis (such as Hobbes, Montesquieu), established two basic principles: the rule of law and parliamentary sovereignty (Mark D. Walters). There is a special Chapter called The Rule of Law, whereby he defines the main meanings in the three main aspects: the absolute supremacy of regular law over arbitrary power, equality before the law, and the primacy of judicial decisions in constitutional development.

⁵⁵ This is not the only recognized author attributed such credit. Credit is given to many other figures promoting this concept. See Keally McBride's in "The Mr. Mothercountry" who portrays James Stephen as a key bureaucrat who institutionalized the Rule of Law across the British Empire. McBride states that James Stephen emphasized the ethical responsibility of law in curbing colonial abuses, viewing it as a moral endeavor rather than administrative technicality.

⁵⁶ Tom Bingham, "The Rule of Law", London: Allen Lane, 2010. pp. 57.

⁵⁷ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), pp 93.

⁵⁸ Joseph Raz "The Rule of Law and its Virtue", in Raz, "The Authority of Law: Essays on Law and Morality" (Oxford University Press, 1979) p. 210 (as quoted by Tom Bingham "The Rule of Law" London: Allen Lane, 2010

⁵⁹ See Tom Bingham "The Rule of Law" London: Allen Lane, 2010, page 5.

Building on the Dicey's concept⁶⁰, which was basically a common law view of the rule of law, Tom Bingham⁶¹ gives a more comprehensive definition to the concept *"that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts"*⁶². Similarly, Friedrich Hayek, provided that the rule of law means that *"government in all its actions is bound by rules fixed and announced beforehand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge"*⁶³. Hayek's view on the rule of law became one of the most quoted versions of the rule of law and so did this view influence some of the most important international institutions⁶⁴. Some other authors, like Joseph Raz, as well have given less comprehensive definition, making a clear distinction between the rule of law and democracy⁶⁵ by even stating that non democratic regimes may be perceived to be acting in full compliance with the rule of law, even better than western democracies⁶⁶. Other authors, like Judith Shklar, have insisted

⁶⁰ According to Dicey, rule of law involves three main principles: (1) *"no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land"* (2) *"every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals"* (3) *the unwritten constitution in the UK could be said to be pervaded by the rule of law because rights to personal liberty, or public meeting resulted from judicial decisions, whereas under many foreign constitutions such rights flowed from a written constitution"*. See the sixth report of the Constitution Committee at <https://publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15115.htm>

⁶¹ This definition of Judge Bingham has in many ways inspired the definition used by the Venice Commission.

⁶² Tom Bingham, *"The Rule of Law"*, London: Allen Lane, 2010. page 8.. Even Bingham himself explains that such a definition may not have a universal application and certain exceptions may be made. In his efforts to define the concept he further explains that his definition originates at Dicey's view but in addition he adds that it also captures the fundamental truth propounded by the great English philosopher John Locke in 1690 that *'Wherever law ends, tyranny begins'*, and pointed out by Tom Paine as well in 1776 when he said *'that in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other.'* [Emphasis added], (both quoted on page 8).

⁶³ Friedrich Hayek, *The Road to Serfdom*, London: Routledge, 1944. p. 80

⁶⁴ See Jens Meierhenrich, *"What the Rule of Law Is ... and Is Not"* in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Op cited), page 584, stating that *"Hayek for a while was one of the most quotable. His "moral science" informed for decades the way in which the World Bank and International Monetary Fund approached the rule of law"*.

⁶⁵ See May Ch., & Winchester A (Eds.). (2018). *Handbook on the rule of law*. Edward Elgar Publishing, Inc. DOI 10.4337/9781786432445, page 28.

⁶⁶ See Jeremy Waldron, *"The Rule of Law as an Essentially Contested Concept"* in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Op cited), page 584, quoting Joseph Raz, who said that *"the rule of law is just one of the virtues which a legal system may possess and by which it is to be judged. It is not to be confused with democracy, justice, equality (before the law or otherwise), human rights of any kind or respect for persons or for the dignity of man. A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and religious persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies. This does not mean that it will be better than those Western democracies. It will be an immeasurably worse legal system, but it will excel in one respect: in its conformity to the rule of law"*.

to put rule of law into the social, historical and other contextual perspectives, stating that the purpose and value of the rule of law cannot be understood apart from the institutions, social structures, and historical junctures within which law is embedded and its authority is to be practically realized⁶⁷.

As such, law as an instrument to rule or as a tool for rulers was used as an important element in peoples hand to protect their rights. Law became a source of right as much as an instrument of control⁶⁸. These two dimensions of the law are important for the rule of law and the proper understanding of its meaning. Is rule of law an instrument for the governing elite to maintain their power according to their will and best power preservation interest or is it a tool in the hands of people to limit the 'misuse of power' by them and an instrument for the protection of their rights? Or is it something else completely? The answer is not that simple to these rather simple questions though. Some believe that rule of law includes the protection of human rights while others, using a rather formalistic approach, satisfy the bar by setting a few criteria that the laws are set in advance in general, clear terms and be applied equally to all.⁶⁹ In fact, the opinions of what rule of law entails are so divergent and numerous so that make it even a contested concept⁷⁰ and, in fact, there are even opinions that there are almost as many conceptions of the rule of law as there are people defining it⁷¹. Some leading authors have provided alternative versions, where the rule of law reflects the ideal that law should govern, not arbitrary and that the rulers too should be subject to the law.⁷² Despite divergent interpretations⁷³ of the concepts and the meanings therein from a political, philosophical, historical or legal point of view, there are common features and similarities too in all of them. All see rule of law as a common good, an important feature of the modern democracy and modern states as well as for the most important international organizations therein. Everyone

⁶⁷ See Seyla Benhabib and Paul Linden-Retek "Judith Shklar's Critique of Legalism" in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Op cited), page 310.

⁶⁸ Fernanda Pirie, A 4,000- Year Quest to Order the World, pp. 338.

⁶⁹ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), pp 3.

⁷⁰ Jeremy Waldron, "Is the Rule of Law an Essentially Contested Concept (in Florida)?" 21 *Law and Philosophy* 137 (2002), as quoted by Brian Z. Tamanaha, op cited, pp 3.

⁷¹ Olufemi Taiwo, "The Rule of Law: The New Leviathan?", 12 *Canadian Journal of Law & Jurisprudence* 151, 152 (1999), as quoted by Brian Z. Tamanaha, op cited, pp 3.

⁷² Kramer MH. *Basic Concepts of Legal Thought*. By George P. Fletcher. [New York: Oxford University Press. 1996. *The Cambridge Law Journal*. 1997;56(1):213-216. doi:10.1017/S000819730001789X

⁷³ Friedrich von Hayek, another leading author there are three attributes common to all rule of law systems, namely "the laws must be general, equal and certain". See Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge University Press (2004), pp 66.

seems to be for the Rule of Law, where authoritarians claim it, democrats demand it, development experts prescribe it, and international organizations promote it.”⁷⁴

Having an ancient origin, medieval roots and modern instantiations, the rule of law idea has turned into a doctrine, sometimes even an ideology⁷⁵. So the theoretical debates about the rule of law have followed the concept ever since, intensified lately especially in the eve of the rise of the authoritarian regimes all over the world. This is why, despite a common definition about the concept, and although many nuances exists in the race to fine tune its meaning therein, one thing is true that there cannot be a modern democratic society without the rule of law present, it is the butler of the democracy⁷⁶. On the other hand, the rule of law alone may be compatible with many forms of arbitrary rule.⁷⁷ This is why the rule of law alone cannot guarantee a free and democratic society respecting all human rights but on the other hand there cannot be any free and democratic society without the rule of law. This is why we may say that there is both a democratic rule of law and an authoritarian rule of law⁷⁸.

The above definitions show a trend on the rule of law history. In the early attempts as provided by A. V. Dicey the term rule of law captured some basic elements which were then complemented by other authors with the intention to include in the definition a much more comprehensive understanding of the rule of law. This is why, even today, we do not have a common universal agreement on the rule of law. The quest to define and refine it will continue and scholars will be treating it from many points of views with the understanding that the rule of law does not and cannot exist abstractly and we must put the law in space and time to be able to talk about its rule in context⁷⁹.

⁷⁴ Krygier, Martin. "The Rule of Law: An Abuser's Guide." In *Law in Context* 3 (2011): pp 5-15; similar from the same author Krygier, Martin Evald John, *Four Puzzles About the Rule of Law: Why, What, Where? And Who Cares?* (June 18, 2010). *UNSW Law Research Paper No. 2010-22*, Available at SSRN: <https://ssrn.com/abstract=1627465>

⁷⁵ Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Cambridge Companions to Law). Cambridge: Cambridge University Press. doi:10.1017/9781108600569, page 570.

⁷⁶ Allan C. Hutchinson and Patrick Monahan, quoted in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Cambridge Companions to Law).

⁷⁷ Joseph Raz "The Rule of Law and its Virtue" as quoted in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Cambridge Companions to Law) page 574.

⁷⁸ *Ibid.* page 579

⁷⁹ See Jens Meierhenrich, "What the Rule of Law Is ... and Is Not" in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Op cited), page 578.

1.4.3 *Comparative perspectives on the Rule of Law: Anglo-Saxon and Continental*

As it can be seen from the previous section, the concept of the Rule of Law has evolved differently across legal traditions and is shaped by divergent historical, institutional, and philosophical foundations. There are many ways to categorizing and grouping views on the rule of law concept, but in this section we will summarize it from the perspective of the two main legal traditions: the Anglo-Saxon (Common Law) and the Continental (Civil Law) traditions. Both traditions offer a distinct interpretation of what the Rule of Law entails, how it is applied, and the role it plays in maintaining legal and political order. While the Anglo-Saxon tradition emphasizes limitations on arbitrary power through case law and procedural fairness, the Continental tradition often views the Rule of Law as synonymous with the constitutional order, legality, and the supremacy of codified law. This section defines those views and explores them from the perspective of these two traditions and how such notion of the Rule of Law has been differently conceptualized. This is very important for a proper understanding of the context of our intervention in this thesis.

- *Anglo-Saxon Tradition*

Rule of Law, according to the common law traditions pertains to the legal restraint on governmental power through precedent-based adjudication, the independence of the judiciary, and the preservation of individual liberty. It views the law as an evolving, decentralized order shaped by historical experience and practical judgment⁸⁰. This contrasts with the Continental model, which tends to associate the Rule of Law with formal legal codification, administrative rationality, and the supremacy of constitutional norms derived through legislative processes⁸¹. Understanding this contrast is crucial to appreciating the diversity in global Rule of Law practices and their respective theoretical foundations. The rule of law arose in England both because of its individualist cultural heritage and because of the non-rationalist character of its intellectual heritage, most especially in the common law⁸². A. V. Dicey, as explained above, is the foundational figure in the Anglo-American

⁸⁰ Nadia E. Nedzel and Nicholas Capaldi in *“The Anglo-American Conception of the Rule of Law (2019)”*, argues that the Rule of Law is rooted in a distinctive intellectual tradition, closely tied to individual liberty and a non-rationalist, inductive legal culture. They contrast the Anglo-American view with Continental conceptions of legality, emphasizing the former’s basis in spontaneous order, customary practice, and common law reasoning.

⁸¹

⁸² (Nedzel & Capaldi, *“The Anglo-American Conception of the Rule of Law (2019)”*, 2019, p. 1. Nedzel and Capaldi identify five key thinkers, Dicey, Leoni, Fuller, Hayek, and Oakeshott, as the foremost defenders of the Rule of Law ideal, all of

tradition of the Rule of Law⁸³. There are five key thinkers from common law tradition contributing to the Rule of Law development, namely Dicey, Leoni⁸⁴, Fuller⁸⁵, Hayek⁸⁶, and Oakeshott⁸⁷. They are the foremost defenders of the Rule of Law ideal, all of whom link it to the protection of individual freedom, historical legal evolution, and the constraint of state power through decentralized, judicial means. This is explained by other important Anglo-Saxon scholars such as Brian Z. Tamanaha⁸⁸ and Lord Tom Bingham⁸⁹ whose contributions are of immense value for the development and definition of the Rule of Law.

- *Continental tradition*

On the other hand, the concept of the Rule of Law in the Continental traditions often articulated through the German terms of *Rechtsstaat* and French *État de droit*, and *Stato di diritto* in Italian. It differs in both origin and structure from its Anglo-Saxon counterpart. While both traditions affirm the centrality of law in regulating public power, the Continental understanding emphasizes the formal legality of state action, the hierarchical structure of norms, and the primacy of constitutional

whom link it to the protection of individual freedom, historical legal evolution, and the constraint of state power through decentralized, judicial means.

⁸³Defining the Rule of Law around three main principles: the absolute supremacy of regular law over arbitrary power, equality before the law, and the primacy of judicial decisions in constitutional development. For Dicey, the Rule of Law was inherently tied to the British common law tradition and constitutional liberties. As Nedzel and Capaldi note, Dicey's work emphasized that law must be understood in its historical, cultural, and institutional context, not as a positivist abstraction. (Op. Cited)

⁸⁴ Bruno Leoni, in "*Freedom and the Law*" (1961), emphasized the spontaneous and evolutionary nature of law, arguing against central legislative planning. He viewed law as akin to language—developed organically through interaction and consensus. Leoni advocated for judicial, case-based evolution of legal norms, rather than state-driven lawmaking.

⁸⁵ Lon L. Fuller in "*The Morality of Law*" (1964), argued for the internal morality of law—principles like generality, clarity, prospectivity, and consistency. He critiqued legal positivism for ignoring these moral dimensions, insisting that legality is not merely procedural but inherently tied to justice and legitimacy.

⁸⁶ Friedrich A. Hayek, particularly in "*The Constitution of Liberty*" and "*Law, Legislation and Liberty*", distinguished law from command. He championed spontaneous order and warned against state overreach via legislation. The Rule of Law, for Hayek, safeguards liberty through predictable, general norms that evolve with society.

⁸⁷ Michael Oakeshott conceptualized law as a mode of civil association, where governance is achieved through rules that enable individual self-direction. He warned against treating law as a tool for collective projects and instead emphasized its role in maintaining peaceful coexistence.

⁸⁸ Brian Z. Tamanaha offers a layered classification of Rule of Law approaches: formal, substantive, and instrumental. In *On the Rule of Law* (2004), he emphasizes that the Rule of Law has been used as a political and ideological tool, and its meaning is contextually bound. He writes: "Everyone is for the rule of law. No one quite knows what it is... The rule of law is a rhetorical device charged with emotive resonance" (Tamanaha, 2004, p. 3).

⁸⁹ Lord Tom Bingham in "*The Rule of Law*" (2010), articulates eight substantive principles underlying the Rule of Law, including legal clarity, fairness, and protection of human rights. His approach bridges procedural and substantive visions, integrating justice and predictability in governance.

law. Rooted in Enlightenment rationalism and Roman legal tradition, the civil law approach offers a systematic and codified conception of legality as a condition of legitimate governance.

Philosophers such as Immanuel Kant and Montesquieu were central in articulating a legal order grounded in reason, autonomy, and institutional checks on power. Kant viewed the lawful state (Rechtsstaat) as a moral imperative, insisting that state authority is legitimate only when exercised in accordance with universal legal principles that respect individual autonomy⁹⁰. Similarly, Montesquieu's doctrine of the separation of powers, elaborated in *The Spirit of the Laws* (1748), laid the groundwork for institutional guarantees against arbitrary authority, influencing constitutional developments across the continent⁹¹. In France, the post-revolutionary transformation of public law embraced the ideal of an *État de droit*, emphasizing that all state action must be authorized by and conform to law. The French legal tradition, especially through the work of Maurice Hauriou⁹², expanded the scope of legality to include judicial review of administrative action, highlighting the need for courts to control the executive branch in accordance with legal norms.

Perhaps the most developed theoretical framework for the civil law conception of the Rule of Law emerged in Germany through the doctrine of the Rechtsstaat. This notion evolved in the 19th century to describe a state governed by and under law, whereby all governmental actions are subject to the rule of legal norms. Georg Jellinek contributed significantly by theorizing the dual nature of the state: both as a political entity and a legal order. In this vision, the state's legitimacy arises from its subordination to general, pre-existing laws.

⁹⁰ Immanuel Kant, *The Metaphysics of Morals* (1797), Part I, 43. "The Rule of Law (Rechtsstaat) is the union of the greatest possible human freedom under external laws with the condition that the freedom of each can coexist with the freedom of everyone else in accordance with a universal law". Kant does not use the modern term "Rule of Law" as such, but he expresses the concept clearly through the notion of the Rechtsstaat (lawful state).

⁹¹ Montesquieu, *The Spirit of the Laws* (1748), Book XI, Chapter 4. "Political liberty is to be found only when there is no abuse of power... To prevent this abuse, it is necessary from the very nature of things that power should be a check to power." Montesquieu sees the Rule of Law as rooted in rational laws and the institutional design of the state, especially the division of legislative, executive, and judicial powers to avoid tyranny and ensure liberty.

⁹² Hauriou, Maurice. *Principes de droit public*. Paris: Librairie Larose, 1910. While Maurice Hauriou may not use the term "Rule of Law", his legal-institutional theory contributes to the continental European concept of the Rechtsstaat, which underpins modern French administrative law and constitutional legality. His work supports the idea that state power must be legally constrained, and institutions must operate according to law, not mere will.

Hans Kelsen⁹³ took this further with his Pure Theory of Law, which articulated the legal system as a hierarchy of norms, deriving its validity from a superior norm, culminating in the *Grundnorm* or basic norm. For Kelsen, the Rule of Law is expressed through the structural coherence of the legal system, whereby every act of public authority must be traceable to the constitution. Kelsen emphasized a hierarchical legal order in which each norm derives its validity from a higher norm, culminating in a foundational presupposition he termed the *Grundnorm* (*Grundgesetz*). This concept aimed to provide a unifying principle for the coherence and legitimacy of a legal system, independent of moral or political considerations. Kelsen's theory positioned the Rule of Law within a strict framework of legal positivism, where legitimacy is grounded in formal structure rather than substantive content⁹⁴.

Nevertheless, the experience of authoritarianism in the 20th century revealed the limitations of formal legality. In response, Gustav Radbruch⁹⁵ famously articulated the Radbruch Formula, arguing that extreme injustice, particularly under the Nazi regime, could not be tolerated under the guise of legality. This marked a significant shift from a purely formal conception to a material or substantive Rule of Law, where justice, human dignity, and moral values serve as correctives to legal positivism⁹⁶.

The Italian view of the Rule of Law, called *Stato di Diritto* is another continental view of the concept following similar developments. Thinkers such as Norberto Bobbio⁹⁷ engaged critically with the limitations of formal legality. Bobbio distinguished between the formal Rule of Law (focused on the

⁹³ Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg (Cambridge, MA: Harvard University Press, 1945), 311. "The Rule of Law means that the entire state activity shall be bound by rules fixed beforehand, rules which are general and abstract." Hans Kelsen, *General Theory of Law and State*, 1945, p. 311. This reflects Kelsen's formalistic and positivist approach: the Rule of Law is not about justice or democracy per se, but about ensuring that all acts of state power are authorised and constrained by pre-existing legal norms within a structured and coherent legal system. Kelsen insisted that law should be studied separately from ethics and politics, focusing only on what the law is, not what it ought to be. This influences his neutral, formal Rule of Law approach.

⁹⁴ Kelsen, Hans. *Introduction to the Problems of Legal Theory*. Clarendon Press, 1992, p. 1–12 and "The Authority of Law" By JOSEPH RAZ . Oxford: Clarendon Press, 1979. Pp.292

⁹⁵ Gustav Radbruch, *Statutory Lawlessness and Supra-Statutory Laws* (1946), 26 OXFORD J. LEGAL STUD. 1, 6 (Bonnie Litschewski Paulson & Stanley L. Paulson trans., 2006)

⁹⁶ Gustav Radbruch, *Statutory Lawlessness and Supra-Statutory Laws* (1946), 26 OXFORD J. LEGAL STUD. 1, 6 (Bonnie Litschewski Paulson & Stanley L. Paulson trans., 2006). This is precisely what is now known as the Radbruch Formula in action: "lex iniusta non est lex"- "an unjust law is not law".

⁹⁷ Pietro Costa & Danilo Zolo Eds., University of Florence, "*The Rule of Law History, Theory and Criticism*", Law and Philosophy Library, VOLUME 80, pp. 19-21 (2007) Springer
https://www.researchgate.net/publication/281345135_The_Rule_Of_Law_History_By_PIETRO_COSTA

procedures of legality, such as clear, general, and prospective laws) and the substantive Rule of Law, which incorporates democratic principles and human rights⁹⁸. His work underscores the need to reconcile legality with legitimacy, particularly in the context of constitutional democracies that aspire to protect individual freedoms while maintaining order⁹⁹. In this work Pietro Costa¹⁰⁰ has highlighted the historical contingency and ideological plurality of the Rule of Law within the Continental tradition. Costa traces the development of the Rule of Law across different epochs, showing how its meaning shifted from liberal constitutionalism to administrative legality and, eventually, to a contested global norm. He argues that while the Rechtsstaat ideal originally functioned as a bulwark against absolutism, its postwar transformation also served to anchor democratic legitimacy in a framework of constitutional adjudication and rights protection¹⁰¹.

Martin Krygier offers a distinctive and influential account of the Rule of Law, emphasizing its institutional and sociological dimensions¹⁰² claiming that the Rule of Law must be assessed by its actual capacity to constrain power and safeguard individuals, not merely by its institutional form¹⁰³. According to him, legal formality alone cannot ensure the Rule of Law. What matters is how legal structures are used and the values they promote¹⁰⁴.

⁹⁸ *Ibid.* Providing an inevitable historiographic simplification, Bobbio claims that the relationship between the state and citizens has been “overturned”: in Europe, through the rise of the modern nation state, the priority of individuals’ duties towards political (and religious) authorities has been turned into the priority of citizens’ rights and into the authorities’ duty to acknowledge, protect, and finally promote such rights. In the European modern (sovereign, national, and secular) state, the original deontic figure, i.e. individual duty, gives way to another largely contrasting deontic figure, i.e. individual expectation or claim, which is collectively acknowledged and protected in the shape of “individual right”.

⁹⁹ *Ibid.* pp. 37, in this book Danilo Zolo speaks even about the Foundation and universality of individual rights, stating that “A third set of unsolved theoretical questions concerns the philosophical foundation and the universality of human rights. Such questions touch upon the issue as to their general coercive applicability, which was dramatically highlighted by the 1999 “humanitarian war” for Kosovo.

¹⁰⁰ Pietro Costa & Danilo Zolo Eds., University of Florence, “*The Rule of Law History, Theory and Criticism*”, Law and Philosophy Library, VOLUME 80, pp. 19-21 (2007) Springer
https://www.researchgate.net/publication/281345135_The_Rule_Of_Law_History_By_PIETRO_COSTA

¹⁰¹ *Ibid.*

¹⁰² Krygier, Martin “The Rule of Law: Legality, Teleology, Sociology” in *The Cambridge Companion to the Rule of Law* (Cambridge Companions to Law), Meierhenrich, J., & Loughlin, M. (Eds.). (2021). p. 205). Krygier critiques approaches that reduce the Rule of Law to abstract principles or checklists of institutional features. Instead, he argues for a more functional and purpose-driven understanding. “The Rule of Law,” Krygier writes, “should be understood not merely as the presence of rules, but as a sustained effort to temper arbitrary power in society”.

¹⁰³ *Ibid.* p. 208.

¹⁰⁴ *Ibid.* p. 213. Krygier’s approach is normative, sociological, and context-sensitive, characteristics that resonate more with Anglo-American traditions, though informed by Continental legal thought. He is best described as a hybrid thinker, drawing from both traditions while developing a distinctive, functionalist theory of the Rule of Law.

Although no universally accepted definition exists, the enduring centrality of the Rule of Law in modern political and legal theory affirms its status as a cornerstone of democratic legitimacy and international legal order. Of course there are other legal systems and traditions that have different views on the rule of law, and these cases show that while the Rule of Law has global appeal, its meaning and implementation vary widely depending on historical experience, governance structures, and cultural values¹⁰⁵.

The next section explores how these theoretical insights have shaped institutional understandings of the Rule of Law among international organizations, as the final section of this comprehensive overview of the rule of law.

1.5 Rule of Law as a Development Concept

At the international level, for many years, rule of law remains one of the most important strategic policies of the international organizations engaged in the development projects. Building on the efforts of the leading scholars on the historical development of the Rule of Law concept, in this section we look at the role of the international organizations in shaping the meaning and the content of the Rule of Law. As such, the first part of the chapter pertains to the international and regional organizations such as UN and the Council of Europe, in defining the meaning and the content of the Rule of Law. This is why in this first section we take a look at the universal efforts through UN to define and promote the rule of law general approach is a good start and serves as a logical chronology for moving to the second part exploring the role of the European Union in defining it. Let's start with the international organizations efforts to define the Rule of Law.

¹⁰⁵ See Gutmann, Jerg and Voigt, Stefan, The Rule of Law and Islam (March 2, 2017). Edward Elgar Handbook on the Rule of Law, Available at SSRN: <https://ssrn.com/abstract=2926400> . *The Rule of Law in Islamic thought derives primarily from the Shari'a, a comprehensive legal and moral framework rooted in divine revelation. Historically, Islamic legal systems developed complex jurisprudential schools (madhhabs) such as Hanafi, Maliki, Shafi'i, and Hanbali, which provided structured interpretive mechanisms for applying sacred law to worldly matters. The idea of legal constraint over rulers was embedded in the concept of the caliph as Amir al-Mu'minin (Commander of the Faithful) who must uphold divine law. In modern contexts, Muslim-majority countries vary widely in how they integrate Shari'a with constitutional frameworks. Some, like Saudi Arabia, claim Shari'a as the sole source of law. Others, like Malaysia or Jordan, adopt a dual legal system, with both civil and religious courts. Countries like Tunisia or Morocco embrace more secular systems with Islamic ethical overlays.*

1.5.1 International Organizations and the development of the Rule of Law concept

United Nations (UN)

United Nations, especially after the Cold-War era, prominently embraced the rule of law as a foundational concept for peace, security, and good governance, often seen as a solution to the world's troubles¹⁰⁶. With the fall of iron curtain and the ideological East and West divide gone, the UN and international community converged on the idea that building the rule of law was essential for conflict resolution, development, and human rights¹⁰⁷. The UN Security Council held thematic debates on the rule of law in 2003 and 2004, and Secretary-General Kofi Annan declared the rule of law a key priority in post-conflict reconstruction,¹⁰⁸ even broadening the theoretical scope and extending it beyond the formalistic view of the concept by defining it as:

For the United Nations (UN) system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.”¹⁰⁹

¹⁰⁶ Thomas Carothers (1998) “*The Rule of Law Revival*”, Foreign Affairs 77, pp. 95-106.

¹⁰⁷ See Elgebeily Sherif, *The Rule of Law in the United Nations Security Council Decision-Making Process: Turning the Focus Inwards*, (2018) by Routledge.

¹⁰⁸ Jane E. Stromseth, in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Cambridge Companions to Law). Cambridge: Cambridge University Press. doi:10.1017/9781108600569, pp. 513 - 537.

¹⁰⁹ See Rule of Law Section at the UN, available at: <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (accessed September 25, 2022). UN has further elaborated the concept in the international efforts of the organization to ensure peace and stability, by specifying that: “The rule of law is fundamental to international peace and security and political stability; to achieve economic and social progress and development; and to protect people’s rights and fundamental freedoms. It is foundational to people’s access to public services, curbing corruption, restraining the abuse of power, and to establishing the social contract between people and the state. Rule of law and development are strongly interlinked, and strengthened rule of law-based society should be considered as an outcome of the **2030 Agenda and Sustainable Development Goals (SDGs)**.” *Ibid*.

This expansive definition – which incorporates human rights, accountability, separation of powers, fairness, and legal transparency – exemplifies how the UN fused classical rule-of-law ideals with substantive values. It signaled that the rule of law is not merely about formal legality, but about justice, equality, and rights in governance, namely “*is a statement about how the rule of law should operate in national systems and it is not a definition of the rule of law at the global level.*”¹¹⁰ In other words, the UN essentially promoted a domestic Rule of Law (rooted in accountable, rights-respecting government) as a universal ideal. Through high-level declarations, the UN encouraged all nations to strengthen the rule of law at home and affirmed that even international organizations (the UN itself included) must be bound by rule-of-law principles in their own actions.¹¹¹ UN’s missions around the world have kept the Rule of Law high in the agenda, including especially the UNMIK mission to Kosovo trying to put such ideas into practice and establish judicial systems and legal order, further entrenching the rule of law as a core element of international orthodoxy.¹¹²

As it can be seen UN, as many other International organizations have, grasped the concept and put it into the perspective by making part of their agendas and principles. Thus, despite the criticism and skepticism over the real meaning and of the Rule of Law as well as the lack of a universally accepted definition there are yet a number of elements attributed to this concept and widely endorsed. This is why Rule of Law has become an integral part of some of the most important international and regional legal instruments. As such, we can find rule of law as one the founding principles at the global level, as is the United Nations Organization¹¹³. The term can be found in the Universal Declaration of Human Rights¹¹⁴ and in fact it has become a label in the international discourse and as an important factor promoting democracy and human rights across the globe. The

¹¹⁰ McCorquodale, Robert. (2016). Defining the International Rule of Law: Defying Gravity?. *International and Comparative Law Quarterly*. -1. 1-28. p. 286

¹¹¹ Kostiantyn Gorobets, “*The International Rule of Law and the Idea of Normative Authority*”, *Hague Journal on the Rule of Law* (2020) 12:227–249 <https://doi.org/10.1007/s40803-020-00141-3>

¹¹² Jane E. Stromseth, Post Conflict Rule of Law, in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law* (Cambridge Companions to Law). Cambridge: Cambridge University Press. doi:10.1017/9781108600569, pp. 513 - 537.

¹¹³ According to the UN: “The General Assembly has established that human rights, the rule of law and democracy are interlinked and mutually reinforcing, and they belong to the universal and indivisible core values and principles of the United Nations. The advancement of the rule of law is essential to achieve sustained economic growth, sustainable development, eradication of poverty, hunger and the protection of all human rights and fundamental freedoms”, available at: <https://www.un.org/ruleoflaw/the-rule-of-law-in-un-intergovernmental-work/>

¹¹⁴ See the Preamble of the UN Declaration of Human Rights, stating “*Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the **rule of law***” [Emphasis added].

ECHR refers to the rule of law too¹¹⁵. There is hardly an international organization and event therein where you don't hear about the rule of law and its importance, including commitments of governments and organizations to further promote it globally¹¹⁶.

The meaning of the rule of law, as in many other fields and discipline as explained above, depends on a number of contexts being them philosophical, political or legal ones. Although this is a common jargon used extensively by politicians and professionals at international and different national levels, especially in the political discourse the meaning attached therein may differ depending on the context being used. This is due to the fact that most countries and international organizations their own legal norms and practice and historical background whereby the rule of law concept has its own meaning and history. This is why when we can consider the Rule of Law from a broader perspective, the definition provided by the UN is a rather general, including some principles of governance. Though this is a definition of the rule of law in the international level, is not a definition for the rule of law meaning on a given form of governance. This is understandable as UN is the global organization with 193¹¹⁷ members and it is hard to come up with a one-size-fits-all solution definition¹¹⁸. A number of authors have tried to simplify the notion of the rule of law¹¹⁹ while others tend to provide a more comprehensive view encompassing most of the principles of a democratic type of governance¹²⁰. Other authors have praised the work of the UN in its role to elevate the Rule of Law concept acknowledging the challenges it entails¹²¹.

¹¹⁵ See recital 5 of the Preamble of the Convention stating: “...*Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the **rule of law**, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration...*” [emphasis added]

¹¹⁶ See Un General Assembly, “**The Rule of Law at the National and International Level**” which was introduced by the Sixth Committee of the General Assembly; thereafter, the topic became more and more central, and annual resolutions have been adopted: 61/39, 62/70, 63/128, 64/116, 65/32, 66/102, 67/1, 67/97, 68/116, 69/123, 70/118. Moreover see the latest resolution of the UNGA, A/RES/76/117 “**The rule of law at the national and international levels**”

¹¹⁷ Kosovo is not member of the UN yet as it has not managed yet to ensure recognition by all member states of the UN, especially by the two permanent members of the Security Council, namely Russia and China. To this date, there is an ongoing dialogue between Serbia and Kosovo, facilitated by the EU.

¹¹⁸ See May Ch., & Winchester A (Eds.). (2018). *Handbook on the rule of law*. Edward Elgar Publishing, Inc. DOI 10.4337/9781786432445, page 213.

¹¹⁹ See Waldron, J, “*The Rule of Law as an Essentially Contested Concept*” in Meierhenrich, J., & Loughlin, M. (Eds.). (2021). *The Cambridge Companion to the Rule of Law (Op cited)*, pp. 122-123.

¹²⁰ Brian Z. Tamanaha, “*On the Rule of Law: History, Politics, Theory*”, Cambridge University Press (2004), pp 91.

¹²¹ *The consolidation and advancement of the international rule of law is a major challenge for the international community, and in particular for the United Nations*” See Kohona, Palitha T. B. *The international rule of law and the role of the United Nations*”, International lawyer 36(4) winter 2002:1131-1144. Others like Thomas Fitschen even dubbed the UN's post-2000 effort as “inventing the rule of law for the United Nations,” indicating how the UN sought a common

Moving from the UN as a global organization, to more regional ones, we should refer primarily to the Council of Europe as one of the most active organization in Europe to efforts to strengthen and promote rule of law.

Council of Europe (CoE)

Council of Europe has contributed extensively in further clarifying the meaning of the Rule of Law and further promoting it within the member states of the organization as well as globally. CoE in addition to being the most important organization in Europe for the protection of human rights, has contributed substantially in the rule of law and democracy as well. Rule of law is one of the three founding principles of the CoE¹²², while is one of the core membership requirements for new member states¹²³. A growing and deeper cooperation between CoE and the EU has pushed the organization's agendas on the rule of law even more. There are a number of specialized bodies established by the CoE tasked with the rule of law agenda as part of the efforts to clarify and streamline the understanding of this concept¹²⁴.

In line with these efforts to streamline the use and understanding on the rule of law, CoE engaged the European Commission for Democracy through Law (known as Venice Commission¹²⁵), to come up with a common definition on the concept. It is only in 2011 that the Commission came up with

understanding of the term for its work. See Thomas Fitschen, *"Inventing the Rule of Law for the United Nations"*. Max Planck Yearbook of United Nations Law vol. 12 (2008): p. 347.

¹²² The third recital in the preamble of the Statute of the organization states *"Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the **rule of law**, principles which form the basis of all genuine democracy"* [emphasis added] <https://rm.coe.int/1680306052>

¹²³ See ETS 1 – Statute of the Council of Europe, 5.V.1949, Article 3, stating that *"Every member of the Council of Europe must accept the principles of the **rule of law** and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I"*. [emphasis added] <https://rm.coe.int/1680306052>

¹²⁴ In 2007, the Parliamentary Assembly of the CoE adopted the resolution 1594, on *"the Principles of the Rule of Law"* expressing concerns about the different meanings used in the terminology of the members states regarding the rule of law term, giving guidance as to how to translate and which term better suits in the language terminology of the member states. <https://pace.coe.int/en/files/11593>

¹²⁵ The Commission has 61 member states: the 46 Council of Europe member states and 15 other countries (Algeria, Brazil, Canada, Chile, Costa Rica, Israel, Kazakhstan, the Republic of Korea, Kosovo, Kyrgyzstan, Morocco, Mexico, Peru, Tunisia and the USA). Argentina, Japan, the Holy See and Uruguay are observers, Belarus has a status of an associate member state (suspended). South Africa and the Palestinian National Authority have a special cooperation status. The Commission also cooperates closely with the European Union, OSCE/ODIHR and the Organisation of American States (OAS) https://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN

definition on a special report on the Rule of Law and then further improved it in 2014 and 2016 by developing the Rule of Law checklist¹²⁶. The Commission, having one of its key objectives to strengthen and promote the rule of law¹²⁷, lists the main elements to the rule of law as (1) Legality; (2) Legal certainty; (3) Prevention of abuse or misuse of powers; (4) Equality before the law and non-discrimination; and (5) Access to Justice¹²⁸. All of those elements have been further divided into sub-components¹²⁹. These five elements as agreed on and promoted by the Venice Commission, reflect the common core contained in the rule of law concept¹³⁰ which permits the accommodation of existing ‘thick’ and ‘thin’ conceptual versions of the rule of law¹³¹. Those elements are drawn from the proposal of the late British Judge, Lord Tom Bingham¹³².

As we will see in the sections to follow, there are different programs dealing with and promoting the rule of law which can be subject to other studies but, with some minor nuances, they all refer to the rule of law checklist of the Venice Commission as an authoritative body having provided a comprehensive overview of the rule of law concept and, as we will see below, serves as an important tool for the EU as well.

1.6 Concluding Remarks

This chapter has laid the conceptual and methodological foundation for the thesis by exploring the evolving meaning of the Rule of Law, both in theory and in the frameworks established by key international institutions. The discussion then traced the historical evolution of the Rule of Law, starting from its philosophical roots in classical antiquity and advancing through Renaissance and

¹²⁶ Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) CDL-AD(2016)007-e.

¹²⁷ See Article 1 of the Statute of the Venice Commission, at https://www.venice.coe.int/WebForms/pages/?p=01_01_Statute

¹²⁸ Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) CDL-AD(2016)007-e.

¹²⁹ *Ibid.*

¹³⁰ See Qerim Qerimi, “Operationalizing and Measuring Rule of Law in an Internationalized Transitional Context: The Virtue of Venice Commission’s Rule of Law Checklist”, Law and Development Review 2019, page 5. <https://doi.org/10.1515/ldr-2019-0010>

¹³¹ *ibid.*

¹³² Op cited

Enlightenment thought, culminating in the foundational work of theorists such as A.V. Dicey, Friedrich Hayek, Tom Bingham, Joseph Raz, Judith Shklar, Brian Tamanaha, and Martin Krygier.

These diverse perspectives illustrate the definitional ambiguity of the Rule of Law, ranging from formalist and procedural interpretations to more substantive and justice-oriented conceptions. The comparative overview underscores that there is no single, universally agreed-upon definition; instead, the Rule of Law remains a contested, multidimensional concept shaped by legal, historical, and political contexts. What emerges, however, is a general consensus on the importance of legal certainty, equality before the law, institutional checks and balances, and protection against arbitrary governance, including the respect for human rights, reflecting the minimum core elements widely acknowledged.

Building on these theoretical underpinnings, the chapter turned to institutional definitions advanced by international organizations, with a particular focus on the United Nations and the Council of Europe. The analysis revealed a growing international convergence around core elements of the Rule of Law, particularly through instruments such as the UN's 2004 definition and the Venice Commission's Rule of Law Checklist. These efforts have operationalized the Rule of Law as both a normative ideal and a set of measurable governance standards at international and regional levels, accordingly.

Looking ahead, the next chapter investigates the European Union's evolving engagement with the Rule of Law. The EU has positioned itself as both a guardian and exporter of the principle, yet its own internal challenges and external strategies invite further scrutiny. A key question is whether the EU has clarified the meaning and implications of the Rule of Law through its legal and policy frameworks, or whether it has further complicated the concept by layering it with conditionalities, political discretion, and contested enforcement mechanisms. The chapter will explore to what extent the EU's approach enhances the legitimacy, coherence, and enforceability of the Rule of Law or whether, paradoxically, it deepens its conceptual ambiguity while expanding its strategic use.

Taken together, the scholarly and institutional perspectives explored in this chapter offer a comprehensive conceptual backdrop against which the EU's Rule of Law framework can now be assessed. As the next chapter will show, the European Union has developed its own legal and political interpretations of the Rule of Law, with distinct internal and external dimensions. Understanding how the EU defines, applies, and enforces the Rule of Law, especially in its enlargement policy toward the Western Balkans, requires grounding in the theoretical diversity and

institutional complexity outlined here. This is important especially for the fact that the rule of law of the European Union is considered as a common value to its Member States, which, as we could see above, the reviewed literature gives quite divergent understanding of it among some of the most important countries that are State Members to the European Union.

Chapter 2: The Rule of Law of the European Union

Following the considerations given to the terminology and the meaning of the rule of law in general, we explore this further in the meaning used in the context of the EU jargon. This is considered both in its internal efforts to further promote the principle of RoL and, especially, in its external ones in the interaction with third countries, especially in relation with the Western Balkan countries. Therefore, we would like to consider further the meaning of the Rule of Law from three main dimensions. Firstly, the Rule of Law as enshrined in the body of law of the European Union, both at the treaty level and at the secondary legislation, including the case law of the Court of Justice of the European Union and its special contribution as a ‘quasi constitutional’ court of Europe¹³³. Secondly, we examine the Rule of Law considerations by the Member States of the European Union.¹³⁴ This overview of the general meaning and understanding of the rule of law notion will be helpful in a third dimension of the notion, namely the external dimension of the EU meaning to the rule of law. This third dimension will elaborate the EU’s role as a promoter of the Rule of Law in its external relations, especially vis-à-vis candidate countries.

2.1 The notion ‘Rule of Law’ in the EU treaties

The history of the European Union goes back to the creation of the first communities, referred to the Treaties of Rome. Those are the founding treaties of what we know today as the European Union. Nevertheless, if we want to trace back the rule of law notion, we will find it only lately in 1992 in the Maastricht Treaty, establishing the European Union.¹³⁵ With the amendments

¹³³ Sadurski, Wojciech, Constitutionalism and the Enlargement of Europe (July 5, 2012). Sydney Law School Research Paper No. 12/45, Available at SSRN: <https://ssrn.com/abstract=2101479>

¹³⁴ For the purpose of clarifying the notion, we will make reference to UK view of the Rule of Law, despite that fact that is no longer Member State of the EU, formally as of January 1, 2020 and effectively as of January 1, 2021.

¹³⁵ See The Treaty on European Union, Official Journal of the European Communities, No C 191 /30, of 29.07.1992. In the Preamble recitals, stating “...CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of **the rule of law**”. In the following provisions, in Title II, the provisions amending the community treaties, there is Article 130u, paragraph 2, stating “Community policy in this area shall contribute to the general objective of developing and consolidating democracy and **the rule of law**, and to that of respecting human rights and fundamental freedoms.”; Article 173 “It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any **rule of law** relating to its application, or misuse of powers”, including similar references to the competence of the Court of Justice. [emphasis added]

introduced by the Treaty of Amsterdam¹³⁶, similar provisions are included therein too¹³⁷ and so are retained in the Treaty of Nice as well, including additional reference to its relations with third countries¹³⁸. In the final treaty, the Treaty of Lisbon, the language can be summarized from the Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, whereby the Rule of Law notion is included in several articles as well, both as a founding principle and value, and as a tool in external relations¹³⁹. Looking at this chronology of the treaties and the language used in those articles, we can notice that the rule of law serves as one of the principles included therein. This means that the rule of law principle is one of the core applicable constitutional principles of the European Union¹⁴⁰. As such the main reference in the treaties of the EU is Article 2 of the TEU, as the most important article regarding the rule of law in the EU which is being widely quoted, stating that:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”¹⁴¹

Some authors claim that there is reference to the rule of law even before having included in the Maastricht Treaty, namely they refer to the Declaration on European Identity by the Heads of States

¹³⁶ It is the Treaty of Amsterdam that for the first time defined the rule of law as a value, making it a value based on which the Union is founded, along with other values such as human dignity, freedom etc.

¹³⁷ See The Consolidated Version of the Treaty on European Union, Official Journal of the European Communities, (C340/146). There is again reference to the Rule of Law in the Treaty of Maastricht, namely at the recitals of the Preamble; in Article 6 (paragraph 1); at Title V, provisions on a common foreign and security policy, Article 11, (paragraph 1, line 5) stating *“The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be: to develop and consolidate democracy and **the rule of law**, and respect for human rights and fundamental freedoms.”*; and again in Article 35 (paragraph 6).

¹³⁸ See Title XXI, article 181a, paragraph 1, stating *“...Community policy in this area shall contribute to the general objective of developing and consolidating democracy and **the rule of law**, and to the objective of respecting human rights and fundamental freedoms.”* [emphasis added]

¹³⁹ See Treaty there are two recitals at the Preamble, the second and the forth one; Article 2; Article 21 (paragraphs 1 and 2 (b)); Article 263 and Article 14 of the ESCB, referring to the National Central Banks.

¹⁴⁰ For a detailed analyses of the treaty provisions and the Rule of Law as a constitutional principle see Laurent Pech and Joelle Grogan et al, *‘Meaning and Scope of the EU Rule of law’* (April 2020), available at <https://reconnect-europe.eu/wp-content/uploads/2020/05/D7.2-1.pdf>.

¹⁴¹ See Article 2. Consolidated Version of the Treaty on European Union. C 326/17, volume 55, Official Journal of the European Union, 26.10.2012.

or Governments in Copenhagen in 1973 calling for the principle of rule of law as one of the elements of European Identity¹⁴² and to the case law of the Court of Justice in the case *Les Verts v Parliament*, Case 294/83¹⁴³. Leaving aside this matter, as to when and by whom is first mentioned in the affairs of the European Union, it is important to note that the definition appeared to become an issue shaking the very foundations of the union, challenged by member states themselves. As such, following the idea that the rule of law is as one of the values based on which the organization is founded, there is a need to see what EU understands with the rule of law, if it has defined it at all. This is needed especially from the mere fact that although treaties do make reference to the rule of law, it is true that they do not offer any definition about the concept and/or any explanation as to what does it entail¹⁴⁴.

The need to define the rule of law was ever pressing especially after the latest developments in some of the EU member states, namely Hungary and Poland that have seriously questioned the meaning of the rule of law¹⁴⁵. Both Polish and Hungarian governments have even argued in front of the Court of Justice that EU has not defined and even does not have competence to define the rule of law¹⁴⁶. These developments have questioned the ability of the EU to promote and protect the rule of law as a common universal value, an argument some authors use when questioning the existence of a rule of law for the EU. In contrast, critics question whether the EU has a truly coherent or enforceable conception of the Rule of Law, arguing “the Rule of Law is not a rule and not a law in the EU context, it is a slogan and a tool of power.”¹⁴⁷ While there are some who question the rule of law as a shared value common to the member states, as a very vague concept¹⁴⁸. As such can we talk about separate rule of law, the EU rule of law? This is important to mention at this point especially if we want to define where we start of and where are we aiming to. Is EU promoting its

¹⁴² See Laurent Pech, “*The Rule of Law*”, in: *The Evolution of EU Law* Edited by: Paul Craig and Gráinne de Búrca (2021), Oxford University Press, DOI: 10.1093/oso/9780192846556.003.0010, page 312

¹⁴³ *Ibid.*

¹⁴⁴ See Laurent Pech, “*The Rule of Law as a Well-Established and Well-Defined Principle of EU Law*”, Hague Journal on the Rule of Law. <https://doi.org/10.1007/s40803-022-00176-8>, page 4.

¹⁴⁵ Pech, Laurent and Scheppele, Kim Lane, *Illiberalism Within: Rule of Law Backsliding in the EU* (December 1, 2017). Cambridge Yearbook of European Legal Studies volume 19 December 2017 3-47, Available at SSRN: <https://ssrn.com/abstract=3009280> or <http://dx.doi.org/10.2139/ssrn.3009280>

¹⁴⁶ See Laurent Pech, “*The Rule of Law as a Well-Established and Well-Defined Principle of EU Law*”, Hague Journal on the Rule of Law. <https://doi.org/10.1007/s40803-022-00176-8>, page 3.

¹⁴⁷ Dimitry Kochenov, “The EU’s Rule of Law: The Hollow Core,” in Clossa & Kochenov (eds.), *Reinforcing Rule of Law Oversight in the European Union* (Cambridge University Press, 2016), p. 7.

¹⁴⁸ Daniel Innerarity, “The EU as a Democratic System,” in *European Law Journal*, Vol. 25, No. 3, 2019, p. 221.

own rule of law, as a supranational legal order or is it promoting the value which is common to the Member States, namely the founders of the Union. The debate on this continues, so do disagreements on the matter¹⁴⁹. Nevertheless, one thing is for sure, rule of law is very important for the EU, which has dedicated immense resources and projects to promote the rule of law within and outside the organization. In its external actions, it is again the Maastricht Treaty that makes reference to the rule of law as tool guiding the union in its international relations, stating:

“The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”¹⁵⁰

Moreover, for the new candidates that wish to join the EU, the EU treaty makes reference to the criteria of the rule of law value as a founding value of the union, namely:

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union...”¹⁵¹

Looking at the provisions of the treaties, the rule of law as a principle is not defined and it does not provide the elements it encompasses. It is rather a political statement in the legal provisions of the treaties. This is why we have to see into the secondary legislation and or the case law of the court of justice to understand the meaning of the rule of law within the European Union. This has been the engagement of the EU with the rule of law which is intensified especially after the notion has been challenged by its member states. In this effort we will see how the EU has used the secondary legislation, especially the Commission has been very active on the matter, as we will see below, similarly has the Court of Justice. In fact, faced by this ‘rule of law crisis’, we will see a pattern of the

¹⁴⁹ Kochenov, Dimitry and Kochenov, Dimitry and Ganty, Sarah, EU Lawlessness Law: Europe’s Passport Apartheid From Indifference To Torture and Killing (January 2, 2023). Jean Monnet Working Paper No 2/2022 (NYU Law School), Available at SSRN: <https://ssrn.com/abstract=4316584> or <http://dx.doi.org/10.2139/ssrn.4316584>.

¹⁵⁰ See Article 21 of the Maastricht Treaty, Official Journal of the European Union, 26.10.2012, C 326/17

¹⁵¹ See Article 49 of the Maastricht Treaty, Official Journal of the European Union, 26.10.2012, C 326/17.

EU hurrying in providing the missing definitions on the rule of law. In this hurrying age of the EU institutions, it is worth examining and reflecting upon the Commission's and the Court of Justice's main contributions in defining the rule of law through secondary legislation and case law.

2.2 EU's hurry to define the rule of law

As mentioned above, Rule of Law is one of the founding principles of the European Union,¹⁵² but in itself this does not provide a definition as to what does this principle mean. Although it is considered to be a 'shared value' as spelled out in the treaty provisions, a growing concern existed that member states do not share the same opinion on its meaning¹⁵³ and due to the lack of this shared understanding hesitation existed even as to whether EU itself is well suited to promote, protect and assess the rule of law.¹⁵⁴

Under those circumstances and being challenged its core founding values by its own Members¹⁵⁵, EU mobilized its potential to hurry up and define the rule of law. In 2014, the Commission in its Communication called "*A new EU framework to strengthen the Rule of Law*"¹⁵⁶, provided that:

"The precise content of the principles and standards stemming from the rule of law may vary at national level, depending on each Member State's constitutional system. Nevertheless, case law of the Court of Justice of the European Union ("the Court of Justice") and of the European Court of Human Rights, as well as documents drawn up by the Council of Europe, building notably on the expertise of the Venice Commission, provide a non-exhaustive list of

¹⁵² See Article 2 of the EU Treaty.

¹⁵³ There are growing concerns that some EU Member States do not share the same belief on the Rule of Law as promoted by the EU institutions and enforced by the Court of Justice.

¹⁵⁴ See Martin Mendelski "*Europeanization and the Rule of Law: Towards a Pathological Turn*", KONINKLIJKE BRILL NV, Leiden, Southeastern Europe 40 (2016), pp. 349; and Mendelski, M. 2015. "The EU's pathological power: The failure of external rule of law promotion in South Eastern Europe" Southeastern Europe 39(3): 318–346. Here the author argues that: "*EU-driven rule of law reforms are not transformative and even have pathological power, that is, a negatively reinforcing effect. Thus, rather than strengthening the rule of law, the EU and domestic reformers (change agents) contribute paradoxically to its overall weakening. The EU's pathological power, though, is an indirect effect, as its outcome depends on a country's domestic conditions, and in particular on the already existing level of its rule of law and the way in which reforms are conducted*".

¹⁵⁵ The Polish Minister of Foreign Affairs in one of his appearances a horse and saddle or box of Belgian chocolates for anyone who finds the definition of the rule of law in the EU treaties or in any EU legally binding document.

¹⁵⁶ See Communication from the Commission to the European Parliament and the Council, COM(2014) 158 final Brussels, 11.3.2014, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52014DC0158>

*these principles and hence define the core meaning of the rule of law as a common value of the EU in accordance with Article 2 TEU*¹⁵⁷.

With the above statement, the reference is made to the Court of Justice as well as to the CoE/Venice Commission definition as a base for the understanding of the rule of law in the EU. Based on this the commission provided the clarification thus defining the rule of law as following:

*“Those principles include legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; and equality before the law”*¹⁵⁸.

The above definition in fact it the first ever comprehensive conceptualization on the rule of law articulated by the EU institutions and is of a substantive constitutional significance to the EU ¹⁵⁹. Clearly this was for the internal purposes of the EU in the light of the rule of law crises the union was facing. This is why the Commission reiterated that:

*“Both the Court of Justice and the European Court of Human Rights confirmed that those principles are not purely formal and procedural requirements. They are the vehicle for ensuring compliance with and respect for democracy and human rights. The rule of law is therefore a constitutional principle with both formal and substantive components”*¹⁶⁰.

In addition to the European Commission, it is the legislator that made those efforts even clearer and hurried as well to give a legal definition to the concept. Thus in the Regulation 2020/2029 we have the first comprehensive all-encompassing definition of the rule of law adopted by the EU legislator¹⁶¹ marking the first detailed and enforceable definition of the rule of law in this

¹⁵⁷ *Ibid.*

¹⁵⁸ See Communication from the Commission to the European Parliament and the Council, COM(2014) 158 final Brussels, 11.3.2014, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52014DC0158>.

¹⁵⁹ See Amichai Magen, “Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU”, Journal of Common Market Studies (JCMS) 2016 Volume 54. Number 5. pp. 1050–1061, DOI: 10.1111/jcms.12400, page 1051.

¹⁶⁰ *Ibid.*

¹⁶¹ See Laurent Pech, “The Rule of Law as a Well-Established and Well-Defined Principle of EU Law”, Hague Journal on the Rule of Law. <https://doi.org/10.1007/s40803-022-00176-8>, page 8.

regulation¹⁶². Article 2 of the regulation provides that, *“for the purposes of this Regulation, the following definitions apply:*

***‘the rule of law’** refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU”*¹⁶³

The above efforts though are limited to the internal meaning of the rule of law and, as the regulation specifies, *“for the purposes of this regulation”*, thus it does not provide a definition for the EU concept as enshrined in the treaties but rather it defines it only for the purposes of this particular regulation. This is an important development though, since at least it defines the rule of law as a legal obligation and enforceable by even listing what does the breach of the principle of the rule of law means for this regulation, namely for the EU¹⁶⁴. This move is seen as helping clarify the core meaning of the rule of law within and for the European Union, a meaning continuously challenged by many scholars and Member States themselves¹⁶⁵. The legality of the Rule of Law conditionality in this regulation was challenged by the Polish and Hungarian government through an annulment action against the EU in front of the Court of Justice¹⁶⁶. The rule of law conditionality regulation is thus tested by the Court of Justice and is widely perceived as the most important regulation thus far in the rule of law development efforts¹⁶⁷. The Court of Justice that finally left no room for the

¹⁶² *Ibid.*, page 10.

¹⁶³ See Official Journal of the European Union, L1 433/1 REGULATION 2020/2092 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, on a general regime of conditionality for the protection of the Union budget, of 16 December 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R2092&from=EN>

¹⁶⁴ *Ibid*, Article 3 of the Regulation 2020/2092.

¹⁶⁵ see Carlos Closa and Dimitry Kochenov, *“Introduction: How to Save the EU's Rule of Law and Should One Bother?”* in Carlos Closa and Dimitry Kochenov (eds), *Reinforcing Rule of Law Oversight in the European Union* (Cambridge University Press 2016); and Dimitry Vladimirovich Kochenov, *“Rule of Law as a Tool to Claim Supremacy”*, RECONNECT Working Paper No. 9 (Sept 2020); Dimitry Kochenov (with Petra Bárd), in *“Rule of Law Crisis in the New Member States of the EU”* (RECONNECT Working Paper, 2018).

¹⁶⁶ See Justyna Lachny, *“The Rule of Law Conditionality Under Regulation No.2092/2020-Is it all About the Money?”* Hague Journal on the Rule of Law (2021) 13:79-105. <https://doi.org/10.1007/s40803-021-00154-6>.

¹⁶⁷ Kirst, Niels, *Rule of Law Conditionality* (December 20, 2023). REBUILD Centre Working Paper No. 13 (2023), Available at SSRN: <https://ssrn.com/abstract=4670838> or <http://dx.doi.org/10.2139/ssrn.4670838>.

interpretation and it finally maintained that yes, the rule of law is a founding principle of the EU and the union has the right to define the rule of law in its legal order. Moreover, EU should ensure that such principle is duly respected and implemented in the legal orders of the Member States. The Court of Justice's approach is that EU can define the rule of law by adopting a specific definition therein on accounts of specific aims and subject matter of the relevant piece of legislation¹⁶⁸. This is in line with the policy documents of the EU in its continued effort to clarify the concept and to "further strengthen" the rule of law within the union¹⁶⁹ and a blueprint for action¹⁷⁰.

The above are only a few references to some of the EU documents and developments pertaining to the efforts to define the rule of law, there are many other Court of Justice decisions contributing to this 'development'. As such, rule of law remains a value within the EU and the Member States are legally obliged to respect such principles and values, namely a European meaning of the rule of law¹⁷¹. Nevertheless, there is no one-singled definition of the rule of law in the EU that is widely and universally accepted and applied all over the organization, nor in its external relations. In fact, based on this approach adopted by the Court of Justice as well, specific definitions refer to the specific aims and subject matter of the relevant piece of legislation. This comes as the result that neither treaties nor EU legislation do provide a definition to clarify as to what exactly rule of law means¹⁷². Court of Justice has contributed substantially to defining and maintaining the principle of the rule of law, this is why presenting some of the most important court cases will help us understand better the EU stance on the rule of law.

2.3 CJEU on the rule of law

¹⁶⁸ See Laurent Pech, "The Rule of Law as a Well-Established and Well-Defined Principle of EU Law", Hague Journal on the Rule of Law. <https://doi.org/10.1007/s40803-022-00176-8>, page 11.

¹⁶⁹ See Communication from the Commission to the European Parliament, the European Council and the Council "Further strengthening the Rule of Law within the Union State of play and possible next steps", COM(2019) 163 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0163&qid=1678874093008>

¹⁷⁰ See Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions "Strengthening the rule of law within the Union: A blueprint for action", COM/2019/343 final

¹⁷¹ See Laurent Pech, "The Rule of Law as a Well-Established EU Value" Hague Journal on the Rule of Law (2021), p. 6. Pech argues that EU possesses its own Rule of Law standards that member states are bound to respect.

¹⁷² See Amichai Magen, "Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU", Journal of Common Market Studies (JCMS) 2016 Volume 54. Number 5. pp. 1050–1061, DOI: 10.1111/jcms.12400, page 1051.

The Court of Justice of the European Union (CJEU) has played a crucial role in articulating the meaning and scope of the Rule of Law within the EU legal order. In the court case *Les Verts v. Parliament*¹⁷³ the Court famously described the European Community as “a Community based on the rule of law.” It affirmed that EU institutions are subject to judicial review under the Treaties, reinforcing legality and institutional accountability¹⁷⁴. This case is perceived as a cornerstone that no one, being an institution, member state or individual is above the law within the constitutional framework of the EU¹⁷⁵.

In the other case, *Kadi and Al Barakaat*¹⁷⁶, the Court annulled an EU regulation that implemented UN Security Council sanctions because it violated fundamental rights. The CJEU asserted its power to review EU measures for compatibility with fundamental rights, even when implementing international obligations. The ruling affirmed that the Rule of Law within the EU legal order has both a constitutional and human rights dimension, setting clear limits to the executive power of the Council and Commission¹⁷⁷. This case exemplifies the EU’s commitment to internal legality and the substantive Rule of Law in the face of external pressures¹⁷⁸.

Another landmark case to be mentioned here is *Rosneft* case,¹⁷⁹ where the Court clarifies that Article 2 of the EU Treaty pertaining to the rule of law, is both legally binding and it provides guidance in

¹⁷³ Case 294/83 – 1986.

¹⁷⁴ Craig & de Búrca, “*EU Law: Text, Cases, and Materials*”, Fifth Edition, Oxford University Press 2011, P. 375.. He argues this judgment “laid the foundational stone for the EU’s commitment to legality and reviewability,” recognizing that even supranational institutions must comply with the Treaty framework. Further clarifying that in this connection it is to be borne in mind that the Community is based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid review of the conformity of their acts with the basic constitutional charter, the EC Treaty, which established a complete system of legal remedies and procedures designed to enable the Court of Justice to review the legality of acts of the institutions (*Case 294/83 Les Verts v Parliament [1986] ECR 1339, paragraph 23*).

¹⁷⁵ Koen Lenaerts, “*The Rule of Law and the Coherence of the Judicial System of the European Union*” CML Rev 2013, p. 1629.

¹⁷⁶ Joined Cases C-402/05 P and C-415/05 P, 2008.

¹⁷⁷ De Burca, Grainne, “*The EU, the European Court of Justice and the International Legal Order after Kadi*”. Harvard International Law Journal, Vol. 1, No. 51, 2009, Fordham Law Legal Studies Research Paper No. 1321313, Available at SSRN: <https://ssrn.com/abstract=1321313>

¹⁷⁸ Halberstam, Daniel, Systems Pluralism and Institutional Pluralism in Constitutional Law: National, Supranational, and Global Governance (February 9, 2011). U of Michigan Public Law Working Paper No. 229, Available at SSRN: <https://ssrn.com/abstract=1758907> or <http://dx.doi.org/10.2139/ssrn.1758907>. Here it is stated that “any doubt about the straightforward integration of international and European legal orders was recently laid to rest by the ECJ in the Kadi judgment. The Court reiterated there that international legal obligations cannot prejudice the principles of the EC Treaty.

¹⁷⁹ Case C-72/15, 2017.

interpreting the EU law, including the EU legal acts in external relations be subject to judicial review¹⁸⁰.

As it was mentioned in the previous sections as well, the Court has been actively engaged in the threat to the rule of law posed by the Member States, namely by Poland and Hungary. In the case against Poland, *Commission v Poland*¹⁸¹, the Court concluded that lowering the retirement age of the Supreme Court judges violated the judicial independence and the principle of rule of law¹⁸². This case is very important for the mere fact that it is the first time the Court used the primary law, hard law, to push back against the systemic rule of law backsliding marking a fundamental improvement in the EU's development in the rule of law and enabling it to seriously counter rule of law violations in its member states¹⁸³.

Another important Court decision in the EU effort to maintain and promote direct effect and enforceability of the rule of law principle is the other similar case against Poland. This new case in 2021¹⁸⁴, pertains to the contested Polish law introducing a new disciplinary regime for judges which the Court established to be in violation of the rule of law principle as enshrined in Article 2. This newly introduced regime was considered to be as a political tool in the hand of the government to control the judiciary. In the light of this decision, Poland's new disciplinary regime for judges was harshly criticized as forming part of an autocratic agenda, endeavors to put an end to judicial independence and reinstate what amounts to a "Soviet-style justice system"¹⁸⁵. This decision is very

¹⁸⁰ the Court found that effective judicial protection originates from the rule of law. "[...] Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. It must be recalled that the very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law [...]" [Rosneft judgment para. 73].

¹⁸¹ C-619/18, 2019.

¹⁸² Grabowska-Moroz, Barbara, How Was the 'Rule of Law' Dismantled in Poland and What Does It Mean for the EU? (2022). La Unión Europea y el reto del Estado de Derecho (edited by Susana Sanz Caballero), Thomson Reuters Aranzadi 2022, pp. 277-294, Available at SSRN: <https://ssrn.com/abstract=4075224> or <http://dx.doi.org/10.2139/ssrn.4075224>

¹⁸³ See Michael Blauberger, Daniel Naurin, Ulrich Sedelmeier & Natasha Wunsch (2025) The multi-level politics of countering democratic backsliding: state of the art and new research directions, *Journal of European Public Policy*, 32:2, 323-340, DOI: 10.1080/13501763.2024.2418957.

¹⁸⁴ C-791/19, 2021.

¹⁸⁵ Laurent Pech 'Protecting Polish Judges From Political Control: A Brief Analysis of the ECJ's Infringement Ruling in Case C-791/19 (Disciplinary Regime for Judges) and Order in Case C-204/21 R (Muzzle Law)'. (2021) *Verfassungsblog*, July 20. <https://doi.org/10.17176/20210720-140052-0>.

important and serves as a serious turn in the EUs efforts to put an end to the rule of law violations by its member states¹⁸⁶.

The above Court cases serve as a landmark to the EU rule of law development and are very important for the internal meaning of the rule of law. In addition they include reference to the external implications of the concept. This is why in the following section we would like to see a very general overview of the EU meaning of the rule of law in the external relations, to treat in the later sections the rule of law conditionality in the enlargement process.

2.4 EU external meaning of the rule of law

EU is perceived to be as one of the most important global soft powers¹⁸⁷ where rule of law is obviously one of the most important tools in this engagement. In the consolidated version of the Treaty on the European Union¹⁸⁸ the 'rule of law' is mentioned five times, two times in the preamble, one time in Article 2, and two times in Article 21 of the treaty¹⁸⁹. As such, rule of law is EU's driving force enshrined in the treaty in its external relations and a key principle in engaging with the world in general. While hurrying to define the rule of law internally and the rush to enforce among the EU member states through legislation and court rulings, EU has been vocal in its external actions as well on the need to further promote the rule of law globally. This, obviously not an easy task since linking the internal and external objective to uphold and promote the rule of law value can easily backfire since EU may internationally be exposed to as 'get your own house in order before you start telling us what to do' sort of response¹⁹⁰. But this cannot simply be interpreted only in a given time.

¹⁸⁶ Closa, C., and Hernández, G. (2025) Defining and Operationalising Defiant Non-Compliance in the EU: The Rule of Law Case. JCMS: Journal of Common Market Studies, 63: 964–986. <https://doi.org/10.1111/jcms.13676>.

¹⁸⁷ See "A Global Strategy for the European Union's Foreign and Security Policy", stating that "The European Union has always prided itself on its soft power – and it will keep doing so, because we are the best in this field", page 4, available at https://www.eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf

¹⁸⁸ See Consolidated Version Of The Treaty On European Union, Official Journal of the European Union, C 326/13.

¹⁸⁹ Article 21, paragraph 1, of the treaty, states that: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, **the rule of law**, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law". Moreover, paragraph 2 (b) states: The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to" ... (b) "consolidate and support democracy, **the rule of law**, human rights and the principles of international law", Consolidated Version Of The Treaty On European Union, Official Journal of the European Union, C 326/13.

¹⁹⁰ See Inge Govaere, Promoting the Rule of Law in EU External Relations: A Conceptual Framework, page 4, available at https://www.coleurope.eu/sites/default/files/research-paper/Research_Paper_3_2022_Inge_Govaere.pdf (access April 2023).

Rule of law did not pose any difficulty for Austria, Finland and Sweden in 1995 when they joined EU, since their legal systems were similar to those of the member states from the perspective of the rule of law¹⁹¹. On the other hand, rule of law has been a crucial criterion for the Eastern enlargement with the former communist countries and as such, it is during this time that EU was focused on the rule of law in its external and, especially, enlargement policy. This is why on the other side of the Iron Curtain it was difficult to speak of a definition of the rule of law in the former European communist dictatorships¹⁹². As such the EU has emphasized the importance that the rule of law plays in its external relations, probably even more than in its internal order. If the rule of law might have been taken for granted in the internal affairs of the EU and its member states, this could have not the case in its external actions pertaining to the enlargement policy.

From the perspective of an internal shared value and constitutional principle for the EU, the rule of law assumes an external role in the aftermath of the Cold War in its consideration to expand towards post-communist world¹⁹³. Apparently, even the need to define the rule of law in a stricter term internally, came as the result of the threat posed by those former communist dictatorships that joined EU in 2004, namely Hungary and Poland, who challenged the concept as new members of the EU. In fact, many blame the accession screening and enlargement criteria have failed in their case by allowing their membership without fully committing to the core values such as the rule of law¹⁹⁴. The experience of the EU has shown that the rule of law for the EU was a primary concern in its external relations regarding the enlargement agenda, rather than internal ones. This is the case especially since, as a shared value among the member states and as a founding principle, rule of law could have not been so well understood by other countries outside the EU in their journey towards the membership. This was confirmed, as we could see from the section above, by the Court of Justice, which concluded that the EU has the right to define rule of law in a given context depending on the specific aims and the subject matter of the relevant legislation. This has been the case with the external relations of the EU as well, where the rule of law ‘explanation’ for the external actors predates the internal definition of the same concept for internal ones.

¹⁹¹ See Elise Bernard, “Geopolitics of the European Rule of Law – Lessons from Ukraine and the Western Balkans”, *Intereconomics*, 2022, 57(4), 229-231, DOI: 10.1007/s10272-022-1068-z, page 230.

¹⁹² *Ibid.*

¹⁹³ See Amichai Magen, “Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU”, *Journal of Common Market Studies (JCMS)* 2016 Volume 54. Number 5. pp. 1050–1061, DOI: 10.1111/jcms.12400, page 1056.

¹⁹⁴ *Ibid.*

Comparing the legal requirements and the way the rule of law has been perceived, very often the EU has defined the rule of law in different manner depending on the aims and context of its external relations, including the enlargement process. In terms of the external dimension, rule of law is as a legal criteria for membership, is defined by Article 49 of the Treaty on EU, which defines that any future member should respect the values defined in Article 2, and rule of law is one of them. This is reinforced with the Copenhagen Criteria¹⁹⁵, where again rule of law is one of the most important ones, and its importance is continuously increasing, as we will see it below. Many authors have listed a number of problems with the so-called Europeanization of the rule of law,¹⁹⁶ while have clearly made a distinction between the internal and external meaning of the rule of law¹⁹⁷. To put it in the words of the former Vice President of the European Commission Timmermans *“the rule of law is not just an ‘inspiration’, it is also an aspiration, a principle that guides both the internal and external actions, it is what we are and what we want to be”*¹⁹⁸.

Nevertheless, although the EU seeks to export the rule of law value externally by means of persuasion, incentives and negotiation, a coherent and consistent application of such a value by the EU is continuously challenged¹⁹⁹. Being faced with the internal turmoil regarding the respect for the rule of law values, it is obvious that the challenge externally is even harder. As the former British Prime Minister Gordon Brown once remarked *‘In establishing the rule of law, the first five centuries are always the hardest’*²⁰⁰. Rule of law in the recent times is under siege²⁰¹, and EU clearly has to understand this ever growing challenge and be ready to adapt to the global developments and stand up for this ideal. This is why the rule of law in fact a form of governance involving a set of democratic principles and ideals. It is clear that is not a simple criteria or an element to be fulfilled. Rather, it is

¹⁹⁵ <https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>

¹⁹⁶ See Martin Mendelski, *Europeanization and the Rule of Law: Towards a Pathological Turn* southeastern Europe 40 (2016) 346-384, pages 357-58.

¹⁹⁷ See Laurent Pech, *“Rule of law as a guiding principle of the European Union’s external action”*, at CLEER WORKING PAPERS 2012/3, page 13.

¹⁹⁸ As quoted in Amichai Magen, *“Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU”*, Journal of Common Market Studies (JCMS) 2016 Volume 54. Number 5. pp. 1050–1061, DOI: 10.1111/jcms.12400, page 1057.

¹⁹⁹ See *“The crystallisation of a core EU meaning of the rule of law and its (limited) normative influence beyond the EU”*, (april 2021) RECONNECT - Reconciling Europe with its Citizens through Democracy and Rule of law, Deliverable 7.3, page 62.

²⁰⁰ May Ch., & Winchester A (Eds.). (2018). *Handbook on the rule of law*. Edward Elgar Publishing, Inc. DOI 10.4337/9781786432445, page 349.

²⁰¹ See Raymond Wacks, *“The Rule of Law Under Fire?”* (2021) Hart Publishing, page 151.

a complex system of principles directed to the government and public authorities that all their actions should be based on the law and anything they do should be within the framework of the legal order.²⁰² Rule of law is perceived as internal and external foundational value guiding action both within and beyond the borders of the European Union²⁰³.

As we will further see in the sections to come, EU continuously updates the notion of the rule of law, and its meaning in the external relations will be subject to this trend as well. This is why it is important to understand what are the main elements of the concept that are used by the EU both in internal and external dimensions of this important tool in the many policies of the EU institutions.

2.5 Core elements of the Rule of Law for ‘within’ and ‘outside’ the EU

All these developments pertaining to the rule of law in the past decade have created a better understanding of the rule of law concept. Once naming it as a principle of “*primordial importance*”,²⁰⁴ EU has managed to crystalize a consensual core meaning of the rule of law²⁰⁵. The core meaning and elements of the rule of law are reflected in the following table, composed by Laurent Pech, extracting from the Venice Commission RoL Checklist, European Commission Rule of Law Report, and the definition provided by 2020/2092 Regulation²⁰⁶:

Venice Commission/Council of Europe’s definition	European Commission’s definition	European Parliament and Council’s definition
Core meaning: ‘all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect	Core meaning: ‘Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental	Core meaning: ‘The rule of law requires that all public powers act within the constraints set out by law, in accordance with the values of democracy and the respect for fundamental

²⁰² See Jeremy Waldron at the “*The Concept and the Rule of Law*”, New York University, School of Law, Public Law & Legal Theory Research Paper Series Working Paper No. 08-50, pp. 5. He defines that “*The Rule of Law is a multi-faceted ideal, but most conceptions give central place to a requirement that people in positions of authority should exercise their power within a constraining framework of public norms rather than on the basis of their own preferences, their own ideology, or their own individual sense of right and wrong.*”

²⁰³ See “*The crystallisation of a core EU meaning of the rule of law and its (limited) normative influence beyond the EU*”, (april 2021) RECONNECT - Reconciling Europe with its Citizens through Democracy and Rule of law, Deliverable 7.3, page 65.

²⁰⁴ See Report from the Commission to the European Parliament and the Council on “Bulgaria's progress on accompanying measures following Accession” Brussels, 27.6.2007. COM (2007) 377 final, 23.

²⁰⁵ Pech, L. The Rule of Law as a Well-Established and Well-Defined Principle of EU Law. Hague J Rule Law 14, 107–138 (2022). <https://doi.org/10.1007/s40803-022-00176-8>. Pp. 122-123.

²⁰⁶ *Ibid.* p. 123.

(generally) in the future and publicly administered in the courts.'	rights, and under the control of independent and impartial courts.'	rights ... under the control of independent and impartial courts.'
Core elements: '(1) Legality, including a transparent, accountable and democratic process for enacting law; (2) Legal certainty; (3) Prohibition of arbitrariness; (4) Access to justice before independent and impartial courts, including judicial review of administrative acts; (5) Respect for human rights; and (6) Nondiscrimination and equality before the law.'	Core elements: 'The rule of law includes principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law.'	Core elements: The rule of law 'includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law.'

Table 1: *Core elements of the rule of law by Lauren Pech*

Despite the above, EU reaffirms that the definition of the rule of law value is a living and a permanent process that may evolve over time²⁰⁷.

The different interpretations on the rule of law concept, as explained in the previous sections, make us look at the rule of law in many different aspects for both internal purposes and external ones. Looking at the main findings of the previous section, we see that the basic principle followed by the EU institutions in all levels, namely in legislating, executing and adjudicating, is that the rule of law is a common value of the member states that it may be applied and interpreted depending on the context. As seen above, what EU is doing is taking this common shared value and turning it into a legally binding and enforceable norm for and against Member States and the EU institutions²⁰⁸. This is why many scholars argue still about the definitions and meaning of the rule of law²⁰⁹. A consensus on this is yet to achieve. Nevertheless, as explained above, in the efforts to defend the rule of law value, EU has managed to uphold such value and give clear legal force by enforcing it through both

²⁰⁷ *Ibid.* p. 127.

²⁰⁸ Michal Ovádek (2023) The making of landmark rulings in the European Union: the case of national judicial independence, *Journal of European Public Policy*, 30:6, 1119-1141, DOI: 10.1080/13501763.2022.2066156.

²⁰⁹ Koskeniemi M. The Rule of Law: Grotius. In: *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870*. Cambridge University Press; 2021:280-346; 1. Stromseth J, Wippman D, Brooks R. What Is the Rule of Law?: A Pragmatic Definition and a Synergistic Approach. In: *Can Might Make Rights?: Building the Rule of Law after Military Interventions*. Cambridge University Press; 2006:56-84.

legal acts and judicial decisions. Although there is no single definition, there is a growing convergence on the essential elements to the rule of law as outlined in the table above. On the other end, the growing activism of the EU in enforcing rule of law in the constitutional setup of the EU legal order, seems to have created some side effects, potentially rendering EU in an area outside the scope of law, thus becoming a threat itself to the rule of law²¹⁰.

2.6 Conclusion

In our effort to understand the rule of law in the EU, in this chapter, we have traced its origin back to the main legal instruments and we have tried to look at the major debates about the concept. As any other principle, rule of law has its own origin and history while obviously the debate over its exact meaning and purpose continues in the EU.

Many authors, as quoted above, have tried to define it from the so-called thin and thick perspectives to a wide and narrow meaning approach²¹¹. In this journey we may conclude that the rule of law is one of the most important principles dominating the legal and political jargon of our time. European Union seems to have been extensively engaged in rule of law and even to be greatly committed to further enhancing and explaining its value and even more keen in protecting it internally while promoting it externally. Despite its contested nature, EU has managed to define a core meaning and has defined the core elements of the Rule of Law in its internal and external context.

To conclude, the basic principle is that EU institutions in all levels, namely in legislating, executing and adjudicating, use the rule of law not only as common value of the member states but as a guiding principle in upholding and promoting such values. Moreover, EU is taking this common shared value and turning it into a legally binding and enforceable legal tool. On the other end, from

²¹⁰ See Kochenov, Dmitry and Kochenov, Dmitry, Restoring the Dialogical Rule of Law in the European Union: Janus in the Mirror (January 22, 2024). 25 Cambridge Yearbook of European Legal Studies 2023 (Forthcoming), Available at SSRN: <https://ssrn.com/abstract=4702710> or <http://dx.doi.org/10.2139/ssrn.4702710>. In this article, Kochenov argues that “while the meaning and specific use of the Rule of Law are both crucially important issues, they are quite different from the use of the concept to set aside substantive concerns that are not reflected in the EU law that claims primacy. His claim is that procedural non-reviewability as a perceived element of the Rule of Law is contrary both to the letter and spirit of EU constitutionalism. This, according to him, is because on such a reading EU law acts to shield the sovereign from scrutiny and criticism by offering the protection of his actions under the Rule of Law, but without an examination of the substantive content of its actions, thus effectively placing the Union outside the law once a supremacy claim has been voiced.

²¹¹ Jørgen Møller and Svend-Erik Skaaning, “Systematizing Thin and Thick Conceptions of the Rule of Law,” *Justice System Journal*, 33 (2012), 136–153.

the review of the primary and secondary legislation and the court cases, it is clear that there is another set of elements pertaining to the external meaning of the rule of law. EU does apply a distinct and more flexible approach to the interpretation of the rule of law in the external relations, particularly in the context of the enlargement policy. Although the rule of law value is exactly the same as a principle in the EU treaties, the way it is defined, used and enforced externally differs. This is a conclusion widely acknowledged by the professionals and academics too.

Now, in order to further analyze and look at this notion from an even more practical perspective, the next chapter will be devoted to the means of measuring the rule of law. In this regard, we will try and understand what are the mechanisms and tools in place to measure the rule of law and, even more importantly, how does EU measure the rule of law in its own yard and in the other countries, including those in the accession process. This is why the next chapter offers an overview as to how the rule of law is and can be measured and the following one after this will treat it in the perspective of the enlargement policy. Both will shed light on the effectiveness of the EU rule of law conditionality policy while measuring the progress of aspirant countries in their path towards membership aspirations through the criteria of the rule of law.

Chapter 3: Measuring the Rule of Law

3.1 Conceptual considerations

Measuring rule of law is not an easy task²¹². A growing trend though, many projects around the world have invested millions to develop and establish sophisticated tools and mechanisms, with massive missions and resources to quantify the rule of law and qualify it²¹³. Just like the debate on the rule of law itself that cannot come to an end²¹⁴, similar debates exist on the possibility and the need to measure the rule of law. Some believe that it cannot be measured at all or even there is no need to measure it at least in the general sense of it, rather better trying some parts and or components, like judicial independence²¹⁵. As a conceptually contested principle or value, there are a number of variable interfering pertaining to the legal, historical and cultural context requiring proper strategies to define common reliable indicators that are sufficiently linked to the underlying normative concept²¹⁶.

As the debate over the rule of law grows, so too does the need to measure it²¹⁷. With the increasing efforts of the international organizations and the latest development in the EU as explained above, we have seen and we will see a growing trend and need to quantify and qualify the rule of law around the world, sometimes being a flying concept trying to take if from one part of the world to the other²¹⁸. This is even more important looking through the lenses of the EU accession process, where rule of law has received a greater attention and is becoming more and more an important

²¹² Karkanitsa, Natallia. "Measuring the Unmeasurable: Foreign Aid and the Rule of Law." *American University International Law Review* 39, no. 2 (April 1, 2024): 287–326. <https://research.ebsco.com/linkprocessor/plink?id=c0d21f5c-67f0-3f05-a72c-b68c97785312>.

²¹³ Versteeg M, Ginsburg T. Measuring the Rule of Law: A Comparison of Indicators. *Law & Social Inquiry*. 2017;42(1):100-137. doi:10.1111/lsi.12175

²¹⁴ See O'Donnell, G. (2004). Why the Rule of Law Matters. *Journal of Democracy*, 15(4), 32–46. <https://doi.org/10.1353/jod.2004.0076>

²¹⁵ Rios-Figueroa, Julio and Staton, Jeffrey K., Unpacking the Rule of Law: A Review of Judicial Independence Measures (April 26, 2009). CELS 2009 4th Annual Conference on Empirical Legal Studies Paper, Available at SSRN: <https://ssrn.com/abstract=1434234> or <http://dx.doi.org/10.2139/ssrn.1434234>

²¹⁶ Versteeg M, Ginsburg T. Measuring the Rule of Law: A Comparison of Indicators. *Law & Social Inquiry*. 2017;42(1):100-137. doi:10.1111/lsi.12175

²¹⁷ Beqiraj, Julinda and Moxham, Lucy. "Reconciling the Theory and the Practice of the Rule of Law in the European Union Measuring the Rule of Law". *Hague Journal on the Rule Law*. (2022). Vol.14.

²¹⁸ Simion K. Between Universals and Particulars: Rule of Law as a Travelling Model. In: *Rule of Law Intermediaries: Brokering Influence in Myanmar*. Cambridge Studies in Law and Society. Cambridge University Press; 2021:30-53.

element before, during and even after the completion of the accession process²¹⁹. As a contested concept, rule of law is a moral ideal rooted in respect for human dignity and a virtue that is technically hard to measure, or, depending on the context, may not yield to the expected outcomes, making it hard to be measured in terms of output²²⁰. Substance of the rule of law and the procedural elements it entails determine an important part of the exercise²²¹. There are cases where some question the validity and the results, quoting cases where they may even be manipulated.²²² Measuring the rule of law depends on the type and quality of strategies and methodologies to select indicators and the sources therein²²³. Authors will continue to debate on the measurement techniques same way as we continue having many divergent opinion on the core meaning of the rule of law itself, some, as stated, claim that often there is fundamental misunderstanding on the rule of law concept itself²²⁴. Measuring the rule of law is an important part of the notion itself and understanding different methodologies. How rule of law is measured is an important part of this thesis, as we believe that if rule of law is used as a condition in the EU accession process than we should be able to measure its progress in this journey, as well as be able to compare the differences before and after the accession process²²⁵. This is why it is important to understand the level of the realization of the rule of law, once effectively defined, as it must contemplate the relationship between means and ends²²⁶, despite that rule of law does not have to have an end point²²⁷.

²¹⁹ Jeremy Waldron, *Is the Rule of Law an Essentially Contested Concept (In Florida)?* Law and Philosophy, Vol. 21, No. 2, *In the Wake of Bush v. Gore: Law, Legitimacy and Judicial Ethics* (2002), pp. 137-164. Springer Nature, URL: <https://www.jstor.org/stable/3505128>

²²⁰ Kołczyńska, M., & Bürkner, P. C. (2021). Marketplace of indicators: inconsistencies between country trends of measures of the rule of law. Political Research Exchange, 3(1). <https://doi.org/10.1080/2474736X.2021.1989984>

²²¹ Jeremy Waldron, *The Rule of Law and the Importance of the Procedure*. American Society for Political and Legal Philosophy, 2011, Vol. 50, *Getting to the Rule of Law* (2011), pp. 3-31. <https://www.jstor.org/stable/24220105>.

²²² Domaradzki, Spasimir, and Ivana Radić Milosavljević. "Between Populism and Technocracy: How National Executives in Bulgaria and Serbia Manipulate EU Rule of Law Conditionality?" *Journal of Contemporary European Research* 17, no. 2 (April 1, 2021): 281–303. doi:10.30950/jcer.v17i2.1181.

²²³ Marta Kołczyńska & Paul-Christian Bürkner (2021) Marketplace of indicators: inconsistencies between country trends of measures of the rule of law, Political Research Exchange, 3:1, 1989984, DOI:10.1080/2474736X.2021.1989984; and Skaaning, S.-E. 2009. "Measuring the Rule of Law." *Political Research Quarterly* 63 (2): 449–460. doi: 10.1177/1065912909346745.

²²⁴ Daniel B. Rodriguez, Matthew D. McCubbins & Barry R. Weingast, *The Rule of Law Unplugged*, 59 EMORY L.J. 1455 (2010). P. 1460.

²²⁵ Jano, Dorian. 2015. "Compliance with EU Legislation in the Pre-Accession Countries of South East Europe (2005–2011): A Fuzzy-Set Qualitative Comparative Analysis." *Journal of European Integration* 38 (1): 1–22. doi:10.1080/07036337.2015.1055738.

²²⁶ *Ibid.* p. 1459.

²²⁷ See Political Guidelines for the Next European Commission 2024–2029 as presented by by Ursula von der Leyen for her Candidacy for the European Commission President. In addition in this document, Von Der Leyen reconfirms strongly

Building on those divergent views and conceptual considerations, we have to see how the rule of law is measured. There are a number of international projects working on this, some governmental some non-governmental that have presented many valuable data which are very important to see the status and trend of the rule of law in several countries and regions based on concrete data and figures presented through their methodologies. This thesis will not be able to analyze all of them but at least we will present them shortly for comparative purposes and, especially see how they are used by the EU in the accession process for the Western Balkan countries.

3.2 Types of rule of law measurements

Measuring the rule of law is a multibillion dollar business, with many governmental, non-governmental and business entities involved in this exercise²²⁸. There are several international organizations, at global and regional levels, that regularly conduct rule of law measurement, just to list a few:

1. UN Rule of Law Indicators;²²⁹
2. World Justice Project;²³⁰
3. EU Justice Scoreboard;²³¹
4. CoE Venice Commission Rule of Law Checklist;²³²
5. European Commission Rule of Law Mechanism;
6. Worldwide Governance Indicators – WGI;²³³
7. Bertelsmann Stiftung’s Transformation Index (BTI);²³⁴

again that: *“The rule of law and fundamental values will continue to be the cornerstones of the EU’s enlargement policy, and they will be the foundations of our reformed and enlarged Union in the future”*.

²²⁸ Ginsburg T, Versteeg M. Rule of Law Measurement. In: Meierhenrich J, Loughlin M, eds. The Cambridge Companion to the Rule of Law. Cambridge Companions to Law. Cambridge University Press; 2021:494-512. p. 494 and Versteeg M, Ginsburg T. Measuring the Rule of Law: A Comparison of Indicators. Law & Social Inquiry, Volume 42, Issue 1, Winter 2017, pp. 100 – 137. doi:10.1111/lsi.12175

²²⁹ See The United Nations Rule of Law Indicators Implementation Guide and Project Tools, available at: http://peacekeeping.un.org/sites/default/files/un_rule_of_law_indicators.pdf

²³⁰ <http://worldjusticeproject.org/>

²³¹ http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

²³² See CDL-AD(2016)007 Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016)

²³³ <https://www.worldbank.org/en/publication/worldwide-governance-indicators>

²³⁴ See <https://bti-project.org/en/methodology> The Status Index, with its two analytic dimensions of political and economic transformation, identifies where each of the 137 countries stand on its path toward democracy under the rule of law and a social market economy.

8. Freedom House “Freedom in the World Report”,²³⁵
9. Varieties of Democracy (V-Dem),²³⁶
10. Heritage Foundation;²³⁷
11. Others: OECD; OHCHR; UNODC, GRECO, UNCAC, etc.²³⁸

The above are only some of the most well known rule of law measurement initiatives at global and regional level, all of them using their own methodology and data-sets built around different indicators. There are a number of reasons following the rule of law trends through measuring strategies and platforms. There is a growing interest to see the impact the rule of law has in many sectors, from democracy and human rights to economic development and stability, including any other potential fields²³⁹. As such, the rule of law measurement has seen a proliferation of indicators where in addition to conceptualizing the rule of law differently such indicators themselves use different coding methodologies²⁴⁰. Despite this, with their different measurement strategies and techniques, they capture similarly the essence of the rule of law concept depending on their definitions²⁴¹. Nevertheless, measurements at the global scale have their own divergences by the simple fact that deal with many completely differing legal traditions and forms of governments.²⁴²

²³⁵ Freedom in the World is an annual global report on political rights and civil liberties, composed of numerical ratings and descriptive texts for each country and a select group of territories. See <https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology>

²³⁶ See <https://www.v-dem.net> See Democracy in the World 2024, stating that Level of democracy for the average world citizen is back to 1985; by country averages, it is back to 1996. Moreover, it warns for a new global wave of autocratization with Eastern Europe and South and Central Asia being in particularly steep decline. Page 5 of the report.

²³⁷ We measure economic freedom based on 12 quantitative and qualitative factors, grouped into four broad categories, or pillars, of economic freedom: Rule of Law (property rights, government integrity, judicial effectiveness); Government Size (government spending, tax burden, fiscal health); Regulatory Efficiency (business freedom, labor freedom, monetary freedom); and Open Markets (trade freedom, investment freedom, financial freedom). <https://www.heritage.org/index/pages/about>

²³⁸ MCC (USA Millenium Challenge Corporation) as well has its own rule of law indicators and methodology for assessing other countries compliance with the rule of law <https://www.mcc.gov/who-we-select/indicator/rule-of-law-indicator/>

²³⁹ There are studies even showing a direct relation between the rule of law level in the countries and the number of medals in the sports, promoting a rule of law culture. See an interesting article on this by Potts, T. B. (2021). Does it pay to Play by the Rules? Respect for Rule of law, Control of Corruption, and National Success at the Summer Olympics. *Journal of Sports Economics*, 23(2), 222-245. <https://doi.org/10.1177/15270025211049787> (Original work published 2022). The result on this study uncovers a new link between governance and Olympic success and provide support for the existing anti-doping rules and enforcement as, ceteris paribus, it would seem that nations whose athletes respect and abide by the rules achieve higher medal shares than those whose athletes do not.

²⁴⁰ Ginsburg T, Versteeg M. Rule of Law Measurement. In: Meierhenrich J, Loughlin M, eds. *The Cambridge Companion to the Rule of Law*. Cambridge Companions to Law. Cambridge University Press; 2021:494-512. p. 494 and Versteeg M, Ginsburg T. Measuring the Rule of Law: A Comparison of Indicators. *Law & Social Inquiry*, Volume 42, Issue 1, Winter 2017, pp. 100 – 137. doi:10.1111/lisi.12175

²⁴¹ *Ibid.* p496.

²⁴² De Souza SP. *Rule of Law Promotion, Legal Indicators and Legal Pluralism*. In: *Designing Indicators for a Plural Legal World*. Global Law Series. Cambridge University Press; 2022:51-111.

All of those have measurement methods, their specific characteristics worth analyzing. Nevertheless, for the purposes of this thesis we will dive deeper into three main ones: two at regional level, the EU measurement methods (the Rule of Law mechanism and EU justice scoreboard) and the Council of Europe/Venice Commission Rule of Law Checklist and one at the international level, namely the world justice project. We will try to compare the methodologies used and draw some comparisons between them.

3.3 Measuring the rule by World Justice Project

As we could see, rule of law is not only a concern for the EU but it is rather a concern being addressed at international levels, including initiatives from and by the UN, where EU too plays an important role as a global actor. World Justice Project (WJP) is one of the most important projects worldwide. It has developed a conceptual framework to assess the extent to which countries adhere to the rule of law in practice. This framework is organized around nine basic concepts, or factors, namely: limited government powers; absence of corruption; order and security; fundamental rights; open government; effective regulatory enforcement; access to civil justice; effective criminal justice; and informal justice²⁴³. All of them consists of 52 sub-factors, all together making the core of the WJP Rule of Law Index that summarized the outcomes that the rule of law societies seek to achieve.²⁴⁴ The World Justice Project defines the rule of law as: *“a durable system of laws, institutions, norms, and community commitment that delivers four universal principles: accountability²⁴⁵, just law²⁴⁶s, open government²⁴⁷, and accessible and impartial justice²⁴⁸. These principles ensure that the government and its officials are accountable under the law, that laws are clear, publicized, stable,*

²⁴³ The informal justice factor is not included in the index scores and rankings though. See for example the WJP 2024 Report page 16, stating that: *“the conceptual framework of the Index includes a ninth factor on informal justice that is not included in the Index’s aggregate scores and rankings. Informal justice systems often play a large role in countries and jurisdictions where formal legal institutions are weak, remote, or perceived as ineffective. As such, the WJP has devoted effort to collecting data on informal justice through our surveys. Nonetheless, the complexities of these systems and the difficulties of systematically measuring their fairness and effectiveness make cross-country assessments extraordinarily challenging. For this reason, the informal justice factor is not included in the Index scores and rankings”*

²⁴⁴ See Botero, Juan Carlos and Ponce, Alejandro, Measuring the Rule of Law (November 30, 2011). p. 8. Available at SSRN: <https://ssrn.com/abstract=1966257> or <http://dx.doi.org/10.2139/ssrn.1966257>

²⁴⁵ The government as well as private actors are accountable under the law.

²⁴⁶ The law is clear, publicized, and stable and is applied evenly. It ensures human rights as well as property, contract, and procedural rights.

²⁴⁷ The processes by which the law is adopted, administered, adjudicated, and enforced are accessible, fair, and efficient.

²⁴⁸ Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve

and fair, that the process of lawmaking and enforcement is accessible, fair, and efficient, and that justice is delivered impartially and competently”²⁴⁹.

The WJP index is one of the most important ones and has a number of similarities with the other global initiatives that are arguably the most prominent ones that try to quantify the rule of law, such as World Bank’s World Governance Indicators project (WGI), the Heritage Foundation and Freedom House. Despite their difference in conceptualizing the rule of law and different methodologies used, they have a high degree of correlation as well²⁵⁰. These are all very important reports and attracting the attention of both academics and professionals. Nevertheless, EU does not use them directly when they monitor the rule of law developments. They are rather used as a source of information as part of the information gathering from the international reports. Nevertheless, for comparison purposes it is important to have a full picture of the indicators used to conduct such important assessments of the rule of law in such a wide scale. This is why presenting a full list of Components with the indicators is important. The WJP Rule of Law Index, presents the conceptual framework for the measurement of the rule of law in eight main factors and divided into 44 sub-factors used as measuring indicators, as following:

No. ²⁵¹	Factor	Indicators
1.	Constraints on Government Powers	• Government powers are effectively limited by the legislature • Government powers are effectively limited by the judiciary • Government powers are effectively limited by independent auditing and review • Government officials are sanctioned for misconduct

²⁴⁹ See the WJP Rule of Law Index 2024 report p.14 <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2024.pdf>. The report maintains that: *“Effective rule of law reduces corruption, combats poverty and disease, and protects people from injustices large and small. It is the foundation for communities of justice, opportunity, and peace—underpinning development, accountable government, and respect for fundamental rights. Traditionally, the rule of law has been viewed as the domain of lawyers and judges. However, everyday issues of safety, rights, justice, and governance affect us all; everyone is a stakeholder in the rule of law”*. Nevertheless, extending the meaning of the rule of law to every dimension of the society is perceived as a tendency to use rule of law very extensively and thus loose the core meaning therein. This is the case especially with Brian Z. Tamanaha who criticizes this approach. See Brian Z. Tamanaha *“The History and Elements of the Rule of Law”*, *Singapore Journal of Legal Studies*, December 2012, (December 2012), pp. 232-24: <https://www.jstor.org/stable/24872211>, particularly in page 236, stating: *“It is necessary to maintain a sharp analytical separation between the rule of law, democracy and human rights, as well as other good things we might want, like health and security, because mixing all of these together tends to obscure the essential reality that a society and government may comply with the rule of law, yet still be seriously flawed or wanting in various respects”*

²⁵⁰ Ginsburg T, Versteeg M. Rule of Law Measurement. In: Meierhenrich J, Loughlin M, eds. *The Cambridge Companion to the Rule of Law*. Cambridge Companions to Law. Cambridge University Press; 2021:494-512. p. 512

²⁵¹ This table is composed using the data from the WJP Rule of Law Index 2024 report p.14 <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2024.pdf>

		• Government powers are subject to non-governmental checks (media, civil society) • The transition of power is subject to the law
2.	Absence of Corruption	• Government officials in the executive branch do not use public office for private gain • Government officials in the judicial branch do not use public office for private gain • Government officials in the police and the military do not use public office for private gain • Government officials in the legislative branch do not use public office for private gain
3.	Open Government	• Publicized laws and government data • Right to information • Civic Participation • Complaint Mechanisms
4.	Fundamental Rights	• Equal treatment and absence of discrimination • The right to life and security of the person is effectively guaranteed • Due process of the law and rights of the accused • Freedom of opinion and expression is effectively guaranteed • Freedom of belief and religion is effectively guaranteed • Freedom from arbitrary interference with privacy is effectively guaranteed • Freedom of assembly and association is effectively guaranteed • Fundamental labor rights are effectively guaranteed
5.	Order and Security	• Crime is effectively controlled • Civil conflict is effectively limited • People do not resort to violence to redress personal grievances
6.	Regulatory Enforcement	• Government regulations are effectively enforced • Government regulations are applied and enforced without improper influence • Administrative proceedings are conducted without unreasonable delay • Due process is respected in administrative proceedings • The government does not expropriate without lawful process and adequate compensation
7.	Civil Justice	• People can access and afford civil justice • Civil justice is free of discrimination • Civil justice is free of corruption • Civil justice is free of improper government influence • Civil justice is not subject to unreasonable delay • Civil justice is effectively enforced • Alternative dispute resolution mechanisms are accessible, impartial, and effective
8.	Criminal Justice	• Criminal investigation system is effective • Criminal adjudication system is timely and effective • Correctional system is effective in reducing criminal behavior • Criminal system is impartial • Criminal system is free of corruption • Criminal system is free of improper government influence

		• Due process of the law and rights of the accused
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Table 2: This table is composed using the data from the WJP Rule of Law Index 2024

The WJP reports are an important tool for practitioners and are often used in academic work as a point of reference for comparison, especially in regards to the relevance and validity of data used through the indicators.²⁵² Measuring rule of law through these initiatives is important for not only theoretical purposes but also and perhaps even more important to shed light on the relationship between formal prescriptions of the rule of law and actual practices.²⁵³

The rule of law checklist as it stands was approved some 10 years ago, officially adopted in 2016. During this time, a lot of developments have impacted the rule of law, especially in the EU. Work has already started to update the rule of law checklist and it is scheduled that during 2025 an updated version will be adopted, reflecting the latest trends internationally and in Europe²⁵⁴.

3.4 Rule of Law Checklist of the CoE/Venice Commission

Rule of law for the Council of Europe (CoE), is one of the three most important values the organization is based on²⁵⁵. The rule of law checklist is one of the most important documents in the rule of law development doctrine. It has attracted lots of attention by academia and professionals. According to this list, rule of law contains six major components in the form of benchmarks, each having their elements as reflected in the following table:

No.	Benchmark	Components
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²⁵² See Urueña R. Indicators and the Law: A Case Study of the Rule of Law Index. In: Merry SE, Davis KE, Kingsbury B, eds. *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law*. Cambridge Studies in Law and Society. Cambridge University Press; 2015:75-102.

²⁵³ Skaaning, SE. A global, historical rule of law index. *Z Vgl Polit Wiss* (2025). <https://doi.org/10.1007/s12286-025-00625-2>

²⁵⁴ See ??? stating: “...updates to the Venice Commission’s Rule of Law Checklist aim to address contemporary challenges that can impact the rule of law, including technological progress, the influence of private power, threats to the rules-based international order, the conditions in post-crisis or transitional situations, and the growing powers of supranational organisations such as the EU. These updates are essential to maintaining the Checklist as a comprehensive, transparent, and objective tool for evaluating the respect for the rule of law, thereby fostering just governance worldwide.

²⁵⁵ See CDL-AD(2016)007 Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), p.6. It states that: “The Rule of Law is mentioned in the Preamble to the Statute of the Council of Europe as one of the three “principles which form the basis of all genuine democracy”, together with individual freedom and political liberty. Article 3 of the Statute makes respect for the principle of the Rule of Law a precondition for accession of new member States to the Organisation. The Rule of Law is thus one of the three intertwined and partly overlapping core principles of the Council of Europe, with democracy and human rights. The close relationship between the Rule of Law and the democratic society has been underlined by the European Court of Human Rights through different expressions: “democratic society subscribing to the Rule of Law”, “democratic society based on the Rule of Law” and, more systematically, “Rule of Law in a democratic society”. The achievement of these three principles - respect for human rights, pluralist democracy and the Rule of Law - is regarded as a single objective - the core objective - of the Council of Europe”.

1.	Legality	• Supremacy of Law • Compliance with the law • Relationship between international law and domestic law • Law-making powers of the executive • Law-making procedures • Exceptions in emergency situations • Duty to implement the law • Private actors in charge of public tasks
2.	Legal Certainty	• Accessibility of legislation • Accessibility of court decisions • Foreseeability of the laws • Stability and consistency of law • Legitimate expectations • Non-retroactivity • Nullum crimen sine lege and nulla poena sine lege principles • Res judicata
3.	Prevention of abuse (misuse) of powers	n/a ²⁵⁶
4.	Equality before the law and non-discrimination	• Principle²⁵⁷ • Non-discrimination • Equality in law • Equality before the law
5.	Access to justice	• Independence and impartiality a) <i>Independence of the judiciary</i> b) <i>Independence of individual judges</i> c) <i>Impartiality of the judiciary</i> d) <i>The prosecution service: autonomy and control</i> e) <i>Independence and impartiality of the Bar</i> • Fair trial a) <i>Access to courts</i> b) <i>Presumption of innocence</i> c) <i>Other aspects of the right to a fair trial</i> d) <i>Effectiveness of judicial decisions</i> • Constitutional justice (if applicable)
6.	Examples of particular challenges to the Rule of Law	• Corruption and conflict of interest a) <i>Preventive measures</i> b) <i>Criminal law measures</i> c) <i>Effective compliance with, and implementation of preventive and repressive measures</i> • Collection of data and surveillance a) <i>Collection and processing of personal data</i> b) <i>Targeted surveillance</i> c) <i>Strategic surveillance</i> d) <i>Video surveillance</i>

Table 3: Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session

²⁵⁶ On the limits of discretionary powers, see Appendix to Recommendation of the Committee of Ministers on good administration, CM/Rec(2007)7, Article 2.4 (“Principle of lawfulness”): “[Public authorities] shall exercise their powers only if the established facts and the applicable law entitle them to do so and solely for the purpose for which they have been conferred”.

²⁵⁷ It further explains if the Constitution enshrine the principle of equal treatment, the commitment of the State to promote equality as well as the right of individuals to be free from discrimination.

These principles, as mentioned in several sections above, have been recognized by the European Court of Justice and the European Court of Human Rights. The checklist serves as a uniform benchmark for assessing the status of the rule of law in the member states of the Council of Europe. It is a point of reference by many international organizations, other governments and civil society and media. It is important to emphasize that the list has been acknowledged by the European Court of Justice in the court cases, including the case against Hungary and Poland²⁵⁸. Despite the nuances of different legal regimes and traditions, the five elements identified and advanced by the Venice Commission reflect the common core contained in the concept of rule of law. This allows sufficient flexibility that is conducive for operational exploration, while making it a broad and inclusive concept that permits the accommodation of existing conceptual variations of the kind of “thick” and “thin” versions of the rule of law²⁵⁹.

One of the most important elements of the rule of law checklist is the fact that it acknowledges that the rule of law does not have an end goal. It is not something that can be achieved and it is an ongoing task even for the well-established democracies²⁶⁰. As we will see below, it is part of the EU rule of law reports assessing and monitoring the rule of law within EU and, lately, some accession countries too.

3.5 Rule of Law Measurement policies by the EU: where do we look at?

As part of the EU hurry to define the rule of law, due to mainly internal rule of law crisis as explained above, there seems to be a hurry in strategies as to how rule of law trends are monitored. There is a wide range of documents we have reviewed but it seems hard to find a one stand-alone document

²⁵⁸ See, C-156/21 (Hungary v. Parliament and Council) and C-157/21 (Poland v. Parliament and Council), 16 February 2022. See also CJEU, judgment in joint cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, 21 December 2021; judgment in case C-156/21, 16 February 2022.

²⁵⁹ See Qerim Qerimi, “Operationalizing and Measuring Rule of Law in an Internationalized Transitional Context: The Virtue of Venice Commission’s Rule of Law Checklist”, *Law and Development Review* 2019. <https://doi.org/10.1515/ldr-2019-0010> p. 5.

²⁶⁰ See CDL-AD(2016)007 Rule of Law Checklist, p.8., stating that: “The Rule of Law is realised through successive levels achieved in a progressive manner: the more basic the level of the Rule of Law, the greater the demand for it. Full achievement of the Rule of Law remains an on-going task, even in the well-established democracies. Against this background, it should be clear that the parameters of the checklist do not necessarily all have to be cumulatively fulfilled in order for a final assessment on compliance with the Rule of Law to be positive. The assessment will need to take into account which parameters are not met, to what extent, in what combination etc. The issue must be kept under constant review”.

in the sort of catalogue having all the criteria and tools to measure the rule of law. So if we want to present a catalogue of the rule of law requirements and baselines we must look at a number of documents. The EU commission has largely relied on the Venice Commission work when defining the main meaning and concept of the rule of law,²⁶¹ making it the first comprehensive articulation of constitutional significance for the EU²⁶². Thus, the Rule of Law checklist of the Venice Commission reflects an important part of the rule of law catalogue for the EU. Nevertheless, EU does not use it as the only and/or the main instrument to monitor and measure the rule of law. It rather serves a source in the long list of documents consulted as part of the rule of law mechanisms and as a source for the preparation of the Annual Rule of Law Reports. Building on this EU continued further, as stated on 3 April 2019 Commission Communication *“Further Strengthening the Rule of Law within the Union”*, setting out the three pillars for future action: promotion, prevention and response²⁶³. In those efforts, EU has consolidated its efforts even further with the annual overview of rule of law state of play through the annual reports on rule of law.

Again, according to the EU, rule of law is a well-established principle, where the Commission has developed standards and issued opinions and recommendations that provide well-established guidance to promote and uphold the rule of law²⁶⁴. Looking at the different instruments invented by the EU institutions, we can make a sort of catalogue as a guide to the rule of law instruments being used to enforce and monitor the state of play and the progress on the rule of law both internally and externally. In early July 2025, EU published the Annual Rule of Law Report.²⁶⁵ As it did for the first time in 2024, the Report does not only cover 27 Member States but also includes four country chapters dedicated to developments in Albania, Montenegro, North Macedonia and Serbia.²⁶⁶

²⁶¹ See Communication from the Commission to the European Parliament and the Council, COM(2014) 158 final Brussels, 11.3.2014, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52014DC0158>.

²⁶² See Amichai Magen, *“Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU”*, Journal of Common Market Studies (JCMS) 2016 Volume 54. Number 5. pp. 1050–1061, DOI: 10.1111/jcms.12400, page 1051.

²⁶³ See COM (2019) 163 final *“Further strengthening the Rule of Law within the Union State of play and possible next steps”*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0163&qid=1678874093008>

²⁶⁴ See https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/what-rule-law_en

²⁶⁵ See COM (2025) 900 final. 2025 Rule of Law Report *“The rule of law situation in the European Union”*

²⁶⁶ Albania, Montenegro, North Macedonia and Serbia were included in 2024. The selection reflects the progress made in their respective accession process or advancement as regards their level of preparedness on rule of law.

The 2025 Annual Rule of Law Report includes a new section on the Single Market dimension, thus extending the rule of law influence policy²⁶⁷. This annual report does not replace the other existing mechanism, such as the EU Justice Scoreboard²⁶⁸ and others, rather complements them. The classical treaty-based mechanism remains of course the most important tools to react to the rule of law issues, such as the infringement proceedings and rule of law conditionality, the budgetary regulation. In the new Political Guidelines, the President of the Commission announced that the Commission will set up a comprehensive Rule of Law Mechanism, covering all Member States and the accession countries once ready. This is in use for the second year already, as the main instrument, handling rule of law monitoring efforts of the EU. The novelty in this instrument is that contrary to its main definitions, promoting the six principles of the rule of law as the core well-defined meaning, the Commission has moved on with this new tool for monitoring the rule of law in its annual reports and has developed a new methodology therein. This new methodology of monitoring include four pillars with a long list of sub-topics and a very wide list of documents used as the source for information and a long list of institutions and organizations consulted for this purpose, as in the following table:

PILLARS ²⁶⁹	TOPICS
Justice Systems Civil, administrative and criminal, all instances, all branches, all stages (including prosecution and enforcement of judgments):	(i) <i>Independence: the appointment, irremovability including transfers of judges and dismissal, promotion, independence and powers of the body tasked with safeguarding the independence of the judiciary, accountability including disciplinary regime and ethical rules, independence/ autonomy of the prosecution service, independence of the Bar, etc. perception of independence</i> (ii) <i>Quality accessibility (e.g. legal aid, digitalisation), resources, use of assessment tools and standards</i> (iii) <i>Efficiency length of proceedings enforcement of judgements</i>
Anti-Corruption Framework	(i) <i>Institutional framework capacity to fight corruption</i> (ii) <i>Prevention Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision- making (including public access to information); rules on preventing conflict of interests in the public sector; measures in place to ensure whistle-blower protection and encourage reporting of corruption; measures to prevent corruption in high-risk sectors (e.g. public procurement, healthcare, other);</i> (iii) <i>Repressive measures</i>

²⁶⁷ COM (2025) 900 final, page 2, section “Rule of law as a foundation for the EU Single Market”

²⁶⁸

²⁶⁹ See 2025 Rule of law report – methodology, available at: https://commission.europa.eu/document/72742fd9-3ce0-4d23-9086-58f885f84cdd_en

	<i>Criminalisation of corruption and related offences, application of sanctions (criminal and non- criminal) for corruption offences; potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g political immunity regulation)</i>
Media Pluralism and Media Freedom	(i) media regulatory authorities and bodies (ii) Transparency of media ownership and governmental interference <i>transparent allocation of state advertisement, public information campaigns, rules governing transparency of media ownership</i> (iii) Framework for journalists' protection <i>Rules and practices protecting journalistic and other media activity from state interference, capacity to investigate attacks on journalists, access to information/ public documents</i>
Other Institutional Issues Related to Checks and Balances	(i) process for preparing and enacting laws <i>consultations, use of fast-track procedures or emergency procedures, regime for constitutional review of laws</i> (ii) independent authorities (iii) accessibility, judicial review of administrative decisions (iv) Enabling framework for civil society

Table 4: 2025 Rule of law report – methodology

This long and comprehensive table is part of the newly published methodology for 2025 Rule of law report. According to this methodology, *as explained in the Communications on "Further strengthening the rule of law in the Union - State of play and possible next steps", and "Strengthening the rule of law in the Union - A blueprint for action"*, the rule of law is a well-established principle²⁷⁰, *well-defined in its core meaning*²⁷¹. With these latest developments, the catalogue of the Rule of Law is getting really thick but whether this will contribute to a thicker rule of law tick the box exercise remains to be seen. There are many practical implications with the measuring of the rule of law, especially for the accessing countries,²⁷² which need to be seen whether this new methodology will help address the shortcomings. Looking at this new methodology section of the sources to be used for measuring the rule of law, it is a rather long one. Nevertheless, this long list of sources does not seem to be a sort of indicators. Rather, it is a long list of documents, reports and even rule of law measurement tools as well. So this new methodology rather than being a new way of measuring the rule of law seems to be a sort of catalogue as to where does the EU collect the information to see the rule of law situation in a certain country.

²⁷⁰ This term is widely used in the academic debate on the rule of law, first used by, Laurent Pech in his article *"The Rule of Law as a Well-Established and Well-Defined Principle of EU Law"*, Hague Journal on the Rule of Law. <https://doi.org/10.1007/s40803-022-00176-8>.

²⁷¹ See 2025 Rule of law report – methodology, available at: https://commission.europa.eu/document/72742fd9-3ce0-4d23-9086-58f885f84cdd_en based on the Political Guidelines for the Next European Commission 2024–2029 as presented by Ursula von der Leyen for her Candidacy for the European Commission President.

²⁷² Begiraj, J., Moxham, L. Reconciling the Theory and the Practice of the Rule of Law in the European Union Measuring the Rule of Law. Hague J Rule Law 14, 139–164 (2022). <https://doi.org/10.1007/s40803-022-00171-z>.

Measuring the rule of law in this new methodology, Commission has introduced a number of novelties. In the 2025 Annual Reports the Commission has included a new novelty, with very high impact that's gone shape new rule of law trends, called Single Market aspects across the four pillars. This is a cross cutting tool to see the impact of the rule of law in the EU market. Many have linked the backsliding trends in the rule of law as directly affecting businesses.²⁷³ This important development expands even further the scope of measuring the rule of law, this time through lenses of the Single Market²⁷⁴. This will give the EU another tool to use rule of law as part of the efforts to maintain the internal market immune from the national interferences. In this way any distortion of the market will be considered as a threat to the rule of law, and by using rule of law value EU will be able to react, same way as in any other field of EU law. Nevertheless, this new methodology and the annual rule of law reports, do not measure the rule of law. It rather collects data and information from so many sources to understand the rule of law issues so that it can then take measures to tackle via the relevant mechanisms. So this methodology and way of monitoring the rule of law is more than just measuring it. It even uses the measurements done by other organizations to track the rule of law challenges. This is why instead of measuring it, it uses it for information purposes to identify the rule of law problems and thus making the European rule of law mechanism acting as a preventive tool, deepening dialogue and joint awareness of rule of law issues²⁷⁵.

In order to collect data and information and to assess the situation of the rule of law in those relevant countries, the methodology explains the way the Commission carries those assessments annually against EU law requirements and well established European standards, including:

- Relevant obligations under EU law and European Court of Justice case law (e.g. Art. 2 TEU, 19 (1) TEU, 47 Charter of Fundamental Rights of the European Union, 325 TFEU on the

²⁷³ See report published by Institut für Europäische Politik e.V, *"German Companies in Hungary. To adapt, endure, or engage?"* August 2024. This study was produced as part of the research project 'German economic diplomacy and democratic backsliding in Hungary and Poland'. Between October 2023 and July 2024, the project examined the challenges and opportunities arising from German foreign trade relations in the context of democratic regression in Hungary and Poland.

²⁷⁴ See COM (2025) 900 final, page 2, stating: *"The rule of law ensures the proper functioning and resilience of the Single Market and the effective, uniform and transparent application of EU law. It fosters mutual trust among Member States and enables businesses to operate on an equal footing across borders. This is why adding a Single Market dimension in the Rule of Law Report has been widely welcomed by the European Parliament, Member States, civil society and business stakeholders. The new dimension will help address rule of law issues affecting companies, especially SMEs, particularly when operating across borders"*.

²⁷⁵ See 2025 Rule of law report – methodology, available at: https://commission.europa.eu/document/72742fd9-3ce0-4d23-9086-58f885f84cdd_en p.1

- Protection of the EU's financial interests), rule of law-relevant EU secondary legislation such as EU criminal law, Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive) or the Audiovisual Media Services Directive (AVMSD)⁴;
- European Court of Human Rights case law;
 - Council of Europe standards such as the Recommendation of the Committee of Minister on judges: independence, efficiency and responsibilities, the Recommendation of the Committee of Ministers on the role of public prosecution in the criminal justice system, Criminal Law Convention on Corruption, Civil Law Convention on Corruption, Resolution of the Committee of Minister on the twenty guiding principles for the fight against corruption, the Recommendation of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, the Recommendation of the Committee of Ministers on media pluralism and transparency of media ownership, the Recommendation of the Committee of Ministers on public service media governance.²⁷⁶

Looking at the above explanations, we see that the EU policy is to monitor the rule of law through its yearly cycle with the annual rule of law report at its center, promoting the rule of law in all Member States through dialogue and exchange of information with the intention to prevent challenges from emerging or deepening. This is the theory at least²⁷⁷. The rule of law semester cycle of annual reports, does not measure itself the rule of law with clear baselines and scoring techniques in the rule of law monitoring mechanism. All these tools are in the hands of the European Commission, as recognised by the Court of Justice of the European Union, as the institution responsible for guaranteeing the respect of the rule of law as a fundamental value enshrined in the EU's Treaties, and for making sure that EU law, values and principles are respected²⁷⁸.

As we can see, in its efforts to assess the rule of law, the EU relies on a very wide of reports and assessments from other international organizations, especially the Council of Europe. Rule of law is

²⁷⁶ *Ibid.* p. 4. Herein the methodology explains that "A list of relevant standards can also be found in the standards section of Venice Commission Rule of Law"

²⁷⁷ See Grabowska-Moroz, B., Grogan, J., Kochenov, D.V. et al. Reconciling Theory and Practice of the Rule of Law in the European Union. Hague J Rule Law 14, 101–105 (2022). <https://doi.org/10.1007/s40803-022-00183-9>

²⁷⁸ See the Rule of Law Report Toolbox-Factsheet 2025 available at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle/2025-rule-law-report_en

now encompassing areas that extend beyond traditional institutional frameworks. As a result, it has expanded to include individuals, corporations and other non-State actors who may exercise power over various aspects of society²⁷⁹. The 2025 Rule of Law Report it expressly states that rule of law is at the core of the enlargement process and external actions, by providing that:

“Consolidating democratic structures, upholding the rule of law, and protecting fundamental rights are at the core of the enlargement process, as part of the fundamentals for EU accession. The Commission’s annual Enlargement package assesses each country’s progress based on merit. The revised enlargement methodology agreed in 2020 further reinforced the need for tangible, sustained improvements in the rule of law before any negotiation chapter can be closed. Enlargement partners can also count on support from the Council of Europe³³ to help them implement rule of law standards, ensure alignment to the EU acquis, and provide strategic guidance for reforms through monitoring”²⁸⁰.

In this sense, EU has started already to include some of the accession countries in the annual rule of law cycle and committing that other will be included gradually. Now this is why the main basis for the situation of the rule of law in the accession countries will be these annual rule of law reports. Following the concluding remarks in this Chapter, the next one will present an overview of the state of play of the rule of law in the Western Balkan countries. Some of these countries are covered by the annual rule of law reports, while others lag behind in the process, being addressed in the regular country reports under the enlargement package. Examples from the past, focusing on practical considerations beyond theory, will also be taken into account²⁸¹. In addition, we will look at the rule of law as more than just a box-ticking exercise²⁸².

3.6 Conclusion

²⁷⁹ See Veraldi, Jacquelyn D, Private Power, the Rule of Law and the European Union (July 19, 2023). CEU Democracy Institute Working Paper No.16, 2023, Available at SSRN: <https://ssrn.com/abstract=4515322> or <http://dx.doi.org/10.2139/ssrn.4515322>

²⁸⁰ See COM (2025) 900 final. 2025 Rule of Law Report “The rule of law situation in the European Union”, p. 8

²⁸¹ Grabowska-Moroz, B., Grogan, J., Kochenov, D.V. et al. Reconciling Theory and Practice of the Rule of Law in the European Union. Hague J Rule Law 14, 101–105 (2022). <https://doi.org/10.1007/s40803-022-00183-9>; and Palombella, G. (2010) ‘The Rule of Law as Institutional Ideal’, Comparative Sociology, 9(1), pp. 4–39. doi:10.1163/156913210X12535202814315.

²⁸² Vincze, A. Rule of Law Compliance Beyond Ticking Boxes. Hague J Rule Law (2025). <https://doi.org/10.1007/s40803-025-00255-6>

Measuring rule of law will be an important element of the rule of law developments in the years to come. This chapter presented some of the well known undertakings measuring the rule of law. The list of other project, organizations and other stakeholders involved in such exercises is even longer. One thing that is common for all is that they are all different. Therefore, each method and organization has its own specifics and similarities too. None of them is identical with the other and more importantly every one of them measures 'its own rule of law' in the sense that has its own definition about the concept. Despite all these divergences, they all contribute towards the same goal, promoting rule of law and monitoring its development in countries and regions around the world. So it may not have to be expected to have them all align and harmonized. With this in mind, as Tamanaha says when a working rule of law system is in place, focusing on 'the rule of law' itself, as a political ideal or a theoretical construct or a set of quantitative indices, does not get us very far, and having this as the central focus might even serve as a distraction. What really matters is the role law plays within the broader government and society on issues of importance to the people, whether the legal system on the whole, or in particular instances, is a positive force for the good, or not.²⁸³

To conclude, while the EU employs various methodologies and instruments to monitor the rule of law in the accession process for the countries in the Western Balkans, it is crucial to understand the current state of the rule of law in these countries. As this chapter shows, the EU does not have its own system to measure the rule of law. Instead, it relies on other international organizations and sources that identify rule of law related issues. The list of sources is so wide and involves so many players that make it difficult to label it EU measurement of rule of law. To this extent, the chapter concludes that EU does not measure the rule of law by itself. It rather collects data and information from other international and national players, including civil society actors that serve as an information gathering exercise to identify and follow the rule of law related developments and issues. As to how does this play into practice, we will see it in the next chapter, where we will try to understand the way EU measures the rule of law in the accession process and see whether those countries function on, and operate under, the principles of the rule of law.

²⁸³ See Brian Z. Tamanaha "The History and Elements of the Rule of Law", *Singapore Journal of Legal Studies*, December 2012, (December 2012), pp. 232-24: <https://www.jstor.org/stable/24872211>, p. 247

Chapter 4: EU conditionality in Enlargement

4.1 Introduction

The first chapters explained the Rule of Law concept in general and its core meaning in the EU, including an overview on modalities how to measure it. This one will dive deeper into the nuances of the rule of law from the perspective of the EU conditionality. The Western Balkan countries seem to have gained a new momentum in their EU integration prospects, and the EU itself seems increasingly eager to accelerate this process. Nevertheless, as explained in the previous section above, the rule of law promotion externally has contributed not only to understand the concept from the theoretical point of view but, even more, to understand its core functions and elements. Rule of law has always been an important part of the enlargement process, it will even more so in the case of the Western Balkans as part of the accession process. This is why we may expect that both academics and professionals will pay more attention to this issue in the times to come²⁸⁴. Previous lessons and experiences are crucial for understanding both the current and future trends in this area. Conditionality of the EU, including the rule of law conditionality, are the cornerstone of the enlargement process of the EU and so have to be seen, within the umbrella of the enlargement waves and capacity of the EU.

4.2 EU Enlargement Perspective and Conditionality

The Enlargement of the EU has been an ongoing journey for the European Union since its origins, beginning with the first communities. It is interesting to note that in every decade there has been at least one enlargement wave, beginning with the first one in 1973, to the latest one in 2013, as reflected in this simple table below:

Enlargement Waves Divided in Decades ²⁸⁵				
1970s	1980s	1990s	2000s	2010s

²⁸⁴ Qerimi, Qerim R., The Impact of EU Conditionality Policy on Human Rights and Rule of Law in the Western Balkans: An Attempt at a Methodology (July 24, 2021). South-East Europe Review, 24(1): 93-102, 2021, Available at SSRN: <https://ssrn.com/abstract=3892875> or <http://dx.doi.org/10.2139/ssrn.3892875>

²⁸⁵ <https://www.consilium.europa.eu/en/policies/enlargement/>

1 st Enlargement	2 nd & 3 rd Enlargement	4 th Enlargement	5 th Enlargement	6 th Enlargement
Denmark Ireland UK (73)	Greece (81) & Portugal + Spain (86)	Austria Finland Sweden (95)	Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia (2004) & Bulgaria and Romania (2007)	Croatia (2013)

Table 5: compiled by the author based on the official data from the EU official webpage

Enlargement is at the very core of the EU's existence and much has been written about this ongoing growing process of the EU, which goes beyond the scope of this thesis. The most important element to be mentioned in this regard though is that all the enlargement waves, especially those with the countries from South East Europe and Baltic states, many being former communist states, have gone through the screening process in light of the enlargement criteria adopted in Copenhagen. As such, conditionality is the cornerstone of the accession process for new members wanting to join the EU²⁸⁶, of course combined with the strategic considerations²⁸⁷. Nevertheless, it is worth noting that every decade there has been an enlargement wave. The last enlargement was in 2013, with Croatia joining EU in a fast track.

More than a decade later, the big statements on the EU commitments to the next wave of enlargement seem to be a repetition of an old promise, now under even more challenging circumstances for the EU itself. The debate on the prospects of a potential EU enlargement is happening at the time when the EU is still adapting to a series of endogenous shocks, such as the Eurozone, refugee and energy crisis, the Brexit. The rise of illiberal politics in the post-communist

²⁸⁶ See Schimmelfennig, F., & Sedelmeier, U. (2004). Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. *Journal of European Public Policy*, 11(4), 661–679. <https://doi.org/10.1080/1350176042000248089>; Although there are opinions that such conditionality not properly invented and applied by the EU institutions. See Kochenov, Dimitry "EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law" 2007/01/01 SP - T1 VL - ER. See for this the book review from VAN ELSUWEGE, P. Dimitry Kochenov (2008): EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law. *Journal of Contemporary European Research*, [s. l.], v. 5, n. 3, p. 505–506, 2009. available: <https://research.ebsco.com/linkprocessor/plink?id=34daf970-6eca-3877-8409-5dfa8910b8e3>.

²⁸⁷ For strategic considerations of the EU enlargement in the light of Brexit and other geostrategic considerations, see Belloni, R., & Brunazzo, M. (2017). After 'Brexit': The Western Balkans in the European Waiting Room. *European Review of International Studies*, 4(1), 21-38. <https://doi.org/10.3224/eris.v4i1.02>

member states and especially the Russian aggression in Ukraine ²⁸⁸ and other conflicts around the world, including the latest one – trade relations with USA, are other headaches EU has is dealing with.

Despite these difficult times for the EU, the enhanced engagement of the EU, in light of the global developments and strategic considerations, provides a strong case for believing that the time has come for the next enlargement. The ‘time is now’ is a statement repeating lately by the EU highest officials²⁸⁹, if acceding countries manage to fulfil the necessary envisaged conditions²⁹⁰. Another important question is whether there will be an *en-bloc* enlargement similar to the previous big bang one or whether divided into sub-waves, having individual states joining similar to the Croatian example. Lately Albania and Montenegro are heading the race. Nevertheless, the war in Ukraine and the extension of the membership offer to Ukraine, Moldova and Georgia may complicate things further. The trend of the progress and the different stages they are at, as explained in the second chapter above, suggest that an *en-block* enrollment would be quite difficult. Some countries, such as Montenegro and Albania, are progressing well in the negotiation process, while Serbia, at the time of writing this thesis, faces internal turmoil, resulting in stagnation. Meanwhile, others, such as North Macedonia, Bosnia and Herzegovina, and Kosovo, are lagging behind. Bosnia & Herzegovina received the candidate status in December 2022, leaving Kosovo as the only country with the potential candidate status in the entire region.

Much has been written and talked about Enlargement as a process where European states respecting EU democratic values, may join the EU once they have fulfilled the so called political and economic conditions in the form of accession criteria, known as Copenhagen criteria²⁹¹. Those

²⁸⁸ Džankić, J. (2023). Perceptions and Misperceptions of EU Conditionality in the Western Balkans: A Case of a “Capability-Expectations Gap”? In: Uvalić, M. (eds) *Integrating the Western Balkans into the EU. New Perspectives on South-East Europe*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-32205-1_9 .page 217

²⁸⁹ See the speech of Keynote speech by President von der Leyen at the GLOBSEC 2023 Bratislava Forum, 31 May 2023.

²⁹⁰ Smith, Karen E., 'The Evolution and Application of EU Membership Conditionality', in Marise Cremona (ed.), *The Enlargement of the European Union* (Oxford, 2003; online edn, Oxford Academic, 22 Mar. 2012), <https://doi.org/10.1093/acprof:oso/9780199260942.003.0005>.

²⁹¹ The Copenhagen criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995. Those criteria are defined as: 1) stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; 2) a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; 3) the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law, the *acquis*, and adherence to the aims of political, economic and monetary union.

criteria were later subject to the EU's capacity to take in new members, while maintaining the momentum of European integration²⁹². The conditionality in the EU enlargement are treated extensively and there is a vast number of scholarly writings pertaining therein²⁹³, to consider it even a separate discipline of EU studies. Enlargement through conditionality is the backbone of the EU policy in handling the accession process. This has been the case with the big-bank enlargement with 12 members and so is the case now with the current candidates in the accession process. Conditionality in general has served to monitor the progress of the countries in their journey towards EU and has proven to be an important tool to manage this process²⁹⁴. Conditionality is the most successful tool used by the EU in the accession process and remains a credible path especially if domestic politics are responsive to external incentives²⁹⁵. Through conditionality, EU has the power to shape institutions and policies of the candidate countries and thus make them be more compatible with the EU norms and standards²⁹⁶.

EU conditionality actually started as a conditionality of the aid programmes and was similar to the aid programme conditionality of other international actors (IMF, World Bank) but later on, it developed into a political conditionality of democracy promotion, rule of law and respect for human rights. Thus making a combination of economic and political elements and the attempt at simultaneous operation across the region makes EU conditionality exceptional in its scope and purpose²⁹⁷. On the other end, conditionality has its own limits and critiques too and is a tool to be seen in a much wider perspective²⁹⁸. In the latest EU official documents though it clearly state that *“Democracy, the rule of law and fundamental values will continue to be the cornerstones of the EU’s*

²⁹² Uvalić, M. (2023). The Perceptions of European Union-Western Balkan Integration Prospects: Introduction and Overview. In: Uvalić, M. (eds) Integrating the Western Balkans into the EU. New Perspectives on South-East Europe. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-32205-1_1

²⁹³ Schimmelfennig, F. (2008). EU political accession conditionality after the 2004 enlargement: consistency and effectiveness. *Journal of European Public Policy*, 15(6), 918–937. <https://doi.org/10.1080/13501760802196861>

²⁹⁴ See Schimmelfennig, F., & Sedelmeier, U. (2019). The Europeanization of Eastern Europe: the external incentives model revisited. *Journal of European Public Policy*, 27(6), 814–833. <https://doi.org/10.1080/13501763.2019.1617333>

²⁹⁵ Schimmelfennig, F., & Sedelmeier, U. (2019). The Europeanization of Eastern Europe: the external incentives model revisited. *Journal of European Public Policy*, 27(6), 814–833. <https://doi.org/10.1080/13501763.2019.1617333>

²⁹⁶ Heather Grabbe, Six Lessons of Enlargement Ten Years on: The EU's Transformative Power in Retrospect and Prospect, 52 J. COMMON MKT. STUD. 40 (September 2014) p.

²⁹⁷ Perković, A. J. (2014). The European Union and the Democratization Process of the Western Balkans: A Critical Perspective. *Southeastern Europe*, 38(1), 112-133. <https://doi.org/10.1163/18763332-03801005>

²⁹⁸ Kochenov, Dimitry and Kochenov, Dimitry, Overestimating Conditionality (January 5, 2014). Inge Govaere, Erwan Lanon, Peter Van Elsuwege and Stanislas Adam (eds.), *The European Union in the World: Essays in Honour of Marc Maresceau* (Martinus Nijhoff, 2014, pp.541-555)., University of Groningen Faculty of Law Research Paper No. 2014/03, Available at SSRN: <https://ssrn.com/abstract=2374924>

*enlargement policy. EU membership is a strategic choice. Partners must embrace and promote EU values firmly and unequivocally. Alignment with the EU's common foreign and security policy is a more significant signal than ever of shared values and strategic orientation in the new geopolitical context*²⁹⁹. For this reason, conditionality and especially rule of law, remains a key priority in the enlargement process more than ever. Therefore, the following section will focus on the rule of law as one of the key accession criteria in the enlargement process under conditionality.

4.3 Background information on the Western Balkans relations with EU

The relations between the EU and the Western Balkans treated in this chapter refer to the EU integration perspective of the region, which was first outlined at the EU Thessaloniki Summit in June 2003³⁰⁰. It is at this summit that the EU gave a clear perspective under the so-called Stabilization and Association Process (SAP). June 2025 marks the 22nd year since then and most of the WB countries are still waiting at different train stations, except Croatia, the only one that made it through to become an EU member. Therefore, this chapter will explain the different stages those countries are in their EU journey, looking through the lenses of the rule of law. Although the skepticism has risen since then, there is still a solid enthusiasm among them to join the EU³⁰¹. Most of those countries have managed to establish, at least pro-forma, democratic regimes, while one of the most important challenges remains the Rule of Law. This is why the chapter will explain the relation between the EU and WB6 through the lenses of the Rule of Law reforms and the progress made therein.

Individual examples will be presented to illustrate the progress and stagnations therein. In explain some of those challenges, some examples of similar challenges the EU faced in the last rounds of enlargement process with countries from south-east Europe, to be used for comparative analyses. The chapter will draw some lessons and conclusions to be further considered in the following chapters. As we Rule of law is becoming more and more important for the accession process, especially in the current wave of enlargement and the progress in rule of law by aspiring countries

²⁹⁹ See COM(2024) 690 final “2024 Communication on EU enlargement policy”. Page 19.

³⁰⁰ Spasov, A. (2025). The European Integration of the Western Balkans and Its Impact on the EU as a Geopolitical Entity. In: Stojkov, A., Warin, T. (eds) Western Balkans and the Future of Europe. The Future of Europe. Springer, Cham. https://doi.org/10.1007/978-3-031-86465-0_3

³⁰¹ Aleksandar Stojkov & Thierry Warin (Editors) Western Balkans and the Future of Europe Between an Enlargement and a Commitment Fatigue, Springer Nature Switzerland AG 2025. <https://doi.org/10.1007/978-3-031-86465-0>

needs to be demonstrated much earlier in the process and is strictly monitored during the entire accession process. This is why once we present the general EU-Western Balkan relations in this introduction, we will explore as to how exactly rule of law is being handled by the parties throughout the accession journey.

4.4 Some historical background impacting values of the Balkans and the Western Balkans

This political reference to those countries was to divide them from the other geographical region of the Balkan Peninsula, which in its wider sense it includes Greece, Slovenia, Croatia, Bulgaria, Rumania and some parts Turkey and other countries we refer today as Western Balkans such as Albania, Bosnia & Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia³⁰².

Having served as the border line between the east and the west, the Austro-Hungarian Empire these countries have suffered the history of tensions between the two. Ottoman Empire ruled most of them for centuries, while their road to independence and the consequences of the First and Second World Wars have had massive impact on them. After the WWI, except Greece, all other Balkan countries were under the dominance of the Soviet Union and or at least governed by the communist ideology³⁰³. Only Greece managed to remain under the western influence of democratic regimes after the war, by joining NATO in 1952³⁰⁴ and then the European Economic Community in 1981³⁰⁵, while all other countries remained under the USSR influence until the end of the iron curtain and the fall of the Berlin Wall. The entire Balkan region has been perceived as troublesome over the course of history, so is even today in many aspects³⁰⁶. Churchill once said that Balkans can produce

³⁰² Balkan Peninsula region, includes ????. <https://www.britannica.com/summary/Balkans>
<https://www.bl.uk/collection-items/ethnographical-map-balkan-peninsular#:~:text=On%20this%20map%20the%20Balkans,of%20Turkey%20is%20also%20included.>

³⁰³ Stasa, I. (2025). Transitional Justice in Albania as a Post-Communist Country. In: Transitional Justice in Albania, Kosovo, and North Macedonia. Springer Series in Transitional Justice. Springer, Cham. https://doi.org/10.1007/978-3-031-89865-5_4.

³⁰⁴ NATO was formed in 1949 with twelve founding members and has added new members nine times. The first new members immediately after its formation were Greece and Turkey in 1952.

³⁰⁵ European Economic Community was the predecessor of the EU established later in 1992.

³⁰⁶ Balkan countries in the EU such as Bulgaria and Rumania, have had serious issues when it comes to the respect for rule of law and democracy as will be referenced in other section of this thesis, so has even Greece which has caused a number of troubles to the EU, especially during the Eurozone crisis where Greece was under strict surveillance from the EU institutions. Greece's chronic fiscal mismanagement and resulting debt crisis has repeatedly threatened the stability of the Eurozone (see: <https://www.cfr.org/timeline/greeces-debt-crisis-timeline>)

more history than it can consume³⁰⁷ while Bismarck is believed to have said that “one day the great European War will come out of some damned foolish thing in the Balkans”³⁰⁸. As such, Balkans has historically been a very important geographical area for Europe as is a strategic location and so is today for the European Union. This is why ever since after the Second World War the western democracies and especially the EU has had a great strategic interest to influence the developments in the region and include it under its own influence. Over the time, in its enlargement journey, EU managed to pull in first Greece, which is one of the founding members of the EU in 1992, and then Slovenia in 2004, Bulgaria and Rumania in 2007 and finally Croatia 2013³⁰⁹.

The remaining Balkan countries, best known as the Western Balkan a political denomination invented by the EU, is the group of countries belonging geographically to Balkan Peninsula but which were outside of the EU, namely falling behind from the earlier phases of the EU integration process. Thus Western Balkan countries refer to Albania, Bosnia & Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia (as said it includes Croatia who joined the EU in 2013). All of these countries together, all six of them, jointly have a total population of 17.6 million³¹⁰, which is less than one third of the population of Italy which has some 59 million, and a total area of 167,659km² which by comparison is some half of the total area of Italy. Currently EU with the 27 member states has a total population of 447 million with a total surface of 4,233,255 km²³¹¹. In percentage all six countries of the Western Balkans would represent less than 4% of the total area of the EU geographically and less than 4% of the total population of the EU.

	Total Population	Total Surface/Area
European Union	450.4 million	4,233,255 km ²
Western Balkans/all six countries	17.6 million	167,659km ²

³⁰⁷ See: <https://historia-europa.ep.eu/en/agenda/partner-event-how-can-europe-help-balkans-consume-its-history#:~:text=It%20is%20often%20said%20that,involvement%20in%20the%20promotion%20of>

³⁰⁸ WWI in fact started in Sarajevo, BiH, with the assassination of Archduke Franz Ferdinand, the heir to the Austro-Hungarian Empire, who was shot by a Serbian nationalist some 110 years ago, on June 28 1914. See <https://www.bbc.co.uk/bitesize/topics/zqhyb9q/articles/zgktrd>

³⁰⁹ Croatia was part of the Western Balkan agenda and enlargement process but managed to complete its journey in a very speedy way. Croatia applied for EU membership in 2003 by starting the negotiations in 2005 and completing them in 2011, signing the accession treaty on December 2011 to fully become effective member in July 2013.

³¹⁰ See statistics for individual countries at <https://data.worldbank.org/indicator/SP.POP.TOTL>

³¹¹ See <https://www.worldometers.info/world-population/europe-population/>

Table 6: Compiled by the author from the official statistics of the countries and the EU

The above listed numbers help understand the following sections in respect to the next enlargement of the relationship of the EU with the Western Balkans from the perspective of the EU integration state of play and trends therein. Another important factor to be mentioned at this stage is that all Western Balkan countries are surrounded by EU member states, none of them share any border with any other country other than countries of the European Union. Looking at the map, it can be noted that it is a small area inside the European Union geographically but still being outside the organization. All of them struggle in their efforts for integration for at least more than 22 years when first in the Thessaloniki Summit on June 2003, they were promised an EU full integration perspective, a promise delivered only for and to Croatia³¹² in 2013³¹³.

The integration of the six new Balkan countries, despite the fact that they are small in number and geographical area, is not a simple technical and political process, it is indeed a very strategic one and involves other powers showing interest in the region. Russia is keen in further targeting the region and EU is well aware about it. This is why those countries are perceived a strategic security area rather than anything else, having EU investing for their stability and Russia counting on their instability and looking how to benefit from their weaknesses³¹⁴. This is why the Balkans in general and now the Western Balkan in particular is of immense value for the European Union and the western democracies in general. Russia's invasion of Ukraine has hugely impacted the EU in terms of the enlargement perspective too as it gave the candidate status to Ukraine as a reaction to and protection from Russia. Having been part of the Ottoman Empire for many centuries and being associated afterwards with communist regimes of the past century, is a contextual background to have in mind. This brief panoramic overview is very important background from the rule of law perspective in terms of both the historical past influencing the rule of law culture and values and for the future European perspective for them.

³¹² Jović, D. (2023). Imagining Europe in a New and Small State: The Case of Croatia. In: Uvalić, M. (eds) Integrating the Western Balkans into the EU. New Perspectives on South-East Europe. Palgrave Macmillan, Cham.
https://doi.org/10.1007/978-3-031-32205-1_6

³¹³ Croatia was one of the countries that started the process along with all other six western Balkan countries, the candidate status was granted to North Macedonia as well in 2005 (than known as FYROM) but all of them lacked behind and Croatia was the only one managing to join the EU within a less than 10 years process.

³¹⁴ See Ene, Angela-Mihaela, "Enlargement of the European Union in the Western Balkans and Russia's Geopolitics in the Region", (2018) EIRP Proceedings, Vol 14, No 1 (2019), Danubius University of Galati, available at <https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1968/2014>

4.5 Western Balkan Integration Perspective at a glance

The journey of the Western Balkan countries towards the EU has had its progress and stagnations at different stages. Alongside the biggest enlargement of the EU in 2004 and 2007 expanding from 15 to 27 member states, the Union engaged heavily with the Western Balkan region too. It was in June 2003, 22 years ago, at the Thessaloniki Summit that EU firmly committed itself to integrating the entire Balkan region in the EU by giving a clear EU integration perspective³¹⁵. Since then, as mentioned above, only Croatia has managed to join EU. All other six Western Balkan countries are at different train stations. The euro-integration enthusiasm with the southeast expansion of the EU, started soon to be vanished as the challenges from the enlargement started to hit the organization. Bulgaria and Rumania proved to be the most difficult one and their integration is very often explained as having been completed mainly due to the strategic considerations, rather than a merit based³¹⁶. The massive integration of 10, namely 12, countries in one wave of enlargement, the biggest one ever experienced, did shake the very foundations of the Union, and geopolitical considerations are still today a matter of concern³¹⁷. This is why the 2003 integration perspective promise to the countries of the Western Balkans, just on the eve of such huge 2004 enlargement

³¹⁵ Furby, D., Tsaknis, D. (2023). Greece, EU Enlargement and the 'Thessaloniki Promise'. In: Kaeding, M., Pollak, J., Schmidt, P. (eds) *Enlargement and the Future of Europe*. Springer, Cham. https://doi.org/10.1007/978-3-031-43234-7_12

³¹⁶ Fenko, A.B., Kovačević, M. (2025). Stagnation in Western Balkans' Security Regionalization: The Problem of Competing Regional Cultures of Anarchy. In: Stojkov, A., Warin, T. (eds) *Western Balkans and the Future of Europe. The Future of Europe*. Springer, Cham. https://doi.org/10.1007/978-3-031-86465-0_4

³¹⁷ An interesting debate on this is the different perceptions on the Enlargement between France and Germany, as two most important countries in the EU. France has always been more reluctant to the Enlargement, both the previous one and with the Western Balkan countries. See an interesting article at Atlantic Council (<https://www.atlanticcouncil.org/blogs/new-atlanticist/by-blocking-enlargement-decision-macron-undercuts-frances-balkan-goals/>) by Loic Tregoures, explaining that historically, France has always been reluctant about enlargement, from the UK in the 1960s to Spain in the 1980s. Why? Because it weakens Paris' influence and dilutes the political project of the EU from what France would wish it to be – more integrated and reflective of France itself. In addition, the 2004 Eastern enlargement remains a huge political trauma, as many argue it caused the failure of the 2005 European Constitution referendum and fueled broad reluctance to enlargement within French public opinion. The 2004 enlargement moved the epicenter of Europe – in the eyes of Paris – towards the East, to Germany. Therefore, Paris sees Berlin as the main winner of the last fifteen years, as Germany took full advantage of the integration of its former communist neighbors. Likewise, France sees the Balkans as being part of Germany's sphere of influence, meaning enlargement should be seen from that standpoint as an element of a broader French bargain with Germany. Namely, Berlin has stonewalled most of Macron's reform ideas on issues such as the eurozone, and Macron is now holding a process that matters more to Germany, for economic and security reasons, than to France.

process, was rather an idealistic than realistic promise, as the following events proved to be, similar to those committed to countries in time of war³¹⁸.

Initially the union started the so called Stabilization and Association Process (SAP) offering different instruments, including the Stabilization Association Agreements (SAAs), modelled after the Association Agreements of the 2004 accession countries. The incentive for the countries were big but challenges they faced were huge. From the fall of the Berlin Wall and the collapse of communism, transitioning to open democratic societies was a difficult task for the region. Albanian transition to democracy experienced violent events, such as those of 1997 leading to a sort of internal civil war³¹⁹. Yugoslavia disintegrated violently, except the Slovenian exit from the federation, the others ignited wars. Serbian regime of Milosevic committed even massacres, initially in Bosnia³²⁰ and then in Kosovo³²¹. Such events were devastating for the region and obviously were so fresh in the eve of the Thessaloniki summit. This is why the timing for this promise was not the best one, neither for the EU nor for the countries of the region themselves. EU soon had to face the turbulences of the big bang enlargement³²² any shift its attention to internal issues naturally leaving the promise for additional members to a longer process, in fact sometimes officially declaring a halt to the EU integration process, often with the dilemma of conditionality or sustainability³²³. This is why during these 22 years for the EU through the stabilization and association process, accession was the target for the EU not the result itself. For the EU it was important to remain involved and to keep the countries of the region involved, not the result of the process, namely not the full

³¹⁸ Öhlén, M. (2025). Future EU Enlargements—Opportunities and Dilemmas. In: Ekman, P., Lundqvist, B., Michalski, A., Oxelheim, L. (eds) *The Depth and Size of the European Union in a Time of War*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-83441-7_2

³¹⁹ Albanian depots of arms were opened and the entire population got access to massive arms, a problem following the country even today.

³²⁰ Markusen, E., Mennecke, M. Genocide in Bosnia and Herzegovina. *Hum Rights Rev* 5, 72–85 (2004). <https://doi.org/10.1007/s12142-004-1029-x> and Bećirević, E. (2010). The Issue of Genocidal Intent and Denial of Genocide: A Case Study of Bosnia and Herzegovina. *East European Politics and Societies*, 24(4), 480-502. <https://doi.org/10.1177/0888325410377655> (Original work published 2010)

³²¹ See Shkelzen Gashi, *Massacres in Kosovo 1998-1999*. The book, published in Albanian, Serbian and English by the NGOs ADMOVERE and Integra, documents 83 massacres that occurred during the 1998-99 war in Kosovo.

³²² Natasha Wunsch & Nicole Olszewska (2022) *“From projection to introspection: enlargement discourses since the ‘big bang’ accession”*, *Journal of European Integration*, 44:7, 919-939, DOI: 10.1080/07036337.2022.2085261

³²³ Woelk, J. (2024). Conditional or Sustainable? The Rule of Law and Judiciary Reforms in the Western Balkans. In: Antonioli, L., Ruzza, C. (eds) *The Rule of Law in the EU*. Springer, Cham. https://doi.org/10.1007/978-3-031-55322-6_14

integration in the EU per se. This is why lately we see calls for a new momentum in the enlargement process of the EU and the full integration of the Western Balkan countries³²⁴.

4.6 Russian influence as an external accelerator to the EU enlargement, a déjà vu for the EU

Many authors have explained the need for EU expansion to both the Baltic Countries as well as those in the southeast Europe, especially for Bulgaria and Rumania, from the perspective of the Russian threat. Probably not the main reason but for sure one of the main ones for the biggest enlargement, the big bang enlargement with 12 countries at once, was the strategic interest of the EU in the eve of Russia's maligne influence to those regions. Apparently, some 20 years after, for sure it seems that EU is again experiencing the same déjà vu. Russian aggression in Ukraine is expected to change the entire international order and by it the strategic position of the EU therein³²⁵. Granting Ukraine the candidate status in a time of war shows a clear shift on the EU strategic approach and a new momentum for the expected future enlargement of the EU. Along with Ukraine³²⁶ candidate status is granted to Moldova while Georgia is in line, raising even questions how far the Europe can go³²⁷.

All of those movements would have not been imagined before the Russian attack to Ukraine. Now, this external factor is clearly again a very important one for the future of the EU and especially the enlargement process. Western Balkan countries, an important area for Russia as well, which over decades has tried to be present and influence the region, is clearly another important and strategic area to be swiftly and quickly addressed by the EU. This external factor is clearly a very important one for the current and future developments of the relations between the EU and the Western Balkan region. Apparently, EU's memory is fresh and the experience with the previous enlargement for sure will have this important external factor in mind and, undoubtedly, will gear the process even faster

³²⁴ See Ursula von der Leyen, said: "The tense geopolitical context makes it more compelling than ever that we complete the reunification of our continent, under the same values of democracy and the rule of law. We have already taken great strides over the last years towards integrating new Member States. And enlargement will remain a top priority of the new Commission".

³²⁵ See: Veronica Anghel & Jelena Džankić (2023) "Wartime EU: consequences of the Russia – Ukraine war on the enlargement process", Journal of European Integration, 45:3, 487-501, DOI: 10.1080/07036337.2023.2190106

³²⁶ V Lomaka, I Yakoviyk, Ye Bilousov 'Europeanisation and Its Impact on Candidate Countries for EU Membership: A View from Ukraine' 2023 2 Access to Justice in Eastern Europe 59-81. <https://doi.org/10.33327/AJEE-18-6.2-a000221>

³²⁷ See: Matina Stevis-Gridneff. (March 4, 2022 Friday). *Ukraine War Forces a Question: How Far East Does Europe Go?*. The New York Times . <https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:64XF-5XN1-DXY4-X2KC-00000-00&context=1516831>.

unless EU wants to face the consequences for a much period of time. As said all six Western Balkan countries are small in population and size but big enough to be left aside under a potential Russian influence in this region, especially taking into account the special ties it has with Serbia³²⁸, as the biggest country in the region³²⁹, and the threat it would pose at the doorstep of the EU. Engaging with the western Balkans is not only an enlargement and economic opportunity for the EU but it is even more so a strategic security need for its own sake and interest³³⁰.

4.7 Back to the promise, a new momentum for the Western Balkans

A new momentum seems to be on the horizon for the Western Balkans, not only due to the democratic and economic advancement of the region³³¹ and the settlement of some of the many regional issues³³² and long standing serious conflicts³³³ but, most importantly, due to the external developments³³⁴ and events, mainly pertaining to the Russian aggression in Ukraine. Looking at the EU official documents we notice a clear language reformulating the reengagement of the EU with the region³³⁵. The need to speed up the process is clearly reflected in the Communication of the Commission in February 2020 *“Enhancing the accession process – A credible EU perspective for the*

³²⁸ Serbia is the only country in Europe that has refused to impose sanctions on Russia for the war in Ukraine. Although it is obliged under the ‘requirement to align the foreign policy with the EU foreign policy’ as part of the accession process, as a candidate country negotiating with EU, it has yet not imposed any sanction and refuses to align the Serbian policy with that of the EU. Moreover, it continues to be one of the most important supporters to Russia and it maintains intense political and diplomatic relations by exchanging visits of very high officials.

³²⁹ See: Veleva-Eftimova, Mirela *“The EU Eastern Enlargement Policy Under the Pressure of Geopolitics. The Bulgarian Case (Russia’s Little Brother)”*, Center for Europe, Warsaw University Studia Europejskie (Warszawa), 2023, Vol.27 (1), p.63-79

³³⁰ Mitchell A. Orenstein (2023) The European Union’s transformation after Russia’s attack on Ukraine, Journal of European Integration, 45:3, 333-342, DOI: 10.1080/07036337.2023.2183393

³³¹ The living standard of the Western Balkan countries seems to have improved, and this is true especially compared to some 20 years ago when this promise was once made. For some comparison data on the living standard see Western Balkans Regular Economic Report No. 26, Fall 2024: Retaining the Growth Momentum, <https://openknowledge.worldbank.org/entities/publication/9dc66654-1e66-4c79-8cb5-5750b7300550>

³³² The name issue between FYROM, now North Macedonia, and Greece has finally come to an end, so is expected the conflict between Serbia and Kosovo, which are continuously negotiating under strong leadership of the EU and the support of US and despite its setbacks, a number of agreements have been reached already paving the way for hopefully a final normalization agreement.

³³³ Bashkeska, E. EU Enlargement in Disregard of the Rule of Law: A Way Forward Following the Unsuccessful Dispute Settlement Between Croatia and Slovenia and the Name Change of Macedonia. Hague J Rule Law 14, 221–256 (2022). <https://doi.org/10.1007/s40803-022-00169-7>

³³⁴ See Jakimovska, K. (2023). Crises and opportunities in the Western Balkans. European View, 22(1), 76–84. <https://doi.org/10.1177/17816858231167741>

³³⁵ See *“A Credible Enlargement Perspective For And Enhanced EU Engagement With The Western Balkans”*, (EU 2018), available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-03/western_balkans_strategy_brochure.pdf

Western Balkans”, reflecting a new approach based on four principles: more credibility, a stronger political steer, a more dynamic process, and greater predictability³³⁶, similarly followed by the 2021³³⁷ and 2022³³⁸ Communications reiterated the new approach and strong commitment.

In her speech at Bratislava Summit on May 31, 2023, President von der Leyen stated that *“the Western Balkans and the Union are getting closer and closer. This is the moment to seize, to forge a more united Europe”*³³⁹. Moreover in her speech she stated that:

*“To a certain extent, this is a new approach for the European Union: We do not only ask our partners to take new steps towards us. We also take a big step towards them. Our shared goal is to speed up their journey towards the EU. And for this, we bring our Union closer to the Western Balkans.”*³⁴⁰

This looks like another opportunity in the line of many previous ones giving the impression of going back to the future³⁴¹. Again, the momentum is a combination of internal and external factors that may become a new incentive for speeding up the integration process of the region, both expanding the Union and its potential too³⁴². From Thessaloniki in 2003 the promise was reiterated especially in the Tirana Summit in 2022³⁴³, where EU sent a new clear signal this time for a full integration into the EU for all the countries of the region. This promise was repeated all over and by many and well reflected in some of the key strategic documents for this purpose. Annually the European Commission adopts the so called “Enlargement packages”, including the 2022 Enlargement Package adopted in October 2022, reflecting the detailed assessment of the progress and the challenges for the individual countries, including Turkey, on their integration journey, paying special attention to

³³⁶ See COM(2020) 57 final, Brussels, 5.2.2020 at https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-02/enlargement-methodology_en.pdf

³³⁷ See COM(2021) 644 final, Strasbourg, 19.10.2021 at https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Communication-on-EU-Enlargement-2021-v2-and-annexes_en.pdf

³³⁸ COM(2022) 528 final, Brussels, 12.10.2022 at <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/2022%20Communication%20on%20EU%20Enlargement%20Policy-v3.pdf>

³³⁹ See the speech of Keynote speech by President von der Leyen at the GLOBSEC 2023 Bratislava Forum, 31 May 2023.

³⁴⁰ *Ibid.* See the speech of Keynote speech by President von der Leyen at the GLOBSEC 2023 Bratislava Forum, 31 May 2023.

³⁴¹ Sharpston, E. Further EU enlargement – a ‘brave new world’, or more like ‘back to the future’?. ERA Forum 25, 275–280 (2024). <https://doi.org/10.1007/s12027-024-00800-0>

³⁴² Bourguignon, J., Demertzis, M. & Sprenger, E. “EU Enlargement: Expanding the Union and Its Potential”. Intereconomics 57, 205–208 (2022). <https://doi.org/10.1007/s10272-022-1063-4>

³⁴³ See “EU-Western Balkans Summit Tirana Declaration”, 6 December 2022, at <https://www.consilium.europa.eu/media/60568/tirana-declaration-en.pdf>

the reform implementation process and the policy priorities of the countries concerned. Those although do reflect a new approach they are basically a continuation of what used to be called “country annual progress reports” but now reflecting the newly adopted Enlargement revised methodology with the intention to *“further advance the gradual integration of the region already during the enlargement process itself in a reversible and merit-based manner”*³⁴⁴. In 2024, the EU has taken even further steps to build more trust on the enlargement perspective, by creating a new momentum not only for the Western Balkans but for other countries invited to the process. The historic opportunity of binding their future with the EU is open to 10 partners: six in the Western Balkans, as well as Türkiye, Ukraine, the Republic of Moldova¹ and Georgia. The enlargement process is merit-based and depends on the individual objective progress made by each of the partners. This requires determination to implement irreversible reforms in all areas of EU law, with a special emphasis on the fundamentals of the enlargement process – related to democracy, the rule of law, fundamental rights as well as a functioning market economy, able to resist the competitive pressures in the EU, and a public administration capable of implementing the body of EU legislation. Countries choosing to join the EU must fully and unequivocally embrace and promote EU values, including aligning with the EU’s common foreign and security policy.³⁴⁵

The Package reemphasizes that enlargement is a historic opportunity both for the acceding countries and for the current Member States and the EU as a whole for a number of advantages, including significant socio-economic, political and security advantages of a bigger and stronger Union. In this sense, the EU has introduced a Growth Plan for the Western Balkans in November 2023. The EUR 6 billion Reform and Growth Facility, an integral element of the Growth Plan, entered into force on 25 May 2024³⁴⁶. Such a plan aims to complement the Economic and Investment Plan for the region to help increase its economic convergence with the EU and accelerate reforms related to the fundamentals of the accession process. It provides for gradually integrating the region into specific areas of the EU single market, subject to progress in regional economic integration and

³⁴⁴ See recital 6 at “EU-Western Balkans Summit Tirana Declaration”, 6 December 2022, at <https://www.consilium.europa.eu/media/60568/tirana-declaration-en.pdf>

³⁴⁵ See COM(2024) 690 final. 2024 Communication on EU Enlargement Policy, page 1

³⁴⁶ Moreover a budget of €50 billion was allocated for Ukraine Facility to incentivising reforms, with justice and the rule of law at the core and a Growth Plan for Moldova with its €1.8 billion Reform & Facility to support its socio-economic reforms and boost investment.

alignment with the relevant EU *acquis*³⁴⁷. As said by the European Commission President: *“The tense geopolitical context makes it more compelling than ever that we complete the reunification of our continent, under the same values of democracy and the rule of law. We have already taken great strides over the last years towards integrating new Member States. And enlargement will remain a top priority of the new Commission”*³⁴⁸. EU faces unprecedented challenges, due to the geostrategic considerations, especially with the war in Ukraine and other crises around the world, making thus enlargement important strategic choice³⁴⁹. This momentum seems to make EU take this momentum even more seriously. Despite these geostrategic considerations, it will continue to be a merit-based process respecting the rule of law and other EU values³⁵⁰.

All these reinforced commitments presenting a new momentum for enlargement are accompanied with a number of novelties in the enlargement process. Even the negotiation of the accession process has moved from a chapter based into a cluster based process.

4.8 Rule of Law Criteria, some specifics

As we have seen in several occasions above, rule of law, initially framed as a ‘principle’ and later on strengthened into ‘values’ into the primary legislation of the EU, is both a common value to the Member States as well as a prerequisite and a condition for accession by any state to the European Union³⁵¹. Rule of law as a founding principle of the EU is defined by Article 2 in the Treaty on European Union, in the Maastricht Treaty in 1992. Article 49 of TEU refers to the rule of law value as a condition for membership, stating that that any European state may apply for membership if it is to respect and promote the values of the EU. This reflects the Copenhagen political criteria agreed in Denmark in 1993. When those criteria adopted in Copenhagen, the EU was a union of 12 countries, with the three other western democracies on their way, namely Austria, Finland and

³⁴⁷ *Ibid* p. 2

³⁴⁸ See statement by the European Commission President, Ursula von der Leyen at https://enlargement.ec.europa.eu/news/commission-adopts-2024-enlargement-package-2024-10-30_en.

³⁴⁹ See Bernard, E. Geopolitics of the European Rule of Law — Lessons from Ukraine and the Western Balkans. *Intereconomics* 57, 229–231 (2022). <https://doi.org/10.1007/s10272-022-1068-z>

³⁵⁰ High Representative/Vice-President Josep Borrell statement at: https://enlargement.ec.europa.eu/news/commission-adopts-2024-enlargement-package-2024-10-30_en

³⁵¹ See Gráinne De Búrca, Poland and Hungary’s EU membership: On not confronting authoritarian governments, *International Journal of Constitutional Law*, Volume 20, Issue 1, January 2022, Pages 13–34, page 14. <https://doi.org/10.1093/icon/moac008>

Sweden that joined in 1995. Back then, the criteria of the Rule of Law did not and could not have had that much importance; it was mainly included to highlight some of the EU's most important founding principles to the new members. We can see the importance of these criteria especially with the next wave of the Enlargement, the Big Bang Enlargement³⁵² with the 12 new member states from the Central and Eastern Europe. The battle of the EU institutions, especially of the European Commission in explaining what the Copenhagen Criteria were, and what aspirant countries have to fulfill, was not an easy task for what has been written a lot³⁵³. This is why the understanding, explaining and promoting to the new comers what the rule of law is, was a very difficult task for the European Commission, which started working with those countries before they joined the EU.

The European Union is founded on the values as defined by Article 2 of the Treaty on European Union (TEU). In order to ensure that these values are respected, Article 7 TEU provides for an EU mechanism to determine the existence of, and possibly sanction, serious and persistent breaches of EU values by a Member State³⁵⁴. It was activated only in relation to Poland and Hungary so far, countries that joined the EU in 2004. Following the emergence of threats to EU values in some Member States, the EU institutions are strengthening their toolbox to counter democratic backsliding and protect those values within the Union. The same countries are exactly those ones today that pose a threat to the rule of law within the Union. This is why the rule of law criteria is a crucial criteria to be examined both in terms of the enlargement journey of those former accession countries of the Big Bang enlargement, the lessons learned by the EU institutions³⁵⁵ and, especially, in the light of the potential new enlargement waves to come with the Western Balkan countries. In fact not only the origin of the rule of law, as a founding principle of the EU and a separate criteria

³⁵² See: Ronald Janse, *"Is the European Commission a credible guardian of the values? A revisionist account of the Copenhagen political criteria during the Big Bang enlargement"*, International Journal of Constitutional Law, Volume 17, Issue 1, January 2019, Pages 43–65, <https://doi.org/10.1093/icon/moz009>

³⁵³ Ibid, 45

³⁵⁴ <https://www.europarl.europa.eu/factsheets/en/sheet/146/the-protection-of-article-2-teu-values-in-the-eu#:~:text=With%20the%20Amsterdam%20Treaty%20a,limits%20posed%20by%20EU%20competences>. Articles 7(2) and 7(3) TEU provide, in the case of the 'existence of a serious and persistent breach' of EU values, for a 'sanctioning mechanism' that can be triggered by the Commission or by one third of Member States, after the Member State in question has been invited to submit its observations.

³⁵⁵ Krygier, Martin Evald John, *"Four Puzzles About the Rule of Law: Why, What, Where? And Who Cares?"* (June 18, 2010). UNSW Law Research Paper No. 2010-22, Available at SSRN: <https://ssrn.com/abstract=1627465>. It is important to note that Krygier explains the notion of the rule of law and the need to understand it in a more comprehensive manner.

for membership, but its current status seems to have become more and more important³⁵⁶. It is, as such, for the preparation for the new *Big Bang* enlargement both at the Primary Legislation (including more clearly in the treaties) and with the Copenhagen criteria, that the EU has made clear and explicit the importance of the rule of law as a crucial value both at the time of the accession and on an ongoing basis³⁵⁷. Current debates and developments inside the EU on the Rule of Law meaning and legal effect shape and strengthen this criterion both internally and externally, especially, in the light of the debates regarding the backsliding of the rule of law in the EU member states³⁵⁸. This reflected with the adoption of the special Rule of Law Conditionality Regulation, the Union Budget Regulation 2020/2092³⁵⁹.

From a founding principle and as a key condition to membership, the rule of law developments inside the EU³⁶⁰ will further shape the debate on the design of the rule of law criteria and its effectiveness in the screening and monitoring regime for future members joining the block, if any, from the Western Balkan region. In this section we will dive further into the legalities of the rule of law requirement from a legal point of view and check where it is included in the legal documents handling the relationship between EU and the Western Balkans. So basically, if the rule of law has become an issue for the current members of the EU, as explained in the second chapter, how will this impact the future members? Will these developments impact the future policy of the EU in using the rule of law criteria in the screening process for the new accessing members? This is crucial to analyze in the following section which should rule of law conditionality in the light of these developments³⁶¹. Technically this leads us to the core part of the thesis, which intends to understand the rule of law as conditionality for membership. This means that we have to understand how this criteria is used and when do we understand that a country has fulfilled.

³⁵⁶ Hovic, N. Pre-enlargement Reform Failures in the Western Balkans: Social and Economic Preconditions of the Rule of Law. *Hague J Rule Law* 16, 693–714 (2024). <https://doi.org/10.1007/s40803-024-00235-2>

³⁵⁷ *Ibid.* page 16.

³⁵⁸ Ginsburg, Tom: *Democratic Backsliding and the Rule of Law*, (2018) Ohio Northern University Law Review, pp. 351.

³⁵⁹ *Ibid.* page 14.

³⁶⁰ Looking back at the sections above, this is true especially if we look at the European Commission work reflecting the need to further strengthening the rule of law and the recent Court of Justice rulings involving the violations by the Polish and Hungarian governments.

³⁶¹ Woelk, J. (2024). Conditional or Sustainable? The Rule of Law and Judiciary Reforms in the Western Balkans. In: Antonioli, L., Ruzza, C. (eds) *The Rule of Law in the EU*. Springer, Cham. https://doi.org/10.1007/978-3-031-55322-6_14

4.9 The rule of law as a legally binding concept

The enlargement, in addition to the conditionality and obligations for the accession countries, involves a number of incentives. The biggest and the most notable one is the membership perspective³⁶². This is considered the biggest ‘carrot’ for any aspiring country to become a member of the EU. This though is the political incentive and is the destination in this long and difficult journey for such countries whose standards are far from those in the member states of the Union. In the meantime, and to keep them eager for the process, EU has developed a number of instruments to both support them financially and technically but as well to bring them closer to the level of standards of the Union. In the case of the Western Balkans, there are a number of important instruments used to steer the integration process and support those countries financially, economically and with technical expertise.

The relationship between EU and the countries of the Western Balkan region begins with the so-called Stabilization and Association Process and its central instrument Stabilization and Association Agreements. All the countries in the region have entered into SAAs and they have been characterized as an important instrument³⁶³ building on the Copenhagen criteria. Western Balkan countries that acquire the candidate status continue to benefit from engagement with the EU through the SAP framework while involved in the accession process³⁶⁴. So in addition to the EU treaty provisions as explained above³⁶⁵ the rule of law is an essential element, and legally binding

³⁶² The membership perspective is an old promise made in Thessaloniki more than 22 years ago. EU made this promise clearly for the first time in this summit on June 21, 2003 marking a turning point for this region building on the SAP launched by the Union in 1999 as the first legal and political tie between the EU and the region.

³⁶³ The conditions of the Stabilisation and Association process were set out in the conclusions of the General Affairs Council in April 1997. To become EU members, the countries need to satisfy the criteria established in the Copenhagen European Council conclusions of June 1993. The Copenhagen political criteria stipulate that countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”

³⁶⁴ See <https://eur-lex.europa.eu/EN/legal-content/glossary/stabilisation-and-association-process.html>

³⁶⁵ See Maastricht Treaty, Official Journal of the European Union, 26.10.2012, C 326/17. Specifically, Article 2, stating that: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”; and Article 49, stating “any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union...”.

between the parties, of the Stabilization and Association Agreement offering a great trade, economic and political benefit to the Western Balkan countries³⁶⁶.

In 2005, the European Commission added a new Chapter in the Enlargement Process with Croatia, namely Chapter 23 “Judiciary and Fundamental Rights”³⁶⁷ and together with Chapter 24 “Justice, Freedom and Security”³⁶⁸, form the so-called ‘rule of law’ chapters and are part of the accession negotiation process. Currently these two chapter are included in the first Cluster of Fundamentals as explained below in the new Methodology.

Other legal documents handling the relationship between the EU and the Western Balkan countries pertain to the IPA instrument³⁶⁹ and the relevant EU regulations and decisions. Looking at the

³⁶⁶ See as an example Article 1 (paragraph 2) of the SAA between EU and Albania, stating “An Association is hereby established between the Community and its Member States, of the one part; and Albania, of the other part. The aims of this Association are: to support the efforts of Albania to strengthen democracy and the rule of law”. Moreover, Article 2, referring to the rule to constitute an essential element to this agreement. In addition and most explicit on is Article 78, stating: “In their cooperation on justice and home affairs the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency, improving the functioning of the police and other law enforcement bodies, providing adequate training and fighting corruption and organised crime”. This follows with Article 87 on economic and trade policy, stating: “Cooperation shall also aim at strengthening the rule of law in the business area through a stable and non-discriminatory trade-related legal framework”, including Article 11 relating rule of law to the public administration.

³⁶⁷ According to the EU, this includes: “EU policies in the area of judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. The establishment of an independent and efficient judiciary is of paramount importance. Impartiality, integrity and a high standard of adjudication by the courts are essential for safeguarding the rule of law. This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. Legal guarantees for fair trial procedures must be in place. Equally, Member States must fight corruption effectively, as it represents a threat to the stability of democratic institutions and the rule of law. A solid legal framework and reliable institutions are required to underpin a coherent policy of prevention and deterrence of corruption. Member States must ensure respect for fundamental rights and EU citizens’ rights, as guaranteed by the *acquis* and by the Fundamental Rights Charter”. See https://enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en

³⁶⁸ According to the EU, this includes: “EU policies aim to maintain and further develop the Union as an area of freedom, security and justice. On issues such as border control, visas, external migration, asylum, police cooperation, the fight against organised crime and against terrorism, cooperation in the field of drugs, customs cooperation and judicial cooperation in criminal and civil matters, Member States need to be properly equipped to adequately implement the growing framework of common rules. Above all, this requires a strong and well-integrated administrative capacity within the law enforcement agencies and other relevant bodies, which must attain the necessary standards. A professional, reliable and efficient police organisation is of paramount importance. The most detailed part of the EU’s policies on justice, freedom and security is the Schengen *acquis*, which entails the lifting of internal border controls in the EU. However, for the new Member States substantial parts of the Schengen *acquis* are implemented following a separate Council Decision to be taken after accession”. See https://enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en

³⁶⁹ For the period 2007-2013, the Instrument for Pre-accession Assistance (IPA) had a budget of €11.5 billion. Its successor, IPA II, was allocated €12.8 billion for the period 2014-2020. For the multiannual financial framework period

Regulation No. 1085/2006 of July 2006³⁷⁰, establishing the first Instrument of Pre-Accession Assistance, we can see that rule of law, in addition to the preamble, is explicitly incorporated into two main articles, Article 2, the Scope of the Regulation and more importantly Article 21 “Suspension of assistance”, stating that:

1. *“Respect for the principles of democracy, the rule of law and for human rights and minority rights and fundamental freedoms is an essential element for the application of this Regulation and the granting of assistance under it. Community assistance for Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia, including Kosovo, shall also be subject to the conditions defined by the Council in its Conclusions of 29 April 1997, in particular as regards the recipients' undertaking to carry out democratic, economic and institutional reforms.*
2. *Where a beneficiary country fails to respect these principles or the commitments contained in the relevant Partnership with the EU, or where progress toward fulfilment of the accession criteria is insufficient, the Council, acting by qualified majority on a proposal from the Commission, may take appropriate steps with regard to any assistance granted under this Regulation. The European Parliament shall be fully and immediately informed of any decisions taken in this context.”*

These provisions make rule of law an essential element and condition to the assistance to be provided to those countries. There are two other regulations of similar nature, following on the same logic that establishes IPA II³⁷¹ and IPA III³⁷². It is interesting to note the different language used in those regulations. In the IPA I Regulation, the statement used in Article 2 “Scope”, differs from the one used in the Regulation for IPA II. The article is much more extensive and includes a wider range of elements³⁷³. On the other side, the third Regulation, IPA III regulation is even more

2021-2027, the IPA III budgetary envelope is €14.162 billion. See <https://eufundingoverview.be/funding/instrument-for-pre-accession-assistance-ipa-ipaii-ipaiii>

³⁷⁰ Official Journal of the European Union (EN) 31.7.2006, L 210/82, Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA).

³⁷¹ Official Journal of the European Union (EN) 15.3.2014, L 77/11, Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II)

³⁷² Official Journal of the European Union (EN) 20.9.2021, L 330/1. Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession assistance (IPA III)

³⁷³ For a comparison see the two versions of IPA I and IPA II regulations, with the later being much more specific and extensive.

comprehensive in terms of the rule of law requirements and conditionality. If in the IPA I Regulation, rule of law was mentioned only four times, in the IPA III it is referred to 15 times. In Article 3 of the Regulation states that IPA III shall have the following specific objectives:

“to strengthen the rule of law, democracy, the respect of human rights and fundamental freedoms, including through promoting an independent judiciary, reinforced security and the fight against corruption and organised crime, compliance with international law, freedom of media and academic freedom and an enabling environment for civil society, to promote non-discrimination and tolerance, to ensure respect for the rights of persons belonging to minorities and the promotion of gender equality and to improve migration management, including border management and tackling irregular migration, as well as addressing forced displacement³⁷⁴;

There are a number of other novelties in this regulation which links the distribution of the assistance on a merit basis system and allowing the commission to reallocate the funds from one program to another, namely from one to another country. The IPA III Programming Framework, as described in Article 7 of the IPA III Regulation, is the overarching European Commission's strategic document for the use of EU funds assisting the IPA III beneficiaries for the duration of the 2021-2027 Multiannual Financial Framework. One of the major novelties compared to the two previous assistance programs, is that it replaces the previous country-specific strategy papers. IPA III reflects the specific objectives and focuses on the priorities of the enlargement process according to five thematic windows, which mirror the clusters of negotiating chapters as per the revised enlargement methodology. Programming of EU assistance is based on EU thematic priorities rather than pre-defined country envelopes³⁷⁵. This will allow rewarding performance and progress towards key

³⁷⁴ Article 3.2 (a) Regulation (EU) 2021/1529 (IPA III). See especially paragraphs 4 and 5 of Article 8, stating: (4). In assessing the performance of the beneficiaries listed in Annex I and deciding on the assistance to be provided, particular attention shall be paid to the efforts made in the fields of the rule of law and fundamental rights, democratic institutions and public administration reform, as well as economic development and competitiveness.(5). In the case of a significant regression or persistent lack of progress by a beneficiary listed in Annex I in the areas referred to in paragraph 4 of this Article as measured by the indicators referred to in Article 7(5), the scope and intensity of assistance shall be modulated accordingly, in accordance with paragraph 6, including by reducing the funds proportionally and redirecting them in ways that avoid compromising support for improving fundamental rights, democracy and the rule of law, including support to civil society and, where appropriate, cooperation with local authorities. Where progress has resumed, the assistance shall also be modulated accordingly in accordance with paragraph 6 to further support those efforts

³⁷⁵ A risk that this may pose is that funds may be allocated from one to another country without any prior approval by the Council and or Parliament. In this case, the Commission on its own may reallocate funds. This is a threat especially

priorities and increased flexibility to respond to the evolving needs of the partners in their path towards accession³⁷⁶.

Rule of law is an important element as well for the other support initiatives for where there are other legally binding provisions in the other official documents, including those related to the new Growth Plan for the Western Balkans³⁷⁷. In the section called Accelerating fundamental reforms, the plan states that:

*“The Reform Agenda will identify a limited set of priority reforms, broken down into qualitative and quantitative steps which will serve as payment conditions, i.e. upon achievement, they will trigger the release of funds under the new Reform and Growth Facility according to a pre-determined timeline. Payment conditions will be linked to specific socio-economic reforms to unlock national and regional growth potential, and to specific reforms related to fundamentals of the enlargement process, **including the rule of law**, democracy, the respect of human rights and fundamental freedoms. Macrofinancial stability, sound public financial management, transparency and oversight of the budget are general payment conditions that have to be fulfilled for any release of funds. Another pre-condition should be that Serbia and Kosovo engage constructively in the normalisation of their relations with a view to fully implementing all their respective obligations stemming from the Agreement on the Path to Normalisation and its Implementation Annex and all past Dialogue Agreements and engage in negotiations on the Comprehensive Agreement on normalisation of relations. Disbursements will not be conditional on the above-mentioned proposed changes to the SAAs (i.e. to implement the 7 priority actions) being in place³⁷⁸.*

Therefore, based on the above, and other similar instruments, EU has clearly made rule of law a legally binding condition in the accession process and it maximizes it's use in all the stages and steps, thus making any financial support and granting any political gain is subject to a relevant progress in

for Kosovo which has been under sanctions from the EU and funds dedicated for Kosovo may be reallocated to other thematic programs in the region and or even end up being used for projects in other countries being more advanced in the accession process.

³⁷⁶ https://enlargement.ec.europa.eu/enlargement-policy/overview-instrument-pre-accession-assistance_en

³⁷⁷ New growth plan for the Western Balkans, COM(2023) 691 final

³⁷⁸ *Ibid.* page 8.

rule of law. In IPA II onwards, EU has introduced even a ‘performance reward’ for countries making substantial progress on certain field, thus stimulating the further³⁷⁹. This is in line with the internal trends within the EU as well, whereby, as seen in the previous sections, even the budgetary allocation to current Member States is subject to the fulfilment of the criteria pertaining to the respect for the fundamental values such as rule of law. This means that the external and internal use of the rule of law concept is not only dependent but is reliant on each other.

4.10 RoL conditionality’s internal and external use: mutually influencing process

As we have seen in the previous chapter, rule of law is not only the most important principle to be respected by the member states of the EU but it is one of the most important criterion for new members joining the EU as well. The past decade has shown a growing debate and greater interest on the rule of law inside the EU. As such, rule of law conditionality reflects a twofold purpose to monitor the EU member states in complying with the Treaty values³⁸⁰ while simultaneously serving as a benchmark for the progress evaluation of accession countries³⁸¹. This is why it is important to understand practically what the rule of law ‘value’ includes in the requirement. Although the debate on the EU member states attitudes towards the and respect for rule of law in general was treated in the previous chapters³⁸², for comparison purposes will be referring to often in light of our effort to understand the design and purpose of this criteria in the accession process. For this purpose, in order to understand it, it is important to break it down into concrete steps that a country needs to take to become a rule of law ‘compliant’ country. In this attempt, we seek to explain as to what are the main elements of the criteria enshrined in the rule of law requirement in the accession process in order to understand when and how a country is perceived to be rule of law compliant and when

³⁷⁹ The performance reward was a mechanism set up in the Instrument for Pre-Accession Assistance II Regulation 231/2014 (Art 14). It provided a financial incentive for individual IPA II beneficiaries in case of particular progress made towards meeting the membership criteria and/or efficient implementation of pre-accession assistance. The Regulation twice foresaw the use of the performance reward scheme in the period 2014-2020 (current Multi-annual Financial Framework). The reward was first allocated in 2017, benefitting Albania, Kosovo, North Macedonia, Montenegro and Serbia with an overall amount of EUR 78 million. The amount allocated for the 2020 performance reward exercise was also EUR 78 million. The Commission proposed to reward the two countries, which had undertaken the most significant steps to advance EU reforms: Albania and North Macedonia.

³⁸⁰ Antonioli, L., Ruzza, C. (eds) (2024), *The Rule of Law in the EU: Challenges, Actors and Strategies*. Springer Nature Switzerland 2024, Cham. https://doi.org/10.1007/978-3-031-55322-6_13

³⁸¹ Schimmelfennig, F., & Sedelmeier, U. (2019). The Europeanization of Eastern Europe: the external incentives model revisited. *Journal of European Public Policy*, 27(6), 814–833. <https://doi.org/10.1080/13501763.2019.1617333>

³⁸² Ramona Coman (2016) Strengthening the Rule of Law at the Supranational Level: The Rise and Consolidation of a European Network, *Journal of Contemporary European Studies*, 24:1, 171-188, DOI: 10.1080/14782804.2015.1057482

does the green light opens to drive through. In order to conduct this exercise, we have to go back to the core meaning and core elements of the rule of law and see how these are tested in the accession process. So let us take those elements in the light of accession process for the countries of the Western Balkans and see how EU deploys and monitors such policy.

First of all, conditionality for accession countries of the Western Balkans begins with the treaty provisions, namely Articles 2 and Article 49 TEU and, secondly, they are complemented by the Copenhagen Criteria referenced above and, thirdly, by the body of formal conditionality in the accession process, as well as other instruments as explained in the previous section. Moreover, EU treaties use the rule of law as both a benchmark and a guiding tool for its external actions,³⁸³ upholding and promoting it as a constitutional mandate for the EU³⁸⁴. Thus, conditionality for any future country entering EU is the tool to condition them to become similar with the members of the union. Some authors have claimed that at the heart of conditionality policy is the EU's image of itself as an international actor³⁸⁵. In this sense, as part of attracting and influencing the perspective countries to join the club, EU uses conditionality in all the aspects.

As we could see above, any political or financial support to bring countries closer to the EU is subject to conditions to be fulfilment by the aspirant countries. Nevertheless, looking at the rule of law as a common value to the existing/founding Member States and from the developments therein in respect to backsliding, we see that there is a high level of heterogeneity, the EU *acquis* is limited and is only lately, after the big-bang enlargement, that is being developed. Some even look at the development of the EU internal rule of law value as a constitutional principle as the result of EU's external actions.³⁸⁶ The Treaty of Amsterdam codified rule of law as a value, a codification

³⁸³ Lindseth, P.L., Leino-Sandberg, P. Crisis, Reinterpretation, and the Rule of Law: Repurposing 'Cohesion' as a General EU Spending Power. *Hague J Rule Law* 16, 587–610 (2024). <https://doi.org/10.1007/s40803-024-00234-3>

³⁸⁴ Schroeder, W. The Rule of Law as a Constitutional Mandate for the EU. *Hague J Rule Law* 15, 1–17 (2023). <https://doi.org/10.1007/s40803-022-00185-7>

³⁸⁵ Qerimi, Qerim R., The Impact of EU Conditionality Policy on Human Rights and Rule of Law in the Western Balkans: An Attempt at a Methodology (July 24, 2021). *South-East Europe Review*, 24(1): 93-102, 2021, Available at SSRN: <https://ssrn.com/abstract=3892875> or <http://dx.doi.org/10.2139/ssrn.3892875>

³⁸⁶ Mac Amhlaigh, Cormac S., The European Union's Constitutional Mosaic: Big 'C' or Small 'C', is that the Question? (October 25, 2010). *EUROPE'S CONSTITUTIONAL MOSAIC*, N. Walker, J. Shaw, S. Tierney, eds., Oxford: Hart, 2011, U. of Edinburgh School of Law Working Paper No. 2010/31, Available at SSRN: <https://ssrn.com/abstract=1697569> as well as 1. Weiler JHH. The Transformation of Europe. In: Maduro MP, Wind M, eds. *The Transformation of Europe: Twenty-Five Years On*. Cambridge University Press; 2017:1-99.

influenced by the enlargement practice³⁸⁷. Looking at the enlargement perspective and based on the internal developments EU has increased gradually the focus on the rule of law by promoting them externally while upholding them internally. This is in line with the international trends that rule of law is not only an internal concern. Today, international law, particularly its human rights and the rule of law components, represents a framework for global governance, extending well beyond the relationships among states³⁸⁸. With this in mind, looking at the new potential members currently negotiating the membership, we have to look closely as to how the EU policy of conditionality is being used.

The strengthened efforts of the EU to promote the rule of law both internally and externally have come due to the already documented process of troubles in understanding and respecting the rule of law by countries that have joined the EU in the big-bang enlargement. In the early stages of the work of the EU institutions, the understanding of the rule of law was not what they proclaim today. If we look at the Commission reports from the past, rule of law was a very simplified version in the mindset of the European Commission. Commenting on the accession process of the then 10 accession countries from south-east Europe, the big-bang enlargement process, rule of law as one of the policy areas under the Copenhagen political criteria, was formulated as following:

*“some of the applicant countries - beyond the normal cycle of elections - do not have stability of institutions enabling the public authorities to function properly and democracy to be consolidated. All the applicant countries have flaws in the rule of law which they need to put right. There is a lack of suitably qualified judges and guarantees of their independence. Police forces are poorly paid and require better training and discipline. The autonomy of local government also requires a firmer legal basis in several cases.”*³⁸⁹

³⁸⁷ Hillion, Christophe, The Copenhagen Criteria and Their Progeny (March 6, 2014). C. Hillion (ed), EU enlargement (Oxford, Hart Publishing, 2004), Available at SSRN: <https://ssrn.com/abstract=2405368>

³⁸⁸ Nowak-Far, A. (2021). The Rule of Law Framework in the European Union: Its Rationale, Origins, Role and International Ramifications. In: von Bogdandy, A., Bogdanowicz, P., Canor, I., Grabenwarter, C., Taborowski, M., Schmidt, M. (eds) Defending Checks and Balances in EU Member States. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, vol 298. Springer, Berlin, Heidelberg. p.328. https://doi.org/10.1007/978-3-662-62317-6_12

³⁸⁹ See for comparison reasons the rule of law explanations in COM (97) 2000 final the “Agenda 2000: For Stronger and Wider Union” Brussels, 15.07.1997, page 43.

The rule of law was taken very lightly, seen as just one of the many problems with democracy in general in those countries. However, looking ahead, past experiences with countries such as Bulgaria, Rumania, Poland and Hungary, especially the internal challenges they faced, have alerted the EU to be more cautious about safeguarding its main founding values. This is why in its efforts for new frameworks to ‘strengthen the rule of law’³⁹⁰ and to ‘further strengthen the rule of law’³⁹¹ with the call for joint actions³⁹², come exactly as the result of such countries threat to the rule of law. This has led to a supranationalization of the rule of law in the EU³⁹³. Consequently and learning from those past and current experiences, the EU is well aware about the importance of the rule of law for any potential new county³⁹⁴. This is due to the fact that past pre-accession conditionality mechanism as well as post-accession ones³⁹⁵, did not fully satisfy for a happy marriage and common understanding on the core values of the European Union. Probably this has been as the result that in the past enlargements the rule of law has been rather a tick-the-box benchmark exercise focusing mainly on formal criteria rather than substantive ones questioning the EU’s credibility in the process³⁹⁶.

Therefore, the development of the rule of law criteria is a mutually influential process whereby the internal dynamics coming as the result of the enlargement have paved the way for a much stricter rule of law policy. This is why we may call it as a mutually influencing process where the external use of the rule of law policy has dictated and internal shift of attention to the matter by enhancing

³⁹⁰ See COM/2014/0158 final “A new EU Framework to strengthen the Rule of Law”

³⁹¹ See COM/2019/163 final “Further strengthening the Rule of Law within the Union State of play and possible next steps”

³⁹² See COM/2019/343 final “*Strengthening the rule of law within the Union: A blueprint for action*”

³⁹³ Priebus, S., and Anders, L. H. (2024) Fundamental Change Beneath the Surface: The Supranationalisation of Rule of Law Protection in the European Union. *JCMS: Journal of Common Market Studies*, 62: 224–241. <https://doi.org/10.1111/jcms.13489>.

³⁹⁴ See Closa C. Reinforcing EU Monitoring of the Rule of Law: Normative Arguments, Institutional Proposals and the Procedural Limitations. In: Closa C, Kochenov D, eds. *Reinforcing Rule of Law Oversight in the European Union*. Cambridge University Press; 2016:15-35.

³⁹⁵ The Cooperation and Verification Mechanism (CVM) was introduced at the accession of Bulgaria and Romania to the European Union in 2007 as a transitional measure to facilitate progress in the fields of judicial reform and anti corruption, as well as on organised crime for Bulgaria. The Commission has now repealed the two decisions that had established that mechanism. Such mechanism have been alive until July 2023 when the Commission adopted two Decisions repealing Commission Decisions 2006/928/EC and 2006/929/EC, thereby formally closing the CVM. Now both Bulgaria and Romania are part of the annual Rule of Law Cycle as for all other Member States.

³⁹⁶ See L Ognjanoska, ‘Promoting the Rule of Law in the EU Enlargement Policy: A Twofold Challenge’ (2021) 17 *CYELP* 237.

internal efforts to uphold the rule of law inside the EU, through both legal and other mechanisms³⁹⁷. In addition, this paves the way for promoting and using rule of law externally, especially in the enlargement process, through a stricter policy in line with those internal dynamics and lessons learned. As a result, the rule of law as a foundational value is serving as both an internal standard for internal affairs of the EU and its Member States, and as a justification for its external actions³⁹⁸. The EU has made this clear on several occasions how important the values of the union are, both for its identity and for the integration narrative³⁹⁹. In this sense, we will see the latest trends and developments pertaining to the conditionality in the enlargement process for the Western Balkan countries, in addition to the mere formal criteria of treaties and Copenhagen ones. This is why we have titled the next section ‘Rule of Law Conditionality for the Western Balkans,’ where we explain the newly introduced methodology that reorganizes the negotiation process from a chapter-based to a cluster-based approach.

4.11 Conclusion

This chapter sought to look at a wide range of documents in order to explore the key aspects of the EU rule of law criteria as a legally binding concept and as a policy. The chapter demonstrates that the rule of law, as a condition in the accession process, is both a legally binding criterion envisaged in the agreements and regulations, but also an important policy in the EU’s enlargement strategy. In explaining those two, several references are made to the development of the rule of law internally within the EU. From a divergent approach where rule of law was perceived rather as an external tool to align candidate countries with the EU member states into a convergent one whereby the rule of law must be primarily upheld by those inside but as well as by those coming in too. With

³⁹⁷ Ștefan, O. Preserving the Rule of Law Through Transnational Soft Law: The Cooperation and Verification Mechanism. Hague J Rule Law 16, 671–692 (2024). <https://doi.org/10.1007/s40803-024-00222-7>

³⁹⁸ See: Lisa LOUWERSE. The EU’s conceptualisation of the rule of law in its external relations : case studies on development cooperation and enlargement. Leiden ; Boston : Brill | Nijhoff, 2023, xi, 448p. The Rule of Law in EU External Relations, An Introduction, Page 17

³⁹⁹ See Lisa LOUWERSE. The EU’s conceptualisation of the rule of law in its external relations : case studies on development cooperation and enlargement. Leiden ; Boston : Brill | Nijhoff, 2023, xi, 448p. The Rule of Law in EU External Relations, An Introduction, Page 18. The author quotes the statements of EU officials in this sense, making reference to “The Union has increasingly phrased its integration narrative in terms of its values. To give an example, then Commissioner Navracsics for Education, Culture, Youth and Sport, acknowledged the importance of the EU’s values as ‘the most powerful driver of integration’.⁶⁷ Expressing the same sentiment in his State of the Union address in 2017, then Commission President Jean- Claude Juncker stressed that ‘Europe is more than just the single market. More than money, more than a currency, more than the euro. It was always about values’”, p. 18.

those in mind, we can see that the rule of law is a bulk of definitions distributed in several official documents, lately combined in the rule of law circle of annual reports as a newly developed mechanism to defend and promote it. Some scholars though have referred to the rule of law could be conceived in terms of both an end in itself and a means to an end⁴⁰⁰. What is becoming as a new phase of these developments, said in the words of the President of the Commission Ursula von der Leyen, the rule of law does not have an end point.⁴⁰¹ As such, despite our efforts to find the rule of law criteria wherever it is and for whatever it serves, we still remain with the question of multiple definitional aspect of the notion, both internally and externally.

Building on the previous section on measuring the rule of law, we concluded that there is a wide range of divergent approaches and practices. This is why we will further deepen our research into the practical aspects of how the rule of law, as a criterion in the accession process, is treated and monitored. In this regard, we will see the practicalities of the rule of law dimension with the countries of the Western Balkans by checking where they are and want or have to be to comply with those requirements. How does all of this play into practical terms of this relationship between EU on those countries in the region, especially for the fact that it was already demonstrated that rule of law importance in the accession process has grown substantially, at least in declarative and formal terms. Through this, we aim to shed further light on the complexities and multiple uses or interpretations of the notion. If there is no endpoint to the rule of law, how can we move from one stage to another? How is this journey guided and/or monitored? These dilemmas will be addressed in the next chapter.

⁴⁰⁰ See Qerimi, Qerim. "Operationalizing and Measuring Rule of Law in an Internationalized Transitional Context: The Virtue of Venice Commission's Rule of Law Checklist " *Law and Development Review*, vol. 13, no. 1, 2020, pp. 59-94. <https://doi.org/10.1515/ldr-2019-0010>.

⁴⁰¹ Political Guidelines for the Next European Commission 2024–2029 as presented by by Ursula von der Leyen for her Candidacy for the European Commission President.

Chapter 5: State of Play of the Rule of Law in the Western Balkans: where we are and where we want/have to be

5.1 Rule of Law as a policy for the Western Balkans: from a divergent to a convergent approach

At an era of democratic backsliding, rule of law is being perceived as an important instrument for many and everywhere⁴⁰². In the EU as well, rule of law crises is treated extensively in many dimensions⁴⁰³. As mentioned several times in the previous chapters, in addition to the internal considerations, EU considers rule of law as an important part of the enlargement process, and its significance has grown over the years. Based on the legal provisions of the EU Treaty, Copenhagen criteria, and as part of Chapters 23 and 24 in the accession process, the rule of law is considered by the Commission as the most important element of the accession process. Nevertheless, it has never been such an important part as it is in the current accession round with the countries of the Western Balkans. The policy of the rule of law in relation to the countries of the Western Balkans is significantly increased, as this chapter will show. This is even more important as in the eyes of many in the region there is an increase of authoritarianism, too⁴⁰⁴. Despite this, it is made clear in multiple policy documents and in the official communications of the EU representatives calling for a comprehensive and more active policy approach towards the rule of law⁴⁰⁵. In its 2024 Communication on EU Enlargement Policy, the Commission states that the enlargement process has entered a new phase, with fresh momentum in 2024⁴⁰⁶. This latest policy commitment in the

⁴⁰² Tiede, L.B. Rebuilding the Rule of Law in the Era of Democratic Backsliding. Hague J Rule Law 17, 31–59 (2025). <https://doi.org/10.1007/s40803-024-00238-z>

⁴⁰³ Fasone, C., Dirri, A., Guerra, Y. (2024). Introduction: Dissensus as a Trigger and Consequence of the Rule of Law Crisis in the EU. In: Fasone, C., Dirri, A., Guerra, Y. (eds) EU Rule of Law Procedures at the Test Bench. Palgrave Studies in European Union Politics. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-60008-1_1

⁴⁰⁴ Bieber, F. (2020). Patterns of Authoritarianism. In: The Rise of Authoritarianism in the Western Balkans. New Perspectives on South-East Europe. Palgrave Pivot, Cham. https://doi.org/10.1007/978-3-030-22149-2_3

⁴⁰⁵ Especially since 2018-19, the Commission has made it clear that rule of law is a top priority for all, committing that *“Strengthening the rule of law in the Union is, and must remain, a key objective for all. Therefore, in a Communication published on 17 July 2019, the Commission has set out concrete actions to strengthen the Union’s capacity to promote and uphold the rule of law, through promotion of a common rule of law culture, prevention of rule of law problems and an effective response. In particular, the Commission has established a Rule of Law Review Cycle and called on the EU institutions for a coordinated approach”*

⁴⁰⁶ See COM(2024) 690 final. Page 1. It reiterates that *“Following the December 2023 European Council decision to open negotiations with Ukraine and Moldova, the first intergovernmental conferences opening the negotiations with both countries were held on 25 June 2024. Subsequently, the Commission started the bilateral screening meetings that are now in full swing. Upon the Council decision recognising that Montenegro had met the interim benchmarks for the rule*

Commission's most important official document in this matter⁴⁰⁷, has made clear that the rule of law will be a high priority that will be monitored in the same way it is done for Member States with the intention to make sure that they are well prepared before even joining the EU⁴⁰⁸. So instead of treating rule of law from the classical past experience as an external tool, EU has taken a more convergent approach to monitor the rule of law in the same way it does for its own current members. Learning from the past experience EU has increased the threshold continuously on the conditionality criteria, thus increasing the bar for the rule of law compliance requirements, before and after the accession⁴⁰⁹. The inclusion of some of the most advanced Western Balkan countries in those reports has not only a symbolic importance; rather, it has a very substantial meaning as it monitors and follows rule of law developments and evaluates the state of play for those countries in the Western Balkan region in the same way, using the same methodologies and tools as they were member states. In addition to including some of those countries in the rule of law report, the EU has introduced several other mechanisms in the accession process geared toward WB calling for a reinvigorated engagement with the relevant partners, particularly through their progressive integration into the EU single market⁴¹⁰. This creates a more proactive approach from what we have experienced with the past enlargements.

Now, the new approach to the accession process is based not only on conditionality, often criticized⁴¹¹, but also on a more inclusive, far more comprehensive strategy, incorporating many new methodologies and innovations. This approach, made at an earlier stage, clearly specifies rule

*of law chapters, the intergovernmental conference on 26 June communicated the closing benchmarks for these chapters. This also paved the way to start provisionally closing the negotiating chapters. The screening sessions were completed with both Albania and North Macedonia at the end of 2023. **The fundamentals cluster was opened with Albania on 15 October 2024***". In fact Albania has managed to open most of the Clusters.

⁴⁰⁷ See Popova, Lubomira "The transforming role of the European Commission in the EU integration process" (2022), SEER Journal for Labour and Social Affairs in Eastern Europe 1/2022, p. 11 – 34.

⁴⁰⁸ See COM(2025) 900 final. "2025 Rule of Law Report - The rule of law situation in the European Union", page 8. Albania, Montenegro, North Macedonia and Serbia are included into the Rule of Law Report as of 2024, the Political Guidelines confirm that as enlargement partners make progress on the rule of law and in the formal accession process, they will be progressively added to this exercise to comply with the commitment to maintain high rule of law standards throughout their accession path and as future Member States. The rule of law is also key to the Western Balkans Reform and Growth Facility, the Reform and Growth Facility for Moldova, and the Ukraine Facility. To fully benefit from these support mechanisms, countries must implement a reform agenda with concrete steps on the fundamentals.

⁴⁰⁹ Ştefan, O. Preserving the Rule of Law Through Transnational Soft Law: The Cooperation and Verification Mechanism. Hague J Rule Law 16, 671–692 (2024). <https://doi.org/10.1007/s40803-024-00222-7>

⁴¹⁰ See COM(2024) 690 final. Page 1

⁴¹¹ Jelena Džankić, Soeren Keil and Marko Kmezić (eds.), The Europeanisation of the Western Balkans: A Failure of EU Conditionality?

of law being central to the enlargement process⁴¹² and obviously a key priority condition to the EU accession process⁴¹³. In line with this policy, EU has developed a number of instruments through which it handles the accession process with the Western Balkan countries.

One of the major novelties in the new approach, in relation to the rule of law, concerns the critical chapters that are most crucial for the rule of law implementation. As such, Chapters 23 “Justice and Fundamental Rights”, which as mentioned above was introduced by the EU in the negotiations with Croatia in 2005, and 24 “Justice, Freedom and Security,” are those to be opened the first and closed the last in the accession process for the Western Balkan countries. This means that the most difficult items are opened first with the intention to allow sufficient time to build solid track record in the process⁴¹⁴. Clearly, the rule of law occupies a central position in the enlargement process for the Western Balkan countries⁴¹⁵. This is mainly due to the past criticism questioning the rule of law conditionality credibility blaming both sides, the EU for making it a superficial and tick-the-box exercise and the aspiring countries elites that resist the reforms⁴¹⁶. Looking from this perspective the new EU institutions, at least declaratively on their political statements, seem to engage with the accession countries well ahead in the process, making rule of law a frontrunner in the process⁴¹⁷. In every step of the process, rule of law is a key in enabling progress in the accession process⁴¹⁸.

⁴¹² See COM(2012) 600 final, Enlargement Strategy and Main Challenges 2009-2010, page 2.

⁴¹³; and COM(2009) 533 final page 5.

⁴¹⁴ Kmezić, M. (2019). EU Rule of Law Conditionality: Democracy or ‘Stabilitocracy’ Promotion in the Western Balkans?. In: Džankić, J., Keil, S., Kmezić, M. (eds) The Europeanisation of the Western Balkans. New Perspectives on South-East Europe. Page 88. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-319-91412-1_5

⁴¹⁵ *Ibid.* page 88.

⁴¹⁶ *Ibid.* page 104.

⁴¹⁷ Political Guidelines for the Next European Commission 2024–2029 as presented by Ursula von der Leyen for her Candidacy for the European Commission President.

⁴¹⁸ See COM(2024) 690 final “2024 Communication on EU enlargement policy”. For example, “Serbia has 22 out of 35 negotiating chapters open, two of which are provisionally closed. The path towards opening further clusters with Serbia will depend in particular on the **progress and pace of rule of law reforms** and the normalisation of relations with Kosovo”. Another example is Albania, the document states “At the end of 2023, Albania submitted its roadmaps on public administration reform and the **rule of law**, which allowed the fundamentals cluster to be opened in October 2024 during the second Intergovernmental Conference”. Further on Albania the Communication states: “The Albanian government signalled their objective to close accession negotiations by the end of 2027 and the Commission is ready to support this ambitious objective. To this end, it is crucial for the authorities to further intensify the pace of EU oriented reforms, **notably on the rule of law**, consolidating the track record on law enforcement, on effectively fighting corruption and organised crime, and the promotion of fundamental rights, including media freedom, property rights, and minorities”.

This new approach has shifted from a chapter-based to a cluster-based methodology, whereby the rule of law, fundamental rights, the functioning of democratic institutions, public administration reform and the economic criteria constitute the ‘fundamentals’ Cluster of the EU accession process⁴¹⁹. With these latest efforts, the EU has made the rule of law not only a cornerstone of the accession process but also the first and last condition for EU membership. This makes the rule of law a pivotal criterion in the entire accession process, particularly for the Western Balkan countries, and for the entire enlargement process in general. This is particularly important from the EU enlargement strategy’s perspective, which states that countries aspiring to join the EU must demonstrate, at every stage of the accession process, the ability to practically implement the values on which the Union is based⁴²⁰.

5.2 A New Enlargement Methodology for a renewed enlargement promise: rule of law at the core

While renewing the old integration promises of the 2003 Thessaloniki summit, the EU reinvented its approach to the process by introducing a new enlargement methodology. This new approach and methodology, as presented, is intended to leverage from the past enlargement processes and further tailor it to the specifics of the new region. In fact, although EU through its most strategic documents as presented above, including the new enlargement strategy and the enhanced engagement with the Western Balkans, the concrete actions from the EU side in this new approach may have given some old impressions of slow movement⁴²¹. This was the case especially with the opening of the negotiations with Albania and North Macedonia. It took the EU more than 2 years to start the negotiation process from the time it had decided to start open the negotiations⁴²². Critical

⁴¹⁹ *Ibid.* page 7.

⁴²⁰ See COM(2024) 690 final “2024 Communication on EU enlargement policy”.

⁴²¹ Just as a reference, in the 2018 in the Communication of the European Commission on “*A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*”, (COM (2018) 65 final), it was envisaged that Serbia and Montenegro as back then the front-runners, would be ready to join EU in 2025. Yet as we write this thesis, chances are inexistence for this to happen, probably not for another 5-6 years at least. This shows that EU instead of bringing countries closer to the union they kept them and themselves busy designing and negotiating a new process to be used for potential future enlargements. This is so especially if we see seven years after the renewed promise in 2018 not a single country has come any closer to the EU. It is now mostly due to the war in Ukraine that the EU is getting distracted by many other factors too, but probably for geostrategic considerations they may accelerate the process for good, hopefully.

⁴²² It was President of France, Macron who has insisted that the enlargement process to be reformed before moving ahead with the negotiations with Macedonia and Albania, stating that At the EU summit, French President Emmanuel Macron led a small number of countries in rejecting the Western Balkan countries from moving forward with their

voices about the effectiveness of the pre-accession screening and monitoring have raised and the lessons learned with the big bang enlargement seem to have a major impact for the future enlargements, especially for the Western Balkans⁴²³. Nevertheless, one thing is clear now more than ever that EU wants to get the Western Balkans closer to the block and seems to be serious in their commitment to the accession process of those countries. Basically although most of the EU member states agreed that the Enlargement process should continue after the so called enlargement fatigue⁴²⁴, some of the most important EU members faced serious concerns about their internal problems and the perceived threat of future enlargement⁴²⁵. The general public very often saw the big bang enlargement with the countries from southeast Europe as one of the reasons EU faced economic and other crises, including the threats from immigration and terrorism⁴²⁶. Under those circumstances President Macron came up with the idea that in order to continue with the enlargement process a new reform should be undertaken to make sure that countries have more say on the process and not just leave it in the hands of the European Commission in Brussels. A compromise was reached and a new methodology was agreed, giving more power to the member states to not only halt the accession process if the required reforms are not delivered by the accession countries but, more importantly, even return them back in the process⁴²⁷ as the new methodology is based in four principles: credibility, dynamism⁴²⁸, predictability and stronger

membership bids. He was joined by Denmark and the Netherlands in refusing Albania but France alone rejected North Macedonia. <https://www.bbc.com/news/world-europe-50100201>

⁴²³ See Popova, Lubomira *"The transforming role of the European Commission in the EU integration process"* (2022), SEER Journal for Labour and Social Affairs in Eastern Europe 1/2022, p. 11 – 34.

⁴²⁴ Bonomi, M. (2023). Beyond 'Enlargement Fatigue': A View from Rome. In: Kaeding, M., Pollak, J., Schmidt, P. (eds) *Enlargement and the Future of Europe*. Springer, Cham. https://doi.org/10.1007/978-3-031-43234-7_15.

⁴²⁵ The French President Macron, vetoed the opening of the negotiations with Albania and North Macedonia for some 2 years. He was the one insisting on a new methodology as a way to have EU Member States have a stronger say in the accession process and be able to control it alongside with the EU institutions. France had big internal debates on the 'danger' that the enlargement process may pose to the existing members of the EU and. Those reflected nationalistic concerns, fueled by the rightists of Le Pen and were highly debated in the French Presidential elections.

⁴²⁶ Kabata, M., & Jacobs, A. (2022). The 'migrant other' as a security threat: the 'migration crisis' and the securitising move of the Polish ruling party in response to the EU relocation scheme. *Journal of Contemporary European Studies*, 31(4), 1223–1239. <https://doi.org/10.1080/14782804.2022.2146072>.

⁴²⁷ Political Guidelines for the Next European Commission 2024–2029 as presented by Ursula von der Leyen for her Candidacy for the European Commission President.

⁴²⁸ Predictability means to re-establish solid trust and mutual confidence between the Western Balkans and EU and our Member States, but also public trust. We need to make it clear that if the reforms are further strengthened and mainstreamed, we will be able to deliver also on our side. It also means that we will continue with the merit-based approach and only a merit-based approach, therefore assessment of the progress is key and the reinforcement of the assessment is key. See Remarks by Commissioner Olivér Várhelyi at the press conference on the revised enlargement methodology. Available at: https://ec.europa.eu/commission/presscorner/detail/el/statement_20_208

political steer.⁴²⁹ Changing the process through this new methodology, may impact the speed of the accession, enabling a fast track to the opening and closing the clusters.

Clusters in the New Negotiation Methodology⁴³⁰		
No	Cluster	Areas and Chapters
1.	Fundamentals	Functioning of democratic institutions; Public administration reform; Chapter 23 – Judiciary and fundamental rights; Chapter 24 – Justice, freedom and security; Economic criteria; Chapter 5 – Public procurement; Chapter 18 – Statistics; Chapter 32 – Financial control;
2.	Internal Market	Chapter 1 - Free movement of goods; Chapter 2 - Freedom of movement of workers; Chapter 3 - Right of establishment and freedom to provide services; Chapter 4 - Free movement of capital; Chapter 6 - Company law, Chapter 7 - Intellectual property law; Chapter 8 - Competition policy; Chapter 9 - Financial services; Chapter 28 - Consumer and health protection;
3.	Competitiveness and Inclusive Growth	Chapter 10 - Digital transformation and media; Chapter 16 – Taxation; Chapter 17 - Economic and monetary policy; Chapter 19 - Social policy and employment; Chapter 20 - Enterprise and industrial policy; Chapter 25 - Science and research; Chapter 26 - Education and culture, and; Chapter 29 - Customs union;
4.	Green Agenda and Sustainable Connectivity	Chapter 14 - Transport policy; Chapter 15 – Energy; Chapter 21 - Trans-European networks; Chapter 27 - Environment and climate change;
5.	Resources, Agriculture and Cohesion	Chapter 11 - Agriculture and rural development; Chapter 12 - Food safety, veterinary and; phytosanitary policy; Chapter 13 – Fisheries; Chapter 22 - Regional policy & coordination of structural instruments; Chapter 33 - Financial & budgetary provisions;
6.	External Relations	30 – External relations; 31 – Foreign, security and defence policy;

Table 7: Clusters in the New Negotiation Methodology

⁴²⁹ See COM(2020) 57 final. “Enhancing the accession process - A credible EU perspective for the Western Balkans” P 3-4. https://enlargement.ec.europa.eu/document/download/ef0547a9-c063-4225-b1b4-93ff9027d0c0_en?filename=enlargement-methodology_en.pdf

⁴³⁰ *Ibid.* COM(2020) 57 final. P. 7

This new methodology brings a number of novelties. This first and most important one is the fact that it has increased the importance of the Rule of Law element, which is the core topic of this thesis⁴³¹. Rule of law is part of the first Cluster, Fundamentals, which is the first one to be opened and the last one to be closed, making the rule of law developments in the respective country to be observed during the entire accession process, and even after. In addition, it has created the possibility that if regress is made, not only to halt the process on that particular sector but, more importantly, to restart it from the beginning, namely to go back to the beginning. This in itself has drastically increased the discretion of the EU during the negotiation process, compared to the previous chapter model of closing them one by one. Under the previous model once a chapter was closed the country moved to the next one and it was impossible to go back to it again. The newly adopted approach creates this possibility of reopening what is already closed⁴³². Now, we have to see how this impacts the practical situation. Has the new methodology grouping chapters into clusters increased the screening process and made it more predictable or is it now more political and discretionary? With the inclusion of the Member States opinion to an extent that may even block the conclusion of a cluster, especially the fundamental one, may have a positive impact, from the perspective that Member States have more say, but on the other side, can make the process much more political and thus more unpredictable. Whether this new approach will help to minimize the gap between the EU and the countries of the Western Balkan region will remain to be seen in the years to come and test whether the region will ever reach the EU⁴³³.

⁴³¹ See statements of Commissioner Olivér Várhelyi Brussels, 5 February 2020: *"The clustered chapters also bring a reinforcement of the rule of law conditionalities, which means that we will open the accession negotiations with the rule of law cluster and we will close them with the rule of law cluster. This will ensure that this issue will be continuously monitored and looked at during the whole process. Maybe for the Western Balkans a very important offer that we are making with the clustered system is that if they are ready with the reforms by the time we start the negotiations on the cluster, we are ready, as we will only have to discuss the implementation of the acquis."* Available at: https://ec.europa.eu/commission/presscorner/detail/el/statement_20_208

⁴³² *Ibid.* Commissioner Olivér Várhelyi: *"I do not hide the fact that one of the most difficult issues when we were putting together the package was that it is clear that in our public opinion and in our Member States there is a very strong call that we need to be able to also reverse the negotiations. When there is no progress or when there is backsliding, clearly we also have to apply similar measures, meaning that we have to make it clear that we can also go backwards. If countries fail to deliver or go back on reforms, on our side similar actions will be taken when it comes to the accession process"*

⁴³³ Džankić, J. (2023). Perceptions and Misperceptions of EU Conditionality in the Western Balkans: A Case of a "Capability-Expectations Gap"? In: Uvalić, M. (eds) Integrating the Western Balkans into the EU. New Perspectives on South-East Europe. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-32205-1_9. The author suggests the "capability-expectations gap" might offer a useful analytical toolbox for understanding why this enlargement round in the Western Balkans differs so much from the earlier ones; why it is taking so much longer; and why despite declarative commitments to EU accession the "future of the Balkans" in Europe is very much uncertain.

5.3 Country progress and specifics: Rule of Law how do you open the door?

Having looked at the rule of law many dimensions from the historical perspective and the EU notion both internally and externally, for the purpose of this thesis it is important to understand how this concept is played practically into the accession progress for the individual countries of the Western Balkans. While EU is praising progress and monitoring rule of law efforts in the region, authoritarian regimes are established in some countries in the Western Balkan region and it is hard to challenge them through democratic processes and rule of law⁴³⁴. Often for this EU is criticized as transporting stabilitocracy rather than democracy in the region⁴³⁵. This is why this section, building on the previous ones on theoretical debates, is dedicated to the practical implications on measuring the rule of law. Is it a ticking the box exercise for each of countries in the Western Balkan or is it a more meaningful engagement⁴³⁶. The specific purpose is to understand as to where they stand with the rule of law agendas and how do they progress towards the EU. Is it a technical and formal process of ticking the boxes, is it a political process or something else⁴³⁷. We have presented in the previous chapters and sections all the theoretical aspects and conditionality specifics of the rule of law as a requirement in the accession process. Here we would like to dive deeper in practical and concrete examples in every country in the Western Balkan region. As we could see from the sections above, rule of law is used as conditionality to a variety of relations between EU and the Western Balkans. In this sense, rule of law is a precondition to any type of support, being that technical, financial and or political to certain set of criteria and rule of law takes the front rows in all of them. Rule of law is a condition for the SAAs, IPA programing and support, Growth Plan, and for any type of benefit received by those countries from EU. These types of initiatives, especially now the Growth Plan for the Western Balkans may provide a better “carrot” to the interest-based governments and politicians in the regional complex, this process would also benefit from clear expectations regarding good/better governance standards replacing the damning mix of stabilitocracy, democratic

⁴³⁴ See Pollozhani, L., & Bieber, F. (2025). Protests for change: mass protests against competitive authoritarian regimes in the Western Balkans. *Third World Quarterly*, 46(2), 193–214. <https://doi.org/10.1080/01436597.2025.2462250>

⁴³⁵ Andjelic, N. (2022). Western Balkans Regimes Between European Democracy and Autocracy. In: *Covid-19, State-Power and Society in Europe. European Union and its Neighbours in a Globalized World*, vol 5. Springer, Cham. https://doi.org/10.1007/978-3-030-91073-0_3

⁴³⁶

⁴³⁷ *Ibid.*

backsliding, and state capture⁴³⁸. State capture is a serious concern in most of the countries in the in the Western Balkans, despite EU efforts to address it⁴³⁹.

Instead of treating rule of law in every of these type of relations, we will see it from the perspective of the state of play of the rule of law in those countries seen through the lenses of the EU, often perceived as creating perverse incentives for governments to draft laws that both they and their citizens have no intention of implementing or obeying⁴⁴⁰. In this sense, two main documents monitor the rule of law in those countries on continuous basis. It is the country report, the annual report published every October of each year and, since July 2024, the rule of law report reflecting the rule of law developments in the EU and in every EU Member States, including some countries in the accession process. This is why, in the following section, we will see how rule of law is monitored and evaluated by the two reports of the EU, namely the Country Reports and the Annual Rule of Law reports, starting with Albania.

5.3.1 Rule of Law State of Play in Albania

We would like to treat Albanian case first for two main reasons, in addition to being alphabetically the first, first for the fact that is the first country using the new Methodology from first step, from the decision to open negotiations. So the entire negotiation process for Albania will be handled through this new approach. Secondly, from a country that was lacking behind in the accession process for many years, it has accelerated it and now is one of the leading one and, together with Montenegro, has reached to a point of being considered to become an EU member by 2030⁴⁴¹.

⁴³⁸ See on this Fenko, A.B., Kovačević, M. (2025). Stagnation in Western Balkans' Security Regionalization: The Problem of Competing Regional Cultures of Anarchy. In: Stojkov, A., Warin, T. (eds) Western Balkans and the Future of Europe. The Future of Europe. Springer, Cham. https://doi.org/10.1007/978-3-031-86465-0_4. It is interesting to note that his approach on regionalism claiming that this as "a whole setup of regional initiatives could re-discover its purpose and give boost to any future process that would strongly follow a re-energized EU-integration path and drive the region to consolidate itself as regional society looking towards a regional community. The regional cooperation initiatives can be the key facilitators of undoing old enmities and building new common interests and trust in an EU-integrated Western Balkans.

⁴³⁹ Vachudova, M.A. (2019). EU Enlargement and State Capture in the Western Balkans. In: Džankić, J., Keil, S., Kmezić, M. (eds) The Europeanisation of the Western Balkans. New Perspectives on South-East Europe. Palgrave Macmillan, Cham.

⁴⁴⁰ See Slapin, J. B. 2015. "How European Union membership can undermine the rule of law in emerging democracies" West European Politics 38(3): 627–648.

⁴⁴¹ See Rapporteur Andreas Schieder (S&D, AT) said: "In this term's first report on Albania, we welcome the rapid progress the 'accession front-runner' has made over the past years. Albania is a strong and reliable partner in foreign policy, and has taken remarkable steps in all areas such as justice, anti-corruption and environmental protection. To

After some 2 years of deadlock⁴⁴² along with Macedonia, Albania finally managed to start the accession negotiations with the EU in July 2022 when officially held the first intergovernmental conference on accession negotiations. This follows a decision by the Council on 25 March 2020 to open accession negotiations, which was endorsed by the members of the European Council on 26 March 2020, as well as the approval by the Council on 18 July 2022 of the Negotiating Framework for the negotiations with Albania, in accordance with the revised enlargement methodology⁴⁴³. The first step, screening process through the assessment report was completed in November 2023. Soon after, it opened the Cluster on Fundamentals, having its second intergovernmental conference on October 15, 2024.⁴⁴⁴ In such a short period of time, Albania has managed to overpass Serbia in the number of chapters opened⁴⁴⁵. From the time it has opened the first cluster, Albania has moved very quickly managing to open three Clusters in eight months⁴⁴⁶. The Commission confirmed that the Albanian government signalled their objective to close accession negotiations by the end of 2027 and the Commission is ready to support this ambitious objective⁴⁴⁷. This is an impressive statement, made several times by several EU officials and even included in the official documents. If we see the past experiences of other countries going through the same process, it is extremely hard to believe that that would be the case. But if the Commission is saying it at a time when they officially claim that the process is predictable then there is room to believe.

reach its goal of full EU membership by 2030, it is crucial to keep up the good work by broadening the economic model, creating jobs and improving the social welfare model, as well as implementing a comprehensive and inclusive electoral reform. Albania's future lies within the EU."

⁴⁴² Albania had long list of 15 pre-conditions for opening the negotiations, before the the first intergovernmental conference, which took the country through some of the most political debates and tensions within the country among the main political parties. Albania had adopted an Action Plan to fulfill these preconditions and has since managed to fulfill most of them, some still ongoing, like the Vetting of judiciary. Some of the most important ones were the electoral reform package, the composition of new justice system institutions and the Constitutional Court, the National Bureau of Investigation (BKH) and Special Prosecutors for Corruption and Organized Crime (SPAK).

⁴⁴³ The intention of the new methodology was in fact to give a strong tool in the hands of the Member States to be able to control the process at all the stages and not simply leave it in the hands of the EU technocrats.

<https://www.consilium.europa.eu/en/press/press-releases/2022/07/19/intergovernmental-conference-at-ministerial-level-on-the-accession-of-albania/>

⁴⁴⁴ See COM(2024) 690 final "2024 Communication on EU enlargement policy", p. 22

⁴⁴⁵ Serbia has opened 22 Chapters but the process has paused due to internal turmoil and the stagnations in the relations with Kosovo. Albania has currently opened 24 out of 33 negotiating chapters being the second one after Montenegro, which has opened all chapters already and is close to closing them.

⁴⁴⁶ See <https://europeanwesternbalkans.com/2025/05/23/albania-opens-cluster-3-surpasses-serbia-in-number-of-open-chapters/>

⁴⁴⁷ See COM(2024) 690 final "2024 Communication on EU enlargement policy", p. 22

If we compare though with other countries in the region, let us take Montenegro as an example as the leading one in the accession process, it has opened some of the clusters/chapters since December 2013, some 12 years ago and is yet to close them⁴⁴⁸. Probably, as a *sui generis* organization, EU we may see such *sui generis* very fast track accession process, something to be seen in the coming years. On the other side though, Albania is the first country to handle the entire accession process via clusters and probably, this may be turn into a advantage in the Albanian case. A detailed table with the Clusters and Chapters that Albania has opened is **Annex 1**.

Looking at this pace of the progress and the statements of the European Commission, the Council and the European Parliament, its hard to make a clear co-relation between the Albania's progress in opening all this Clusters at the same time, in a matter of one year and, more importantly, with the intention to close them in 3 years time, and the real progress in the ground. Either Albania has been extremely exceptional in completing all the conditionality requirements or, alternatively, EU is taking those decision based on political calculations and geostrategic considerations. The EU has supported Albania's transformation since 1991, when the Union integrated Albania into its PHARE assistance program⁴⁴⁹. Albania, has in general, made progress in recent years, but had continuous problems with corruption and rule of law before and after receiving the candidate status⁴⁵⁰.

If we want to track a clear link between the rule of law progress and the decision to open negotiations in those clusters, we have to look to multiple documents and assessments. Nevertheless, we will just look at it from the perspective of the Commissions reports and the decisions and opinions of other EU institutions. In addition, we will present the views of other international organizations on the rule of law situation in Albania for comparison purposes⁴⁵¹. We have to remind here that according to the Commission's New Methodology as adopted, the system was expected to be more transparent and predictable, in a way that: *"Predictability and conditionality will also be enhanced through greater transparency. To ensure sustainability of reforms and facilitate monitoring of implementation, all key reforms in the countries should be carried out in a fully transparent and inclusive way, with key stakeholder involvement. For its part,*

⁴⁴⁸ See SWD(2024) 694 final, "Montenegro 2024 Report", p. 20

⁴⁴⁹ Hoffmann, J. (2005). Integrating Albania: the Role of the European Union in the Democratization Process. Albanian Journal of Politics, I(1), 55-74.

⁴⁵⁰ Armakolas, I., & Ker-Lindsay, J. (2020): The Politics of Recognition and Engagement: EU Member State Relations with Kosovo P. 35

⁴⁵¹ See COM(2020) 57 final. "Enhancing the accession process - A credible EU perspective for the Western Balkans". P. 6

the European Union should endeavour to make the process more transparent, with wider publication of key documents”. Moreover it shall be noted again that this new Methodology, clearly defined that: Credibility should be reinforced through an even stronger focus on the fundamental reforms essential for success on the EU path. These fundamentals will become even more central in the accession negotiations. Negotiations on the fundamentals will be opened first and closed last and progress on these will determine the overall pace of negotiations. Negotiations on the fundamentals will be guided by:

- *A roadmap for the rule of law chapters equivalent to the previous action plans will constitute the opening benchmark. Interim benchmarks will continue to be set. No other chapter will be provisionally closed before these benchmarks are met; and*
- *A roadmap on the functioning of democratic institutions and public administration reform.* ⁴⁵²

All of the above policy positions of the EU, articulated in several documents, are to be considered from the perspective of the Annual Rule of Law Reports. As mentioned above, through the new methodology, EU follows the rule of law developments on yearly basis and prepares annual reports for every single country. For the last two years, since 2024, some countries of the Western Balkans (Albania, Montenegro, North Macedonia and Serbia) are covered by those reports as well. As such, since these are to be considered the most important reports pertaining to the rule of law for both Member States and for the Western Balkan countries. Below we will present in a simplified table some of the key items measured in the rule of law report for Albania using the same template as presented in the Chapter 3 Measuring the Rule of Law, as following:

2024 AND 2025		
Rule of Law Report Country Chapter on the rule of law situation in Albania ⁴⁵³		
Year:	Data in the 2024 RoL Report ⁴⁵⁴	Data in the 2025 RoL Report ⁴⁵⁵
	Independence:	Independence:

⁴⁵² Ibid. p. 3; *In fact the Roadmaps are documents to be presented by the candidate countries to the Commission. At the end of 2023, Albania submitted its roadmaps on public administration reform and the rule of law, which allowed the fundamentals cluster to be opened in October 2024 during the second Intergovernmental Conference. Albania also submitted its roadmap on the functioning of democratic institutions in September 2024. In December 2023, North Macedonia adopted the roadmaps on the rule of law and on public administration reform. The adoption of the action plan on the protection of minorities is still pending. See for this COM(2024) 690 final, “2024 Communication on EU enlargement policy, p. 5*

⁴⁵³ See 2025 Rule of law report – methodology, available at: https://commission.europa.eu/document/72742fd9-3ce0-4d23-9086-58f885f84cdd_en

⁴⁵⁴ SWD(2024) 828 final, “2024 Rule of Law Report – Country Chapter on the rule of law situation in Albania”

⁴⁵⁵ SWD(2025) 928 final, “2025 Rule of Law Report – Country Chapter on the rule of law situation in Albania”

Justice Systems	Average among both the general public and companies: - 46% of the general population and - 45% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 20247. - Albania has been implementing a substantial judicial reform since 2016, which resulted in the restructuring of the entire justice system; - The vetting process of all judges and prosecutors has strengthened accountability; - Shortcomings exist on the appointments of non-magistrate members of the High Judicial Council and the High Prosecutorial Council as regards the background checks and asset verification, as well as the transparency and meritocracy of the process; - Despite the strong independence safeguards in the process of appointment, promotion and transfers of magistrates, it is impacted by limited transparency and challenges in ensuring timely and qualitative evaluations; - The High Justice Inspector is operational, but the significant number of magistrate inspector vacancies constitutes a challenge; - There are challenges as regards the random allocation of cases and publicity of Proceedings; - Concerns about attempted interference and pressure on the judicial system by public officials or politicians remain;	Average among both the general public and companies: - 47% of the general population and - 40% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2025. - Albania continued implementing the judicial reform, strengthening judicial independence and prosecutorial autonomy; - The vetting process of all judges and prosecutors was finalised in first instance, further strengthening accountability, while gaps to maintaining the high standards set during the vetting process remain. - Previously identified shortcomings in the appointments of non-magistrate members to the High Judicial Council and the High Prosecutorial Council remain. - Challenges in conducting timely and qualitative evaluations, appointments, promotions, and transfers of magistrates remained, and the Councils lack important operating rules; - The High Justice Inspector is operational, but the high number of magistrate-inspector vacancies affects its effective operation. - The random allocation of cases is applied in courts, although its overall efficiency remains to be improved, and it is only limitedly applied in the prosecution service. - While the resilience of the judiciary has improved, attempts by public officials or politicians to exert undue interference and pressure on the judicial system raise serious concerns
	Efficiency: - Challenges remain regarding the length of proceedings and the large backlog⁴⁵⁶. - Further measures to increase efficiency and stabilise the backlog have yet to be implemented.	<i>- Challenges regarding the length of proceedings⁴⁵⁷ and the large backlog have further increased, while decisive measures to increase efficiency are yet to be implemented.⁴⁵⁸</i>

⁴⁵⁶ Albania is one of the countries in the WB with the worst numbers in terms of efficiency. There has been a an increase from 9,1% to 33,1% for different types of cases awaiting adjudication countrywide⁶⁹. The courts with the largest backlog are the Court of Appeal, the Administrative Court of Appeal and Tirana District Court of general jurisdiction. The High Court continued to reduce its backlog by 12% compared with the previous year, however it remains the court with the highest overall backlog of over 31 827 cases accumulated over the years. Serious delays are experienced with the legal deadlines on publishing the reasoned decisions by court.

⁴⁵⁷ The disposition time for second instance administrative cases decreased from 8 680 days to 5 326 days. In contrast, the disposition time ranges from 124 days to 462 days for all other types of cases (except civil and commercial litigious cases in second instance, for which data is not available for 2023). This length of administrative cases is extremely high for a country that aims to join the EU in 3 years.

⁴⁵⁸ The clearance rate remained well below 100% in 2023 and was particularly low in second instance where it ranged between 43% and 63% for different types of cases (compared to between 87% and 94% for first instance cases).

Anti-Corruption Framework	- The perception among experts and business executives is that the level of corruption in the public sector is high. In the 2023 Corruption Perceptions Index by Transparency International, Albania scores 37/100 and ranks 98th globally. This perception has been relatively stable over the past five years. - The State police remain highly vulnerable to corruption as evidenced by a large number of complaints to the Police Oversight Agency and arrests, despite some anti-corruption efforts. - Overall, corruption is prevalent in many areas, including during electoral campaigns, with preventive measures suffering from an overly complex legal framework and continuing to have limited impact in vulnerable sectors. Limited transparency in public procurement procedures, especially for public-private partnerships, are a source of concern.	- The perception among experts, citizens and business executives is that the level of corruption in the public sector remained high. In the 2024 Corruption Perceptions Index by Transparency International, Albania scores 42/100 and ranks 80th globally. Nonetheless, this perception marks the best score for Albania over the past five years, confirming the positive impact of the implementation of the justice reform. The 2025 Special Eurobarometer on Corruption shows that 86% of respondents consider corruption widespread in their country (EU average 69%) and 45% of respondents feel personally affected by corruption in their daily lives (EU average 30%). As regards businesses, 85% of companies consider that corruption is widespread (EU average 65%) and 63% consider that corruption is a problem when doing business (EU average 35%). Furthermore, 56% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 30%), while 51%⁴⁵⁹ - Despite some anti-corruption efforts including the revision of the Law on the Police, the state police is still highly vulnerable to corruption. - Although efforts on repression and prevention have increased, corruption remains prevalent in many areas, including in high-risk areas for corruption. Limited transparency in public procurement procedures, especially for public-private partnerships, remain a source of concern.
Media Pluralism and Media Freedom	- Concerns have been raised with regard to the independence of the Audio-Visual Regulatory Authority (AMA) due to the bi-partisan formula for election of board members and their political affiliation. - Self-regulation in the media sector is weak as it is impacted by limited resources, a polarised media landscape and persisting inflammatory rhetoric in the public debate. - Limited regulation on transparency of media ownership and high concentration negatively impact media independence.	- The independence of the Audio-Visual Regulatory Authority (AMA) remains an issue of concern, due to the bi-partisan formula for election of board members and their political affiliation. - Concerns with regard to the independence of the public broadcaster have increased. - High concentration continues to negatively impact media independence and media market penetration by high profile business groups with political links remain a serious concern.

⁴⁵⁹ The RoL Report quotes corruption cases: Albanian Government (2025f). Other subjects include: two ex-Secretary-Generals, an ex-judge, an ex-member of Special Appeals Chamber and four ex-judicial police officers. The SPAK first instance court convicted 93 persons in cases of corruption, including one former mayor for unlawful actions in the procedure to issue a construction permit and abuse of public funds. Regarding high level corruption, during the period January 2024 – September 2024, seven criminal proceedings were sent to trial including 10 high-level officials. By 30 September 2024, six additional investigations in high level corruption cases were launched with respect to 14 individuals. In November 2024, the SPAK appeal court pronounced its final decision regarding the “Elbasan Incinerator case” with a harsher conviction than the first instance judgement for the former Minister and a former member of the Parliament; see more [Albaniantimes.al](https://www.albaniantimes.al) (2024).

	- Verbal and physical attacks, smear campaigns and strategic lawsuits against public participation (SLAPP) against journalists are a cause for concern.⁴⁶⁰ - Limited job security and poor working conditions for journalists pose serious challenges in terms of self-censorship, pressure from political actors and a reduced resistance to disinformation. For these reasons MPM 2024 considers this to be an area presenting medium risk.	- Verbal and physical attacks, smear campaigns and strategic lawsuits against public participation (SLAPP) targeting journalists are a continued cause for concern. - Limited job security and poor working conditions for journalists combined with self-censorship, pressure from political actors and media owners¹¹⁹ continue to pose serious challenges for media. For these reasons, MPM 2025 further increased the risk indicator in the area to medium to high risk.
Other Institutional Issues Related to Checks and Balances	- Challenges regarding the quality of the legislative process include the limited effectiveness of public consultations; - The Constitutional Court is effective in upholding institutional checks and balances, though Parliament has failed to comply with some of its rulings⁴⁶¹; - On 1 January 2024, Albania had 24 leading judgments of the European Court of Human Rights pending implementation; - At that time, Albania's rate of leading judgments from the past ten years that remained pending was at 96%, and the average time that the judgments had been pending implementation was 3 years and 11 months. The oldest leading judgment, pending implementation for 10 years, concerns the failure to implement domestic decisions by the public administration, in particular reinstatement in public service, the lack of an effective remedy in this respect, as well as the violation of the property rights on account of the non-enforcement of the final court decisions; - As regards the respect of payment deadlines, on 31 December 2023 there were 22 cases in total awaiting confirmation of payments (compared to 16 in 2022)²⁰⁰. On 1 July 2024, the number of leading judgments pending implementation had increased to 30.	- Challenges remain regarding the quality of the legislative process, including effectiveness of public consultations; - The Constitutional Court continued to function effectively, while Parliament's ongoing failure to comply with some of its rulings and the legal uncertainty over the duration of its members' mandates are a concern⁴⁶²; - On 1 January 2025, Albania had 25 leading judgments of the European Court of Human Rights pending implementation, an increase of 1 compared to the previous year; - On 1 January 2025, Albania's rate of leading judgments from the past 10 years that had been implemented was at 25% (compared to 4% in 2024, 75% remained pending), and the average time that the judgments had been pending implementation was 4 years and 3 months (compared to 3 years and 11 months in 2024). The oldest leading judgment, pending implementation for 11 years, concerns the failure to implement domestic decisions by the public administration. - As regards the respect of payment deadlines, on 31 December 2024 there were 17 cases in total awaiting confirmation of payments (compared to 22 in 2023). On 16 June 2025, the number of leading judgments pending implementation had increased to 28.

Table 8 compiled by the Author based on the data from the Annual Rule of Law Report for Albania.

⁴⁶⁰ According to the RoL report: Journalists have the right to protect their sources and refuse to testify in criminal, civil and administrative cases, with some narrowly defined exceptions. Nonetheless, in February 2024, the High Court deemed lawful the seizure by the Special Prosecution Office against Organised Crime and Corruption (SPAK) of phones and computers belonging to a journalist who was reporting on an organised crime case under SPAK investigation.

⁴⁶¹ During the reporting period, the Parliament failed to implement some rulings of the Constitutional Court, including one relating to the right of citizens residing abroad to take part in elections;

⁴⁶² During the reporting period, Parliament implemented the ruling of the Court regarding the right of citizens residing abroad to take part in elections. However, Parliament failed to implement the remaining rulings of the Constitutional Court. In an opinion on the matter, the Venice Commission called upon Parliament to respect and implement the Court's decisions and confirmed that the decisions of the Constitutional Court are compulsory for all state bodies, including the Parliament. The implementation of the Constitutional Court decision that declared some amendments to the Law on Inquiry Committees unconstitutional is still pending.

This table is composed with the data from the Albania's Annual Rule of Law Report. Country Report is another document used to compile this one and structured the information differently, structured mainly on the Chapters and or Clusters. Nevertheless, as it is, the data presented is only for some of the criteria and sub-criteria and is only for illustrative purposes, to see the type of measurement EU does when it monitors the rule of law progress in a certain country. As we can see, the statements are very general, political and subject to very wide interpretations. Sources used to prepare such report are very wide, including governmental sources, CoE, CSOs, other international organizations, etc. The rule of law report, is part of the rule of law cycle of the rule of law situation in the European Union which are published in July every year. Another important source of information is provided in the Country Report (previously formally, now often informally, named Progress Report), which are published on yearly basis (usually in October). Country reports present annually the general state of play and progress/regress in every country in the Enlargement process, both candidates and potential candidates – although the only country that has remained yet a potential candidate is Kosovo. These reports are published as part of the document called “[year]Communication on EU enlargement policy”⁴⁶³. The country reports are structured in another way, following the Chapters and Clusters structure and reflect information on the rule of law as well, but mainly from the perspectives of Chapters 23 and 24 as part of Cluster 1. It is important to reflect some examples pertaining to the modalities the rule of law issues are reflected there too. For the sake of limited space, we will present a very short table, just to have an idea of the method presenting the rule of law data/developments therein too. As such, it is very interesting looking at the selected examples in the following table:

EU COUNTRY REPORT FOR ALBANIA 2024 ⁴⁶⁴		
Criteria	Status / findings	Recommendations
Chapter 23: Judiciary and fundamental rights Albania is moderately prepared in the area of judiciary and fundamental rights and has made some progress during the reporting period.		
Functioning of Judiciary	- Albania is moderately prepared and has made some progress on the functioning of the judiciary. - Albania continued implementing the justice reform and the vetting process, which led to	- The Commission's recommendations from last year were partially implemented and remain mostly valid. In the coming year, Albania should in particular:

⁴⁶³ See for example the latest one COM(2024) 690 final, *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS* “2024 Communication on EU enlargement policy”

⁴⁶⁴ SWD(2024) 690 final, *“Albania 2024 Report”*, accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS: “2024 Communication on EU enlargement policy”.

	significant improvements in the functioning of the judiciary that must be maintained. The end of the vetting process in first instance is imminent, which is a major milestone with 11 remaining cases out of 805 as of 3 October 2024. Concerns remain about attempted political interference and pressure on the judicial system and shortcomings in the merit-based appointments of non-magistrate members of the High Judicial Council (HJC) and the High Prosecutorial Council (HPC) and their integrity. The new judicial map was implemented, but there are still challenges with the quality and efficiency of justice. Some preparatory acts were adopted on the roll-out of an integrated case management system, but the necessary budget allocations are lacking, especially for the court component.	- further strengthen accountability by: (i) speeding up vetting procedures in appeal; (ii) speeding up evaluations of magistrates and implementing conflict-of-interest regulations by the HJC and the HPC; (iii) aligning provisions applicable to the selection of non-magistrate members of HJC and HPC with those applicable to magistrates as regards asset declaration and background checks, ensuring the highest integrity and merit principles, and a high degree of consistency with the ranking of the ad-hoc pre-selection committee (iv) filling the magistrate-inspector vacancies at the High Justice Inspectorate; - improve the quality of justice by making progress in filling vacancies for court chairs, magistrates and legal advisers at all levels of the judiciary and quality improvements at the School of Magistrates, in line with European standards, including the comprehensively revising the School of Magistrates' entrance exam, increasing the relevance of training and ensuring quality and integrity of its staff; - improve judicial efficiency by: (i) ensuring the necessary budget for the Integrated Case Management System and rolling it out in a timely manner; and (ii) enacting the HJC roadmap to increase efficiency and reduce the backlog in the judicial system.
Fight against corruption	- Albania is between having some level of preparation and a moderate level of preparation and has shown some progress. - The continued implementation of vetting has had a positive impact on fight against corruption in the judiciary. The end of vetting of all judges and prosecutors is imminent at first instance with 794 cases closed out of 805 (98% of the total). Another direct outcome of vetting was registered in September 2024, as the IQC referred 19 vetting cases with prima facie criminal elements to prosecution for further investigations, thus following up on a key recommendation from the EU. The Specialised Structure for Anti-Corruption and Organised Crime (SPAK) has continued to produce good results by further advancing in the prosecution and investigation of complex anti-corruption cases, including those involving high-level politicians and officials, as well as cases involving the protection of EU financial interests. SPAK's capacity in financial investigations has increased and the systematic use of financial investigations and asset confiscations has improved. Overall, corruption remains a serious concern and preventive efforts have had a limited impact. The adoption of a broad criminal amnesty law led to 40 individuals convicted by SPAK courts	- The Commission's recommendations from last year were partially implemented and remain mostly valid. In the coming year, Albania should in particular: - strengthen the investigation, prosecution, adjudication and final conviction of corruption cases, in particular at high level, including the final confiscation of criminal assets resulting from corruption-related offences, and increase proactive referrals of relevant state institutions and law enforcement agencies to SPAK; - adopt and effectively implement anti-corruption strategy and the accompanying action plans, including comprehensive risk assessments for vulnerable sectors, effectively implement integrity action plans in those state authorities most prone to corruption, such as the State Cadastre Agency and fully address the recommendations of the Council of Europe's Group of States against Corruption (GRECO); - make asset declaration checks more efficient by reviewing the administrative boundaries of the HIDAACI's mandate and ensuring all asset declarations are published online.

	and being fully pardoned and 65 others having their sentence reduced, which raises concerns ⁴⁶⁵ . Targeted risk assessments and dedicated measures are needed to address corruption in the most vulnerable sectors, including police, customs, land and property management, state cadastre and public procurement.	
Fundamental rights	Albania's legal framework sets out a generally good basis for the protection of fundamental rights. - Progress during the reporting period included the adoption of a new strategy for the protection of crime victims, as well as the preliminary results of the national population and housing census published in June. Implementation efforts need to intensify overall, particularly in the areas of violence against women, protection of property rights and rights of persons belonging to minorities.	- The Commission's recommendations from last year were not implemented and remain valid. In the coming year, Albania should in particular: - adopt the pending implementing legislation on the rights of persons belonging to minorities; - safeguard the right to property, in particular, by making decisive progress on first registration and compensation, improving the transparency of the state cadastre and the quality of the property register cadastral data, and ensuring that the right to a fair trial and the right to effective remedy are respected in cases of expropriation and removal of properties; - improve the protection of fundamental rights, in particular, by fully aligning the Law on personal data protection with the EU acquis enhancing institutional capacities on human rights (monitoring, data collection), and by effectively implementing the National Agenda on Child Rights, including by allocating sufficient budget to strengthen the capacity of the Agency on Child Rights and to help children facing exclusion and vulnerabilities, including those living in poverty, children with disabilities, children belonging to minorities and other children at risk.
Freedom of expression	Albania is between having some level of preparation and a moderate level of preparation in the area of freedom of expression and made no progress during the reporting period. Media independence and pluralism continued to be affected by the high market concentration, the overlap of business and political interests, the lack of transparency of financing sources, the high concentration of media ownership, intimidation and precarious working conditions for journalists.	- The Commission's recommendations from last year were not implemented and remain valid. In the coming year, Albania should in particular: - adopt amendments of legal framework to: (i) increase the transparency of media ownership, (ii) fully decriminalise defamation and align civil aspects of defamation with European standards, based on a structured and inclusive dialogue with media actors; - ensure zero tolerance for intimidation and effective judicial follow-up of cases attacks against journalists; ensure increased capacities of law enforcement bodies to handle cases of violence, including on the margins of protests, and other criminal cases involving journalists, notably by ensuring high human rights compliance in handling incidents involving journalists, through binding

⁴⁶⁵ EU itself criticizes the Government if comments are made on the Court decisions, claiming that courts are independent and no one should comment on them. On the other side, EU keeps commenting on the substance of the court decisions and gives opinions on them. This itself may be perceived as violation to one of the fundamental values of the rule of law

		instructions, data collection and capacity building measures; - improve Albanian journalists' working conditions, in particular by strengthening the protection of journalists' employment and social rights and ensuring the labour code is consistently applied.
Chapter 24: Justice, freedom and security		
	Albania is moderately prepared in aligning with the EU acquis in the area of justice, freedom and security. Some progress was made in the fight against organised crime by increasing the capacity of the Specialised Anti-corruption and Organised Crime Structures (SPAK), improving the use of financial investigations and amending the legislation on psychoactive substances. Further action is needed to strengthen law enforcement capacity and improve the efficiency of investigations. Some progress was made in the area of migration with the adoption of the new migration strategy aligned with EU priorities. Further efforts are needed to improve access to asylum and align the country's visa policy with the EU's.	- The Commission's recommendations from last year were partially implemented and remain largely valid. In the coming year, Albania should in particular: - continue developing the systematic use of parallel financial investigations when dealing with serious and organised crime, illicit trafficking, terrorism and money laundering; - adopt the legal framework to set up a national drugs observatory and a national early warning system on the detection of new psychoactive substances; - improve the asylum referral system and access to asylum procedures, improve returns procedures, continue to address the issue of unfounded asylum applications in Schengen and associated countries and further align the country's visa policy with the EU's.
Fight against organised crime	- Albania is between having some and a moderate level of preparation in aligning with the EU acquis in this area. Some progress was made in meeting last year's recommendations by increasing SPAK's capacity in financial investigations (with improved access to databases), strengthening the fight against money laundering and seizing assets linked to organised crime. Albania needs to continue working to ensure the independence of its law enforcement agencies.	- The Commission's recommendations from last year were partially implemented and remain largely valid. In the coming year, Albania should in particular: - further strengthen the fight against organised crime, including through continued cooperation with EU Member States and EU agencies (including Europol, in the framework of the European Multidisciplinary Platform against Criminal Threats (EMPACT), and Eurojust), increase capacity to counter cybercrime and money laundering, and prevent and combat trafficking in human beings; - set up an asset recovery office in charge of the identification and tracing of criminal assets in order to enhance the effectiveness of the national asset recovery system and facilitate the operational cooperation with Asset recovery offices in EU Member States without delay, in line with the EU acquis; - improve criminal analysis systems and methodologies to resolve complex criminal cases.

Table 9: compiled by the author from the data in the EU Country Report 2024.

After comparing those data and the information presented in the table above, it is not easy to link some of the main principles proclaimed by the revised methodology, presented by the Commission, *to drive forward the enlargement process with a stronger political steer and in a more credible, predictable, dynamic way.* Looking at those documents and data presented therein, it is hard to

track the progress made and the status of the rule of law, especially from the perspective as to what shall be fulfilled to move from one step to another.

Rule of law is turned into a criteria for everything, used everywhere in the process, including the accession process. The political discretion, especially with the strong role of the Member States has increased and instead of making it a more predictable process, is rather a much more political one with discretionary powers in the hands of the policymakers keeping the gate. This often raises concerns on the merits and on the impact of such approach, leaving room to doubt that often sidelines with autocratic regimes and state capture practices⁴⁶⁶. With such data and information is hard to predict and what's on the radar of the parties involved. This is true for all the countries but most importantly for the Albanian case, from the perspective of looking at the path and dynamic of the negotiation process. It will for sure attract further research and attention by professionals and academia. Both reports instead of measuring rule of law against certain standards and baselines, they rather present developments. In fact they present events in the country but such events will be a never-ending story. There will always be development, need for change, improvement of processes and systems, new laws and implementing legislation. It will always be something needed in any given system, especially now with the innovation and technology, where any country, including Member States, will be adapting and adjusting their system in their efforts to increase efficiency, transparency and quality. Those are never ending objectives as they all are moving targets⁴⁶⁷.

Albania is perceived for a while as constituting a good example of a reformateur under EU's oversight⁴⁶⁸. On the other side though, there are concerns again on the way Albania is treated and

⁴⁶⁶ Bartlett, W. (2020). International assistance, donor interests, and state capture in the Western Balkans. *Journal of Contemporary European Studies*, 29(2), 184–200. <https://doi.org/10.1080/14782804.2020.1794801>

⁴⁶⁷ As we could see above, it is EU itself that condemns political interference into the judiciary, by calling on political actors to respect court decisions and not comment on them but, on the other side, it is EU that comments them in every given report, quantifying and qualifying them in reference to "EU standards", a reference without any solid ground.

⁴⁶⁸ Beshku, K., & Mullisi, O. (2018). The European Union as a reforming power in the Western Balkans: the case of Albania. *Journal of Liberty and International Affairs*, 4(2), 40-53. <https://nbn-resolving.org/urn:nbn:de:0168-ssolar-60927-2> – This is praised especially in three main areas: foreign policy (full alignment with CFSP), regional relations (good neighborly relations following Berlin Process series) and the domestic policy (reform of the justice system) as the rule of law is a crucial prerequisite for a healthy society, the consolidation of democracy and the economic development of a country on its way to the EU

very often is seen by many with a more skeptical view.⁴⁶⁹ We have to acknowledge an additional advantage that Albania has in the region compared to the other countries and that has to do with the internal composition. Namely Albania does not have any ethnic conflict or conflicts with other countries in the region. Having not been part of the ex- Yugoslavia and its ethnic conflicts, Albania constitutes a country with a “potential of stability” in the whole region⁴⁷⁰. Nevertheless, often the broad consensus on the goal of integration has removed the need for debate on the pros and cons of the process sidelining the integration issue on the list of policy priorities⁴⁷¹. Again, geostrategic considerations are often quoted for having given Albania a special boost this time in this process⁴⁷². These considerations often make the EU skip some of the main concern in Albania, including the phenomenon of state capture⁴⁷³ and aspects of developing strong executives and weak institutions⁴⁷⁴.

Since the focus of this thesis is the rule of law, we will treat countries that are included already as part of the rule of law annual cycle of the EU. As such, we will treat next Montenegro, North Macedonia and Serbia as countries that are part of the rule of law cycle and for which every July

⁴⁶⁹ De Haas, M., & Prantl, J. Publication (2022). The EU as a Promoter of Democracy or Stabilitocracy? Accessible at: <https://www.clingendael.org/sites/default/files/2022-02/the-eu-as-a-promoter-of-democracy-or-stabilitocracy.pdf>, pp. 18-19. The authors argue on this that: The EU seeks to promote democratisation mainly through its conditionality policy, which seems rather straightforward: reward progress on good governance and the rule of law through progress in the accession process and punish democratic backsliding by halting the steps towards accession. In practice, however, this policy is unclear and even contradictory at times. On the one hand, the European Commission tends to favour enlargement and assist the Albanian government and other institutional stakeholders to overcome obstacles to institutional reforms. This approach enables the Commission to influence Albanian policy and expand the influence of European agencies. On the other hand, due to their internal public safety concerns or foreign policy objectives, some member states have been more reluctant to agree that Albania progresses on the accession path and towards enlargement in general.

⁴⁷⁰ Beshku, K., & Mullisi, O. (2018). The European Union as a reforming power in the Western Balkans: the case of Albania. *Journal of Liberty and International Affairs*, 4(2), 40-53. <https://nbn-resolving.org/urn:nbn:de:0168-ssaar-60927-2>

⁴⁷¹ Armakolas, I., & Triantafyllou, G. (2020). Greece and EU enlargement to the Western Balkans: understanding an ambivalent relationship. In Ker-Lindsay, J. (Ed.), *The National Politics of EU Enlargement in the Western Balkans* (p. 398). Routledge

⁴⁷² See Bushati, D. (2023). European Union and the Western Balkans, an Endless Story. The Case of Albania. In: Uvalić, M. (eds) *Integrating the Western Balkans into the EU. New Perspectives on South-East Europe*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-32205-1_13. The author states on this: Albanian government stakeholders tend to take (short-term) measures, which are seen as successful by the European Commission and member states, to demonstrate reform commitment on the country’s accession path but often these ‘reform’ measures threaten civil liberties and undermine good governance and democracy

⁴⁷³ Vachudova, M.A. (2019). EU Enlargement and State Capture in the Western Balkans. In: Džankić, J., Keil, S., Kmezić, M. (eds) *The Europeanisation of the Western Balkans. New Perspectives on South-East Europe*. Palgrave Macmillan, Cham.

⁴⁷⁴ Meyerrose, A.M. Building strong executives and weak institutions: How European integration contributes to democratic backsliding. *Rev Int Organ* 19, 307–343 (2024). <https://doi.org/10.1007/s11558-023-09507-2>

there is a special rule of law report. One we present those we will present the rule of law situation in Bosnia and Herzegovina and in the Republic of Kosovo.

5.3.2 Rule of Law State of Plain in Montenegro

Montenegro has been the front runner in the region in the EU accession process for long time now, starting with the candidate status in granted in 2010. It applied for membership in 2008, two years after becoming independent in 2006. It opened the negotiations in 2012. A detailed table with the Clusters and Chapters that Montenegro has opened is **Annex 2**.

Montenegro has managed to open all 33 chapters, namely all 6 clusters, from which some of the chapters are opened as early as December 2013, 12 years ago. It has managed to close already only 7 chapters⁴⁷⁵. Nevertheless, as mentioned these are provisionally closed as they are fully closed since according to the negotiating principles endorsed by the Accession Conference, agreements reached in the course of negotiations on specific chapters, even partial ones, may not be considered as final until an overall agreement has been reached for all chapters.⁴⁷⁶

This is why, it is important to see in the annual reports, both the country report and the rule of law report, for Montenegro to see the state of play of the rule of law related matters. As such we will run a similar exercise below in another table to see some of the main issues that are identified first by the rule of law report and than in the next one issues raised in the country report.

2024 AND 2025		
Rule of Law Report Country Chapter on the rule of law situation in Montenegro ⁴⁷⁷		
Year:	<i>Data in the 2024 RoL Report⁴⁷⁸</i>	<i>Data in the 2025 RoL Report⁴⁷⁹</i>
Justice Systems	Independence: The level of perceived judicial independence in Montenegro is low among the general public and very low among companies. Average among both the general public and companies:	Independence: The level of perceived judicial independence in Montenegro is now very low among the general public and is now low among companies. Average among both the general public and companies:

⁴⁷⁵ See Press release of Adam Szałapka, Minister for European Affairs of Poland, on behalf of the Polish Presidency of the Council of the EU, at <https://www.consilium.europa.eu/en/press/press-releases/2025/06/27/eu-and-montenegro-provisionally-close-public-procurement-chapter-in-accession-negotiations/>

⁴⁷⁶ *Ibid.*

⁴⁷⁷ See 2025 Rule of law report – methodology, available at: https://commission.europa.eu/document/72742fd9-3ce0-4d23-9086-58f885f84cdd_en

⁴⁷⁸ SWD(2024) 828 final, “2024 Rule of Law Report – Country Chapter on the rule of law situation in Albania”

⁴⁷⁹ SWD(2025) 928 final, “2025 Rule of Law Report – Country Chapter on the rule of law situation in Albania”

	- 35% of the general population and - 28% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2024.⁴⁸⁰ - Significant delays in high-level judicial appointments have ultimately had an impact on the judicial system, although by now only a new President of the Supreme Court remains to be appointed. - The promotion and enforcement of ethics and professional standards among judges and prosecutors remains a challenge.	- 26% of the general population and - 35% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2025⁴⁸¹. - The implementation of the previously amended legal framework has yielded some initial positive results, while the composition of the Judicial and Prosecutorial Councils remains to be further improved⁴⁸². - The promotion and enforcement of ethics, professional standards among judges and prosecutors, and evaluation mechanisms has improved, yet concerns persist in ensuring the quality of evaluations and the consistency of sanctioning practice for Agency for the Prevention of Corruption reports. - Instances of undue public influence on the judiciary continue to raise the concern of some stakeholders
	Efficiency: - Challenges remain regarding the length of proceedings and the large backlog. - Further measures to increase efficiency and stabilise the backlog have yet to be implemented. - Serious challenges exist regarding the efficiency of justice, where the length of proceedings for administrative cases has further increased.	- <i>Challenges regarding the length of proceedings and the large backlog have further increased, while decisive measures to increase efficiency are yet to be implemented.</i> - Some improvements have been achieved on efficiency, while significant backlogs persist in administrative cases
Anti-Corruption Framework	- The perception among experts and business executives is that the level of corruption in the public sector is high. In the 2023 Corruption Perceptions Index by Transparency International, Montenegro scores 46/100 and ranks 63rd globally. This perception remained relatively stable⁶³ over the past five years.	- The perception among experts, citizens and business executives is that the level of corruption in the public sector remained high. In the 2024 Corruption Perceptions Index by Transparency International, Montenegro scores 46/100 and ranks 65th globally. This perception remained relatively stable over the past five years. The 2025 Special Eurobarometer on Corruption shows that 88% of respondents consider corruption widespread in their country (EU average 69%) and 24% of respondents feel personally affected by corruption in their daily lives (EU average 30%). As regards businesses,

⁴⁸⁰ The main reason cited by companies for the perceived lack of independence of courts and judges is the perception of interference or pressure from the Government and politicians

⁴⁸¹ The perceived judicial independence among the general public has significantly decreased in comparison with 2024 (35%), while among companies it has increased in comparison with 2024 (28%). The main reason cited by the general public for the perceived lack of independence of courts and judges is the perception of interference or pressure from the Government and politicians.

⁴⁸² It is very interesting to see the way this is measured and compared with the so called "EU standards". in further justifying this deficiency, the report states: "To fully address recommendations of the European Commission and Venice Commission, the Judicial Council's composition remains to be further aligned with European standards as regards the Minister of Justice's role as an ex officio member as well as the representation of peer-elected judges. As constitutional amendments are necessary, the Government initiated the process through the adoption of a governmental draft. Against this background, the new Minister of Justice appointed in August 2024 has informally committed to continuing his predecessor's practice of not participating in Judicial Council sessions". Nevertheless, looking at some of the most advanced democracies, like the EU founding Member States such as France, Germany, Italy etc., Minister even appoint judges. So the reference in such "EU standards" on this are not the most appropriate ones, to say the least.

	- The track record of investigations and prosecutions in cases of high-level corruption is stable, but the lack of trials and final decisions contributes to a perception of impunity. - The human resources of the Special Prosecution Office (SPO) are insufficient to cope with its workload. - The ACA is mandated to check public procurement procedures, even though the high number of small contracting authorities remains a risk.	79% of companies consider that corruption is widespread (EU average 63%) and 47% consider that corruption is a problem when doing business (EU average 35%). Furthermore, 21% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%), while 32% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 33%)³⁶. Montenegro is not yet a signatory party to the OECD Anti-Bribery Convention - The track record of investigations and prosecutions in cases of high-level corruption continues to improve, but the low number of final convictions and lack of effective and deterrent penalties contribute to a perception of impunity. - The human resources capacities in the fight against corruption have slightly increased but remain insufficient overall. - Progress has been made in enhancing public procurement transparency with electronic systems. Montenegro has implemented a red flag system in its e-procurement system to detect irregularities in public procurement procedures. The electronic European Single Procurement Document (ESPD) in the e-procurement system was introduced in 2024, resulting in a significant reduction in complaints.
Media Pluralism and Media Freedom	- Concerns have been raised with regard to the independence of the Audio-Visual Regulatory Authority (AMA) due to the bi-partisan formula for election of board members and their political affiliation. - Self-regulation in the media sector is weak as it is impacted by limited resources, a polarised media landscape and persisting inflammatory rhetoric in the public debate. - Limited regulation on transparency of media ownership and high concentration negatively impact media independence. - Verbal and physical attacks, smear campaigns and strategic lawsuits against public participation (SLAPP) against journalists are a cause for concern.⁴⁸³ - Limited job security and poor working conditions for journalists pose serious challenges in terms of self-censorship, pressure from political actors and a reduced resistance to	- The independence of the Audio-Visual Regulatory Authority (AMA) remains an issue of concern, due to the bi-partisan formula for election of board members and their political affiliation. - Concerns with regard to the independence of the public broadcaster have increased. - High concentration continues to negatively impact media independence and media market penetration by high profile business groups with political links remain a serious concern. - Verbal and physical attacks, smear campaigns and strategic lawsuits against public participation (SLAPP) targeting journalists are a continued cause for concern. - Limited job security and poor working conditions for journalists combined with self-censorship, pressure from political actors and media owners¹¹⁹ continue to pose serious challenges for media. For these reasons, MPM

⁴⁸³ According to the RoL report: Journalists have the right to protect their sources and refuse to testify in criminal, civil and administrative cases, with some narrowly defined exceptions. Nonetheless, in February 2024, the High Court deemed lawful the seizure by the Special Prosecution Office against Organised Crime and Corruption (SPAK) of phones and computers belonging to a journalist who was reporting on an organised crime case under SPAK investigation.

	disinformation. For these reasons MPM 2024 considers this to be an area presenting medium risk. - The new Law on Audiovisual Media Services grants new powers to the Agency for Audiovisual Media Services (AAVMS) addressing the long-standing challenge of its effectiveness to enforce the regulatory framework by granting it with comprehensive sanctioning instruments, including the power to impose fines in case of violations of the law. - Transparency of media ownership information is limited to registered media providers only. - Information on all public sector payments made to media outlets, including institutional advertising, is limited. - The authorities generally provide effective law enforcement and institutional responses to new cases of violence against journalists and media workers, but there was no effective judicial follow-up of emblematic past cases.	2025 further increased the risk indicator in the area to medium to high risk. - Delays in appointing members to the Councils of the Agency for Audiovisual Media Services and the Radio Television of Montenegro hinder the implementation of the media legislative framework. - Rules on transparency of media ownership information have improved but only in relation to media providers. - The legal provisions regulating the transparency of public funding allocations for media are yet to be fully implemented. - The authorities continue to provide prompt and effective institutional and law enforcement response to new cases of verbal and physical violence against journalists.
Other Institutional Issues Related to Checks and Balances	- Despite an established framework for inclusive legislative processes, challenges exist in terms of effectiveness of public consultations. - While the Ombudsperson's Office has improved its capacity to handle complaints and improve the quality of decisions, the absence of systematic follow-up to its recommendations undermines the efficiency of its work. - On 1 January 2024, Montenegro had three leading judgments of the European Court of Human Rights pending implementation. - At that time, Montenegro's rate of leading judgments from the past ten years that remained pending was at 14%, and the average time that the judgments had been pending implementation was 4 years and 10 months. The moderately high average implementation time of Montenegrin cases results from the fact that the country's three leading judgments had been pending implementation for 2, 5 and 8 years respectively. The oldest leading judgment pending implementation concerns the applicant's ill-treatment in police detention and	- An established framework for inclusive legislative processes is in place, but challenges remain in terms of effectiveness of public consultations. - A deep institutional and political crisis emerged over the decision of the Parliament to unilaterally declare the retirement of a Constitutional Court judge, raising concerns about the respect for the independence of the Constitutional Court.⁴⁸⁴ - A new law on the Ombudsperson's Office is being drafted to fully align with the Paris Principles aimed at achieving an upgraded accreditation to 'A' status. - On 1 January 2025, Montenegro had 6 leading judgments of the European Court of Human Rights pending implementation, an increase of 3 compared to the previous year. - On 1 January 2025, Montenegro's rate of leading judgments from the past 10 years that had been implemented was at 75% (compared to 86% in 2024; 25% remained pending), and the average time that the judgments had been pending implementation was 3 years and 3 months (compared to 4 years and 10 months in 2024). The oldest leading judgment, pending implementation for 9 years, concerns ill-treatment in police detention and the lack of an

⁴⁸⁴ On 17 December 2024, tensions escalated following the Parliament's decision on the retirement of a Constitutional Court judge. This decision was not in line with the procedure foreseen in the Constitution, which requires a plenary decision of the Constitutional Court 85 as also stated by the Venice Commission and sparked a serious crisis within Parliament. These developments raised strong concerns about the respect for independence of the Constitutional Court and separation of powers enshrined in the Constitution.

	the lack of an effective investigation into his complaints. - As regards the respect of payment deadlines, on 31 December 2023 there was one case in total awaiting confirmation of payments (the same as in 2022). On 1 July 2024, the number of leading judgments pending implementation had increased to five.	effective investigation into the relevant complaints. - As regards the respect of payment deadlines, on 31 December 2024 there were 4 cases in total awaiting confirmation of payments (compared to 1 in 2023). On 16 June 2025, the number of leading judgments pending implementation had remained 6.
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Table 10: compiled by the author from the data in the EU rule of law reports 2024 and 2025.

Montenegro is another example as to how EU perceived the rule of law development and how it does follow them on yearly basis. It is the second year that Montenegro as well is included in this exercise. The above table is not exhaustive, the list is much longer but for the purpose of this thesis the above data is used to see some examples as to how rule of law is being measured through this new methodology. It is interesting to note that most of the information is received by external actors, including CSOs and international organizations. For comparison purposes we will test a similar table with the data and information from the Country Report, which is published in Octobers. These two reports present the first hand information from and for the EU used in decided the destiny of each stage of the accession process. This is why analyzing them closely is important for this thesis and future research in this matter too. So let us have a look at the data presented in the EU Country Report for Montenegro as following:

EU COUNTRY REPORT FOR MONTENEGRO 2024 ⁴⁸⁵		
Criteria	Status / findings	Recommendations
Chapter 23: Judiciary and fundamental rights Montenegro remains moderately prepared to apply the EU acquis and European standards in this area and has made good progress overall. Good progress was achieved as regards justice reform, the fight against corruption, and freedom of expression and media freedom, with substantial reforms to the legislative and strategic frameworks. In June 2024, the European Commission assessed in its interim benchmark assessment report that Montenegro had fulfilled the interim benchmarks for chapter 23, and consequently the closing benchmarks for chapter 23 were set.		
Functioning of Judiciary	- Montenegro's judicial system is moderately prepared and has made good progress on key judicial reforms and last year's recommendations. - A new strategic framework was put in place, and substantial amendments were adopted to the Law on Judicial Council and Judges, the Law on State Prosecution Service, and the Law on Special State Prosecution Service aiming to	- The Commission's recommendations from last year were largely met. In the coming year, Montenegro should, in particular: - appoint a permanent President of the Supreme Court, as well as other high-level judicial positions, through a merit-based and transparent procedure, to ensure the proper functioning and accountability of the justice system;

⁴⁸⁵ SWD(2024) 694 final, "Montenegro 2024 Report", accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS: "2024 Communication on EU enlargement policy".

	align them with the EU acquis and European standards, based on the European and Venice Commissions' recommendations. Further efforts will need to be ensured to continue their alignment. Progress was made on transparent and merit-based high-level judicial appointments, following a long period of standstill. The Parliament appointed by qualified majority a new permanent Supreme State Prosecutor, three members of the Judicial Council and one judge of the Constitutional Court, and only a permanent President of the Supreme Court remains to be appointed.	- ensure full and effective implementation of the improved strategic and legal framework to address existing challenges, and further align the legal framework, including the Constitution, in particular on the composition and decision making process of the Judicial Council, with the EU acquis and European standards on judicial independence, accountability, impartiality, integrity, efficiency, and professionalism of the judicial system, addressing the remaining recommendations from the European Commission, the Venice Commission and the Council of Europe Group of States against Corruption (GRECO), to decisively restore the stability, credibility and public trust in the justice system; - fully implement the Plan for the rationalisation of court network and the Strategy for digitalisation of the judiciary, to improve human, financial, and physical infrastructure in the judiciary and state prosecution service.
Fight against corruption	- Montenegro is between having some level of preparation and a moderate level of preparation in the fight against corruption. Good progress was made on key reforms and last year's recommendations. - The strategic framework has improved with the adoption of a new a new 2024-2028 Anticorruption Strategy, aiming to align it with European and international standards, by addressing prevention and repression of corruption, as well as international cooperation. Likewise, the legal framework was substantially upgraded with the adoption of a new Law on Prevention of Corruption and amendments to the Law on Confiscation, with the aim to align them with European standards by addressing existing loopholes. In addition, a new Law on lobbying was adopted, in line with the EU acquis and European standards. New guidelines were adopted to improve the use of plea bargain agreements by prosecutors and judges in corruption cases, including high-level corruption, to ensure an effective and deterrent criminal justice response.	- The Commission's recommendations from last year were largely met. In the coming year, Montenegro should, in particular: - ensure full and effective implementation of the improved strategic and legal frameworks to address existing challenges, and continue its alignment with the EU acquis and European standards on prevention and fight against corruption by addressing the remaining recommendations from the European Commission, the Venice Commission and the Council of Europe Group of States against Corruption (GRECO) and peer review missions, including on its institutional set up and effective functioning; - further improve the track record on corruption, including high-level corruption, by urgently strengthening the effective enforcement of the existing criminal legislation by the prosecution and courts, including by imposing effective and deterrent penalties; - urgently amend Law on financing of political entities and election campaign to address the existing shortcomings and bring it fully in line with European standards, to substantially increase transparency and control of the spending of political parties, and prevent the abuse of state resources, including through dissuasive sanctions.
Fundamental rights	The legislative and institutional framework on fundamental rights is largely in place and Montenegro continues to largely meet its international obligations on human rights. However, more effort is needed to fully implement this framework and to ensure access to justice and enforcement of rights in	- The Commission's recommendations from last year were partially implemented, with substantial progress in drafting a new anti-discrimination law, and the revision of relevant criminal legislation, and remain largely valid. In the coming year, Montenegro needs in particular to:

	administrative and judicial proceedings, in particular for vulnerable groups. The most vulnerable groups in society (including Roma and Egyptians, persons with disabilities, LGBTIQ persons) continued to be subjected to discrimination, hate speech and hate crime. More effort is needed to effectively address all recommendations from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT).	- make substantial progress in implementing all pending recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT); - make substantial progress in implementing the Strategy for the Advancement of the Status of Roma and Egyptians in Montenegro, as well as commitments under the Poznan Declaration; - adopt a new law on anti-discrimination and a new law on personal data protection, in line with the EU acquis, European and international standards.
Freedom of expression	Montenegro has a pluralistic media environment and is between having some level of preparation and moderate level of preparation in the area of freedom of expression. Overall, good progress was achieved in the reporting period, notably with the adoption a media legislative package – new Media Law, new Law on Audiovisual Media Services and new Law on Public Broadcaster RTCG – in line with the EU acquis, and European standards, which was a key recommendation of last year’s report.	- The Commission’s recommendations from last year were largely implemented. In the coming year, Montenegro needs in particular to: - continue to provide prompt and effective law enforcement and institutional protection to journalists against all forms of violence, while prioritising investigations and judicial follow-up in key cold cases; - ensure consistent implementation of all media-related legislation and uphold a zero tolerance policy to any form of pressure or harassment of journalists, including by public officials; - safeguard against any form of undue influence on the editorial, institutional or financial independence of the public broadcaster RTCG, which needs to comply fully with the law and with the highest standards of professional integrity and accountability.
Chapter 24: Justice, freedom and security		
	Montenegro has between a moderate and a good level of preparation in the area of justice, freedom and security. Montenegro has made good progress combating organised crime and on the management of migration and asylum. In June 2024, the European Commission assessed in its interim benchmark assessment report that Montenegro had fulfilled the interim benchmarks for chapter 24, and consequently the closing benchmarks for chapter 24 were adopted.	- The Commission’s recommendations from last year were partially implemented. In the coming year, Montenegro should in particular: - increase the efficiency of prosecution/adjudication for serious and organised crime cases, especially cases of money laundering; address the lengthiness of trials and frequent adjournments in organised crime cases; ensure the application of key legal concepts such as stand-alone money laundering (independent of the predicate crime) and quality of evidence by the courts and the prosecution; and ensure the seizure and confiscation of criminal assets – by systematic tracking of money flows, the efficient use of special investigative measures and the consistent use of extended confiscation; - further strengthen border management capacity by addressing critical gaps in border surveillance infrastructure and equipment; take the necessary steps to set up an advance passenger information system and a biometric migrant registration system; - further align Montenegro’s visa policy with the EU’s list of visa-required countries, in line with the commitments taken in the Reform Agenda, in particular with regard to countries presenting irregular migration or security risks to the EU.

Fight against organised crime	- Montenegro is moderately prepared in the fight against organised crime. Good progress was made with the adopted legislative amendments in the areas of money laundering and trafficking in human beings.	- The Commission's recommendations from last year were partially implemented. In the coming year, Montenegro should in particular: - make progress on filling vacancies in the Special Police Unit (SPU), SSPO and High Court of Podgorica; provide suitable premises to the SSPO and SPU and reorganise the Special Investigative Measure (SIM) division; - further amend its legislation on weapons to align with EU acquis and international standards; - address the risks of corruption and infiltration of organised crime into law enforcement agencies and the judiciary by implementing a strong prevention policy and providing a stringent judicial response to detected cases; urgently implement the reorganisation in the Ministry of Interior /police in the area of corruption prevention and internal control.
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Table 11: compiled by the author from the data in the EU Montenegro Report 2024.

It is very interesting to see the way the Commission measures the progress or the state of play of the rule of law in those sub-components as reflected in the table. Terms like “...*has between a moderate and a good level of preparation...*”, or that “[country] *has made good progress*” are typically political statements and randomly used without any particular point of reference to a concrete measurement process. Montenegro is the most advanced country in the accession process, still there are often backsliding⁴⁸⁶ on a number of developments that were embedded in clientelist and corruption-based relations between state and society, while they were also, to an extent, affected by state-driven populism⁴⁸⁷. When there are stability concerns EU speeds up the process in a way to keep the country moving towards EU⁴⁸⁸.

5.3.3 Rule of Law State of Play in North Macedonia

North Macedonia is another interesting example of the complexity of the EU Western Balkan relations. Macedonia is the first country in the Western Balkans to receive the Candidate Status,

⁴⁸⁶ Đuković, M. (2024). Backsliding Rule of Law and “Stabilitocracy” in Montenegro. In: Mihr, A., Pierobon, C. (eds) Polarization, Shifting Borders and Liquid Governance. Springer, Cham. https://doi.org/10.1007/978-3-031-44584-2_12
⁴⁸⁷ Sotiropoulos, D.A. (2023). How Elected Governments Make Democracies Backslide: The Case of Montenegro. In: The Irregular Pendulum of Democracy. New Perspectives on South-East Europe. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-25609-7_9.

⁴⁸⁸ Muk, M. (2022). “Montenegro: ‘Unconditional’ Rule of Law” in The EU as Promoter of Democracy or ‘Stabilitocracy’ in the Western Balkans?, Clingendael Report, February 2022, The Hague: Clingendael, 30–34

receiving it even before Croatia who is now full Member State in the EU. North Macedonia, back then called Former Yugoslav Republic of Macedonia – FYROM, received the candidate status some 20 years ago, exactly on December 16, 2005⁴⁸⁹. As we write this thesis, North Macedonia on the name of EU integration had to even change its country’s name over a long dispute with Greece. Despite this, it is yet to open the negotiations for membership. Currently it is in the very early stage of conducting the screening process, the very first preliminary task before it can open the clusters and chapters. It has managed to hold the first Intergovernmental Conference for the screening process of the *acquis*. After tabling the screening report on cluster 1 in July 2023, in the autumn of 2023 the Council outlined to North Macedonia the terms for opening accession negotiations on the first cluster (fundamentals) once the constitutional amendments are adopted. In response, the government adopted the roadmaps on the rule of law and on public administration reform. The adoption of the action plan on the protection of minorities is still pending. The screening reports on cluster 2, internal market, was presented to the Council in May 2024, followed by the screening reports on cluster 6, external relations and cluster 3 competitiveness and inclusive growth in October 2024.⁴⁹⁰ This is why, in the case of North Macedonia there is no table to be presented for the Clusters and Chapters. We will thus, present a comparison of the two main tables presenting the rule of law status in the country, namely the first table on the Rule of Law Annual Report, published in July, the Country Chapter for North Macedonia, using the same methodology as with the previous two other countries presented above, as following:

2024 AND 2025		
Rule of Law Report Country Chapter on the rule of law situation in North Macedonia ⁴⁹¹		
Year:	<i>Data in the 2024 RoL Report</i> ⁴⁹²	<i>Data in the 2025 RoL Report</i> ⁴⁹³
Justice Systems	Independence: The level of perceived judicial independence in North Macedonia is very low among both the general public and companies. Average among both the general public and companies: - 25% of the general population and	Independence: The level of perceived judicial independence in North Macedonia continues to be very low among both the general public and companies. Average among both the general public and companies: - 28% of the general population and

⁴⁸⁹ https://enlargement.ec.europa.eu/enlargement-policy/north-macedonia_en

⁴⁹⁰ See SWD(2024) 693 final, North Macedonia 2024 Report, p. 20

⁴⁹¹ See 2025 Rule of law report – methodology, available at: https://commission.europa.eu/document/72742fd9-3ce0-4d23-9086-58f885f84cdd_en

⁴⁹² SWD(2024) 830 final, “2024 Rule of Law Report – Country Chapter on the rule of law situation in North Macedonia”

⁴⁹³ SWD(2025) 930 final, “2025 Rule of Law Report – Country Chapter on the rule of law situation in North Macedonia”

	- 20% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2024.⁴⁹⁴ - The independence of the judiciary and the institutional capacity to protect it against undue influence continue to raise serious concerns. - Appointment decisions for public prosecutors by the Council for Public Prosecutors and judges by the Judicial Council have been criticised by civil society for not being comprehensively motivated⁴⁹⁵ or based on objective criteria.	- 26% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2025⁴⁹⁶. - Interference and pressure from other State branches raise serious concerns about the respect for judicial independence⁴⁹⁷. - Measures were taken across the judiciary to enhance transparency, while some concerns remain regarding judicial and prosecutorial appointment decisions.
	Efficiency: - The efficiency of the judiciary has declined for first instance civil, commercial and criminal cases, while it has been overall stable for second instance cases.⁴⁹⁸	- The efficiency of the justice system has overall declined as the length of proceedings increased for almost all case categories.
Anti-Corruption Framework	- The perception among experts and businesses is that the level of corruption in the public sector is high. In the 2023 Corruption Perceptions Index by Transparency International, North Macedonia, scored 42/100, and ranks 76th globally. This perception has improved over the past five years.⁴⁹⁹ - High risk of corruption remains prevalent in many areas, with public procurement and public sector employment being at particular risk.	- The perception among experts, citizens and businesses is that the level of corruption in the public sector is high. In the 2024 Corruption Perceptions Index by Transparency International, North Macedonia scores 40/100 and ranks 88th globally. - Corruption risks are high in the healthcare and public procurement areas, while the impact of political influence on efforts to address corruption is highlighted as a concern.
Media Pluralism and Media	- The Agency for Audio and Audiovisual Media Services fulfils its tasks, while its financial and	- The financial independence of the Agency for Audio and Audiovisual Media Services has been

⁴⁹⁴ The main reason cited by both the general public and companies for the lack of independence of courts and judges is the perception of interference or pressure from the Government and politicians.

⁴⁹⁵ This is a very interesting formulation for an appointment process – what would “*comprehensively motivated*” mean in such circumstances?

⁴⁹⁶ The perceived judicial independence remains low but has increased in comparison with 2024 both among the general public (25% in 2024) and companies (20% in 2024). The main reasons cited by the general public for the perceived lack of independence of courts and judges are the perception of interference or pressure from the Government and politicians as well as, cited by both the general public and companies, the interference or pressure from economic or other specific interests.

⁴⁹⁷ In March 2025, the Government initiated a dismissal procedure against the Chief Prosecutor, invoking, among others, that the Chief Prosecutor harmed the reputation of the judiciary. In April, the Council of Public Prosecutors provided a negative opinion, not supporting the dismissal proposal. These are very sensitive matters in the North Macedonia and are clear signs of political interference in the judiciary.

⁴⁹⁸ In 2022, the clearance rate was below 100% for all case categories in the first and second instances, except for administrative cases. In comparison to 2021, the clearance rate for first-instance civil and commercial litigations declined from 99% to 85% in 2022, and the number of backlogs increased by 24.8%⁷¹. Conversely, the disposition time increased by 23.1% from 253 days in 2021 312 days in 2022. For second-instance civil and commercial cases, the clearance rate increased from 89% to 97%, while the disposition time, however, increased as well by 16.7% from 142 days in 2021 to 166 days in 2022. For first-instance criminal cases the trend is negative, with the disposition time increasing by 20,5% from 132 days in 2021 to 159 days in 2022, and the number of pending cases increasing by 17.5%. The clearance rate decreased from 103% in 2021 to 94% in 2022. In second instance criminal cases, the efficiency indicators remained stable compared to 2021. As mentioned above, it is interesting to see that the disposition time does not look that bad in North Macedonia. The efficiency seems to be much better than in Albania, although there there are no numbers on disposition time numbers at all.

⁴⁹⁹ It is interesting to note that Albania scores worse than that being 37/100 and ranks 98th globally. Montenegro is better but only for four scores, at 46/100 and ranks 63rd globally.

Freedom	institutional independence remain to be further strengthened. - The Council of Media Ethics continues to be put under pressure. - Legislative measures have enhanced the legal safeguards for the protection of journalists, however threats and acts of violence against journalists have been noted. - Beyond safety, the overall precarious labour and economic conditions of journalists and media workers are identified as a reason of concern¹⁷³. The MPM 2024 reports a medium risk for journalistic profession, standards, and protection.	improved, while appointments of new members to its Council are still pending. - The self-regulatory Council of Media Ethics continues its activities despite concerns about securing long-term sustainable funding. - Despite some progress in strengthening the legal protection for journalists, their working environment has not improved. - Shortcomings in journalists' working conditions persist, notably, the short-term or part-time contracts without health and social insurance coverage, unpaid overtime and low wages, which contribute to self-censorship and influence over editorial content by media owners¹⁴². The MPM 2025 reports a medium-low risk⁵⁰⁰ for journalistic profession, standards, and protection.
Other Institutional Issues Related to Checks and Balances	- Political polarisation in Parliament has caused delays in its work and led to the excessive and sometimes inappropriate use of accelerated legislative procedures. - On 1 January 2024, North Macedonia had 13 leading judgments of the European Court of Human Rights pending implementation⁵⁰¹. - At that time, North Macedonia's rate of leading judgments from the past ten years that remained pending was at 29%, and the average time that the judgments had been pending implementation was 3 years and 9 months. The oldest leading judgment, pending implementation for more than 14 years, concerns violations of the applicant's right to liberty on account of the lack of concrete and sufficient grounds for his detention. - As regards the respect of payment deadlines, on 31 December 2023 there were 9 cases in total awaiting confirmation of payments (compared to 3 in 2022). On 1 July 2024, the number of leading judgments pending implementation had increased to 17.	- The Parliament is implementing the new Rules of Procedure, which were adopted with the aim of improving its oversight and efficiency. - On 1 January 2025, North Macedonia had 18 leading judgments of the European Court of Human Rights pending implementation, an increase of 5 compared to the previous year. - On 1 January 2025 North Macedonia's rate of leading judgments from the past 10 years that had been implemented was at 65% (compared to 71% in 2024; 35% remained pending), and the average time that the judgments had been pending implementation was 3 years and 3 months (compared to 3 years and 9 months in 2024)⁵⁰². The oldest group of leading judgments, pending implementation for more than 14 years, concerns violations of the applicants' right to liberty on account of the lack of concrete and sufficient grounds for their detention. - As regards the respect of payment deadlines, on 31 December 2024 there were 2 cases in total awaiting confirmation of payments (compared to 9 in 2023). On 16 June 2025, the number of leading judgments pending implementation had increased to 20.

Table 12: compiled by the author from the data in the EU rule of law reports 2024 and 2025.

⁵⁰⁰ Just for another comparison example, this is even better than Montenegro, which is considered as **medium to high risk**.

⁵⁰¹ Albania had 24 leading judgments in 2024 and 25 in 2025

⁵⁰² Montenegro has the same time (3.3 years) for 2025, while for 2024 North Macedonia was much better than Montenegro, which was at 4 years and 10 months. Albania is worse, with 4 years and 3 months in 2025/3 years and 11 months in 2024.

It is very interesting to note that if we want to make a clear link between the rule of law as the key criteria to membership, as proclaimed in most of the EU documents, and the rule of law status of the countries it is hard to come to logical conclusions. Let's take and compare two examples between Albania and North Macedonia pertaining to the time disposal of court cases and the level of corruption. In both of those criteria, North Macedonia is much better than Albania. The clearing rate in administrative cases North Macedonia was doing extremely well, with its worst being in 2025 at 306 days disposition time, while Albania's best is now at 5 326 days from 8 680 days being its worst. As far as the perceived corruption level according to the Transparency International, North Macedonia in 2025 scores 40/100 and ranks 88th globally, Albania scores worse than that being 37/100 and ranks 98th globally. Corruption is one of the most important elements not only for the rule of law but for many other perspectives and the democracy and human rights. Therefore a further consideration of those important elements is of immense value in understanding the state of play of the rule of law in the accession countries and the type of impact it has for the overall progress speed⁵⁰³.

Now going back to the annual country report for North Macedonia, we have the following data and information there that are worth looking at. For the sake of the space, we will limit the number of sub-sections and keep only a few which are sufficient to get a glimpse of an understanding of specificities that may exist, in the following table:

EU COUNTRY REPORT FOR NORTH MACEDONIA 2024 ⁵⁰⁴		
Criteria	Status / findings	Recommendations
Chapter 23: Judiciary and fundamental rights North Macedonia is between having some and a moderate level of preparation in applying the EU acquis and European standards in this area. Overall, there was limited progress on strengthening judicial independence and improving the legal framework for protecting fundamental rights.		
Functioning of Judiciary	- The country adopted a new Strategy for Judicial Reform (2024-2028) and a roadmap on chapter 23 and has started to implement the recommendations of the 2023 peer review mission on the Judicial Council. The new government's announcements of plans to 'dissolve' the Judicial and Prosecution Councils are a matter of serious concern, as such actions would undermine the independence of the	- The Commission's recommendations from last year were only partially implemented and are therefore largely valid. In the coming year, North Macedonia should in particular: - adopt a new Law on civil procedure , in line with European standards and start implementing the new strategy on judicial reform; - strengthen the Judicial Council by revising the legislative framework and its overall functioning to

⁵⁰³ See on this, Woelk, J. (2024). Conditional or Sustainable? The Rule of Law and Judiciary Reforms in the Western Balkans. In: Antonioli, L., Ruzza, C. (eds) The Rule of Law in the EU. Springer, Cham. https://doi.org/10.1007/978-3-031-55322-6_14.

⁵⁰⁴ SWD(2024) 693 final, "North Macedonia 2024 Report", accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS: "2024 Communication on EU enlargement policy".

	judiciary. The rising deficit in human resources in the judiciary raises concerns for impacting the quality and efficiency of justice.	enhance its transparency and independence, in line with the recommendations of the 2023 peer review mission, and step up the implementation of the human resources strategies for the judiciary and the prosecution; - ensure that the automated court case management information system (ACCMIS) is fully functional and compatible with level of complexity of court cases and the method for assessing judges and presidents of courts.
Fight against corruption	- North Macedonia is between having some level of preparation and a moderate level of preparation and made no progress in the prevention and fight against corruption. Corruption remains prevalent in many areas and is an issue of serious concern. The current government has stated that the fight against corruption is a priority. - The institutional framework for the fight against corruption is in place and is satisfactory in terms of preventive measures. However, improvement is needed on law enforcement. The newly composed State Commission for the Prevention of Corruption (SCPC) started its mandate on 8 February 2024. To enhance the performance of the SCPC, the Public Prosecutor's Office, investigative centres and law enforcement units should all receive additional human resources and financial support. Strategic documents have been adopted and the legal framework for the fight against corruption is in place but needs to be improved, both in terms of preventive measures and law enforcement. - Many ongoing cases were terminated either because the statute of limitations had expired or because specific offences, such as the abuse of office in public procurement, no longer exist.	- The Commission's recommendations from last year were not fully addressed and therefore remain valid. In the coming year, North Macedonia should in particular: - adopt a new Criminal Code in line with the EU <i>acquis</i> and international standards. Improve its track record in high-level corruption cases – with timely, professional, and transparent proactive investigations, prosecutions, final convictions, and recovery, including confiscation of criminal assets, value-based confiscation, extended confiscation and third-party confiscation; - improve the implementation of the national strategy for the prevention of corruption and conflict of interests and also the GRECO's recommendations, in particular on the system of sanctions for the violation of conflicts of interest, integrity and anti-corruption rules; - allocate sufficient human and financial resources, including financial experts, to the Office of the Basic Public Prosecutor for Organised Crime and Corruption to ensure effective accountability in high-level corruption cases; and to the State Commission for the Prevention of Corruption to improve the verification of assets declarations and the oversight of election campaign financing.
Fundamental rights	- The legal framework on the protection of fundamental rights is partially aligned with the EU <i>acquis</i> and European standards. The country continues to meet its general obligations on fundamental rights, but legislation should be implemented in a systematic manner. In November 2023, the Parliament appointed the Macedonian Association of Young Lawyers and the Helsinki Committee for Human Rights (HCHR) to serve as the civil control mechanism within the Ombudsman's office. The Parliament elected new anti-discrimination commissioners and filled vacant positions. No progress has been made on the protection of personal data. The overall situation in prisons remains dire	- The Commission's recommendations from last year were addressed only partially and therefore remain valid. In the coming year, the country should in particular: - address the dire conditions in prisons and continue the efforts to promote alternatives to incarceration and implement relevant recommendations on detention conditions, made by national and international institutions, notably by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); - allocate the necessary resources to the Ombudsman's Office and to the Commission for the Prevention and Protection against Discrimination to enable them to fulfil their mandate;

	although infrastructure was renovated and improved in several prison facilities. ⁵⁰⁵	- provide adequate support to vulnerable categories of children, especially children victims of violence, Roma4 children and children with disabilities.
Freedom of expression	North Macedonia is between having some level of preparation and a moderate level of preparation on freedom of expression and has made limited progress in this area. The Law on audio and audio-visual media services was amended in July 2023 to harmonise it with the Media Directive. It was amended again in February 2024 to reintroduce State advertising in commercial media, which was later criticised by the media regulator and media organisations. The Laws on media and the Electoral Code were also amended. However, these amendments were not comprehensive and multiple long-standing issues therefore remain unaddressed.	- The Commission's recommendations from last year were only partially implemented and therefore remain valid. In the coming year, the country should in particular: - continue to revise the legal framework governing the media to align it with the EU acquis and European standards, notably by introducing rules on full transparency in media ownership and advertising, competition and State aid, and intellectual property rights, in accord with the EU single market; - implement the strategy to reform the Public Broadcaster and appoint the Public Service Broadcaster's Programme Council and the Media Regulator's Council; - continue to promptly address all threats and acts of violence against journalists and ensure perpetrators are brought to justice.
Chapter 24: Justice, freedom and security		
	North Macedonia is moderately prepared to implement the EU acquis. Some progress was made in the area of asset recovery and confiscation by further aligning the legislation with the EU acquis. Limited progress was made on migration and asylum where there was no further alignment with EU acquis. The new Frontex agreement is implemented in a satisfactory manner.	- The Commission's recommendations from last year were only partially met and remain mostly valid. Therefore, in the coming year the country should in particular: - continue to proactively reform the structures responsible for fighting organised and financial crimes and money laundering with a focus on increasing operational capacity and cooperation and confiscating property when warranted; - ensure effective implementation and monitoring of the national strategies for countering terrorism (2023-2027), countering violent extremism (2023-2027) and of the joint action plan on counterterrorism; - systematically register migrants and improve protection-sensitive profiling and adopt a more systematic approach to fighting migrant smuggling.
Fight against organised crime	North Macedonia has between some level of preparation and a moderate level of preparation in the fight against organised crime. Some progress was made in the area of confiscation by aligning further the legislation on the Asset Recovery Office and management of confiscated property with the EU legal framework. Additional progress was made in setting up a Commission for the compensation of victims of trafficking in human beings.	- The Commission's recommendations from last year were only partially met and remain valid. Therefore, in the coming year the country should in particular: - improve its track record on investigations, prosecutions and convictions in organised crime, financial crimes and money laundering cases, with a focus on asset recovery and confiscation of proceeds of crimes; - strengthen the human and financial capacity of the law enforcement agencies investigating organised and serious crimes, financial crimes and money laundering, and of the Asset Recovery

⁵⁰⁵ See the situation with Albania, the report there states that "Albania's legal framework sets out a generally good basis for the protection of fundamental rights".

		Office (ARO) and the Agency for Management of Confiscated Property; - align its legislation on money laundering, asset recovery, weapons, narcotic drugs and psychotropic substances with the EU acquis.
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Table 13: compiled by the author from the data in the EU North Macedonia Report 2024.

North Macedonia may have internal issues and rule of law troubles, nevertheless compared to the other countries in the region is not that bad and sometimes it scores better. See the Rule of Law Index of the World Justice Project, North Macedonia scores much better than Albania and Serbia both of the being ahead of North Macedonia in the integration process. Of course similar with those countries has a number of issues pertaining to the rule of law, as identified in the tables above. Very often such evaluations are seen very technocratic, in the effort to demonstrate the state of play of the rule of law in the particular country⁵⁰⁶.

5.3.4 Rule of Law State of Play in Serbia

According to the latest Country report, since the opening of Serbia's accession negotiations in January 2014, 22 out of 35 chapters have been opened. All chapters in cluster 1 on the fundamentals and all chapters in cluster 4 on the Green agenda and sustainable connectivity have been opened. Two chapters have provisionally been closed. In June 2021, Serbia accepted the revised enlargement methodology. The overall pace of negotiations will continue to depend on the rule of law reforms and the normalisation of Serbia's relations with Kosovo. Serbia is yet to show any genuine commitment to investigating and adjudicating war crimes cases. The Commission's recommendations from previous years, that Serbia has fulfilled the opening benchmarks for cluster 3 (competitiveness and inclusive growth) and that this cluster is technically ready for opening, remain valid⁵⁰⁷. Similarly with the other countries, a detailed table with the Clusters and Chapters that Serbia has opened is **Annex 3**.

⁵⁰⁶ Bayamlioglu, E., & Leenes, R. (2018). The 'rule of law' implications of data-driven decision-making: a techno-regulatory perspective. *Law, Innovation and Technology*, 10(2), 295–313. <https://doi.org/10.1080/17579961.2018.1527475>

⁵⁰⁷ SWD(2024) 831 final, "2024 Rule of Law Report – Country Chapter on the rule of law situation in Serbia"

Serbia has opened some of the first chapters as early as December 2015, 10 years ago. From one of the front liners once even expected to join the EU jointly with Montenegro as early as 2025, now has remained a little behind in the process. Serbia is one of the countries in the region that has often caused head ache to EU, as a paradigmatic case, it has been able to manipulate the EU rules and conditionality⁵⁰⁸ and the bargaining games it plays⁵⁰⁹. This is the case, especially, in terms of its foreign policy and the alignment it has with Russia and China⁵¹⁰. Moreover, the relationship with Kosovo is another issue of very big concern. Serbia continues not to recognize Kosovo and there is a very delicate situation in this sense. EU has extensively been involved in gearing a dialogue between Serbia and Kosovo but progress is very limited and even when certain agreements are reached, they immediately become an issue between them in their implementation. This is why Serbia has many peculiarities but remains very important one for the region, as is the biggest one in terms of population and territory, including the economy⁵¹¹. Despite those other related areas of concern for the Serbian path towards EU, rule of law is as well very important similarly with all other countries in the region. So lets see the state of play of the rule of law in Serbia based on the data and information from the annual rule of law report, presented as following:

2024 AND 2025		
Rule of Law Report Country Chapter on the rule of law situation in Serbia ⁵¹²		
Year:	Data in the 2024 RoL Report ⁵¹³	Data in the 2025 RoL Report ⁵¹⁴
Justice Systems	Independence: The level of perceived judicial independence in Serbia is low among both the general public and companies. Average among both the general public and companies: - 36% of the general population and - 34% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2024.	Independence: The level of perceived judicial independence in Serbia continues to be low among both the general public and companies. Average among both the general public and companies: - 30% of the general population and - 36% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2025.

⁵⁰⁸ Domaradzki, S. and Radić-Milosavljević, I. (2021) 'Between Populism and Technocracy: How National Executives in Bulgaria and Serbia Manipulate EU Rule of Law Conditionality?', *Journal of Contemporary European Research* 17(2): 281–303.

⁵⁰⁹ Pavlović, D. Is European enlargement policy a form of non-democracy promotion?. *J Int Relat Dev* 26, 324–346 (2023). <https://doi.org/10.1057/s41268-022-00286-8>

⁵¹⁰ Gardner, H. (eds) *Geopolitical Turmoil in the Balkans and Eastern Mediterranean*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-34318-6_5. p. 7

⁵¹¹ Ostojić, N.P., Weisner, A., Ilić, L.V. (2023). *Geostrategic Tendencies and Challenges for the Western Balkans and Serbia*. In: Gardner, H. (eds) *Geopolitical Turmoil in the Balkans and Eastern Mediterranean*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-34318-6_5. P. 120

⁵¹² See 2025 Rule of law report – methodology, available at: https://commission.europa.eu/document/72742fd9-3ce0-4d23-9086-58f885f84cdd_en

⁵¹³ SWD(2024) 831 final, "2024 Rule of Law Report – Country Chapter on the rule of law situation in Serbia"

⁵¹⁴ SWD(2025) 931 final, "2025 Rule of Law Report – Country Chapter on the rule of law situation in Serbia"

	- Political pressure on the judiciary and the prosecution services remains high, with little or no follow-up by the High Judicial and Prosecutorial Councils, the Government or Parliament. - The laws on the Public Prosecution Office and the High Prosecutorial Council were amended with the aim to strengthen safeguards for prosecutorial autonomy.	- Political pressure on the judiciary and the prosecution services remained high, with little or no follow-up by the High Judicial and Prosecutorial Councils, the Government or Parliament. - There are concerns with regard to prosecutorial autonomy, and the effectiveness and confidentiality of criminal investigations are hampered by shortcomings in law and practice.
	Efficiency: - Efficiency shows a positive trend for civil, commercial, and criminal cases, while there are serious challenges in the handling of administrative cases and constitutional complaints.⁵¹⁵	- The overall picture continues to be positive for civil, commercial, and criminal cases, while serious challenges remain in the handling of administrative cases and constitutional complaints⁵¹⁶.
Anti-Corruption Framework	- The perception among experts and business executives is that the level of corruption in the public sector is high. In the 2023 Corruption Perception Index by Transparency International, Serbia scores 36/100 and ranks 104th globally. This perception has remained relatively stable over the past five years. - There is risk of politically motivated interference into high-level corruption investigations and prosecutions although new safeguards have been introduced. - There is risk of politically motivated interference into high-level corruption investigations and prosecutions although new safeguards have been introduced. - Public procurement is a high-risk corruption area, in particular as regards several exemptions from the Law on public procurement. - Other areas of particular risk to corruption include State-owned enterprises, concessions, bankruptcy proceedings and public-private partnerships.	- The perception among experts, citizens and business executives is that the level of corruption in the public sector remained high. In the 2024 Corruption Perceptions Index by Transparency International, Serbia scores 35/100 and ranks 105th globally. This perception has remained relatively stable over the past five years, while it is the lowest score recorded for Serbia.⁵¹⁷ - Following the canopy collapse at Novi Sad railway station, which prompted widespread public protests, authorities launched investigations into alleged corruption linked to the tragic incident which are yet to be completed⁵¹⁸. - Investigations launched in the context of a new anti-corruption operation raise concerns over the systematic fight against corruption free from political interference. - Exemptions to the Law on public procurement continued to be widely used, thereby circumventing its application, and oversight mechanisms are insufficient.

⁵¹⁵ The clearance rate for first and second instance civil and commercial cases between 2021 and 2022, has improved significantly from 74% to 178% for first instance cases, while the disposition time in both instances decreased. Due to a stark increase in the number of incoming first instance administrative cases, their clearance rate fell from 56% in 2021 to 39% in 2022 and the disposition time increased from 1 089 days in 2021 to 1 528 in 2022. Furthermore, a high number of cases (41 279) are pending before the Constitutional Court, 99.38% of which are constitutional complaints.

⁵¹⁶ The negative development on administrative cases continued and remains a challenge. Their clearance rate fell from 39% in 2022 to 35% in 2023 and the disposition time increased from 1 528 days in 2022 to 2 095 days in 2023. The number of pending first instance administrative cases also increased by 45.8% in 2023³². As of May 2025, a total of 43 711 cases were pending before the Constitutional Court, of which 99% are constitutional complaints.

⁵¹⁷ This is among the worst positions for the countries in the Western Balkan region. Only BiH is worse than this, ranking at 114/33 scores in 2024.

⁵¹⁸ The tragic incident, in which 16 people were killed in November 2024, prompted widespread public protests over corruption and the perceived lack of accountability and transparency in Government infrastructure and construction projects. As we write this thesis, hundred of thousands of protesters are in the streets of Belgrade and very serious violent protests are going on, students are the majority but the unrest is widely spread throughout the country.

		- Other areas of particular risk to corruption include State-owned enterprises, concessions, bankruptcy proceedings and public-private partnerships and the health sector.
Media Pluralism and Media Freedom	- The Regulatory Authority for Electronic Media fails to fully exercise its mandate to safeguard media pluralism and professional standards and there are also serious concerns about its independence. - Journalists continue to face either frequent refusals by public bodies to disclose information of public importance or no response at all. - The safety of journalists is a source of concern, as is the growing pressure by abusive lawsuits.	- Serious concerns remain on the independence of the Regulatory Authority for Electronic Media (REM), and the delay and shortcomings in the selection procedure of a new REM Council undermine public trust in the process. - Journalists continue to face either frequent refusals by public bodies to disclose information of public importance or no response at all. - The safety of journalists has become a source of increasing concern.
Other Institutional Issues Related to Checks and Balances	- Parliament's ability to ensure the exercise of necessary checks and balances is constrained by issues of effectiveness, autonomy, and transparency, including in terms of the oversight of the executive and the law-making process. - The process of public consultations needs further strengthening. - On 1 January 2024, Serbia had 14 leading judgments of the European Court of Human Rights pending implementation. - At that time, Serbia's rate of leading judgments from the past ten years that remained pending was at 27%, and the average time that the judgments had been pending implementation was almost 7 years. - As regards the respect of payment deadlines, on 31 December 2023 there were 52 cases in total awaiting confirmation of payments (compared to 51 in 2022). On 1 July 2024, the number of leading judgments pending implementation had remained 14.	- Parliament's effectiveness and oversight function continued to be hampered by the low frequency of sessions and the lack of genuine political debate. The exercise of presidential powers is intensively debated in the public discourse. - The process of public consultations still needs further strengthening. - On 1 January 2025, Serbia had 20 leading judgments of the European Court of Human Rights pending implementation, an increase of 6 compared to the previous year. - At that time, Serbia's rate of leading judgments from the past 10 years that had been implemented was at 62% (compared to 73% in 2024; 38% remaining pending), and the average time that the judgments had been pending implementation was 5 years and 7 months (compared to 7 years in 2024). - As regards the respect of payment deadlines, on 31 December 2024 there were 16 cases in total awaiting confirmation of payments (compared to 52 in 2023). On 16 June 2025, the number of leading judgments pending implementation had increased to 21.

Table 14: compiled by the author from the data in the EU rule of law reports 2024 and 2025 for Serbia.

As we can see from the information extracted in the table above, similarly with other countries, Serbia make no exception⁵¹⁹. The information there captures developments on the rule of law and instead of measuring the state of play, it rather comments on developments and activities in the sector. The report is very general and relies on the information from external actors, including CSOs,

⁵¹⁹ For an overview of the corruption in the region see Bazerkoska, J.B. (2024). EU Enlargement and Anti-corruption Standards: From Candidacy to Accession. In: Pellat, G., Zafiroski, J., Šuplata, M. (eds) Cooperation and Enlargement: Two Challenges to be Addressed in the European Projects—2022. Studies in Systems, Decision and Control, vol 500. Springer, Cham. https://doi.org/10.1007/978-3-031-42253-9_8

international organizations and governmental entities. Despite this, the report can give an understanding with regards to the type of issues the country is dealing with.

Serbia has been for some long time a pioneer in the EU integration path. Nevertheless, the last two or three years especially, have demonstrated a deviation from this path. This is reflected both in terms of the geopolitical choices of the country and its relationship with Russia and China, that has openly threatened one of the key requirements, the harmonization of the country foreign policy with that of the EU, as well as the destructive approach towards Kosovo. On the other side chronic corruption is a very serious concern in Serbia, despite pro-forma progress, often presented in the EU reports⁵²⁰. Moreover, Serbia is yet to show a genuine commitment to investigating and adjudicating war crimes cases. We will see this and other similar matters in the next table reflecting Serbia's current position in relation with EU, where we will see the rule of law related sections similar with the exercise we did above with the other countries in the Western Balkan. As such, the latest data presented in the annual country report for Serbia look as following:

EU COUNTRY REPORT FOR SERBIA 2024 ⁵²¹		
Criteria	Status / findings	Recommendations
Chapter 23: Judiciary and fundamental rights Serbia has reached some level of preparation and has made limited progress . ⁵²²		
Functioning of Judiciary	- Serbia is between having some level of preparation and a moderate level of preparation in the area of judiciary. - Limited progress was made, notably in the adoption of by-laws to the laws implementing the constitutional amendments. Adoption of the Law on Judicial Academy is still pending, whilst the Government has decided not to amend the Law on Seats and Territorial Jurisdiction of Courts. Several judges and prosecutors were elected in 2023 and 2024 whereas a considerable number of vacancies remain to be filled. The current system of recruitment, transfer and promotion of judges and prosecutors has not been comprehensively revised to ensure that careers are fully based on merit. Undue pressure on the judiciary remains a concern. Four vacant positions at the Constitutional Court still need to be filled. Serbia is yet to	- The Commission's recommendations from last year were partially implemented and remain valid. In the coming year, Serbia should in particular: - adopt the Law on Judicial Academy, and carry out the necessary appointments of judges and prosecutors in line with the legal framework to reduce the number of vacancies; - ensure that the High Judicial Council and the High Prosecutorial Council, the Government and the Parliament effectively and proactively defend judicial independence and prosecutorial autonomy in cases of undue influence, including undue comments made publicly by members of Government or Parliament on ongoing investigations or court proceedings which breach their codes of conduct; - operationalise the uniform and centralised case management systems; improve the efficiency of the justice system, in particular reduce the backlogs and disposition times for the

⁵²⁰ Bazerkoska, J.B. (2024). EU Enlargement and Anti-corruption Standards: From Candidacy to Accession. In: Pellat, G., Zafiroski, J., Šuplata, M. (eds) Cooperation and Enlargement: Two Challenges to be Addressed in the European Projects — 2022. Studies in Systems, Decision and Control, vol 500. Springer, Cham. https://doi.org/10.1007/978-3-031-42253-9_8

⁵²¹ SWD(2024) 695 final, "Serbia 2024 Report", accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS: "2024 Communication on EU enlargement policy".

⁵²² Comparing this sentence with the Albania' Report stating: "Albania is **moderately prepared** in the area of judiciary and fundamental rights and has made **some progress** during the reporting period". These quantifications have no meaning, and there is no explanation anywhere as to what this or that categorization mean.

	show a genuine commitment to investigating and adjudicating war crimes cases.	Administrative and Constitutional Courts and fully implement the human resources strategy.
Fight against corruption	- Serbia is between having some level of preparation and a moderate level of preparation in the fight against corruption. Overall, some progress has been made during the reporting period on last year's recommendations. - Serbia adopted the new anti-corruption strategy (2024-2028) in July 2024. Serbia still needs to adopt and begin implementing the accompanying action plan. On the recommendations by the Group of States against Corruption (GRECO), Serbia reported, in December 2023, on the recommendations of the fifth evaluation round. GRECO has assessed that of the 24 recommendations, one recommendation has been fully met, and 10 have been partially met. The number of final convictions for high-level corruption cases, of new investigations as well as the number of new indictments has increased, yet obstacles remain for establishing a robust track record. Overall, corruption is prevalent in many areas and remains an issue of concern. There is a need for strong political will to effectively address corruption issues, as well as a robust criminal justice response to high-level corruption. Targeted risk assessments and specific measures are also needed to address corruption in the most vulnerable sectors.	- The Commission's recommendations from last year were partially implemented and remain valid. In the coming year, Serbia should in particular: - further improve its track record on investigations, prosecutions and final court decisions in high-level corruption cases, in particular the seizure and confiscation of criminal assets; - address all GRECO recommendations, in particular from the fifth evaluation round; - adopt and implement the anti-corruption action plan accompanying the new anti-corruption strategy and establish an effective monitoring and coordination mechanism to track progress, while focusing on all relevant interim benchmarks and GRECO recommendations.
Fundamental rights	- Serbia's legislative and institutional framework for upholding fundamental rights is broadly in place. - This framework needs to be consistently and efficiently implemented. Most of the Commission's recommendations from last year have not yet been implemented and remain valid.	- In the coming year, Serbia should in particular: - strengthen human rights institutions by allocating the necessary financial and human resources, ensuring they exercise their mandates to the full, and by putting in place procedures to ensure compliance with measures, including interim measures of the European Court of Human Rights; - adopt and allocate appropriate financial and human resources for the pending action plans on violence against women, deinstitutionalisation, anti-discrimination – including the rights of LGBTIQ persons – and violence against children, and ensure timely reporting on their implementation; actively counter hate crimes and establish a track record of investigations and convictions; - demonstrate, through better data collection, real improvements in the effective exercise of the rights of individuals belonging to national minorities, including reference to the targets set by the Poznan Declaration on Roma5 inclusion and by the future action plan on national Minorities.
Freedom of expression	Serbia has some level of preparation and has made no progress on the recommendations from last year, which therefore remain valid.	- In the coming year, Serbia should in particular: - implement the new media laws, respecting their letter and spirit, including on the independence of the regulatory body for electronic media (REM), election of the new REM Council members and

		amendment of the laws to address the remaining issues in aligning with European standards and the latest EU acquis; - strengthen the protection and safety of journalists, notably by ensuring that: (i) high-level officials refrain from labelling or making verbal attacks on journalists; and (ii) any threats and cases of physical and verbal violence are swiftly followed up, and as appropriate, publicly condemned, investigated or prosecuted; - ensure transparent and equitable co-funding for media content serving the public interest, and full transparency in media ownership and advertising.
Chapter 24: Justice, freedom and security		
	Serbia is between having some level of preparation and a moderate level of preparation and has made some progress. Serbia continued to significantly contribute to the management of mixed migration flows towards the EU by playing an active and constructive role and cooperating effectively with its neighbours and EU Member States. Part of last year's recommendations have been implemented. The new Frontex Status Agreement was signed in June 2024. In March 2024, Serbia adopted the 2024-2027 Programme for the fight against human trafficking and 2024-2026 action plan and appointed a new National Coordinator in September 2023. Serbia visa policy is not yet fully aligned with EU visa policy. Serbia still has a visa-free regime with 16 countries that are on the EU list of visa-required countries. However, Serbia's reform agenda committed the country to withdraw visa-free arrangements with at least three countries by December 2024.	- The Commission's recommendations from last year were partially implemented and remain valid. In the coming year, Serbia should in particular: - amend the Law on internal affairs to make the police fully autonomous from the Ministry of Interior and fully accountable only to the Prosecutor's Office during pre-investigation and investigation phases; - further align with the EU visa policy; take measures to systematically register and identify migrants, develop swift asylum procedures and increase capacities for managing effective return operations; - implement the programme for fight against human trafficking, increase national coordination efforts and strengthen the protection of and support to victims.
Fight against organised crime	- Serbia has some level of preparation and has made limited progress in addressing last year's recommendations. Authorities continued to cooperate actively with CEPOL, Eurojust, Europol and INTERPOL, notably in drugs trafficking and the fight against organised crime groups. There has been insufficient follow-up in investigations and prosecutions for the 2023 attacks in the north of Kosovo⁵²³.	- Most of last year's recommendations have not yet been implemented and remain valid. In the coming year, Serbia should in particular: - increase efficiency in prosecuting serious and organised crime cases, including money laundering cases and the seizure and confiscation of criminal assets by the systematic tracking of money flows, the effective use of financial investigations and special investigative measures, and the systemic use of extended confiscation; - amend the Criminal Code to effectively criminalise the trafficking of weapons; adopt the new Law on weapons and ammunition; step up the fight against the storage, sale and ownership of illegal firearms;

⁵²³ EU still considers it attack, while in fact this was categorized by many, including the Kosovo Government, as a full act of aggression against Kosovo. This has been a serious threat not only to Kosovo but to the entire regional stability and is a matter to be further considered by the international community. Ever since then there are no negotiations between Kosovo and Serbia, a part from some meetings without any result. EU has been weak on pressuring the parties on coming any closer together.

		- take specific steps to ensure a clear separation between mandates and regulations on the interception of communications for criminal investigation on the one hand, and for security purposes on the other.
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Table 15: compiled by the author from the data in the EU Serbia Report 2024.

All those four countries presented above are scrutinized through the rule of law cycle and annual rule of law reports. As we could see in the examples above, those reports cover developments. They talk about the institutions and processes from a rule of law perspective, covering a wider range of areas than simply the one covered by the Accession Clusters and Chapters. Nevertheless, this in itself does not give a proper understanding in terms of evaluating the state of play of the rule of law in any of those countries. It is hard to make a clear linkage between the progress made in some of the areas identified therein and the progress in the negotiations of the accession. The terminology used to label, quantify, or qualify the progress are very general. Statements like *is moderately prepared* in the area of judiciary and fundamental rights and *has made some progress* during the reporting period, or the country is *between having some level of preparation and a moderate level of preparation* are among them that do not give a proper understanding of the progress itself. These quantifications have no meaning, and there is no explanation anywhere as to what this or that categorization mean. Based on the above it is hard to make a line of trends that are based on the rule of law criteria. This may lead us to consider it as a highly political process that is not an evidence-based one. Some of those will be further treated in the Appraisal chapter below. Despite EU efforts, Serbia is one of the countries where corruption and state capture are of serious concerns, phenomenon common to other countries in the region too⁵²⁴.

Serbia is the last from the four countries that are included in the annual rule of law cycle of the Commission that are dedicated special Country Chapters on the rule of law. The other two remaining countries that will be presented below, BiH and Kosovo, are not part of the rule of law cycle and as such Serbia completes this part of the presentation with the two years tables looking at the state of play of the rule of law and the progress from one to another year.

5.3.5 Rule of Law State of Play in BiH

⁵²⁴ Richter, S., & Wunsch, N. (2019). Money, power, glory: the linkages between EU conditionality and state capture in the Western Balkans. *Journal of European Public Policy*, 27(1), 41–62. <https://doi.org/10.1080/13501763.2019.1578815>

Bosnia and Herzegovina is another troubled country in the region, composed of three republics (Bosnians, Serbs and Croats). From a very tragic history of Srebrenica genocide, it is a country that is facing many challenges to become a meaningful and functional democracy, due to still very serious inter-ethnic relations. The country comprises two autonomous entities - the Federation of Bosnia and Herzegovina and Republika Srpska - and the Brcko District, which is governed by its own local government. These come under a federal government and rotating presidency. Peace has not brought the two entities closer together, and Bosnian Serb leaders often raise the possibility of seceding from what they call a failed state.⁵²⁵ Bosnia and Herzegovina applied for EU membership in February 2016, and in May 2019 the Commission adopted its Opinion setting out 14 key priorities in the areas of democracy/functionality, rule of law, fundamental rights and public administration reform⁵²⁶. In December 2022, the European Council granted Bosnia and Herzegovina candidate country status and on 21 March 2024 European Council decided to open accession negotiations with Bosnia and Herzegovina⁵²⁷. Bosnia and Herzegovina has remained stuck at the bottom of the countries in the accession process, only Kosovo remaining behind, and remains a very complex country in the EU integration process.⁵²⁸

As mentioned above, BiH and Kosovo are not part of the annual cycle of the rule of law reports so the data and information on the state of play and the situation pertaining to the rule of law will be presented based on the Country report only, as following:

EU COUNTRY REPORT FOR BOSNIA AND HERZOGOVINA 2024 ⁵²⁹		
Criteria	Status / findings	Recommendations
Chapter 23: Judiciary and fundamental rights		

⁵²⁵ See Bosnia-Herzegovina country profile, <https://www.bbc.com/news/world-europe-17211415#:~:text=The%20country%20comprises%20two%20autonomous,federal%20government%20and%20rotating%20presidency.>

⁵²⁶ SWD(2024) 691 final, “Bosnia and Herzegovina 2024 Report”, accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS: “2024 Communication on EU enlargement policy”, p. 93

⁵²⁷ The European Council invited the Commission to prepare the negotiating framework with a view to its adoption by the Council the moment all relevant steps set out in the Commission’s recommendation of October 2022 are taken. See SWD(2024) 691 final.

⁵²⁸ Davididi, R. (2023). Moving the Western Balkans Towards the European Union: The Daunting Case of Bosnia and Herzegovina. In: Uvalić, M. (eds) Integrating the Western Balkans into the EU. New Perspectives on South-East Europe. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-32205-1_3

⁵²⁹ SWD(2024) 691 final, “Bosnia and Herzegovina 2024 Report”

Bosnia and Herzegovina has some level of preparation to implement the EU acquis and European standards in the area of the judiciary and fundamental rights. Limited progress was made during the reporting period, including to address the related Opinion key priorities. ⁵³⁰		
Functioning of Judiciary	- Bosnia and Herzegovina is in between an early stage of preparation and having some level of preparation in the area of the judiciary. Limited progress was made on the functioning of the judiciary (Opinion key priority 6), including on addressing the findings of the expert report on rule of law issues (the 'Priebe Report'). Persistent and evident signs of deterioration continue to require urgent measures to strengthen integrity and restore public trust in the judiciary. The poor functioning of the judicial system continued to undermine citizens' rights and the fight against corruption. In January 2024, the obstruction to accessing personal data for external experts tasked with monitoring the asset declaration system were removed from the Law on the High Judicial and Prosecutorial Council (HJPC); the right of the HJPC to access additional information from natural and legal person still needs to be strengthened. The draft new Law on the HJPC should be brought in line with the June 2024 interim opinion of the Venice Commission. Bosnia and Herzegovina should submit the revised draft for a follow-up opinion, and fully align the draft law with its recommendations before adoption by Parliament. The Republika Srpska entity assembly should swiftly appoint the two vacant judges to the Constitutional Court of Bosnia and Herzegovina. The Republika Srpska entity should also fully recognise and enforce the decisions of the Constitutional Court, repealing any legislation to the contrary.	- The Commission's recommendations from last year were only partially met and thus remain valid. In the coming year, Bosnia and Herzegovina should in particular: - urgently appoint the vacant constitutional judges, ensuring the full composition and functioning of the Constitutional Court; and, for the courts in general, consistently appoint judges based on merit, without prevalence of ethnic criteria, and appraise the performance of judges based on quality criteria; - finalise and adopt the new laws on the HJPC and the Courts of Bosnia and Herzegovina, in line with Venice Commission recommendations, including by ensuring the access of the HJPC to all information necessary to perform integrity checks; fully implement the integrity related provisions of the Law on the HJPC to establish a robust system of asset declaration verification under close external monitoring; - adopt a new justice sector reform strategy; register the sentences of international criminal tribunals in domestic criminal records; and effectively implement the revised national war crimes strategy, particularly by boosting regional cooperation.
Fight against corruption	- Bosnia and Herzegovina is in between an early stage of preparation and having some level of preparation in the fight against corruption. Some progress was made during the reporting period (Opinion key priority 7). The state-level Law on the prevention of conflict of interest, adopted in March 2024, is a substantial step forward, although it is not yet fully in line with European standards. In June 2024, Bosnia and Herzegovina adopted a state-level strategy and action plan on anti-corruption. Legislation is still not harmonised across the country. Selective and non-transparent judicial follow-up in corruption cases of public resonance is a	- In the coming year, Bosnia and Herzegovina should in particular: - complete the legislative and institutional framework and step up implementation of the rules on prevention of conflict of interest and on the protection of whistle-blowers by adopting new legislation in line with European standards at all levels of government and aligning existing legislation with them; - demonstrate progress towards establishing a track record on fighting high-level corruption; improve cooperation between police and prosecutors' offices; - professionalise corruption prevention bodies across the country.

⁵³⁰ Comparing this sentence with the Albania' Report stating: "*Albania is **moderately prepared** in the area of judiciary and fundamental rights and has made **some progress** during the reporting period*". These quantifications have no meaning, and there is no explanation anywhere as to what this or that categorization mean.

	cause of significant concern, along with pressure and intimidation, as evidenced in a number of high-level cases. The track record on fighting corruption (including high-level corruption) remains weak due to operational inefficiency and political interference. Prosecutors' offices however advanced in a number of investigations for high-level corruption cases. The number of final convictions in high-level cases remains very low, one notable exception being the final conviction in the Novalić et al case. Only in Sarajevo Canton is there efficient application of conflict of interest rules, verification of asset declarations and protection of whistle-blowers. Targeted risk assessments and dedicated measures are needed to address corruption in the most vulnerable sectors.	
Fundamental rights	- The general framework for fundamental rights is largely in place but needs to be improved. The country needs to urgently adopt constitutional and electoral reforms to ensure that all citizens are able to effectively exercise their political rights, notably bring the country's Constitution into line with the Sejdić-Finci case law of the European Court of Human Rights (Opinion key priority 4.f). Freedom of assembly remains restricted, and civil society is being targeted, in particular in the Republika Srpska entity. The entity government withdrew a draft law targeting civil society groups as 'foreign agents'; such a legislative initiative should not be reintroduced, as it would mark a step backwards. Further progress is required across key priorities 9-13. The Commission's recommendations from last year have not been implemented and remain valid.	- In the coming year, Bosnia and Herzegovina should in particular: - implement court rulings to end divided education; - ensure full respect, protection and promotion of the freedom of assembly, association and expression, and refrain from further actions that adversely impact their exercise; - harmonise and improve legislation against domestic and gender-based violence to meet international standards and align laws across the country with the Gender Equality Law to increase the public and political participation of women.
Freedom of expression	There is some level of preparation on freedom of expression. There was no progress in guaranteeing freedom of expression and of the media, and the protection of journalists (Opinion key priority 12). Political pressure, intimidation and harassment towards journalists continued, including physical and verbal attacks, with no appropriate institutional follow-up. Political influence over public broadcasters persists, and their financial sustainability is ever more in danger. The Law on the public broadcasting system remains unimplemented, and entity-level legislation is still not harmonised with this law. The criminal penalties for defamation in the Republika Srpska entity continue to severely impact freedom of expression and of the media and to have a chilling effect. Sarajevo Canton's legislative initiative on	- The Commission's recommendations from last year were not implemented and remain valid. In the coming year, Bosnia and Herzegovina should, in particular: - ensure the protection of journalists and systematic institutional follow-up of threats and violence against them; - ensure the financial sustainability and political independence of public broadcasters and harmonise entity legislation with the state-level Law on the public broadcasting system; - adopt legislation on media ownership transparency and criteria for public advertising; and ensure that defamation is decriminalised across the country.

	sanctions for online ‘fake news’, if adopted, could be abused to restrict media freedom. Any such norms must fully respect freedom of expression standards.	
Chapter 24: Justice, freedom and security		
	Bosnia and Herzegovina has some level of preparation in this area. Some progress was made on Opinion key priorities 7 and 8, notably with the adoption of the Law on anti-money laundering and combating the financing of terrorism. Action plans for countering terrorism and preventing and countering violent extremism were also adopted at all levels. Migration management continued to improve. While broadly aligned with the EU acquis, legislation is often not harmonised across the country, and institutional cooperation and coordination remain weak, leading to uneven implementation.	- The Commission’s recommendations from last year were partially implemented and therefore remain valid. In the coming year, Bosnia and Herzegovina should in particular: - take over responsibility for managing migration, including management of reception centres; ensure effective coordination of border management and migration management capacity; and guarantee access to quality and effective asylum procedures; - improve civilian oversight mechanisms over all police forces; consistently appoint police directors based on merit; - adopt the law on border control and the strategy and action plan on integrated border management 2024-2029 in line with the EU/Schengen acquis; continue to align with EU visa policy, in particular with regard to third countries presenting irregular migration or security risks to the EU, and introduce security measures to better screen visa-free arrivals.
Fight against organised crime	Bosnia and Herzegovina is between an early stage of preparation and having some level of preparation in the fight against organised crime. Some progress was made, notably with the adoption of legislation on anti-money laundering, enforcement operations supported by Europol, and improved coordination capacity in the Prosecutor’s Office. Systemic shortcomings remain in the operational cooperation and capacity of law enforcement agencies to investigate due to non-harmonised criminal legislation, weak institutional coordination and lack of resources. Financial investigations and asset seizures and confiscations remain insufficient. A proactive approach is essential to stop criminal infiltration in the political, legal and economic systems.	- The Commission’s recommendations from last year were only partially implemented, and therefore remain broadly valid. In the coming year, Bosnia and Herzegovina should in particular: - adopt a 2024-2027 strategy on trafficking in human beings and amend legislation on migrant smuggling to better combat these two crimes; - establish specialised multi-agency investigation teams for complex cases; setup an asset recovery office; improve mutual access to databases and timely exchange of information; strengthen financial investigations; - adopt a new law on personal data protection, as a precondition for an agreement on operational cooperation with Eurojust, and sign and ratify the latter; establish a firearms focal point; and align legislations on the possession of weapons by civilians.

Table 16: compiled by the author from the data in the EU Bosnia and Herzegovina Report 2024.

Similar with other countries of the region, Bosnia and Herzegovina is being evaluated on annual basis on the rule of law trends and developments. As there was no rule of law report, we will have to rely on the data from the country report. Nevertheless, most of the important data is here in the report and it captures where the country is in terms of the rule of law related requirements. Generalizing statements are the same here too. Bosnia seems to have some real serious issues and hard to move faster in the integration agenda, mainly for political reasons that make the internal

reform move very slowly as consensus is hard to be reached among the main political parties of the society. On the other side and against this threat, with the incentive to enable the application of conditionality in Bosnia and Herzegovina, the EU has been arrayed against much more stable local leadership, creating opportunities for regional and global opponents of liberal democracy.⁵³¹

The last country, but not the least though, to be presented is Kosovo in the following section to see the peculiarities of this country too, which is the last one in line of the EU accession that unfortunately has not even been granted the status of the candidate country.

5.3.6 Rule of Law State of Play in Kosovo

Kosovo is another country in the Western Balkan region that has fallen behind in the integration agenda, although it has had the greatest presence from EU and other international organizations. Kosovo has a special EU Rule of Law mission that has been set up in 2008 and became fully operational in April 2009, and has received a lot of support to build a society based on democracy and rule of law. Kosovo has remained the only country in the Western Balkan that has not received the candidate status yet, to the most extent due to the dialogue halt with Serbia and the fact that there are still 5 EU Member States that have not recognized Kosovo as a state yet⁵³². It has formally submitted its application for EU membership on 15 December 2022, which is still pending an answer. Since 2008, the European Union Rule of Law Mission in Kosovo (EULEX) has been assisting Kosovo authorities in setting up sustainable and independent rule of law institutions⁵³³. Under its current mandate (extended until June 2025), EULEX has limited executive functions. It continues to perform monitoring activities and the role of second security responder through its Formed Police Units⁵³⁴.

⁵³¹ Hulsey, J. (2021). Turnover, Conditionality, and Europeanization in the Western Balkans. In: Scherpereel, J.A. (eds) *Personnel Turnover and the Legitimacy of the EU*. Palgrave Studies in European Union Politics. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-60052-5_8

⁵³² Kosovo was the last country to benefit from a visa free regime with the EU. Visa liberalisation for Kosovo entered into force only as of January 2024. Nevertheless, another sensitive matter in relation with the visa free regime was the visa free regime granted to the holders of passports issued by the Serbian Coordination Directorate, a decision which has raised concerns in Kosovo.

⁵³³ Osland, K. M., & Peter, M. (2019). The double proximity paradox in peacebuilding: implementation and perception of the EU rule of law mission in Kosovo. *European Security*, 28(4), 493–512. <https://doi.org/10.1080/09662839.2019.1649658>

⁵³⁴ SWD(2024) 692 final, *“Kosovo 2024 Report”*, p. 88

Despite the political peculiarities pertaining to the Kosovo case, we will keep the focus on the rule of law state of play and, similar with the other countries, present the table as following:

EU COUNTRY REPORT FOR KOSOVO 2024 ⁵³⁵		
Criteria	Status / findings	Recommendations
Chapter 23: Judiciary and fundamental rights Kosovo is between an early stage of preparation and having some level of preparation to apply the EU acquis and European standards on the judiciary and fundamental rights. Kosovo made limited progress by improving the functioning of the judiciary, stepping up the fight against corruption and strengthening the protection of fundamental rights.. ⁵³⁶		
Functioning of Judiciary	Kosovo is at an early stage of preparation on the functioning of the judiciary and made limited progress . Kosovo achieved a higher clearance rate and managed to reduce the backlog in civil cases. Continuous improvements were made on the use of the Case Management Information System. The functioning of the Kosovo Judicial Council (KJC) improved in terms of communication and transparency, while the Assembly finally elected all three lay members of the Kosovo Prosecutorial Council (KPC). However, the delays and struggle to jointly design justice reforms in line with the March 2023 joint commitment statement indicates a recurring lack of willingness to strengthen the justice system. Consultations on these reforms and on amendments to the law on the KPC were rushed and did not ensure a meaningful review. Despite strong EU advice, the Venice Commission was not consulted by the government and Assembly on the final amendments to the law on the KPC and on the other key reforms. This negatively affected the quality of legislation and its alignment with European standards. Work continued on handling gender-based violence cases, but faster progress is needed.	- The Commission's recommendations from last year were partially implemented and remain largely valid. In the coming year, Kosovo needs, in particular, to: - ensure that legislation concerning integrity and accountability of the judiciary are aligned with European standards and relevant Venice Commission recommendations, and step up the use of existing mechanisms on the accountability, integrity and efficiency of the justice system, with a particular focus on the roles and responsibilities of the KPC and KJC regarding implementation and monitoring of legislation and policies; - further reform the court administration and strengthen the management capacity of the prosecution service and the judiciary to achieve strategic goals effectively, including further reducing the backlog of cases based on a clear action plan with audits and internal control, and implementing the IT strategy; - ensure solid criminal investigations, improve the quality of indictments and ensure effective criminal procedures, including cases of gender-based violence. To this end, strengthen the cooperation between prosecutors and police as well as the prosecutors' leading role in investigations.
Fight against corruption	- Kosovo is between an early stage of preparation and having some level of preparation in fighting corruption, and made limited progress overall. Additional institutions adopted integrity plans. The Assembly adopted the Law on the special prosecution office (SPO) to strengthen the criminal justice response to high-level corruption cases. There was some progress in adjudicating corruption cases,	The Commission's recommendations from last year were partially implemented and remain largely valid. In the coming year, Kosovo should, in particular: - further strengthen the capacity of the Agency for the Prevention of Corruption (APC), in terms of staff and expertise, to ensure it can carry out its mandate effectively;

⁵³⁵ SWD(2024) 692 final, "Kosovo 2024 Report", accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS: "2024 Communication on EU enlargement policy", p. 93

⁵³⁶ Comparing this sentence with the Albania' Report stating: "Albania is **moderately prepared** in the area of judiciary and fundamental rights and has made **some progress** during the reporting period". These quantifications have no meaning, and there is no explanation anywhere as to what this or that categorization mean.

	which resulted in a greater number of final court decisions and convictions. Nevertheless, results are affected by a shortage of resources and capacity and by a lack of impartiality and accountability in the prosecution service and the judiciary. Stronger commitment to establish a solid track record in fighting high-level corruption remains necessary, including by strengthening the use of anti-corruption tools such as asset declarations and public institutions' integrity plans.	- further implement existing anti-corruption legislation; adopt a national strategy and action plan against corruption for 2024-2027 in line with European best practices and standards; - strengthen the quality of investigation in high-level corruption cases, by increasing the capacity of the Special Investigative Unit of the police and ensuring its effective cooperation with the SPO.
Fundamental rights	- The general framework for fundamental rights is largely in place but needs to be improved. The country needs to urgently adopt constitutional and electoral reforms to ensure that all citizens are able to effectively exercise their political rights, notably bring the country's Constitution into line with the Sejdić-Finci case law of the European Court of Human Rights (Opinion key priority 4.f). Freedom of assembly remains restricted, and civil society is being targeted, in particular in the Republika Srpska entity. The entity government withdrew a draft law targeting civil society groups as 'foreign agents'; such a legislative initiative should not be reintroduced, as it would mark a step backwards. Further progress is required across key priorities 9-13. The Commission's recommendations from last year have not been implemented and remain valid.	- The Commission's recommendations from last year were partially implemented and remain valid. In the coming year, Kosovo needs, in particular, to: - address shortcomings related to protecting the rights of persons with disabilities, in particular by adopting the Law on status recognition, services and benefits, and improving their access to rights in practice; - strengthen implementation of the Law on gender equality and the Strategy on gender-based violence; appoint a new head of the Agency for Gender Equality; and enhance gender mainstreaming of legislation, regulations and policies; - safeguard existing mechanisms protecting the rights of non-majority communities and improve their implementation.
Freedom of expression	Kosovo has some level of preparation and made limited progress. Some improvement was made on freedom of media, including access to public documents. However, this was coupled with developments perceived as attempts by the government to exercise control over the media. A new law on the media regulator was adopted. It contributes to enhancing media regulation, but the Assembly's amendments failed to reflect most recommendations from the EU and other international partners. The functioning of the Independent Media Commission improved. The public broadcaster faced instability with a number of resignations among top management and board members. It needs to swiftly address concerns related to editorial accountability and independence. The media in Kosovo is pluralistic, but the sector still lacks transparency and financial sustainability. Data on the audiovisual market remains insufficient, including on media ownership and financing. Attacks against journalists are given due attention by the police and the judiciary, but some level of impunity remains, including because of the difficulty to investigate complex	- The Commission's recommendations from last year were not implemented and remain valid. In the coming year, Kosovo should, in particular: - improve the capacity of the prosecutorial, judicial and law-enforcement authorities to handle cases related to the freedom of expression; - develop protocols and training on the protection and safety of journalists, including early warning and rapid-response mechanisms; improve the working conditions of journalists and media workers; and strengthen professional reporting; - ensure implementation of the new Law on the Independent Media Commission by ensuring full alignment with the EU acquis and European standards; and review the Law on the Radio Television of Kosovo to ensure sustainable funding, preserving its independence.

	cases which occurred in the north. The environment in the north of Kosovo is restrictive and conducive to self-censorship for the public, the media and CSOs.	
Chapter 24: Justice, freedom and security		
	Kosovo has some level of preparation and made some progress . The reaction to the September 2023 attack in Banjska/Banjskë showed the high level of professionalism of the Kosovo Police. The Kosovo Police recruited two new generations of Kosovo Serb officers; the Special Prosecutor's Office (SPO) recruited nine additional special prosecutors. The number of indictments in organised-crime cases has steadily increased. The new Law on the SPO makes it possible to set up multidisciplinary investigation teams in complex cases and provides a legal basis for the Special Investigation Unit of the police to handle high-level corruption cases. Kosovo adopted a new drugs strategy; the National Drug Observatory became operational. Kosovo improved migration governance and conducted an information campaign on visa-free travel to the EU which entered into force on 1 January 2024. Also, Kosovo adopted a new law on the Civil Registry Agency.	- The Commission's recommendations from last year were partially implemented and remain largely valid. In the coming year, Kosovo should, in particular: - amend the Law on money laundering and terrorism financing to fully harmonise it with the corresponding EU directives; and increase the number of final convictions for money laundering; set up a national centre for countering terrorism and violent extremism; - continue to implement the EU Action Plan on Western Balkans for migration; implement an integrated border management system in line with the current legislation and the European best practices; amend the Law on foreigners in line with EU standards; and progressively align its legislation with EU visa policy; - maintain its communication campaign on rights and obligations associated with visa free travel to the EU, improve screenings at departures and engage with the most affected EU Member States to avoid unfunded asylum applications.
Fight against organised crime	Kosovo is between an early stage of preparation and having some level of preparation in the fight against organized crime and made some progress. The cooperation with Europol advanced, with Kosovo participating in joint operations and a Kosovo liaison officer deployment in Europol. The amount of information exchanged via the Secure Information Exchange Network Application (SIENA) significantly increased. The reorganisation of the police advanced and is pending final phases of the recruitment processes. As per recommendations, the Kosovo Police is directing its activities according to intelligence-led policing principles, and assigned officers implement the community policing approach. The police is conducting financial investigations more systematically. Some progress was achieved in the area of asset confiscation, while systemic improvement remains needed. The Ministry of Interior and its executive agencies adopted integrity plans. There was some progress in the fields of cybercrime, combating trafficking in human beings, and small arms and light weapons (SALW) control.	The Commission's recommendations from last year were partially implemented and remain largely valid. In the coming year, Kosovo should, in particular: - find ways to ensure that police composition reflects the ethnic composition of Kosovo's municipalities; - adopt a new organised-crime strategy; further improve the investigation and prosecution of high-profile organised crime, including money laundering; and proactively and jointly target and map organised criminal groups and networks; further strengthen the efficiency of the criminal confiscation regime, by establishing a confiscation fund and increasing use of confiscation tools by the prosecution and police; - strengthen efforts to prevent and combat migrant smuggling and trafficking in human beings.

Table 17: compiled by the author from the data in the EU Kosovo Report 2024.

Kosovo's relation with the EU are very peculiar. There are 5 Members States of the EU that still do not recognize Kosovo as an independent country. On the other side, Kosovo has received the most

EU support compared with the other countries in the region. EU regional geopolitical goals of stabilizing and integrating the whole of the Western Balkans coincide with rule of law development in Kosovo⁵³⁷. Kosovo is an example where EU limits in proper promoting and upholding the rule of law are questioned⁵³⁸.

Kosovo is the only country in the Western Balkan region that has not even received the candidate status yet. This is due to both political reasons and the internal reforms, including progress in the rule of law. Nevertheless, looking through the lenses of the rule of law, Kosovo may be even better than many countries in the region sometimes scoring highest in the rule of law index of the⁵³⁹ or like the last year one, in 2024, being the second best one in the region, right after Montenegro as ranked by the World Justice Project⁵⁴⁰.

5.4 Conclusion

This section relies mainly on the EU documents, primarily on the rule of law reports and the country reports. As we could see, it is hard to compare the countries among themselves and to understand the status of the rule of law in one country and to be able to compare with the other one that may be ahead in its accession process or lacking behind. In the table below, we have compared the four countries that are included already in the EU annual rule of law reports. Despite that fact that they are at very different stages of accession process, some having opened all Clusters and Chapters and even almost close to closing all of them, like Montenegro, still they do not differ that much in some of the core trends in terms of hard data. So if we look at the anticorruption efforts as measured by the Corruption Perception Index of the Transparency International and or polls on judicial independence (both public perceptions and company ones) we see that they are at similar stages. For a comparison impression, see the following table:

RULE OF LAW CORE DATA – COMPARATIVE BETWEEN 4 WB COUNTRIES IN THE EU RULE OF LAW REPORT								
Country	Year	Judicial independence public (%)	Judicial independence	CPI score	CPI rank	ECtHR leading judgment	ECtHR: last-10y implemented	ECtHR: avg.

⁵³⁷ Jackson, C. M. (2019). The EU and rule of law development in Kosovo: EULEX, domestic spoilers, and a two-level commitment problem. *Journal of European Integration*, 42(7), 955–973. <https://doi.org/10.1080/07036337.2019.1703967>

⁵³⁸ Noutcheva, G. (2009). Fake, partial and imposed compliance: the limits of the EU’s normative power in the Western Balkans. *Journal of European Public Policy*, 16(7), 1065–1084. <https://doi.org/10.1080/13501760903226872>

⁵³⁹ <https://md.rks-gov.net/en/lajmet/kosovo-ranks-first-in-the-western-balkans-in-respecting-rule-of-law/>

⁵⁴⁰ <https://worldjusticeproject.org/rule-of-law-index/global>

			companies(%)			s pending (1 Jan 2025)	d (%) (as of 1 Jan 2025)	pendin g time
Albania	2024	46	45	37	98			
	2025	47	40	42	80	25	25	4y 3m
Montenegro	2024	35	28	46	63			
	2025	26	35	46	65	6	75	3y 3m
North Macedonia	2024	25	20	42	76			
	2025	28	26	40	88	18	65	3y 3m
Serbia	2024	36	34	36	104			
	2025	30	36	35	105	20	62	5y 7m

Table 18: compiled by the author from the data in the EU rule of law reports 2024 and 2025 for four Western Balkan countries.

The similarities among all six Western Balkan countries are perceived often as failed democracies, where is only ticking the boxes while EU is often between the stabilitocracy and democracy dilemma for the region⁵⁴¹. All countries share several of the characteristics of failing democratic institutions, where clientelism keeps the same elites in power who make use of the status-quo that keeps them out of the EU but permanently in the position of “making progress” in European integrations.⁵⁴² For another comparative measurement, it is interesting to see the trends in the scoring and ranking of the Western Balkan countries in the World Justice Project Rule of Law Index, categorizing them as following in the latest report 20204:

WB6 Ranking (1 best to 6 worst)	Score	Rank in Eastern Europe and Central Asia (15 Countries)	Global rank (142 total)
Montenegro – 1 st	0.57	2 nd from 15 countries	56/142
Kosovo – 2 nd	0.56	3/15	58/142
North Macedonia – 3 rd	0.53	6/15	67/142

⁵⁴¹ Smith, N. R., Markovic Khaze, N., & Kovacevic, M. (2020). The EU’s stability-democracy dilemma in the context of the problematic accession of the Western Balkan states. *Journal of Contemporary European Studies*, 29(2), 169–183. <https://doi.org/10.1080/14782804.2020.1823823>

⁵⁴² Andjelic, N. (2022). Western Balkans Regimes Between European Democracy and Autocracy. In: Covid-19, State-Power and Society in Europe. European Union and its Neighbours in a Globalized World, vol 5. Springer, Cham. https://doi.org/10.1007/978-3-030-91073-0_3. The author further states that: *European institutions refrain from confronting “budding autocrats of the Balkans”. This is how stabilitocracy has been developed across the Western Balkans. Europe has chosen stability over democracy in this region. All six Western Balkans countries are run or have been recently governed by autocrats creating suppressed societies.*

Bosnia Herzegovina – 4 th	0.52	7/15	71/142
Albanian – 5 th	0.48	10/15	89/142
Serbia – 6 th	0.47	11/15	94/142

As this table shows, Albania and Serbia have the worst scores, while apart from Montenegro that scores the best, Kosovo and North Macedonia follow as second and third best, respectively in the Western Balkan region in the rule of law Index of the World Justice Project⁵⁴³. It is important to remind here that Rule of Law Index of the World Justice Project is source as one of the most referenced reports looking at the rule of law developments in the countries worldwide, including within the EU and the accession countries⁵⁴⁴. Now looking at those figures and the position they are at in the EU integration path it is hard to correlate those reports with those of the EU. There are a number of authors criticizing the inconsistencies between country trends and the rule of law trends⁵⁴⁵. So despite the fact that rule of law is promoted by the EU to be the most important factor in the EU integration process, its practical application is far from having the highest consideration.

⁵⁴³See The 2024 WJP Rule of Law Index® evaluates 142 countries and jurisdictions around the world. For the seventh year in a row, the rule of law has declined in most countries. Available at: <https://worldjusticeproject.org/rule-of-law-index/global/2024>

⁵⁴⁴ Ginsburg, Tom and Versteeg Mila. "Rule of Law Measurement". In: Meierhenrich, Jens & Loughlin, Martin (eds). "The Cambridge Companion to the Rule of Law" (Cambridge Companions to Law). Cambridge University Press. (2021).

⁵⁴⁵ Kołczyńska, M., & Bürkner, P. C. (2021). Marketplace of indicators: inconsistencies between country trends of measures of the rule of law. Political Research Exchange, 3(1). <https://doi.org/10.1080/2474736X.2021.1989984>

Chapter 6: Appraisal of EU's policy of rule of law conditionality in the Western Balkans

6.1 Conditionality Between Promise and Practice

Building on the previous chapters, this appraisal will show the EU efforts and investments made in the Rule of Law in the WB countries. Although they may be at different stages of integration, there are common lessons and experiences among them. The EU has shown that RoL is a *conditio sine qua non* for any reform and progress in the EU integration path in all the documents it has produced. The new methodology introduced shows the commitment of the EU to enhance the requirements pertaining to the RoL by making it a permanent area of assessment until the accession is completed and, under the new mechanisms established within the union, even monitor it afterwards. All the legal and policy documents of the EU have shown that understanding the RoL is not only important for the WB countries while they strive to enter the EU but, probably even more important, once they join the club too.

Nevertheless, looking at the data and the way EU considers the situation with the rule of law in every Western Balkan country, those policy and political statements are yet to be converted into clear and practical implementation actions. This is why we will start with the conditionality promise and the way it is implemented into practice.

Previous chapters have shown that EU declares the rule of law as the cornerstone of its enlargement strategy. In the Western Balkans, the Commission has repeatedly emphasised that Chapters 23 and 24, along with the broader Fundamentals Cluster, will determine the overall pace of accession. Declaratively, RoL conditionality has thus become the most important policy tool of the EU in the enlargement process. Yet, as the preceding chapter demonstrated, a persistent gap exists between the rhetorical centrality of the rule of law and its practical operationalisation. The EU has not succeeded in establishing clear baselines, systematic indicators, or causal links between RoL reforms and accession progress. Instead, RoL assessments remain descriptive, political, and highly discretionary.

This chapter appraises the EU's rule of law conditionality in the Western Balkans. It argues that while RoL conditionality has the potential to become a powerful tool for credible enlargement, in its current form it risks being instrumentalised as a political lever — to accelerate certain candidates for geopolitical reasons or to block others.

6.2 From External Conditionality to Convergent Monitoring

Since the 2003 Thessaloniki Summit, conditionality has been the backbone of EU–WB relations. Traditionally, RoL conditionality functioned as external leverage: candidates had to meet EU standards before admission. The revised methodology of 2020, however, shifted toward convergent monitoring. By including Albania, Montenegro, North Macedonia, and Serbia in the EU's annual Rule of Law Reports in the last two years (2024-25), the Commission signalled that candidates are to be assessed in the same manner as Member States.

This “convergence” has symbolic significance: it narrows the gap between candidates and members, treating them as part of a single RoL monitoring cycle. However, convergence has not eliminated discretion. In practice, similar RoL performances have produced divergent accession outcomes as seen in Albania's fast-tracked⁵⁴⁶ clusters compared with North Macedonia's stalled path, despite the latter often performing better in judicial efficiency and corruption indices⁵⁴⁷.

6.3 The Measurement Dilemma: Declarative Progress without clear Baselines

As mentioned above, the rule of law strategy in both Enlargement Strategy and in the Rule of Law Cycle with the annual rule of law reports, it is emphasized repeatedly that credibility, predictability, and transparency are the guiding principles of the accession process and with it the rule of law conditionality. Yet in practice, RoL conditionality is not supported by robust measurement frameworks. There are a number of problems as his thesis identifies, but can be shortened into three

⁵⁴⁶ For example Albania has opened three clusters within a single year (2024–25), with an official Commission narrative of a potential closure by 2027. Yet corruption perceptions remain high, judicial independence scores modest, and case backlogs severe. This raises doubts about the evidence-basis of accession momentum, suggesting that geopolitical calculations outweigh RoL measurements.

⁵⁴⁷ Despite lower clearance times and relatively improved corruption scores compared to Albania, North Macedonia has been unable to advance beyond the screening stage. Political conditions, notably constitutional amendments, including the name change and internal political issues and bilateral disputes have overshadowed RoL performance.

main ones: the absence of clear baselines, an event driven process rather than indicator based system of measurement and the lack of causal linkage⁵⁴⁸. This is due to the fact that Commission reports lack reference points against which to measure progress. Labels such as “some progress” or “moderately prepared” are used interchangeably without standardised thresholds. Annual Rule of Law Reports and Country Reports largely describe developments such as strategies, action plans, legislative adoptions, institutional changes, judicial appointments, rather than relying primarily on clear meaningful outcomes. This makes the process of having no transparent causal chain showing how RoL benchmarks translate into concrete accession steps, even in the countries like Kosovo where there is a permanent rule of law mission and such causal link could have been documented easier⁵⁴⁹. For instance, Albania’s rapid cluster openings in 2024–25 occurred despite crime rates, traffic and criminal networks and corruption perceptions being worse than in for example North Macedonia and even other countries in the region. In addition there is a lack of a proper system to address internal politically motivated deadlocks especially in countries that have complex internal arrangements, such as the BiH and the impact on the rule of law reforms and conditionality⁵⁵⁰.

All of those do create an impression that conditionality is declarative rather than operational. The EU speaks of RoL as the “first and last” condition, but cannot demonstrate measurable progress in a way that would sustain its declared and intended credibility. The 2020 methodology promised credibility, dynamism, predictability, political steer⁵⁵¹. But this thesis shows that it has rather strengthened political control and has yet to demonstrate an institutionalised and transparent measurement regime.

⁵⁴⁸ From the causal linkage perspective Serbia is another interesting example where RoL trajectory shows stagnation: weak judicial independence, persistent corruption risks, and increasing foreign policy alignment and economic and strategic ties with Russia and China. Yet the EU continues to engage Serbia strategically, often separating RoL concerns from broader geopolitical imperatives. This underlines the double standards in conditionality.

⁵⁴⁹ Kosovo hosts the EULEX mission, the most direct RoL involvement in the region, yet it is the only WB country without candidate status. Conditionality is applied externally but not consistently integrated into accession. This reveals the another element of political limits of conditionality when recognition and sovereignty are contested, but are clearly beyond the radars of this thesis.

⁵⁵⁰ BiH remains paralysed by constitutional constraints (Sejdić–Finci, entity vetoes). Here, conditionality struggles not because of lack of EU leverage, but because reforms require internal consensus that conditionality alone cannot deliver.

⁵⁵¹ Quote again the methodology or Enlargement strategy here

Chapter 7: Conclusions and recommendations

Rule of law continues to generate wide debate. There is no consensus on its meaning or on its essential elements. The comparative overview in this thesis confirms that there is no single, universally agreed definition. Rather, the rule of law is a contested, multidimensional concept shaped by legal traditions, historical trajectories, and political contexts. Even so, a broad convergence exists around certain core features recognised by practitioners and scholars alike (legality, equality before the law, separation of powers, independent judiciary, and effective rights protection).

Within the European Union, the concept remains similarly open-textured. The EU does not operate with a comprehensive, settled definition; instead, it invokes the rule of law as a value whose content is specified contextually across policy fields. In practice, the rule of law has become a cross-cutting organising principle in an expanding set of EU agendas, including economic governance and the internal market. The Union has also built an array of instruments for promoting and enforcing it, ranging from annual assessments to conditionality levers. The paradox, however, is that while instruments have multiplied, consensus on a common definition and on operational criteria has not kept pace. The meaning of the rule of law continues to “travel” with context, which weakens the precision and predictability of enforcement.

A comparable pattern appears in enlargement policy. In declarative terms, the EU presents rule of law conditionality as the central lever of the accession process: Chapters 23 and 24 open first and close last, and the Fundamentals Cluster is said to set the overall pace. In practice, however, the Union does not measure the rule of law against clearly defined baselines that would allow transparent demonstration of progress over time. As shown in this thesis, EU reporting is largely event-driven and descriptive (cataloguing reforms and developments) rather than benchmark-driven and outcome-oriented. Moreover, reliance on external indicators and diffuse sources, without an internally agreed “minimum standards” framework, makes it difficult to substantiate systematic improvement or regression in a way that is comparable across countries and years.

The core finding that follows is twofold. First, there is no demonstrable causal link between measured rule of law reforms and concrete decisions along the accession path. The comparative indicator tables prepared for this thesis illustrate that countries with similar or even stronger rule

of law metrics do not necessarily advance at the same rate in clusters or chapters. Second, the absence of baselines, thresholds, and public benchmarks leaves wide room for political discretion. Rule of law conditionality, which should anchor credibility, risks being instrumentalised and used to justify acceleration in some cases and blockage in others, including for reasons that are essentially geopolitical rather than evidentiary.

If the EU intends the rule of law to play a higher value as it has clearly stated in especially the latest strategies and documents, decision shaping role in the accession process, the framework must be more structured, measurable, and transparent. Building on the analysis of this thesis and as summarized in the Appraisal chapter, this thesis can therefore suggest some modest steps to advancing the EU policy and practical approach by taking into consideration the following actions:

- Adopt a Rule of Law Catalogue: agree a concise list of minimum substantive and institutional standards (the “what”) coupled with a limited set of outcome indicators (the “how measured”).
- Set Baselines and Thresholds: for each standard, specify baseline values and clearly defined thresholds for advancement or corrective action.
- Align Labels with Metrics: terms such as “some progress” or “moderately prepared” should map to ordinal scales tied to the indicators and thresholds, ensuring that qualitative judgments are anchored in quantitative (or at least intersubjectively verifiable) evidence.
- Publish Opening/Closing Benchmarks: make the conditions for opening, suspending, and closing chapters/clusters public, with time stamped justifications linked to the indicators and thus make the process much more predictable and transparent.
- Ensure Comparability: present annual, side by side indicator tables for Western Balkan candidates (and, where relevant, Member States), enabling trend analysis and reducing discretion in cross-country comparisons.

Therefore, and to conclude, the EU’s rule of law conditionality has the potential to be a powerful engine of transformation. At present, however, it functions primarily as a declarative principle supported by descriptive reporting. Without a publicly articulated catalogue of standards, fixed baselines, and measurable thresholds, conditionality will continue to be vulnerable to political and geostrategic calculation of Member States and its own institutions. With those elements in place,

by contrast, the rule of law can become what enlargement policy claims it to be: the first condition of accession and the final guarantee of membership credibility.

Annex 1: Clusters and Chapters for Albania

ALBANIA			
No	Cluster	Areas and Chapters	Date opened
1.	Fundamentals ⁵⁵²	Functioning of democratic institutions; Public administration reform; Chapter 23 – Judiciary and fundamental rights; Chapter 24 – Justice, freedom and security; Economic criteria; Chapter 5 – Public procurement; Chapter 18 – Statistics; Chapter 32 – Financial control;	October, 2024
2.	Internal Market	Chapter 1 - Free movement of goods; Chapter 2 - Freedom of movement of workers; Chapter 3 - Right of establishment and freedom to provide services; Chapter 4 - Free movement of capital; Chapter 6 - Company law, Chapter 7 - Intellectual property law; Chapter 8 - Competition policy; Chapter 9 - Financial services; Chapter 28 - Consumer and health protection;	April, 2025
3.	Competitiveness and Inclusive Growth	Chapter 10 - Digital transformation and media; Chapter 16 – Taxation; Chapter 17 - Economic and monetary policy; Chapter 19 - Social policy and employment; Chapter 20 - Enterprise and industrial policy; Chapter 25 - Science and research; Chapter 26 - Education and culture, and; Chapter 29 - Customs union;	May, 2025
4.	Green Agenda and Sustainable Connectivity		To be opened
5.	Resources, Agriculture and Cohesion		To be opened
6.	External Relations	30 – External relations; 31 – Foreign, security and defence policy;	December, 2024

⁵⁵² It is interesting to note that in every meeting the following is reiterated: “Negotiations on the Fundamentals cluster are the first to be opened and the last to be closed, and progress under this cluster will determine the overall pace of negotiations”. Nevertheless, looking at the pace the clusters are being opened, Albania seems to move extremely well on the implementation of those requirements.

Annex 2: Clusters and Chapters for Montenegro

Cluster	Areas and Chapters	Date opened
Fundamentals	Chapter 23 – Judiciary and fundamental rights; Chapter 24 – Justice, freedom and security; Chapter 5 – Public procurement; Chapter 18 – Statistics; Chapter 32 – Financial control; Economic criteria Functioning of democratic institutions; Public administration reform;	December 2013 December 2013 December 2013 December 2014 June 2014 - - -
Internal Market	Chapter 1 - Free movement of goods; Chapter 2 - Freedom of movement of workers; Chapter 3 - Right of establishment and freedom to provide services; Chapter 4 - Free movement of capital; Chapter 6 - Company law, Chapter 7 - Intellectual property law; Chapter 8 - Competition policy; Chapter 9 - Financial services; Chapter 28 - Consumer and health protection;	June 2017 December 2017 December 2017 June 2014 December 2013 March 2014 June 2020 June 2015 December 2014
Competitiveness and Inclusive Growth	Chapter 10 - Digital transformation and media; Chapter 16 – Taxation; Chapter 17 - Economic and monetary policy; Chapter 19 - Social policy and employment; Chapter 20 - Enterprise and industrial policy; Chapter 25 - Science and research; Chapter 26 - Education and culture, Chapter 29 - Customs union;	March 2025 March 2015 June 2018 December 2016 December 2013 December 2012 (opened and closed – no closing benchmark) April 2013 (opened and closed – no closing benchmark) December 2014
Green Agenda and Sustainable Connectivity	14 – Transport Policy 15 – Energy 21 – Trans European Networks 27 – Environment and climate change	December 2015 December 2015 June 2015 December 2018
Resources, Agriculture and Cohesion	11 – Agriculture and rural development 12 – Food safety, veterinary, phytosanitary services 13 – Fisheries and aquaculture 22 – Regional policy and coordination of structural instruments 23 – Financial and budgetary provisions	December 2016 June 2016 June 2016 June 2017 December 2014
External Relations	30 – External relations; 31 – Foreign, security and defence policy;	March 2015 – June 2017 provisionally closed June 2014

Annex 3: Clusters and Chapters for Serbia

No	Cluster	Areas and Chapters	Date opened
1.	Fundamentals	Chapter 23 – Judiciary and fundamental rights; Chapter 24 – Justice, freedom and security; Chapter 5 – Public procurement; Chapter 18 – Statistics; Chapter 32 – Financial control; Economic criteria Functioning of democratic institutions; Public administration reform;	July 2016 July 2016 December 2016 December 2018 December 2015 - - -
2.	Internal Market	Chapter 1 - Free movement of goods; Chapter 2 - Freedom of movement of workers; Chapter 3 - Right of establishment and freedom to provide services; Chapter 4 - Free movement of capital; Chapter 6 - Company law, Chapter 7 - Intellectual property law; Chapter 8 - Competition; Chapter 9 - Financial services; Chapter 28 - Consumer and health protection;	December 2019 December 2017 June 2017 June 2019
3.	Competitiveness and Inclusive Growth	Chapter 10 - Digital transformation and media; Chapter 16 – Taxation; Chapter 17 - Economic and monetary policy; Chapter 19 - Social policy and employment; Chapter 20 - Enterprise and industrial policy; Chapter 25 - Science and research; Chapter 26 - Education and culture, Chapter 29 - Customs union;	December 2018 February 2017 Opened December 2016 and previously closed Opened December 2016 and previously closed June 2017
4.	Green Agenda and Sustainable Connectivity	14 – Transport Policy 15 – Energy 21 – Trans European Networks 27 – Environment and climate change	December 2021 December 2021 December 2021 December 2021
5.	Resources, Agriculture and Cohesion	11 – Agriculture and rural development 12 – Food safety, veterinary, phytosanitary services 13 – Fisheries and aquaculture 22 – Regional policy and coordination of structural instruments 23 – Financial and budgetary provisions	June 2018 June 2018
6.	External Relations	30 – External relations; 31 – Foreign, security and defence policy;	December 2017

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