

# A Declaration on the Rule of Law in the European Union

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Helsinki Rule of Law Forum

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Since the Second World War, Europe has witnessed the benefits of rule-based order. Peace, prosperity, and progress have grown out of a shared commitment to the rule of law, both between individuals and states. As of late, these unprecedented achievements are increasingly under threat, as the basics of the rule of law, including the need for an independent judiciary, are questioned both at the heart of Europe and in countries beyond our borders. Time is of the essence. If backsliding on the rule of law occurs faster than corrective action, the passage of time will inevitably erode the rule-based order. We, the signatories of this declaration, urgently call on all leaders, in Member States and the EU Institutions, to uncompromisingly safeguard the rule of law in Europe. Our reasons are as follows:

1. The EU is built upon the rule of law. As the foundation of European integration, the rule of law reflects a specific vision for establishing a union among the peoples of Europe. This vision is intrinsically connected to the EU's values, listed in its founding treaty and drawn from the historic inheritance of Europe. These values include – besides the rule of law – respect for human dignity, freedom, democracy, equality, and respect for human rights, including the rights of persons belonging to minorities. Without the rule of law, these values are illusory. They are observed in a society in which pluralism, tolerance, justice and equality prevail. The rule of law is more than legality; it transcends the letter of the law. It is indissociable from the Union's values.

2. In joining the EU, the Member States have bound themselves, voluntarily and following their own constitutional requirements, to respect the key principles of liberal constitutional democracy. These principles informed the drafting of the original Treaties and have been reaffirmed upon each accession. In the course of membership, the Member States are obligated to continue respecting these structural principles, which underpin the Union's legal order and are articulated in the Treaty as founding values. These principles cannot flourish in the EU if they are not observed at the national level. In fact, the interdependence between the political and legal orders of the Union and its constituent members is such that breaches in Member States will inevitably put into question the EU's compliance with them, both internally and towards the wider world.

3. In the EU, as everywhere, liberal democracy, human rights, and the rule of law are interconnected at their root. There can be no real democracy without the guarantees of free and fair elections, individual liberty, and active civil society; there can be no effective protection of individual rights, nor of democracy, without independent courts, and there can be no rule of law without the democratic legitimacy of government and substantive fundamental rights. Under the EU Treaties, the rule of law's concept is premised on the respect of liberal democracy: freedom, consent of the governed, and equality before the law. Its antitheses, for which there is no

room in the EU, are authoritarianism, the rule of the few, and arbitrary use of power. The principles of the rule of law are well known and enshrined in the EU's legal order, developed over seven decades by the Court of Justice and inspired by the national constitutional traditions. They entail requirements for the independence of the judiciary, the democratic character of law-making processes, checks and balances for the separation of powers, the freedom of the media, and the protection of minorities.

4. Not simply an aspiration, the rule of law is a set of legal principles essential for the practical realization of the rights of European citizens. The rule of law preserves the democratic state through legal certainty, which enhances the predictability of official decisions and allows people to plan their lives. Without the rule of law, the EU inevitably fails to function adequately and to deliver the public goods it is expected to guarantee. Moreover, it ceases to command moral legitimacy in the eyes of people in Europe and beyond. That the Union and its constituent Member States share a commitment to the rule of law is, moreover, the basis for their mutual trust. This trust can only exist under conditions guaranteeing that people and businesses are treated according to the law in all Member States, including when they appeal to courts in a State other than their own, and that their rights are protected.

5. The primacy of EU law is a core element of our common legal order. While the EU must respect the specific national constitutional identities of its Member States, this does not detract from the obligation of the latter to grant EU law its full effect in their national legal orders. Constitutional identity cannot serve as a pretext for departing from the fundamental principles of the rule of law. To ensure trust in the EU's legal order, the rule of law must be vigilantly protected at the Union level. Resilience against threats to the rule of law requires positive action on the part of the EU legislative and executive branches. The EU's values bind the EU's institutions, bodies, offices, and agencies, which must constantly strive to be exemplary in observing them. Adherence to the rule of law, in particular, safeguards the EU's decision-making processes and ultimately guarantees that all Member States are treated equally in the Union.

6. The Union and its Member States must be held up to equivalent standards as regards compliance with the rule of law. There is a need to understand the rule of law coherently. To this end, the EU should consistently have regard to the rule of law standards developed by the relevant Council of Europe bodies and mechanisms, such as the European Court of Human Rights, the European Commission for Democracy through Law (Venice Commission), the European Commission for the efficiency of justice (CEPEJ) and the Group of States against Corruption (GRECO). In due time and form, the EU should accede to the European Convention on Human Rights to further safeguard the consistent application of the principles of the rule of law throughout Europe.

The EU cannot survive without the rule of law. Protecting it requires immediate action. Because of the overriding importance for sustaining liberal democracy and considering the magnitude of the task, its resolution cannot be left to the Court of Justice alone. Under threat, the rule of law cannot be guaranteed solely by the judiciary, but its preservation requires comprehensive legal and political action. The

leaders of Member States, acting through the EU institutions in accordance with the procedures foreseen in the EU Treaties, as well as individually, must step up with urgency. The causes of Europe's rule of law malaise must be remedied decisively. Time is of the essence. Even as the EU confronts profound global challenges, the time for action to uphold the rule of law within the Union is now.

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