RESILIO MONITOR

What makes the rule of law resilient? Evidence from EU27

Insights and Highlights

iep Institut für Europäische Politik

resilio
Resilience observatory on the rule of law in Europe

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1. Introduction

"RESILIO – Resilience Observatory on the Rule of Law in Europe" examines the ability of the rule of law to anticipate and withstand incremental threats and hazardous events without losing its core functions. The project focuses on the resilience of the rule of law, rather than evaluating the performance of the rule of law *per se,* or on its perception and experience.

RESILIO wants to offer a positive framework for researching the rule of law. Its added value derives from the adoption of the resilience perspective. By choosing a preventive approach, RESILIO wants to deliver ideas on how to strengthen the rule of law not only to prevent attacks and slow down rule of law backsliding, but also to create a friendly habitat to boost rule of law resilience.

RESILIO identifies rule of law resilience factors and measures their performance in all 27 member states of the European Union (EU) in order to provide recommendations on how to strengthen the rule of law by making it more resilient. Furthermore, RESILIO looks beyond legal framework and institutional design, including determinants such as civic space, media landscape, political culture, or the overall socio-economic circumstances at a given moment in time.

The RESILIO project was launched in January 2022 and scheduled for two-and-a-half years. It was funded by Stiftung Mercator and co-funded by the European Union.

RESILIO model
RESILIO offers a multi-layered model of the resilience of the rule of law, incorporating different factors which refer to both the institutional architecture of the rule of law, and the environment in which it functions. Systemic factors refer to the resilience of the legal setup; subsidiary factors look at social phenomena and tendencies as possible facilitators; and contextual factors analyse the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and the general political climate. Finally, RESILIO also includes crises as a horizontal factor to examine unpredicted and unprecedented events, which can affect all other factors with different intensity.

Resilience Monitor
The Resilience Monitor provides a quantitative analysis of all identified rule of law resilience factors by collecting, analysing, and visualising data to map out rule of law resilience across the EU. The goal of the Resilience Monitor is to identify factors outlined in the RESILIO model that particularly strengthen rule of law resilience within each EU member state; illustrate the importance of the chosen most prominent resilience

factors and explain the preconditions for a strengthened rule of law; and raise awareness of future challenges to the rule of law as well as identify the potential for strengthening it across the EU. The Resilience Monitor is based predominantly on data finalised in 2022, because at the time of data collection (early 2023), the most up-to-date were the databases from 2022.

The Resilience Monitor is an open source interactive tool, available online under this link

or please scan the QR code:

Resilience Observatory

The quantitative analysis of the Resilience Monitor is complemented by a qualitative one, presenting a more nuanced look at the 27 member states. To that end, Country Reports were prepared by country experts, using the analytical framework of the RESILIO model to examine country-specific environments and circumstances. Together, the Resilience Monitor and Country Reports both provide an overview of the rule of law resilience in Europe and deliver the narrative to contextualise the general model in 27 member states. They also serve as evidence-based background information for delivering ideas on how to improve the EU toolbox on the rule of law in the future.

2. Analytical framework

The rule of law is one of the fundamental principles of the EU. However, the term is ambiguous, and at least two main points of discussion feature in scientific literature. First, there is the meta-debate over the scope of the term. One school of thought confines the rule of law to formal-procedural attempts to inhibit the arbitrary use of state power.[1] In contrast to this 'thin' conceptualisation, other scholars argue for a 'thick' definition of the rule of law, which also includes substantive elements such as fundamental and human rights, democracy, and equality.[2] The second area of discussion focuses on terminology and specific constitutional history. Here, the focus is on the contexts of origin and different national traditions, such as the rule of law, *l'état de droit,* or *Rechtsstaat,* which should not be mistaken as direct equivalents.[3]

In the EU, the conceptualisation of the rule of law closely follows a definition by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe. The Venice Commission identified six necessary formal and substantial components.[4] The EU's definition accordingly emphasises the values of democracy and fundamental rights.[5] It was first enshrined as a legally binding instrument in Regulation 2020/2092.[6] Additionally, the European Court of Justice (ECJ) has gradually expanded the rule of law in the EU towards a more substantive understanding in its case law.[7]

[1] András Jakab, Lando Kirchmair (2021). 'How to Develop the EU Justice Scoreboard into a Rule of Law Index: Using an Existing Tool in the EU Rule of Law Crisis in a More Efficient Way', in: German Law Journal, 22(6), p. 941, https://athene-forschung.unibw.de/doc/141098/141098.pdf.

[2] Brian Tamanaha (2007). 'A concise guide to the rule of law', in: Legal Studies Research paper Series #07-0082, p. 3, https://www.ruleoflawus.info/The%20Rule/Tamanha%20Concise%20Guide%20to%20Rule%20of%20Law.pdf.

[3] Martin Loughlin (2010). Foundations of public law, Oxford University Press, p. 313.

[4] Council of Europe, Commission, Report on the Rule of Law Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March, 2011), Strasbourg, 4.4.2011, Study No. 512 / 2009, CDL-AD(2011)003rev, p. 10, https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_ law&lang=EN.

[5] European Commission (2019). 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/HTML/?uri=CELEX:52019DC0163.

[6] European Commission (2020). Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. COM(2019) 163 final, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0163.

[7] Laurent Pech (2009). The Rule of Law as a Constitutional Principle of the European Union, Jean Monnet Working Paper Series No. 4/2009, p. 53, https://ssrn.com/abstract=1463242.

2.1 Working definitions

Considering the broad academic and institutional acceptance of the Venice Commission's working definition of the rule of law, RESILIO draws on this 'thick' concept and applies the above-mentioned definition set out by the European Commission[8]:

> Under the rule of law, all public powers act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. Core elements of the rule of law include the principle of legality, the principle of legal certainty, the prohibition of arbitrary use of executive power, effective judicial protection by independent and impartial courts, and equality before the law.

Resilience usually refers to the ability of a system to experience shocks or disruptions while retaining its basic function, structure, and purpose. Resilience of the rule of law therefore means that the rule of law can "anticipate, absorb, accommodate, or recover"[9] from exposure to hazardous events or incremental threats in a timely and efficient manner. Sources of resilience lie not only in constitutional texts and institutions, but also in traditions, culture, civil society, media attention, as well as international reporting and pressure.[10] RESILIO applies the following working definition:

> Resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure, and purpose. Sources of resilience lie not only in constitutional texts and institutions, but also in external social, political, cultural, economic circumstances.

[8] European Commission (2019). 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, p.1 I. INTRODUCTION, What is the rule of law?, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0163.

[9] Christopher B. Field et al (eds) (2012). Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation, Cambridge University Press, p. 5.

[10] Paulo Cardinal (2020). 'Rule of Law Resilience: Comparative Perspectives from Macau', in : Cora Chan, Fiona de Londras (eds) (2020). China's National Security Endangering Hong Kong's Rule of Law? Hart Publishing, https://www.academia.edu/40730681/Rule_of_Law_Resilience_Comparative_Perspectives_from_Macau.

2.2 Three dimensions of rule of law resilience

The resilience of the rule of law depends on a diversity of factors. They refer to both the institutional architecture of the rule of law as well as the environment in which it functions. Therefore, RESILIO offers a multi-layered model of rule of law resilience, reflecting on: (i) the resilience of the legal and institutional setup *per se* (systemic dimension); (ii) phenomena and tendencies present in societies as possible facilitators (subsidiary dimension); and (iii) analysing the broader habitat (contextual dimension). Each dimension consists of three resilience factors. Each of the nine resilience factors is further broken down and operationalised by aspects that can be empirically observed and measured through their respective indicators. While each factor is necessary for a resilient rule of law, they are only sufficient in combination (Image 1).

First and foremost, the rule of law is a legal term. At its core, a system of rules and norms regulates the work of institutions to safeguard the proper functioning of the legal and political order. The resilience of each element of this system plays a primary, direct role for the resilience of the rule of law as a whole. Even if the rule of law cannot be guaranteed with rules and constitutions alone,[11] the **systemic resilience factors** can serve as speed bumps that reduce certain risks or block the attempts to dismantle the rule of law.[12]

Systemic factors are institutional resilience, constitutional resilience, and judicial resilience.

Second, the thick definition of the rule of law applied here and by the EU highlights its close interdependence with the state of democracy and respect for fundamental rights.[13] For that reason, beyond the systemic dimension (formal conventions, *de jure*), it is important to understand how the rule of law is perceived, internalised, and exercised in the civic space (informal conventions, *de facto*). The resilience of the rule of law can be strengthened by values declared and realised in society as well as common social and political practices. Individual commitment to democratic values, the awareness of fundamental rights as well as collective action in case of attempted assaults on the rule of law can significantly increase its resilience. Organised civil society as well as independent media can act as watchdogs or whistle-blowers. Moreover, the electoral system and the quality of the electoral process can also contribute to the resilience of the rule of law by facilitating a proportional and balanced composition of parliaments and preventing asymmetrical power concentration in the hands of one party or elevating fringe parties into power. Therefore, such **subsidiary resilience factors** play a secondary, indirect role for the resilience of the rule of law. They act as stabilisers of the system.

Subsidiary factors are political resilience, electoral resilience, and media resilience.

Third, a non-aggressive socio-political order is a strong bulwark against the potential dangers of dismantling the rule of law. It depends on a wide range of cultural, political, and economic factors and can be strengthened or weakened by external shocks. If balanced, **contextual resilience factors** can create a friendly habitat for the functioning of the rule of law: social peace, economic well-being, satisfactory living standards, and social

[11] Daniel Ziblatt, Steven Levitsky (2018). How Democracies Die, Crown.
[12] Sujet Choudhry (2018). Constitutional Resilience to Populism: Four Theses, Verfassungsblog.
[13] Glossary of summaries: 'Rule of law,' An official website of the European Union, https://eur-lex.europa.eu/EN/legal-content/glossary/rule-of-law.html.

cohesion. The existence of such favourable preconditions in place can avert the appetite for a regime change or popular support for anti-democratic actors, who could try to dismantle the rule of law for political gains. Therefore, a steady environment can be an enabler for the resilience of the rule of law.

Contextual resilience factors are economic resilience, social resilience, and a resilient public discourse.

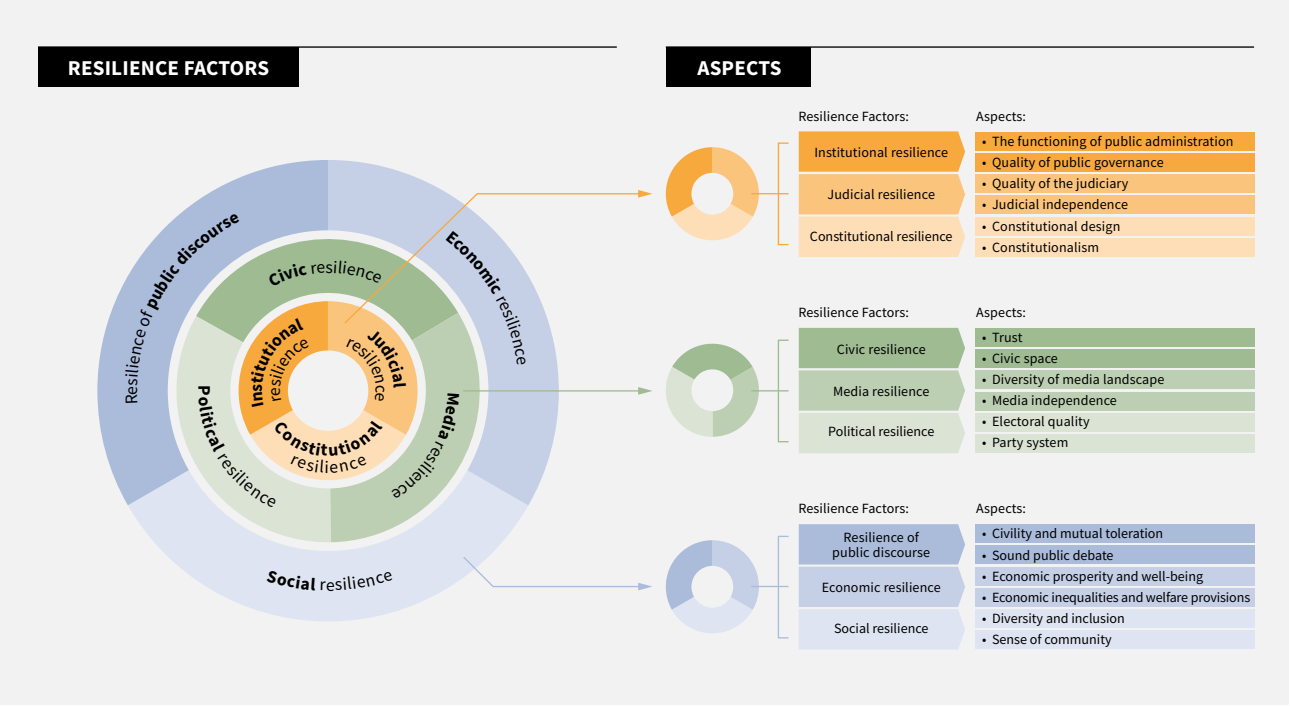


Image 1. RESILIO model: resilience dimensions, factors and aspects of the rule of law

2.3 Crises and their impact on rule of law resilience

Crises are a horizontal factor that differs from the other factors in this model (Image 2). As a variable, crises cut across the three dimensions, and can impact the other factors horizontally or exert pressure on their resilience. Crises have potentially negative consequences for the rule of law and its resilience factors: they threaten a system by disrupting it, have uncertain outcomes, create an urgency to act, have depoliticising effects, and can be instrumentalised.

Moreover, crises can have intentional and unintentional effects on the rule of law. Intentional effects result from the deliberate actions of political actors. Governments can use a crisis to strengthen their position or authority

by implementing laws unrelated to the crisis, or which undermine democratic decision-making procedures. Oppositional forces and external agents can use crises to delegitimise the government by prolonging or exaggerating the crisis through disinformation and fake news. By their very nature, crises can have unintended effects by creating the pressure to act and disrupting societal routines and expectations. Governments are therefore incentivised to circumvent normal decision-making procedures to effectively deal with the crisis.

Crises can further lead to polarisation and depoliticisation by creating rally round the flag effects, delegitimising diverging opinions, and being framed as necessitating technocratic-rational solutions. Because crises – unlike other variables in this model – can affect other factors horizontally and endanger their resilience, they can impact the rule of law indirectly by threatening its economic, political, or societal environment. Accordingly, crises and resilience are two sides of the same coin.

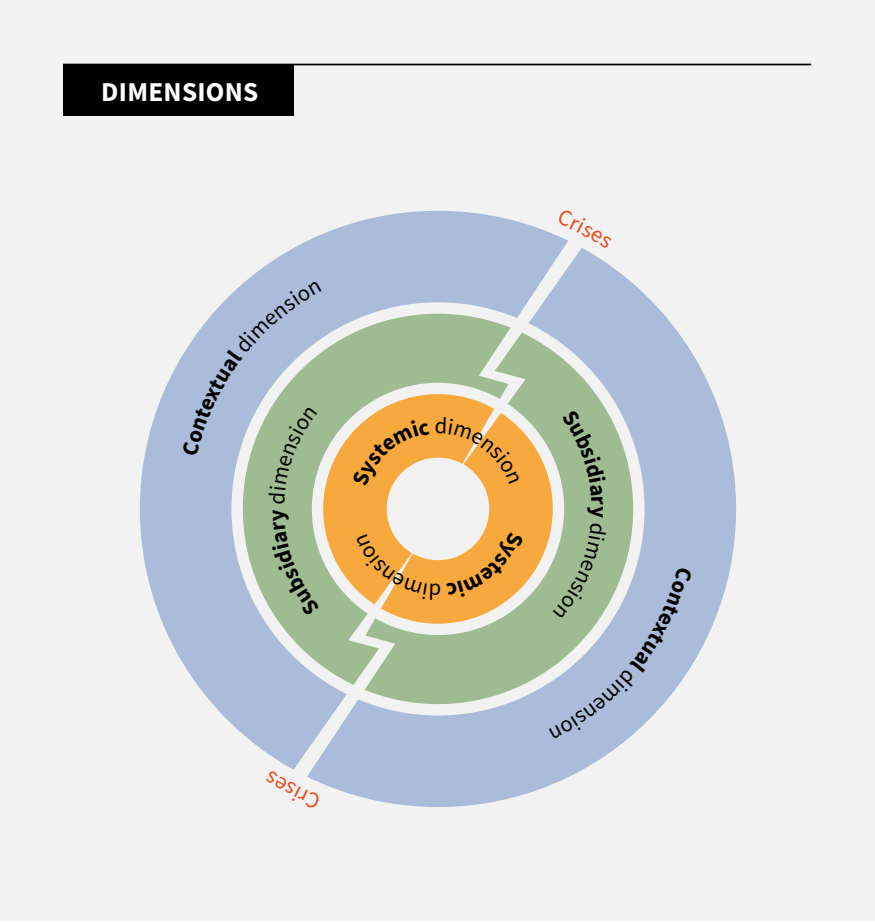


Image 2. RESILIO model and the impact of crises

3. Methodology

RESILIO's methodology, including the selection of resilience factors, is purpose-oriented and defined by the research topic. While identified aspects and indicators may not cover the entire spectrum of a chosen factor, it is the aim to reflect tendencies and phenomena most relevant for the resilience of the rule of law. A reduction strategy has been implemented, eliminating those variables that seemed less significant or redundant for answering the research question.

3.1 Resilience Monitor explained

The methodology of the Resilience Monitor follows a two-step approach. First, the conceptual background behind the RESILIO model was elaborated based on an extensive literature review. Second, the model was operationalised for the purpose of empirical analysis of the defined dimensions, factors, and aspects. Next, two empirical aspects per each resilience factor were translated into a set of measurable indicators.

For the purpose of this study, no original data was collected. Instead, the Resilience Monitor is based predominantly on data finalised in 2022, obtained through desk research and from secondary sources. The data originated from existing databases, indexes, and indicators. Therefore, the overall operationalisation of resilience factors relied on limited sources and had to be adjusted to open access data freely available in the public domain.

Originating from diverse sources, the acquired data presented different scales, formats, and units of measurement: absolute values and absolute numbers (e.g., GDP per capita); ratio and percentage (e.g., unemployment, at-work risk of poverty); opinion polls (e.g., sense of community, trust in democracy and institutions); existing composite indices, indexes, coefficients (e.g., World Press Freedom Index, Corruption Perception Index, World Bank government effectiveness, Gini coefficient); and finally descriptive sources (e.g., OSCE/ODHIR reports on fair & free election observations, judicial independence, constitutional design, shocks and crises).

For this reason, it was necessary to categorise data by coding.
One standardised ordinary scale for all collected data was developed, whereby:

- 0 stands for 'no/does not exist';
- 1 stands for 'worst/weakest/smallest/unsatisfactory';
- 10 stands for 'best/strongest/largest/excellent';
- values in between reflect the intensity of a given characteristic.

After coding the initial data according to the scale above, an average value was calculated for each resilience aspect. The value for each resilience factor is an average value derived from its contributing aspects. Adding up scores resulted in aggregated sub-indices for our three dimensions of rule of law resilience – systemic, subsidiary, and contextual – as well as the overall resilience score.

Additionally, we searched for two types of correlations. First, we identified correlations between individual resilience factors by calculating the Pearson's r between the average scores of two factors among the EU27. Second, we examined the relationship of individual factors with the overall resilience score by doing the same and calculating the Pearson's r between the average of a resilience factor and the overall resilience scores among the EU27.

3.2 Measuring the effect of crises

The RESILIO model also considers the impact crises may have on rule of law resilience. Crises can present external shocks which pose a threat to the structure, functionality, or existence of a social system,[14] thus disrupting the status quo in a decisive manner.[15] Crises may affect specific sub-systems such as the media, the judiciary or the economy, or even the political community as a whole.

While the EU has been in a 'permacrisis'[16] for over a decade, where economic, ecological, health, and security crises closely followed each other, their impact on member states has been asymmetrical. Additionally, specific national crises can be expected to impact rule of law resilience in the respective EU countries. Their impacts cannot be comparatively quantified, and thus these specific national crises are examined qualitatively in the 27 Country Reports adjacent to this study.

3.3 How to interpret the results

Quantitative data analysis and graphic visualisation helped to systematically analyse the results for each member state. Rule of law resilience was assessed in each country, for the three separate identified resilience dimensions as well as in an aggregated form. Moreover, member states were grouped according to their intrinsic similarities regarding different aspects of rule of law resilience.

The Resilience Monitor systematically organises and groups data available for all EU member states in the form of:

- Overall EU27 rating: ranking all EU member states according to their aggregated scores – from the highest to the lowest level of rule of law resilience, and categorising them into: Top rule of law resilience, High rule of law resilience, Medium rule of law resilience, Low rule of law resilience.
- Detailed ratings based on sub-scores: ranking all EU member states according to the specific scores for each resilience dimension – from the highest to the lowest level of systemic resilience, subsidiary resilience, contextual resilience.
- Resilience scatter plot: grouping EU member states according to correlations between chosen systemic, subsidiary, and contextual resilience factors.

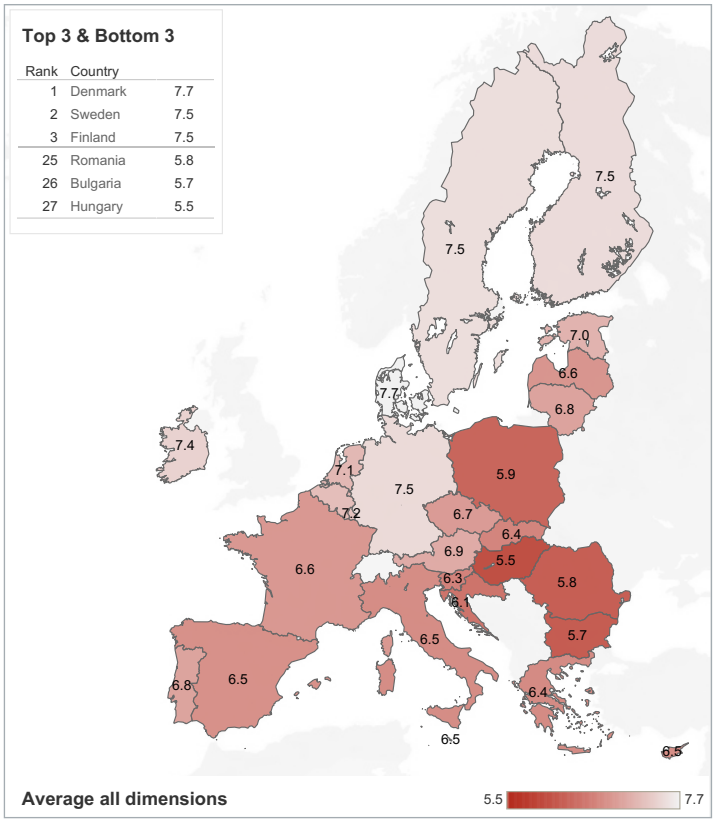
A full list of sources is available online under this link or please scan the QR code:

[14] Joris Steg (2020). 'Was heißt eigentlich Krise?' in: Soziologie 4/2020, p. 432.
[15] David Nonhoff, York Albrecht (2023). Crises and their impact on rule of law resilience, RESILIO Snapshot, Institut für Europäische Politik, May 2023, p. 2, https://iep-berlin.de/site/assets/files/2536/iep_resilio_snapshot_crises.pdf.
[16] Fabian Zuleeg et al. (2021). Europe in the age of permacrisis, European Policy Centre commentary, https://www.epc.eu/en/Publications/Europein-the-age-of-permacrisis~3c8a0c.

4. Rule of law resilience across the EU – key results

The collected data paints a complex image of rule of law resilience across the EU (Image 3). Overall, the rule of law in the EU that is anchored in three dimensions is moderately resilient (6.7 on a scale of 0-10).

Some countries clearly demonstrate exceptionally high values in all three resilience dimensions, while others suffer from notably weak rule of law resilience. But most importantly, there exists a broad trend which – despite its areas in need of improvement – provides a stable base for the rule of law in the EU.



Clusters of rule of law resilience in the EU:

- **Top rule of law resilience (7.5 or more):** Denmark, Finland, Sweden, Germany
- **High rule of law resilience (7.0 – 7.4):** Ireland, Luxembourg, Belgium, the Netherlands, Estonia
- **Medium rule of law resilience (6.0 – 6.9):** Austria, Czechia, Lithuania, Portugal, France, Latvia, Cyprus, Italy, Malta, Spain, Greece, Slovakia, Slovenia, Croatia
- **Low rule of law resilience (5.0 – 5.9):** Poland, Romania, Bulgaria, Hungary

Average rule of law resilience score for the EU: 6.7

Image 3. Rule of law resilience across the EU

4.1 Regional characteristics of rule of law resilience in the EU

Northern Europe performs visibly better than Southern Europe. Central and Eastern Europe as well as South-East Europe score comparably lower. In other words, when examining rule of law resilience in the EU, there are clear North-South and East-West divides. From the perspective of European integration, there is a visible difference between the countries of the former EU15 versus the member states that joined in the 'big bang' enlargement and thereafter (in the 2004, 2007, and 2013 enlargement rounds). The gap is particularly visible not only in the case of Poland and Hungary where the rule of law is undermined systematically, but also in the youngest member states (Romania, Bulgaria, Croatia) where substantial challenges remain but less proactive attacks on the rule of law occur. On the contrary, some of the founding member states (Germany and the Benelux countries) and the Nordics (Denmark, Sweden, Finland) present the highest scores in all resilience dimensions.

This diversity results from different regional characteristics, which can be attributed to a range of socio-economic and historical circumstances.

First, socio-economic convergence has not yet been completed in the EU and within the Eurozone area, exhibiting gaps in prosperity and living conditions across the EU.[17] Some (especially Southern) member states have, over the last decade, suffered devastating consequences of the financial crisis. All EU member states have suffered from the recession resulting from the COVID-19 pandemic as well as the ongoing energy crisis caused by the Russian war against Ukraine. The lack of convergence is also visible in Central and Eastern and South-East European countries that underwent a socio-economic transformation after 1989, yet fell into the middle-income trap due to their dependence on foreign investments and their low-wage strategy to attain competitive advantage. Both these groups of countries also suffer from high emigration rates (brain drain), affecting their economies and demography.[18]

Second, some member states in Central and Eastern Europe still struggle with the consequences of their transition from authoritarian regimes to democracy in 1989. Others have experienced episodes of authoritarian rule in the past (Spain, Portugal, or Greece). While formal democratic institutions are functional, the underlying

[17] See: Adriaan Schout, Arthur van Riel (2022). The state of economic convergence in the Eurozone. Two decades of monetary union and economic governance, Clingendael Report, December 2022, https://www.clingendael.org/sites/default/files/2023-01/The_State_of_Economic_Convergence_in_the_Eurozone.pdf; Eurozone convergence: two steps forward, one step back, Allianz Research, 6 July 2023, https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/economic-research/publications/specials/en/2023/july/eurozone/2023_07_06-EU_Convergence.pdf; as well as older publications like Jakob Kapeller, Claudius Gräbner, Philipp Heimberger (2019). Economic Polarisation in Europe: Causes and Policy Options, Research Report 440, The Vienna Institute for International Economic Studies (WIIW), September 2019, https://wiiw.ac.at/economic-polarisation-in-europe-causes-and-options-for-action-dlp-5022.pdf.

[18] See: 'Chapter 5: Illustrating the consequences of 'brain drain,' in: Lutz W. (ed), Amran G., Bélanger A., Conte A., Gailey N., Ghio D., Grapsa E., Jensen K., Loichinger E., Marois G., Muttarak R., Potančoková M., Sabourin P., Stonawski M., Demographic Scenarios for the EU - Migration, Population and Education, EUR 29739 EN, Publications Office, Luxembourg, 2019, ISBN 978-92-76- 03216-8, doi:10.2760/590301, JRC116398; 'Opinion of the European Committee of the Regions — Brain Drain in the EU: addressing the challenge at all levels,' (2020/C 141/08), Official Journal of the European Union, 29.4.2020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019IR4645&rid=2.

democratic values and citizens' trust not only in said institutions but also in each other are less developed.[19] These latent circumstances might result in less commitment to democratic values in some segments of society, and a greater prominence of political actors representing more authoritarian-populist rhetoric.[20] In addition to constitutional heritage and legal traditions, such historical events may also determine the level of rule of law resilience today.

[19] See: Jannik Jansen (2023). When trust becomes a luxury: How economic crises undermine political trust among the most disadvantaged. Policy Brief, Jacques Delors Centre, Hertie School, https://www.delorscentre.eu/fileadmin/2_Research/1_About_our_research/2_Research_centres/6_Jacques_Delors_Centre/Publications/20230606_Jansen_WhenTrustBecomesALuxury.pdf; Esteban Ortiz-Ospina, Max Roser (2016). 'Trust,' OurWorldInData.org, https://ourworldindata.org/trust.

[20] With a particular focus on the countries of Central and Eastern Europe, a study conducted by IEP in 2021 showed that illiberal positions were particularly popular among three social groups: 1) self-perceived losers of Europeanisation, 2) people with low educational qualifications and 3) culturally and politically illiberal as well as economically liberal minorities. For more, see: David Nonhoff, Julian Plottka, Julian Rappold (2022). Wertepräferenzen und politische Trends in Mittel- und Osteuropa, Institut für Europäische Politik, January 2022, https://iep-berlin.de/site/assets/files/2158/iep_wertepraferenzen_studie_04_2022.pdf.

4.2 Top rule of law resilience vs low rule of law resilience

Rule of law resilience in the EU is diverse (Image 3). Countries on the top of the ranking score very high in overall resilience. Resilience leaders are the Nordic member states and Germany (7.5 or more). They are followed by a group of countries whose overall rule of law resilience is still high: Ireland (7.4), Luxembourg (7.2), Belgium (7.2), the Netherlands (7.1), and Estonia (7.0).

Around half the EU member states present medium rule of law resilience. Although systemic, subsidiary, or contextual resilience dimensions could be improved, current conditions enable a resilient rule of law. This group includes both Central European as well as all Southern European member states (6.0 - 6.9).

Finally, there are four member states exhibiting visibly weak rule of law resilience (5.0 - 5.9). All joined the EU in 2004 or later and are located in Central and Eastern Europe as well as South-Eastern Europe: Poland (5.9) and Hungary (5.4) – with proven cases of assaults on their democratic institutions by current governments – as well as Romania (5.8) and Bulgaria (5.7), which struggle with endemic corruption and weak governance standards.

Top rule of law resilience (7.5 or more)	**High rule of law resilience (7.0 - 7.4)**	**Medium rule of law resilience (6.0 - 6.9)**	**Low rule of law resilience (5.0 - 5.9)**
Denmark (7.7)	Ireland (7.4)	Austria (6.9)	Poland (5.9)
Finland (7.5)	Luxembourg (7.2)	Czechia (6.7)	Romania (5.8)
Sweden (7.5)	Belgium (7.1)	Lithuania (6.8)	Bulgaria (5.7)
Germany (7.5)	The Netherlands (7.1)	Portugal (6.8)	Hungary (5.5)
	Estonia (7.0)	France (6.6)	
		Latvia (6.6)	
		Cyprus (6.5)	
		Italy (6.5)	
		Malta (6.5)	
		Spain (6.5)	
		Greece (6.4)	
		Slovakia (6.4)	
		Slovenia (6.3)	
		Croatia (6.1)	

Table 1. Overall ranking of rule of law resilience in EU27

4.3 Interplay between resilience factors

There are visible correlations between single resilience factors (Table 2). Despite their diverse allocation across the model, some factors jointly contribute to broader phenomena that affect the resilience of the rule of law, such as the political culture, economic stability, the tradition of a strong state and interventionism, or an active citizenry.

	Civic Resilience	Consti-tutional Resilience	Institutional Resilience	Judicial Resilience	Media Resilience	Political Resilience	Discourse Resilience	Economic Resilience	Social Resilience
Civic Resilience	1.00	0.43	0.68	0.79	0.69	0.50	0.68	0.75	0.46
Constitutional Resilience	0.43	1.00	0.50	0.57	0.50	0.34	0.60	0.35	0.18
Institutional Resilience	0.83	0.50	1.00	0.90	0.78	0.53	0.72	0.75	0.35
Judicial Resilience	0.79	0.57	0.90	1.00	0.79	0.60	0.80	0.60	0.26
Media Resilience	0.55	0.50	0.78	0.79	1.00	0.52	0.76	0.39	0.04
Political Resilience	0.52	0.34	0.53	0.60	0.52	1.00	0.62	0.29	0.30
Discourse Resilience	0.68	0.60	0.72	0.80	0.76	0.62	1.00	0.42	0.08
Economic Resilience	0.75	0.35	0.75	0.60	0.39	0.29	0.42	1.00	0.53
Social Resilience	0.46	0.18	0.35	0.26	0.04	0.30	0.08	0.53	1.00

Table 2. Pearson correlation coefficient (r) between resilience factors (EU27 average)

4.3.1 Public debate and political culture

Pluralistic and independent media, the quality of public debate, and a pluralistic political scene driven by the principles of mutual toleration and civility create a favourable and stable political atmosphere.

The overall tendency shows a substantial correlation between resilience of the media and a resilient public discourse (r = 0.76). In countries with right-wing populists in power, low media resilience visibly coincided with low resilience of public discourse (Poland, Hungary, Slovenia). Interestingly, a resilient media landscape and independence does not necessarily herald the presence of an equally resilient discourse, such as in the case of Germany and, to a lesser extent, France. France and Germany, however, remain minor exceptions in this regard (Image 4).

Similarly, there is a positive correlation (r = 0.62) between a resilient public discourse and high political resilience (Image 5); however, this is not without exceptions. Public discourse is less resilient compared to a relatively high political resilience (a developed multi-party system and electoral integrity). This is particularly visible in countries with a high presence of populist actors, fierce political competition, and polarised political debate, like Malta, Poland, Italy, Slovenia, Bulgaria, Romania, or Latvia. In other words, there can be political integrity without quality public discourse. Similarly, political resilience can exist with weakened media resilience.

Unsurprisingly, in Hungary, media resilience, political resilience, and resilience of public discourse are the lowest, visibly diverging from other EU countries. Free but unfair elections and media control by individuals and companies close to the government may well reinforce the negative effects of intended democratic backsliding.

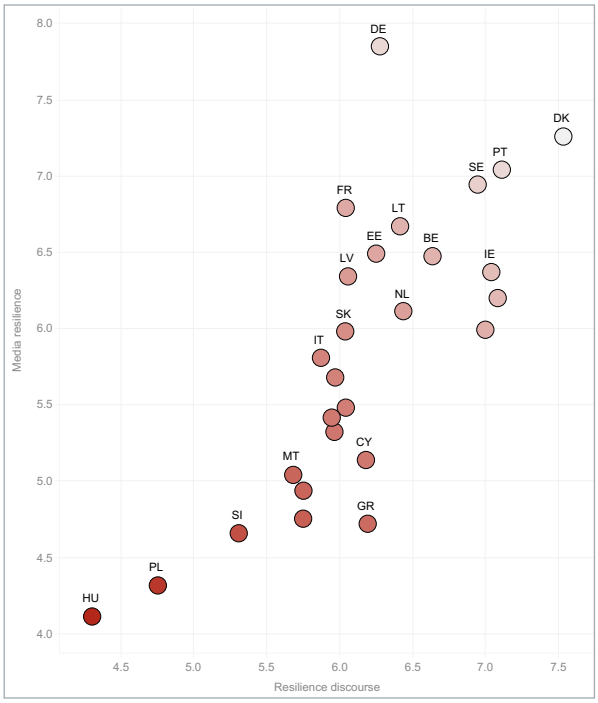


Image 4. Media resilience and Resilience of public discourse

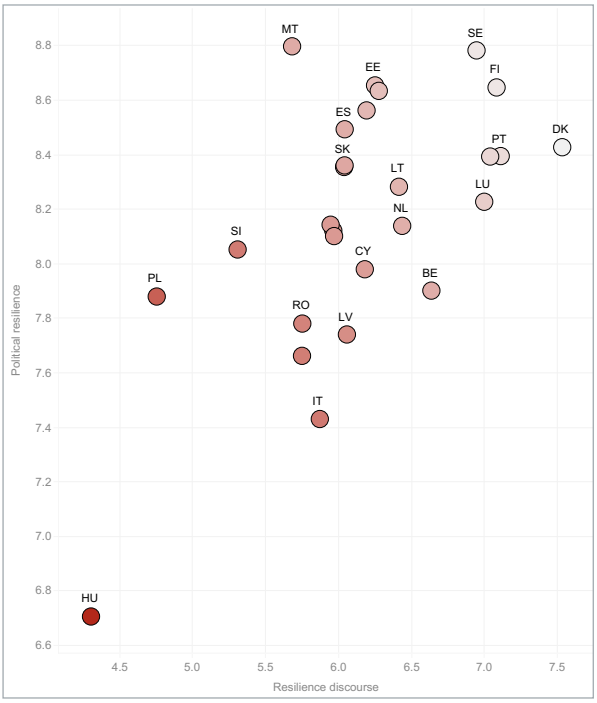


Image 5. Political resilience and Resilience of public discourse

4.3.2 The media and the foundations of the state

In addition to their important function for public discourse and political resilience, the data also shows a significant connection between strong media and structural components of statehood (Image 6). Independent and diverse media contribute to the quality and functioning of public administration as a watchdog against corruption and nepotism (r = 0.78).

Similarly, independent and pluralistic media strongly correlate with a resilient judiciary (r = 0.79), as demonstrated by frontrunners such as Denmark, Sweden, or Germany. At the other end of the scale, the data also reflects the systematic dismantling of independent press and courts in Poland and Hungary. The 'authoritarian playbook' followed by their governments aims to dismantle both institutional as well as societal checks and balances (Image 7).

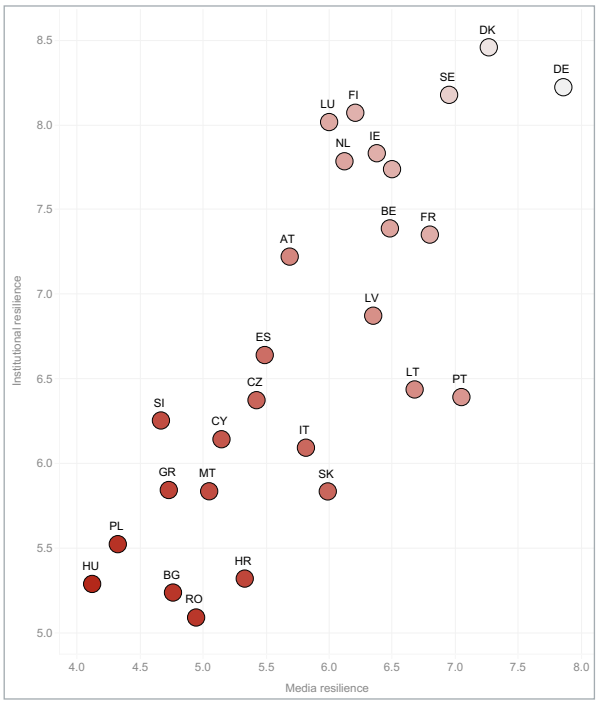


Image 6. Media resilience and Institutional resilience

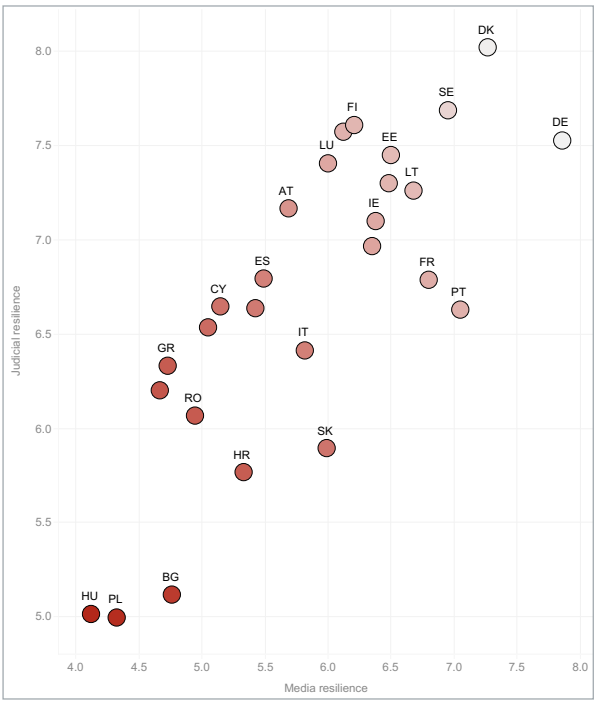


Image 7. Media resilience and Judicial resilience

4.3.3 Cohesion and belonging

Inclusion, as well as social and economic cohesion enhance the sense of community and also trust in fellow citizens and institutions. To some extent, civic resilience tends to go hand in hand with social resilience (r = 0.46). Countries with high levels of integration and a strong sense of belonging, like Denmark, Sweden, Finland, Ireland, or Germany tend to exhibit highly developed civil society and high levels of citizens' trust.

At the opposite end are countries in which internal tensions persist, for example regarding integration of different ethnic and national groups (like France or Latvia, see Image 8), or states with weaker institutional and governance structures (Bulgaria, Romania, Croatia). There also is a positive correlation between forms of citizen engagement and participation (r = 0.52): low political resilience coincides with low civic resilience (Hungary, Bulgaria, Croatia, Romania). At the same time, growing levels of civic engagement and trust also increase the robustness of the political system.

Unsurprisingly, to function well, civil society and an active citizenry need resources and financial stability (Image 9). There is a clear correlation visible between civic and economic resilience (r = 0.75), with Bulgaria, Romania, Croatia at the lower end, and Luxemburg, Denmark, Sweden, Finland, Ireland at the higher end.

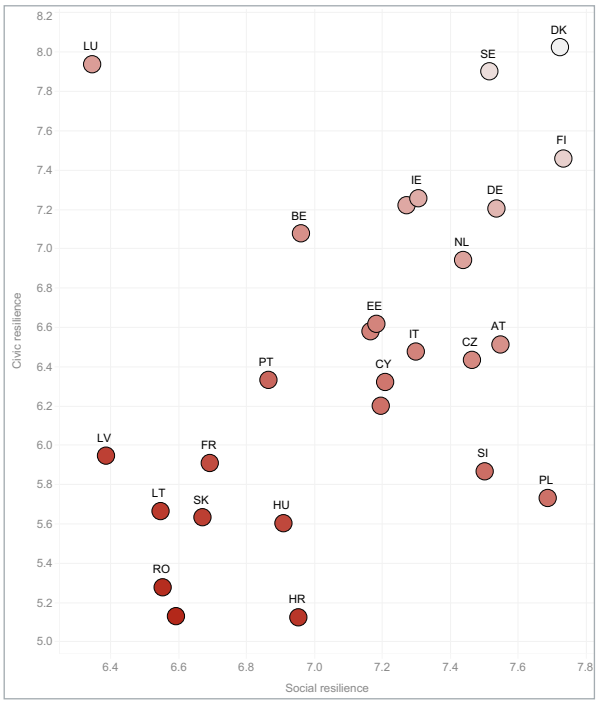


Image 8. Civic resilience and Social resilience

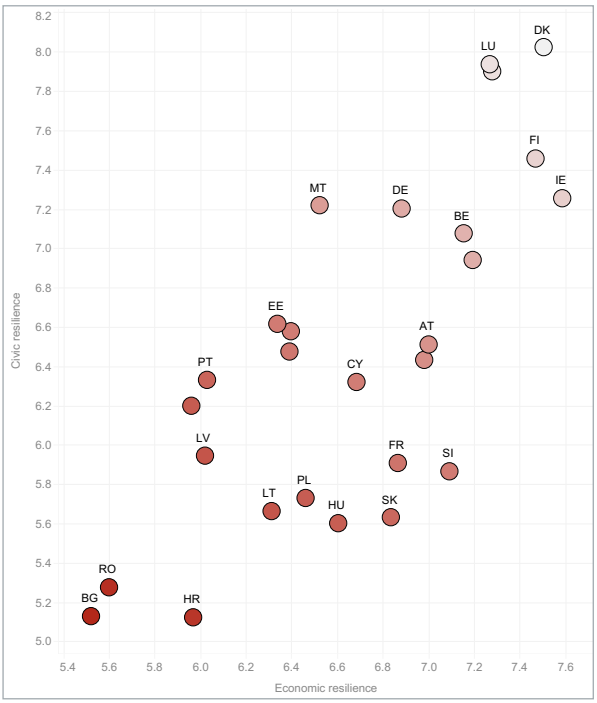


Image 9. Civic resilience and Economic resilience

4.3.4 Organisation of society

There is a strong connection between levels of trust in the system and the state, and the functioning of state institutions (Image 10 and Image 11). Civic resilience correlates strongly with institutional resilience (r = 0.83) as well as with judicial resilience (r = 0.79). This is exemplified by frontrunners such as Denmark, Sweden, Finland, and Luxembourg.

Conversely, low civic resilience coexists with low judicial resilience in countries where the proactive dismantling of democracy and checks and balances continues: Poland and Hungary, as well as (to a lesser extent) in Bulgaria, Romania, Slovakia, and Croatia. The lowest levels of civic and institutional resilience are found in Bulgaria, Romania, and Croatia, which may be due to low levels of trust deriving from high levels of corruption. Similarly, this is also relevant in Poland and Hungary, due to the ongoing state capture attempts.

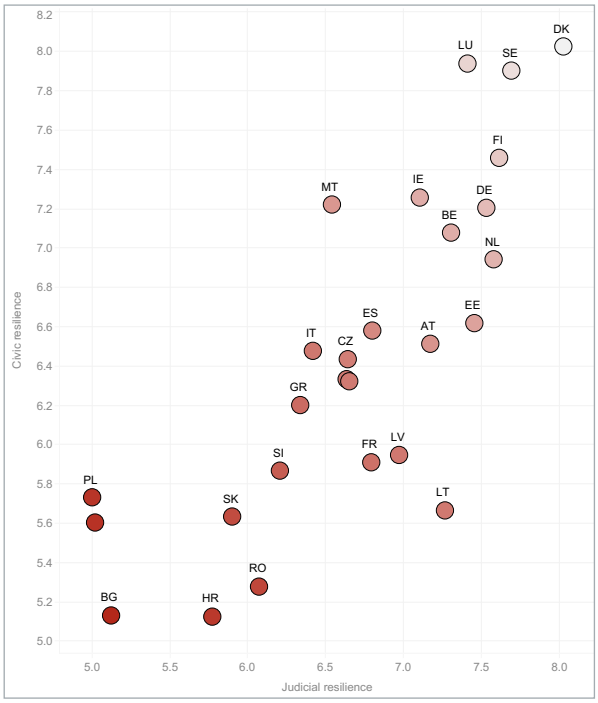


Image 10. Civic resilience and Judicial resilience

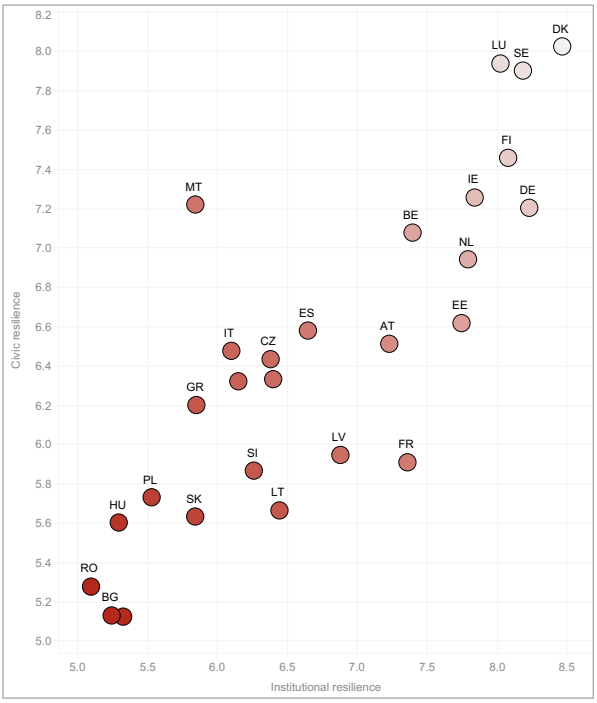


Image 11. Civic resilience and Institutional resilience

4.3.5 Economic prosperity and democracy

Sustainable socio-economic conditions in EU member states (economic resilience, welfare, closing socio-economic gaps, social peace) constitute a favourable environment, corresponding with the robust governance models of European countries, which are rooted in the established institutions and legal frameworks that provide the institutional base for a functioning rule of law. The overall tendency shows that economic prosperity coincides with stronger institutional resilience (r = 0.75), as exemplified by Ireland, the Nordic member states, the Netherlands, Luxembourg, or Germany. It can be speculated that economic wealth contributes to adequate education and compensation of public servants and better functioning state institutions. Thus, weaker economic resilience goes hand in hand with a weaker institutional resilience (Greece, Croatia, Romania, Bulgaria, and Portugal, see Image 12).

Similar effects can be observed for judicial resilience: with a stronger economy and lower inequality, the judiciary is more robust (r = 0.6). Vice versa, an independent judiciary, legal certainty, and protection of property rights are prerequisites for a well-functioning economy. Yet clearly, judicial resilience is disproportionally weakened compared to relatively high economic resilience when democratic backsliding is taking place (like in Poland and Hungary, see Image 13).

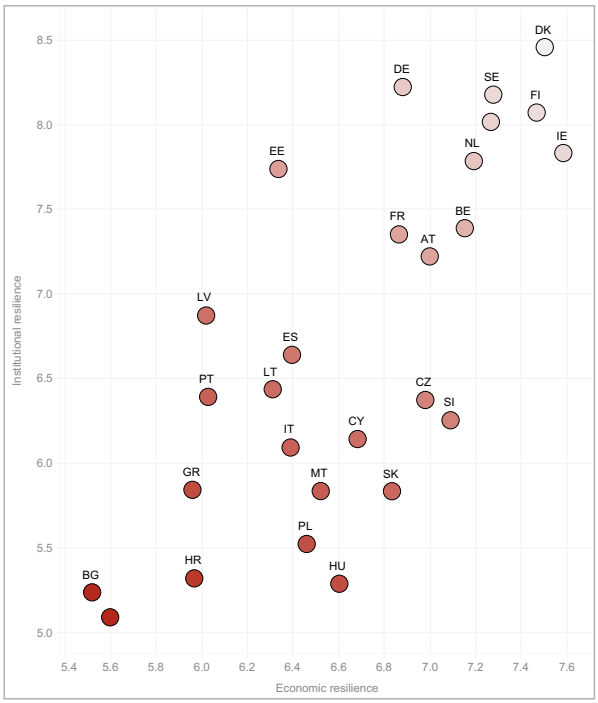


Image 12. Economic resilience and Institutional resilience

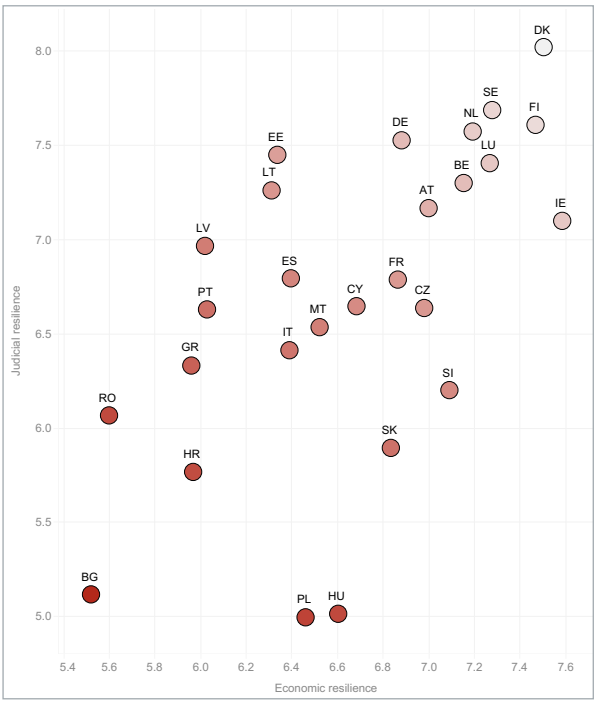


Image 13. Economic resilience and Judicial resilience

Further vital components of democracy are freedom of speech and the press. Affluent countries tend to have strong media resilience (Ireland, Nordic member states, Benelux), and similarly, low economic resilience can coexist with low media resilience (Greece, Croatia, Romania, Bulgaria, see Image 14). There is a statistically moderate connection between economic resilience and resilient media (r = 0.3). This is exemplified by countries experiencing stark democratic backsliding, where media resilience can be very low despite the existence of a good economic situation (Poland and Hungary). On the contrary, media resilience can persist in healthy democracies despite moderate economic prosperity (like in Portugal and the Baltic States: Lithuania, Estonia, Latvia).

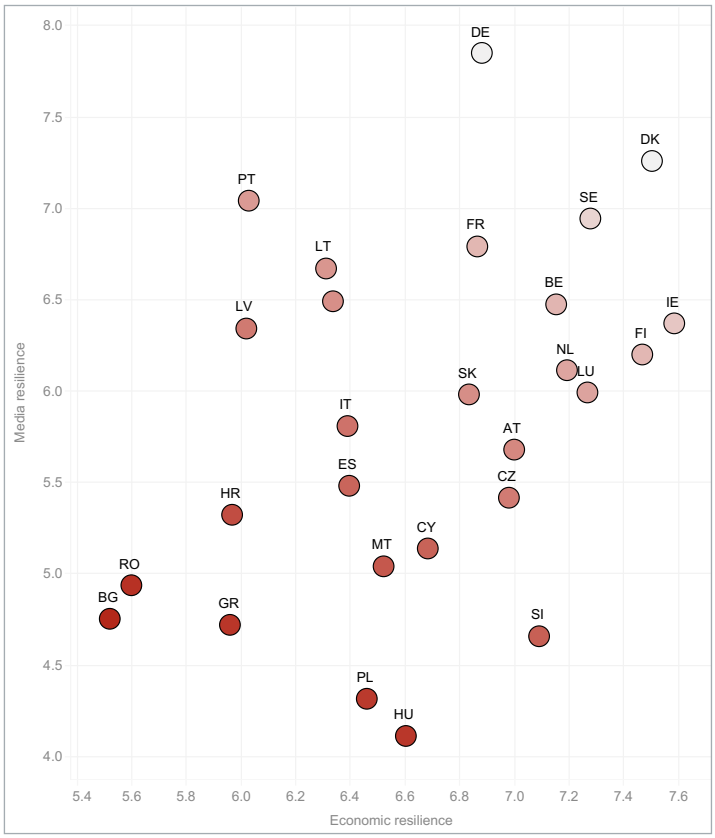


Image 14. Economic resilience and Media resilience

5. Conclusions

The summary below presents concluding remarks derived from our analysis of the empirical data gathered. They describe the findings regarding the overall landscape of rule of law resilience in the EU, its geographic dispersion and main trends, and further explore the specific pillars of rule of law resilience in the EU.

- **Conclusion 1: Rule of law resilience is diverse and geographically dispersed across the EU**

The resilience of the rule of law varies across the EU member states. While most EU member states are equipped with robust democratic institutions and democratic processes, others exhibit deficiencies.

Visibly, the rule of law resilience is the highest in the affluent societies of Northern Europe and Western Europe. Rule of law resilience decreases on the geographic peripheries of Europe (with the exception of Ireland, the Baltic States, and the Nordic countries). This trend is particularly visible in the younger democracies of Central and Eastern Europe, but not exclusively. The rule of law can also be vulnerable in some Southern European countries. There is also a clear division between East and West, South and North, and between countries that joined the EU in different rounds of enlargement (especially after 2004, 2007, and 2013).

Countries with the lowest rule of law resilience are Hungary, Bulgaria, Romania, and Poland. All of them joined the EU in the more recent enlargement rounds (2004 or 2007), and all have an authoritarian past (communism/state socialism). Yet, despite their challenges, most of them are still considered liberal democracies. Only one of them – Hungary – has been officially denied a status of a democratic, free regime in diverse reporting instances (including Democracy Index 2022 by Economist Intelligence,[21] the European Parliament,[22] and Freedom House[23]).

- **Conclusion 2: Each resilience dimension is similarly potent in the EU**

The aggregated values for each of the three resilience dimensions are similar (Table 3). This speaks for rule of law resilience to be well-balanced across the EU. Systemic foundations, societal elements, and contextual circumstances all shape rule of law resilience. Diverse phenomena can therefore strengthen or weaken the resilience of the rule of law.

[21] See: Democracy Index 2022 of The Economist Intelligence Unit, https://www.eiu.com/n/campaigns/democracy-index-2022/.
[22] 'MEPs: Hungary can no longer be considered a full democracy,' Press Release, European Parliament, 15 September 2022, https://www.europarl.europa.eu/news/en/press-room/20220909IPR40137/meps-hungary-can-no-longer-be-considered-a-full-democracy.
[23] Hungary, Freedom in the World 2022, Freedom House, https://freedomhouse.org/country/hungary/freedom-world/2022.

A closer look reveals discrepancies, dispersion, and differentiation between single resilience factors. On the one hand, there are phenomena deeply rooted in the traditions, identity, and culture of a society. On the other, there are laws and institutions that can easily be replaced, adapted, or changed. Together, they all create a complex and multi-layered framework of circumstances determining the resilience of the rule of law in a particular society, place, and time in history.

	Systemic resilience	Subsidiary resilience	Contextual resilience
EU (6.7)	6.6	6.8	6.6

Table 3. Average score for the EU, broken down into single resilience dimensions

Rule of law resilience is a complex and dynamic phenomenon. Strong democracies are characterised by a full set of solid, coordinated resilience dimensions. Their complementary reinforcement corresponds with above-average scores for rule of law resilience. On the contrary, backsliding rule of law regimes manifest flaws and weaknesses across the model. Countries with a weak overall resilience also tend to have lower scores across all three dimensions (Table 4).

	Systemic resilience	Subsidiary resilience	Contextual resilience
1. Denmark (7.7)	7.7	7.9	7.6
2. Sweden (7.5)	7.4	7.9	7.2
3. Finland (7.5)	7.6	7.4	7.4
25. Romania (5.8)	5.3	6.0	6.0
26. Bulgaria (5.7)	5.4	5.9	6.0
27. Hungary (5.5)	5.1	5.5	5.9

Table 4. Scores of Top 3 and Bottom 3 EU member states broken into single resilience dimensions

- **Conclusion 3: Behaviours and attitudes have higher scores than formal statutes and written norms**

Taken together, the legal framework of the constitution, political system, or the institutional setup of the judiciary or public administration all set standards for the organisation of the state and lay out the guidelines for its functioning. Yet, rules and norms are only efficient if laws are obeyed.

In this respect, the legal structure seems less important for rule of law resilience than the cultural framework. Institutional structures are secondary to the performance of institutions and their staff (Table 5). The key to rule of law resilience is how politicians, public officials, and elected officials act: whether they respect the rules, obey the laws, perform with good will, and follow the principles of civility and mutual toleration. For rule of law resilience, individual attitudes and behaviours as well as internalised values and norms are indispensable and essential ingredients, and these corresponding factors score higher than those merely reflecting the institutional or legal setup.

	Performance	**Structure**
Media resilience	Media independence 6.4	Media landscape 5.3
Political resilience	Party system 8.3	Electoral quality 8.1
Institutional resilience	Quality of governance 6.8	Functioning administration 6.7
Judicial resilience	Quality of the judiciary 7.2	Judicial independence 6.2
Constitutional resilience	Constitutionalism 7.0	Constitutional design 5.6
Average score	**7.1**	**6.4**

Table 5. Differences in average scores of performance and structural aspects of different resilience factors

- **Conclusion 4: A weak rule of law resilience does not automatically mean rule of law backsliding**

Rule of law resilience does not describe the status of the rule of law in a particular country. Rule of law resilience describes the defence potential of the rule of law if attacked. Therefore, the rule of law can be in place and intact even if it is not particularly resilient (the democratic accountability and integrity of governments).

Unsurprisingly, the strongest democracies in the EU also show a great potential for resilience. A high rule of law resilience is characteristic for countries that also score high regarding the overall rule of law situation (measured, for example, by the Rule of Law Index of the World Justice Project,[24] or the Sustainable Governance Indicators of the Bertelsmann Foundation[25]), as well as its other features (media freedom, human rights, voter turnout etc.). On the contrary, a weaker rule of law resilience does not necessarily coincide with an eroded rule of law. These findings underscore that rule of law backsliding is the result of deliberate political action.

[24] See: Rule of Law Index of the World Justice Project, https://worldjusticeproject.org/rule-of-law-index/.
[25] See: Sustainable Governance Indicators of the Bertelsmann Foundation, https://www.sgi-network.org/2020/Survey_Structure.

Authoritarian-populist actors cleverly observe and exploit weaknesses that exist in every political system, be they institutional, economic, or in the fabric of society. Our findings demonstrate that in order to defend the rule of law, both governmental and non-governmental democratic forces must address weaknesses and oppose authoritarian actors.

	Systemic resilience	Subsidiary resilience	Contextual resilience	Overall resilience
22. Slovenia	6.1	6.2	6.6	6.3
23. Croatia	5.8	6.2	6.3	6.1
24. Poland	5.3	6.0	6.3	5.9
25. Romania	5.3	6.0	6.0	5.8
26. Bulgaria	5.4	5.9	6.0	5.7
27. Hungary	5.1	5.5	5.9	5.5

Table 6. Resilience scores of EU member states currently or in the recent past experiencing active rule of law erosion compared to countries with low resilience scores, yet with no intentional rule of law backsliding

- **Conclusion 5: Public administration and the judiciary are a backbone for rule of law resilience**

Functioning public institutions that follow the principles of good governance and integrity are the most important pillars of rule of law resilience (Table 7). In terms of robust state organisation, public administration (the executive), and the judiciary – both well-developed formal structures as well as the ethos and integrity of their staff – are the cornerstone of a functioning state and good governance (r = 0.94).

EU member states – even those currently backsliding in their democratic standards – are nevertheless equipped with robust institutions and legal systems which organise the functioning of the state and society. Long bureaucratic traditions result in an institutionalisation of almost every aspect of public life, and developing norms that regulate the rights and obligations of both citizens and state agencies. An independent and functioning judiciary contributes to peaceful conflict resolution and enables individuals to enforce their rights.

	Pearson's r with overall resilience score
Civic resilience	0.87
Constitutional resilience	0.66
Institutional resilience	0.94
Judicial resilience	0.94
Media resilience	0.82
Political resilience	0.65
Discourse resilience	0.85
Economic resilience	0.72
Social resilience	0.39

Table 7. Pearson correlation coefficient (r) between individual resilience factors and overall resilience score

- **Conclusion 6: To thrive, rule of law resilience needs independent media, a sound public debate, and a robust civil society; the media and a sound public discourse are also the most vulnerable factors**

Civic space – understood both as active citizenry as well as guaranteed freedoms of assembly and associations – is a fundamental element for the protection of rule of law (r = 0.87). Independent and pluralistic media are another important pillar of rule of law resilience (r = 0.82). They not only protect the quality of public debate but can also act as watchdogs, offering access to information and securing the accountability of public figures. Similarly, the quality of public discourse is closely correlated to resilience of the rule of law (r = 0.85): the contents and style of communication in public debate, affecting popular attitudes and perceptions (Table 7).

While media resilience (r = 0.82) and the resilience of public discourse (r = 0.85) are important for the overall resilience of the rule of law, they also present the lowest resilience scores (Table 8). Media landscape and sound public debate are currently the most vulnerable aspects. They are also the weakest in countries undergoing attacks on the rule of law, as well as in weaker democracies. This is all the more worrying as both factors are significant pillars of rule of law resilience.

Dimensions	Factors	Aspects
Systemic resilience	Institutional 6.7	Quality of public governance 6.8
		Functioning administration 6.7
	Judicial 6.7	Quality of the judiciary 7.2
		Judicial independence 6.2
	Constitutional 6.3	Constitutional design 5.6
		Constitutionalism 7.0
Subsidiary resilience	Civic 6.5	Trust 6.0
		Civic space 6.9
	Media 5.9	Media landscape 5.3
		Media independence 6.4
	Political 8.2	Electoral quality 8.1
		Party system 8.3
Contextual resilience	Public discourse 6.2	Civility and toleration 6.3
		Sound public debate 6.0
	Economic 6.7	Economic prosperity 7.1
		Economic (in)equalities 6.2
	Social 7.1	Diversity and inclusion 7.1
		Sense of community 7.1

Table 8. Overall resilience scores for the EU across dimensions, factors and aspects – relatively lower scores for media landscape and sound public debate

- **Conclusion 7: The resilience of the rule of law profits from European social model and political culture; social cohesion and the robustness of legal frameworks do not guarantee a resilient rule of law**

The overall rule of law resilience achieved higher scores in countries with strong economies, high living standards, and a long track-record of democratic development (r = 0.72). Yet, economic welfare and prosperity can neither prevent active attacks on the rule of law, nor help to defend it − as shown by the example of relatively prosperous countries that suffered an illiberal populist backlash (Poland, Hungary).

Political resilience is by far the strongest pillar of the rule of law in the EU and in single member states. Parliamentary representative democracies are resilient when it comes to democratic processes, such as elections, however, active attempts to manipulate elections in certain EU member states weaken political resilience. Political resilience is also more vulnerable when party systems are disrupted by the rise of populist parties, the spreading of anti-pluralist agenda, and erosion of the quality of public debate.

In comparison with other factors, the quality of constitutional scope and the design of legal systems plays a less important role for rule of law resilience (r = 0.66). The ethos of public service, its integrity, and professional competence can help to overcome flaws in systemic design (r = 0.94). Similarly, the absence of corruption in the judiciary and the accountability of independent judges and prosecutors contribute significantly to a resilient rule of law (r = 0.94). Laws and regulations are as powerful as the commitment to obey them.

Finally, social resilience seems to be the least important for a resilient rule of law (r = 0.39). Moreover, in countries experiencing a populist illiberal backlash, social resilience can still remain high, both in terms of social mobility and opportunities. On the contrary, populists often aim to redefine the social glue that keeps society together, introducing values other than those specific to liberal democracies, such as ethno-nationalism or the personality cult. Therefore, the sense of community can contribute to a more resilient rule of law but can also be actively weaponised against it.

6. Recommendations

The RESILIO results indicate that behaviours and attitudes matter more for rule of law resilience than formal statutes and written norms. Rules and norms are only efficient if laws are obeyed. The constitution, political system, and institutions lay the foundations for a resilient democracy based on the rule of law. However, the key to a resilient rule of law is a democratic political culture that enforces compliance and sanctions non-compliance.

Therefore, to foster resilience, investments are necessary in all three resilience dimensions:

- **#1 CONTINUOUS CAPACITY BUILDING AT THE SYSTEMIC LEVEL**

First, the legal framework of the constitution, political system, and the institutional setup of the judiciary and public administration set standards for the organisation of the state and lay out the guidelines for its functioning. Most important for rule of law resilience are functioning institutions: public administration and the judiciary that adhere to the principles of independence from political pressures, good governance, and integrity.

Therefore, at the systemic level, to avoid corruption and secure the proper functioning of public institutions, strengthening the capacity and efficiency of public administration and the judiciary is necessary. The state must be strong and credible, and led by good governance and public service ethos.

- **#2 PROTECTING INDEPENDENT MEDIA AND CIVIL SOCIETY**

Second, the RESILIO study clearly indicated the role of democratic culture and institutions for rule of law resilience. Rule of law resilience needs a robust civil society, independent media, and a sound public debate. Civic space – understood both as active citizenry as well as the guaranteed freedoms of assembly and associations – is an essential fundament for the protection of rule of law. Further crucial factors for rule of law resilience are an independent and pluralistic media and the quality of public discourse. They not only protect the quality of public debate but can also act as watchdogs, offering access to information and securing accountability of public figures. Media resilience and resilience of public discourse currently seem to be the most vulnerable elements.

The rule of law is a cornerstone for any functioning democracy, yet any symptoms of democratic backsliding pose a threat to the proper functioning of the rule of law. Therefore, investing in a pluralistic and independent media landscape and the quality of public discourse is a must. Protecting journalistic work and the civic space embodied by whistle-blowers and watchdog organisations is most important in today's turbulent times, tainted by malign influence and disinformation campaigns on the one hand, and the rise of illiberal autocrats on the other.

- **#3 FOSTERING ECONOMIC CONVERGENCE, FURTHER DEVELOPING CONDITIONALITY**

Third, the EU is one of the most prosperous and safest regions globally, characterised by relative welfare and social cohesion within its member states. The resilience of the rule of law profits from European social model and political culture. Economic and financial arguments can indirectly address rule of law erosion. The RESILIO results suggest that the southern and eastern flank of the EU is relatively less resilient compared with Western and Northern Europe.

Socioeconomic convergence could therefore not only strengthen the state apparatus and its functioning, but also close the gaps between and within societies, providing less fertile ground for illiberal autocrats to flourish. On top of that, the recently applied conditionality mechanism, which aims to protect the EU budget and EU's financial interests in case of rule of law breaches in member states, might have a deterring effect and serve as an incentive to adhere to the rule of law.

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