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Resilience observatory on the rule
of law in EU accession candidates

RESILIO-ACCESS Snapshot Series

Threats to Rule of Law Resilience

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1. Introduction

This Snapshot analysis presents a systems-based approach to understanding threats to rule of law resilience. Drawing on systems theory and resilience thinking, we will identify three key capacities that shape how the legal system responds to pressure: feedback, functional separation, and adaptive capacity. This approach shifts the focus from isolated violations or institutional failures to the broader political, economic, and social pressures that affect whether legal decisions remain consistent, independent, and credible. Such a framework also provides a clear foundation for the indicators used in the RESILIO-ACCESS model, linking theory to observable stress factors.

The Snapshot is structured as follows. Section 2 revisits systems theory in general, followed by elaborations on Niklas Luhmann’s understanding of law as a social system in Section 3. Section 4 conceptualises threats to rule of law resilience by combining different approaches by systems and resilience theorists. Section 5 condenses the argument by identifying the three key capacities of rule of law resilience. We shall conclude by emphasising that rule of law resilience extends beyond individual legal institutions to the wider governance environment in which legality is generated and contested.

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2. Systems, social systems, and their core functions

Ludwig von Bertalanffy defined a system as a set of interacting elements whose overall properties arise from their relationships, not from the separate elements taken individually. These system-level properties are emergent and are thus more the sum of its parts. He further argued that systems are typically open. They continuously exchange matter, energy, and information with their environment, yet maintain a stable overall structure despite ongoing processes of change, input, and output.¹ These insights laid the foundation for later applications of systems thinking to social and political phenomena.

Talcott Parsons in turn viewed social systems as open ones that interact continuously with their environments, as well as their embedded cultural, personal, and behavioural subsystems. He argued that social systems are defined by stable patterns and boundaries, which provide coherence and continuity even as conditions change. Within this framework, system stability depends on fulfilling core functions: maintaining patterns, integrating components, achieving goals, and adapting to external pressures.² Adaptation refers to a system’s ability to adjust to its environment or shape external conditions in its favour. Goal attainment involves setting collective objectives and mobilising resources to achieve them. Integration ensures coordination and coherence among the system’s parts, while pattern maintenance sustains the normative and motivational foundations that hold the system together.³

Luhmann then reconceptualised social systems by arguing that they are constituted by communication. Social systems exist and reproduce themselves through communicative events that occur only when information is expressed and understood. These events generate meaning and give rise to further communications, allowing the system to sustain itself. Systems are self-referential and autopoietic, maintaining autonomy through operational closure and a clear boundary between the system and environment.⁴

3. Law as a social system

In *Law as a Social System*, Luhmann put forth that law is an operatively closed and self-referential system that manages social complexity by producing legal communication. Law reproduces itself through its own boundaries, structures, and operations, most notably judicial verdicts. Thereby it organises communication through a binary code of “legal” versus “illegal” in order to reduce complexity.

The legal system develops internal differentiation structured around a centre–periphery logic, with courts at the centre and actors such as legislators, lawyers, and clients at the periphery. While law remains operationally closed, it is structurally coupled with other social systems, such as politics and the economy. Through structural coupling, political decisions may prompt legislation, but only through legal operations, such as judicial or administrative interpretation, do they become part of the legal system.⁵

For the purposes of this analysis, it is useful to clarify how the rule of law is conceptualised within a Luhmannian framework. In his theory, law itself constitutes a functional social system operating through the binary code legal/illegal. The rule of law, on the other hand, does not participate directly in legal decision-making. Rather, it functions as a second-order observation of the legal system, concerned not with determining what is legal or illegal but with how legality is produced, stabilised, and sustained over time.

All functional systems observe the world through their own binary codes, and as they do, they also generate blind spots. Because the legal system operates through the legal/illegal distinction, it cannot observe the conditions and limits of this distinction itself. Second-order observation addresses this limitation by shifting attention from outcomes to the processes through which decisions are

produced. From this perspective, the rule of law does not judge individual cases but evaluates whether legality is being generated under conditions that support consistency, autonomy, and credibility.

This distinction becomes particularly relevant under conditions of systemic stress. Only the legal system can determine whether a political act is unconstitutional and therefore illegal. Even actions that undermine judicial independence, weaken separation of powers, or normalise emergency governance may remain formally legal until courts declare otherwise. A second-order observation, however, can still reveal that legality within a given system is being produced under distorted conditions, such as excessive discretion, political instrumentalisation, or weakened safeguards against arbitrariness. It is concerned with the integrity of legal decision-making rather than its formal outcomes.

Although Luhmann’s theory does not prescribe substantive rule of law values, such values can play an important role at the level of second-order observation. Principles such as legal certainty, limits on arbitrary power, equality before the law, and effective judicial protection⁶ originate in constitutional and democratic traditions and help stabilise shared expectations about how legality ought to be produced, without directly guiding legal decisions.

Finally, understanding the rule of law’s function in evaluating how legality is constructed and applied, clarifies its link to subsidiary resources of the RESILIO-ACCESS model.⁷ The interdependence of the legal system with its social environment becomes crucial to understanding the complexity of both rule of law and how it can be resilient. Civil society, independent media, academic freedom, and democratic institutions do not produce legality themselves, but they do enable scrutiny, expose deviations, and sustain public expectations of lawful governance. In contexts where formal institutions are weakened or captured, these resources are crucial for maintaining the conditions under which legal-system resilience remains possible.

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4. Conceptualising threats

In the context of rule of law resilience, von Bertalanffy's systems logic helps to identify how threats could emerge when a given legal system becomes overly rigid, closed to its environment, or unable to renew its internal operations. Rigidity may arise when legal institutions prioritise formal procedures over substantive justice, or when they mechanically apply outdated laws. The same could happen if they resist technological and procedural modernisation. Closure occurs when the legal system isolates itself from its social and political environment, failing to engage with public concerns, overlooking social inequalities in judicial reasoning, or disregarding civil society and international feedback. Finally, the inability to renew internal operations could reflect a loss of adaptive learning. This becomes evident in stagnant leadership, lack of reform initiatives, or absence of institutional mechanisms for evaluation and innovation. When these tendencies combine, legal systems tend to drift toward entropy, maintaining formal structures while losing capacity for meaningful adaptation. Resilience, therefore, depends on sustaining openness, flexibility, and feedback loops that allow the legal system to learn, reorganise, and evolve in response to societal change.

Parsons viewed equilibrium as the key to understanding how systems deal with change. A system maintains equilibrium when it can respond to environmental pressures while preserving its essential structure. When it fails to do so, it may undergo structural transformation, disintegrate altogether, or survive in a weakened, pathological form. These outcomes show that disequilibrium can lead to adaptation, collapse, or distortion, depending on the system's capacity for self-regulation and normative stability.⁸

Applied to rule of law resilience, this framework highlights several potential threats linked to the failure or misalignment of core system functions. Erosion of normative and cultural foundations may arise from declining public trust in justice institutions, perceptions of unfairness, or the normalisation of informal, corrupt, and clientelist practices. Goal attainment can be undermined when judicial institutions lack adequate resources or when executive power interferes with judicial independence. Failure to adapt becomes apparent in legal and institutional rigidity or in the inability to reassess priorities in response to changing social needs. Weak integration manifests through poor

coordination among courts, prosecution, the broader judiciary, and police, or through selective enforcement that erodes coherence and legitimacy. From this perspective, resilience refers to the system's capacity to sustain shared values, coordinate its components, and adapt to societal change without losing functional stability or legitimacy.⁹

Although Luhmann did not conceptualise threats in resilience terms, his framework allows for an analysis of conditions that undermine the legal system's capacity for autonomous self-reproduction. Vulnerability arises not from changes to the legal code itself, but from distortions in how the legal/illegal distinction is operationalised through programmes and decision-making. Political interference, selective enforcement, or the intrusion of moral, populist, or economic reasoning can destabilise conditional programmes and second-order observations that translate the binary code into concrete legal decisions. When these mediating structures become inconsistent or dominated by non-legal considerations, the coherence of legal communication erodes. Additional risks emerge from imbalanced structural coupling, whether through legislative capture, weakened judicial authority, or maladjustment to evolving social realities. Equally, excessive responsiveness to political or media pressures can also compromise autonomy. From this perspective, rule of law resilience refers to the legal system's capacity to sustain the integrity of its distinctions, the consistency of its programmes, and a balanced relationship with its environment.

The threats identified by von Bertalanffy, Parsons, and Luhmann align closely with the dynamics described by Brian Walker and David Salt in what they have deemed "resilience thinking". Resilient systems can absorb shocks and adapt to change while preserving their core functions, structure, and identity. Several resilience characteristics that have been identified for ecological systems are also relevant to social systems. Diversity expands future options and enables multiple responses to disturbance. Modularity limits the spread of shocks by preventing excessive interdependence. Tight feedback allows problems to be detected and addressed early. In social systems, social capital, in the form of trust, networks, and leadership, enables collective action under stress. Innovation supports learning and adaptation, whereas systems focused solely on efficiency or stability risk losing the capacity to evolve.¹⁰

Borrowing from resilience theory, a distinction can be made between threats or stressors and vulnerabilities.¹¹ Stressors are disturbances such as political interference, economic crises, corruption, or declining public trust that disrupt the system's balance. Vulnerabilities are internal conditions that shape how the legal system responds to such disturbances, including rigidity, weak feedback mechanisms, or compromised institutional independence. While threats typically arise from the system's environment, vulnerability resides within the legal system's capacity to maintain functional differentiation, autonomy, and adaptive learning. Where vulnerabilities are high, even minor stressors can cause systemic disorientation; where they are low, the system can absorb shocks without losing its normative orientation.

Rule of law resilience, therefore, depends primarily on reducing internal vulnerabilities while remaining attentive to external threats transmitted through structural coupling with political, economic, and social systems.

5. Connecting systems, resilience, and RESILIO-ACCESS

In order to go beyond the organisation of threats around individual theoretical traditions, we will conceptualise threats to rule of law resilience in terms of three core systemic capacities in this section: feedback loops, functional differentiation, and adaptive capacity. These dimensions capture points of convergence between systems theory and resilience thinking and provide a direct bridge between the theoretical framework and the indicators selected in the RESILIO-ACCESS model to capture systemic stressors.¹² Each category reflects a distinct way in which stressors undermine the legal system's ability to maintain autonomy, coherence, and normative orientation under pressure.

Feedback loops are essential to rule of law resilience because they allow the legal system to detect distortions, contest abuse, and recalibrate its operations. Indicators such as government censorship of the media, mobilisation for autocracy, and physical violence are included because they directly impair these feedback channels. Restrictions on media freedom and civic space suppress or delay signals of legal distortion and institutional failure, weakening public scrutiny and self-observation. Mobilisation for au-

toocracy further distorts feedback by delegitimising institutional constraints and reframing critique as disloyalty, thereby corrupting how negative signals are processed. Physical violence raises the costs of producing and transmitting feedback, silencing actors who would otherwise generate corrective information. Together, these dynamics mute early warning signals and increase the likelihood that legal stress escalates into systemic instability.

Functional differentiation refers to the capacity of the legal system to maintain its distinct logic and decision-making criteria while remaining structurally coupled to politics, the economy, and society. Indicators such as mobilisation for autocracy, states of emergency, clientelism, and regime corruption capture pressures that blur institutional boundaries and weaken the separation of powers. Emergency governance and populist mobilisation normalise exceptional decision-making and political loyalty tests, while clientelism and corruption redirect legal processes toward partisan or private interests. Under these conditions, the legal system may continue to operate formally, but it will increasingly reproduce non-legal logics within its own operations, further undermining its functional autonomy.

Adaptive capacity concerns the system's ability to absorb shocks, reorganise internal processes, and adjust to changing conditions without losing its core identity. Indicators such as states of emergency, organised crime, and physical violence are included because they place sustained pressure on this capacity. Prolonged emergency governance can entrench exceptional modes of operation, reducing institutional learning and flexibility. Organised crime introduces parallel power structures that distort incentives, weaken enforcement, and undermine long-term adaptation. In such contexts, adaptation may take the form of accommodation or capture rather than renewal, progressively reducing rule of law resilience.

Taken together, these indicators reflect how political, economic, and criminal pressures interact through structural coupling to weaken feedback, erode differentiation, and constrain adaptation. When countervailing actors such as independent media, civil society, and professional legal communities are weakened, the legal system loses both the informational input required for self-correction as well as the external legitimacy that sustains its authority.

Over time, this erosion diminishes the system's capacity to reproduce legality through its own norms rather than through external coercion. Under such conditions, the rule of law risks becoming a symbolic form that conceals systemic imbalance rather than a resilient mode of governance.

6. Conclusion

This paper proposes a systems-based approach to understanding threats to the resilience of the rule of law. Rather than treating resilience as something institutions either have or lack, or as an abstract ideal, we consider the rule of law as an outcome of how legality is created, applied, and maintained across institutions and actors over time. Using systems theory and resilience thinking, the analysis concentrates on three core capacities: feedback, functional separation, and adaptive capacity. Through them, political, economic, and social pressures influence the consistency, independence, and credibility of legal decision-making. This framework offers a clear basis for the indicators used in the RESILIO-ACCESS model, connecting theory with observable stress factors.

Viewed in this way, rule of law resilience extends beyond individual legal institutions to the wider governance environment in which legality is generated and contested. The analysis shifts attention from cataloguing violations to examining how stress accumulates and interacts across the rule of law ecosystem. It highlights the role of open feedback, professional integrity, institutional learning, and balanced oversight, as well as openness to innovation, digitalisation, and collaboration with civil society and the media. Taken together, this approach supports better diagnosis of risk, clearer identification of vulnerabilities, and more informed responses to sustained pressure on the rule of law.

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Sources

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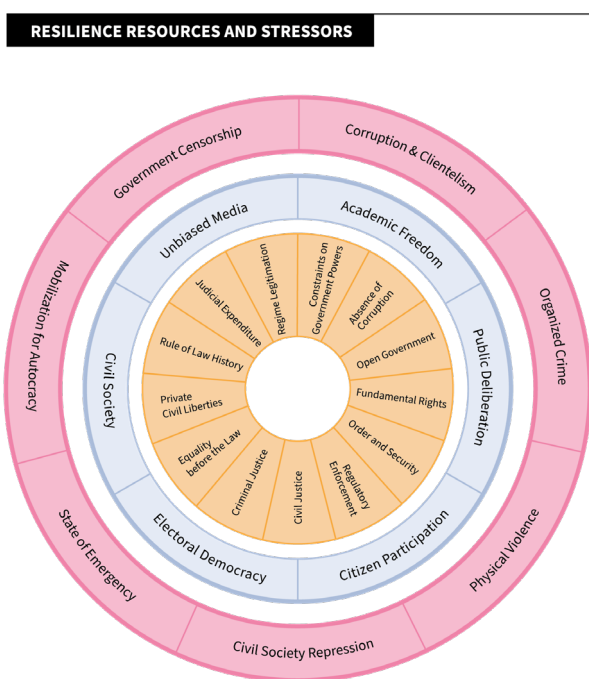
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About the project

RESILIO-ACCESS investigates the resilience of the rule of law in the current (potential) candidate states for EU accession. The project explores how to measure the resilience of the rule of law and assesses the potential of the EU’s enlargement policy toolbox to foster resilience in the region. Resilience here means the capacity of the rule of law to prevent, cope with or recover from hazardous events or incremental threats without losing its core function, structure and purpose.

About the paper

This paper is part of the **#RESILIO-ACCESS Snapshot Series**, a collection of compact analyses that explain ties between resilience resources of the rule of law identified by the RESILIO-ACCESS model.



The RESILIO-ACCESS model is based on three dimensions: The system of the rule of law itself provides primary resilience resources such as an effective judicial system, the protection of fundamental rights, and regulatory enforcement.

These resources are embedded into a social environment with subsidiary resilience resources such as civil society, academia, and the media.

However, these resources are constantly being challenged by threats such as autocracy, corruption, violence, or censorship. The characteristics of each dimension, their interactions and their conditions of resilience resources determine the overall resilience capacity of the rule of law.

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