



RESILIO MONITOR

What makes the rule of law resilient? Evidence from EU27

Full Report

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About the project

Facing a range of challenges to the rule of law in the EU, the Institut für Europäische Politik (IEP) launched the project “RESILIO – Resilience Observatory on the rule of law in Europe”. Its goal was to develop an interdisciplinary approach, based on both academic literature and institutional practice, to identify institutional and structural factors that contribute to the resilience of the rule of law. Implementing a comparative perspective, IEP drew on its German and Europe-wide networks, engaging relevant actors from academia, think-tanks, politics, and civil society.

RESILIO was structured in two parts: analysis and outreach.

The analytical part focused on providing practice-oriented knowledge about the resilience of the rule of law, policy recommendations to strengthen the rule of law in the EU, and fact-based arguments to support decision-makers and actors in the rule of law debate across Europe and beyond. It investigated factors that influence the rule of law, including: constitutional culture and legislative processes, judicial systems and the role of corruption, trust in political institutions as well as political culture, public debate, and freedom of the media. The main output of this analytical section is the Resilience Observatory, comprising the Resilience Monitor study and data visualisation, a toolbox of concrete policy recommendations for preventing rule of law regression and strengthening the rule of law in the EU, and 27 EU country analyses.

The outreach component was realised through country-specific workshops and two events in Berlin and Brussels, as well as continuous and dynamic online communication, presenting research results in a series of user-friendly visualisations. The project’s core target groups are: decision-makers at the EU level; decision-makers from member states strongly committed to protecting the rule of law in the EU; academics and think-tankers with interdisciplinary expertise on democracy research and the rule of law; civil society and advocacy organisations specialising in the rule of law, human rights, media and press freedom, and democracy; and journalists and media outlets with a focus on the EU.

RESILIO 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.

Executive summary

How resilient is the rule of law in the European Union (EU)? Why are some systems more resilient against authoritarian attacks than others? How can rule of law erosion be prevented? The RESILIO project analyses the performance of rule of law resilience in the EU27, and reaches beyond the legal and institutional framework by including factors such as the media, civil society, and the economic situation. By analysing the complexity of the environment in which the rule of law is embedded, and how this contributes to its resilience, RESILIO offers a new, preventive perspective on democratic regression and rule of law backsliding. The study helps identify not only vulnerabilities, but also pathways to reinforce bulwarks against violations of the rule of law in the EU and its 27 member states.

Determinants of rule of law resilience

Rule of law resilience is a complex phenomenon. Systemic foundations, societal elements, and contextual circumstances all shape rule of law resilience. Diverse phenomena can therefore strengthen or weaken the resilience of rule of law.

The 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.

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 also can 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 EU is one of the most prosperous and safest regions globally, characterised by relative welfare and social cohesion within its member states. Political culture remains important for rule of law resilience in the EU. By and large, member states' parliamentary representative democracies are rather resilient in terms of democratic processes, such as elections. The resilience of the rule of law profits from European social model and political culture, but they do not guarantee a resilient rule of law.

In comparison with other factors, the quality of constitutional scope and design of legal systems plays a less important role for rule of law resilience. What matters most is the performance of institutions, rather than their formal design. For rule of law resilience, behaviours and attitudes are more important than formal statutes and written norms. Laws and regulations are only as powerful as the commitment to obey them.

Rule of law resilience across the EU

Rule of law resilience is diverse and geographically dispersed across the EU. Distinctive trends can be observed regarding the variety of rule of law resilience manifested across the continent. While most of the member states are equipped with robust democratic institutions and democratic processes, others exhibit deficiencies such as corruption or concentration of media ownership.

The overall rule of law resilience for the EU is positive, yet moderate. No country excels in every one of the researched dimensions. Even in case of the highest rule of law resilience, there is room for improvement. Similarly, no country presents a hopeless and helpless situation. Even the most vulnerable systems still demonstrate a potential to defend the rule of law.

Country clusters of rule of law resilience in the EU in 2022¹:

- **Top rule of law resilience:** Denmark, Finland, Sweden, Germany
- **High rule of law resilience:** Ireland, Luxembourg, the Netherlands, Belgium, Estonia
- **Medium rule of law resilience:** Austria, Czechia, Latvia, France, Lithuania, Portugal, Cyprus, Greece, Spain, Italy, Malta, Slovakia, Slovenia, Croatia
- **Low rule of law resilience:** Poland, Romania, Bulgaria, Hungary

High rule of law resilience is the effect of accumulated strength of all resilience dimensions, and similarly, low rule of law resilience also manifests across dimensions. In other words, strong democracies are characterised by a full set of solid, coordinated resilience dimensions. At the other end of the scale, backsliding rule of law regimes manifest flaws and weaknesses across the model. Countries with a weak overall resilience also tend to have low resilience across all dimensions.

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. Yet, rules and norms are only efficient if laws are obeyed.

¹ RESILIO was launched in January 2022 and therefore, and at the time of data collection (early 2023) the most up-to-date were the databases from 2022.

Conclusions in a nutshell

Rule of law resilience is a dynamic phenomenon. It describes the defence potential of the rule of law if attacked, not the status of the rule of law in a particular country. Therefore, the rule of law can be intact even when it is not particularly resilient. In contrast, weak rule of law resilience does not automatically lead to rule of law backsliding.

A resilient rule of law depends on an efficient public administration that acts with integrity, a well-functioning, independent judiciary, active democratic citizenry based on trust, public discourse based on mutual toleration, and independent, dispersed media as watchdogs. The key to a resilient rule of law is a democratic political culture that enforces compliance and sanctions non-compliance.

In the EU, a solid electoral system, established party systems, independent state institutions, and high social cohesion are particularly strong elements of rule of law resilience. At the same time, rule of law weaknesses are the shrinking independence of the media and growing concentration of their ownership, a deteriorating quality of public discourse, and poor constitutional designs.

Efforts to foster rule of law resilience will require: investments in independent media and the quality of public discourse; strengthening the capacity and efficiency of public institutions (public administration and the judiciary); and creating opportunities for civic deliberation and engagement.

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, and looking beyond the legal framework and technical debates. 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.

RESILIO model

RESILIO offers a multi-layered model of rule of law resilience, 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 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 achieve that, 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 provide both the 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.

Aim and structure of this report

This report presents the outcomes of a research conducted within the RESILIO project. It aims to examine the overall rule of law resilience in EU27 as well as its contributing dimensions, factors, and aspects. In Chapter 1, the overall structure of the project and its outputs are listed, to better contextualise this publication and locate it in the overall logic of the project. Chapter 2 of this study presents in detail the conceptual model of rule of law resilience, defining its three dimensions and operationalising its contributing factors and aspects. Chapter 3 explains the methodology of its empirical application, also providing guidance how to interpret the results. Chapter 4 outlines the results based on the analysis of available data for EU27, and Chapter 5 summarises the conclusions regarding the characteristics of rule of law resilience in EU27, its main pillars, and areas in need of improvement. Finally, Chapter 6 collects all sources and databases used in this publication.

2. Analytical framework

2.1 Working definitions

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 the 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.² 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.³ 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.⁴

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.⁵ The EU’s definition accordingly emphasises the values of democracy and fundamental rights.⁶ It was first enshrined as a legally binding instrument in Regulation 2020/2092.⁷ 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.⁸

² 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>.

³ 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/Tamanaha%20Concise%20Guide%20to%20Rule%20of%20Law.pdf>.

⁴ Martin Loughlin (2010). Foundations of public law, Oxford University Press, p. 313.

⁵ 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

⁶ 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>.

⁷ 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>.

⁸ 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>.

2.1.1 Rule of law

Considering this 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 Commission⁹:

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.

2.1.2 Resilience of the rule of 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"¹⁰ 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.¹¹ 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.

⁹ 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>.

¹⁰ 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.

¹¹ 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, including both the institutional architecture of the rule of law, and the environment in which it functions. RESILIO therefore offers a multi-layered model of rule of law resilience, reflecting on: (i) the resilience of the legal setup (factors of the **systemic** dimension); (ii) phenomena and tendencies present in societies as possible facilitators (factors of the **subsidiary** dimension); and (iii) analysing the broader habitat (factors of the **contextual** dimension), 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 levels of intensity. While each factor is necessary for a resilient rule of law, they are only effective in combination.

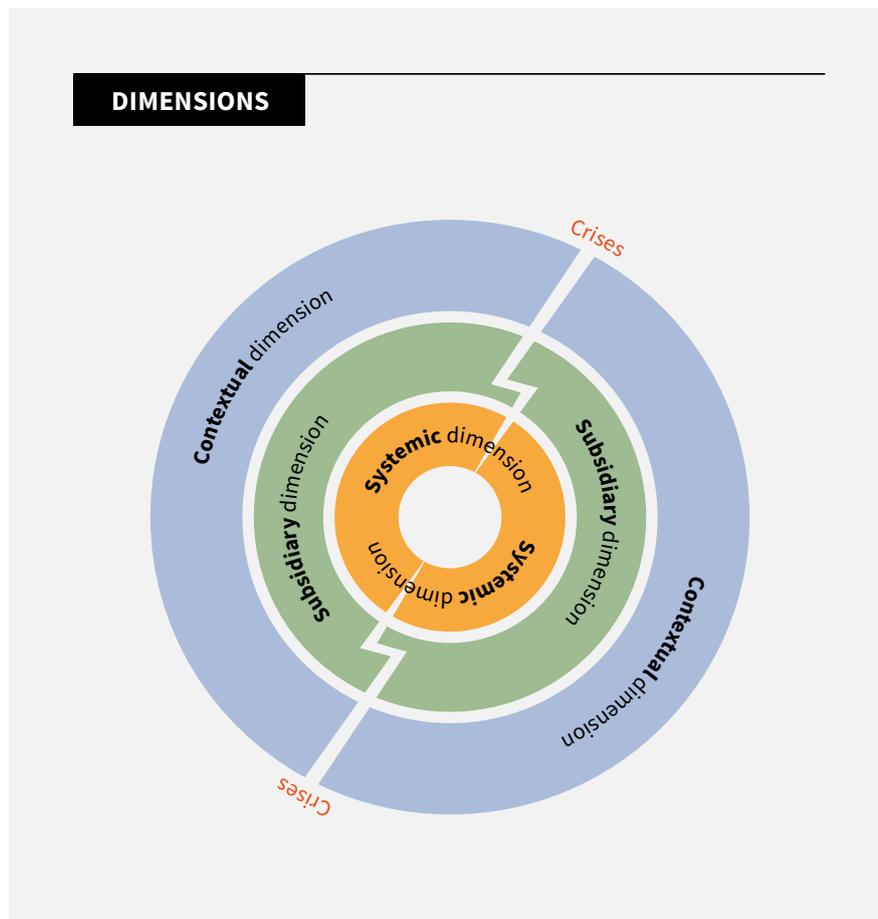


Image 1. RESILIO model: three dimensions of rule of law resilience

2.2.1 Systemic dimension

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. Its main components are: legality, which requires a transparent, accountable, and democratic process of making and enacting law; legal certainty and the prohibition of arbitrariness in the execution of laws; the separation of powers, and checks and balances on the executive and legislative branches; access to justice before independent and impartial courts; and equality before the law. These elements all belong to the institutional design of legal and political systems, with the judiciary assuming a particular corrective role. The resilience of each factor in this system plays an important preventive role for the resilience of the rule of law. Even if the rule of law cannot be guaranteed solely with rules and constitutions, systemic resilience factors serve as ‘speed bumps’ that reduce certain risks or block attempts to dismantle the rule of law.

Systemic resilience factors are institutional, judicial, and constitutional.

Institutional resilience

Institutional resilience is defined as the ability of the public administration at various levels to maintain high integrity and remain independent from political influence.

Aspect 1. Functioning of public administration

Definition: Present-day bureaucracies fulfil various roles in policymaking; they are elaborate organisations with autonomous tendencies, operating in complex political environments. Public administration is at the core of a functioning state. High entry requirements and a transparent career path lay the ground for the efficient functioning and the independence of the whole apparatus.

Indicators:

- entrance threshold: the difficult and transparent process of becoming a public official (civil servant), selection criteria: merit-based versus political appointments in public administration;
- ethos of public service – impartiality.

Aspect 2. Quality of public governance

Definition: The quality of public governance lies in its independence and flawless functioning. Public service ethos avoids actions that may technically respect the letter of the law but which violate its spirit in practice. Examples include using laws, institutions, and public assets for political gain or private interests (violating institutional forbearance). Public administration can also fall victim to attempts to capture, dismantle, sabotage, or reform the state bureaucracy. Political corruption occurs when public assets are traded for private profits. State capture, on the other hand, entails influencing state decision-making processes for own gains (political and/or private). On the flipside, a healthy public service ethos can strengthen political steering capacities vis-à-vis the bureaucracy.

Indicators:

- quality of governance;
- existing corruption (proven cases);
- existing counter measures in place, e.g. anti-corruption laws.

Judicial resilience

Judicial resilience is defined as the ability of the court system at various levels to maintain a high standard of impartiality and independent oversight, and to effectively protect individual rights and freedoms by ensuring accountability before the law. Because the judiciary is responsible for interpreting the constitution and other laws and ensuring their consistent and fair application, it has the power to declare both laws as well as executive actions unconstitutional. As such, it ensures that the legislative and executive branches of government operate within the bounds of the law and thus abide by the rule of law.

Aspect 1. Quality of the judiciary

Definition: The judiciary's ability to protect the rule of law depends in part on the quality of its own work. The more effective the judiciary, the better individuals and organisations can rely on the legal system to protect their rights and interests. A well-functioning judiciary requires that justice is accessible and affordable, and free of discrimination, unreasonable delays, and corruption or other improper influences. Effective justice further requires adequate enforcement mechanisms, such as the judiciary's ability to impose fines or other consequences for wrongful action. Tasked with holding individuals, organisations, and the government accountable to the rule of law, a reliable judiciary and its judges must be accountable in cases of corruption or serious misconduct.

Indicators:

- quality of the civil and criminal justice system (access and affordability, the absence of unreasonable delay/timeliness/effectiveness, and effective enforcement);
- the absence of corruption in the judiciary;
- judicial accountability (the means of holding judges accountable in cases of corruption or other serious misconduct).

Aspect 2. Judicial independence

Definition: A further aspect of the judiciary's ability to act as an impartial arbiter and protector of the rule of law is its independence. Accordingly, decisions must be rendered on the basis of facts and the law, as opposed to interests or other considerations. Therefore, the judiciary must be free from direct or indirect political, economic, or other influences, pressures, or interferences.

Indicators:

- judicial appointment procedure;
- court-packing for political reasons;
- independent decision-making of courts;
- alterations of judicial power;
- arbitrary removal of judges from posts;
- protection against public targeting of judicial integrity by the government.

Constitutional resilience

Constitutional resilience is defined as the ability of constitutionally protected principles to hinder malevolent attempts at changing the political order. It requires a constitution that is robust, yet flexible, so as to not constitute a barrier to its modernisation. Furthermore, constitutional resilience should provide clear and enforceable protections for the rule of law. In the face of challenging political circumstances, constitutional resilience – determined by the constitutional design and constitutionalism – is an important factor to ensure that the system remains effective and just, thus contributing to a resilient rule of law.

Aspect 1. Constitutional design

Definition: Constitutional design is a crucial aspect of building and maintaining a stable, democratic, and just society, as it lays down the foundation of the rule of law. It refers to the structure and provisions contained in the constitution, and involves decisions about the distribution of power and responsibilities among different branches of government, the rights and protections afforded to citizens, and the processes by which the constitution can be amended or changed.

Indicators:

- material scope (democratic system, entrenchment clauses, rights enshrined in the constitution);
- checks and balances enshrined in the constitution (executive, legislature, judiciary).

Aspect 2. Constitutionalism

Definition: Constitutionalism refers to the political and legal concept whereby a country's government and institutions must operate within the limits set by a written or unwritten constitution. The quality of constitutionalism, in other words its resilience, depends on the extent to which the government, organisations, and individuals respect the constitution as the supreme law of the land, as well as the checks and balances in place to ensure respect for the constitution.

Indicators:

- government respects/does not violate the constitution;
- performance of checks and balances.

2.2.2 Subsidiary dimension

RESILIO's thick definition of the rule of law also highlights its close interdependence with the state of democracy. For that reason, in addition to examining how the rule of law is anchored in a system of legal norms and institutions (formal conventions, *de jure*), it is important to understand how the rule of law is perceived, internalised, and exercised by society (informal conventions, *de facto*). Rule of law resilience can be strengthened by the values that society declares and realises, as well as in common social and political practices. Individual commitment to democratic values, the awareness of fundamental rights, as well as collective action in the 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, either showing active resistance or offering advocacy. Moreover, the electoral system and the quality of electoral processes can also contribute to the resilience of the rule of law. They can facilitate a proportional and balanced composition of parliament by preventing asymmetrical power concentration or, conversely, by elevating fringe parties into power. Here, the party system is also of fundamental importance, in terms of both its structure (whether it fosters fragmentation, symmetry, or competitiveness) and the political culture it cultivates (one of peaceful or hostile coexistence of diverse political actors). Such subsidiary resilience factors play a secondary, indirect role for rule of law resilience, and act as stabilisers of the system.

Subsidiary resilience factors are civic, media, and political.

Civic resilience

Civic resilience is defined as the ability of civil society to develop and maintain high levels of civic engagement and confidence in public institutions.

Aspect 1. Trust

Definition: Trust is a feeling of confidence and security. It is integral to the functioning of any society. Citizens' trust in each other, in public institutions, and in leaders are all essential ingredients for social and economic progress by allowing people to cooperate. Trust also allows public bodies to plan and execute policies as well as to deliver services. Greater public trust has been found to improve compliance with regulations and respect for rights. It also gives confidence to consumers and investors.

Indicators:

- belief in the ability and reliability of the democratic system;
- belief in the ability and reliability of institutions;
- belief in self-agency: voter turnout.

Aspect 2. Civic space

Definition: Civic space emerges from citizen engagement, cooperation, and participation in the public sphere. As such, it can influence political decisions and structures. Empowered and robust civil society landscapes (organised civil society) are developed and represented by independent non-governmental organisations. These can act as watchdogs and whistle-blowers by raising awareness, documenting violations, and organising protests to hold governments accountable. They can also take on advocacy and consultancy roles to support

public authorities/administration and inform better public policy making. A strong organised civil society is also a proxy for an active citizenry.

Indicators:

- existence of organised civil society;
- level of development (robustness) of organised civil society;
- existing shrinking spaces for NGOs (insufficient access to funding, disproportionate legislative restrictions, or even smear campaigns).

Media resilience

Media resilience is defined as the ability of the media – the channels of popular communication and information – to maintain their independence and plurality.

Aspect 1. Diversity of the media landscape

Definition: In democracies, the media is of great importance for securing the quality of public debate. A media landscape that is not concentrated in the hands of a few private or political interests is more likely to shape a pluralistic and inclusive public debate and to reflect public opinion. A diverse media landscape, comprised of public broadcasting as well as independent, private media outlets, is more resilient towards being controlled by one political interest group.

Indicators:

- concentration/dispersion of media ownership;
- transparency of media ownership;
- existence of media laws;
- existence of critical media.

Aspect 2. Media independence

Definition: The independence of the media is best reflected in the ability of journalists to report freely on matters of public interest, especially with regards to critical coverage of the government or elites/powers (e.g., businesses, organised crime). Media independence means the absence of external pressure or control on media outlets or individual journalists, regardless of ownership structures (public or private). In a functional democracy, public authorities have respect for media freedom. In the case of irregularities and violations of the legal order, independent media and journalists can act as whistle-blowers and watchdogs.

Indicators:

- professionalisation of journalism;
- existing pressures on media institutions (financial, legal, political restrictions);
- existing violation of media freedom and journalistic independence.

Political resilience

Political resilience is defined as the ability of the political system to secure free and fair elections, and to offer a pluralistic representation of interests in power structures.

Aspect 1. Electoral quality

Definition: The electoral system is a set of rules defined by constitutions and laws that determine how elections are conducted and how their results are determined/translated into seats in parliament. Different kinds of electoral systems are likely to encourage different kinds of party organisation (favouring larger or smaller parties) and party systems (multi-party or two-party, in which the latter encourages bipolar competition and polarisation; or enhancing party system consolidation versus encouraging new entries). Proportional systems seem to be more resilient than majoritarian ones. The electoral process is the act of electing successful candidates into parliaments. Its quality involves the principle of a free and fair electoral process, the unconstrained exercise of political rights (active and passive suffrage), a fair campaign, a fair count of votes, and the acceptance of election results by all parties.

Indicators:

- electoral competition;
- clean electoral process.

Aspect 2. Party system

Definition: A party system is defined as the entirety of parties in a political system and their relationship with each other. It reflects the social diversity of the political community. Although there is no monocausal link, a party system is closely connected to the electoral system of a given polity, especially in relation to the chances of small parties to win seats in parliament. As an important factor of organised civil society and political debate, parties have an enormous influence on how a democratic society governs itself. A functional party system is characterised by fair competition for votes, clear ideological positions, as well as the possibility of changing majorities. However, high polarisation and segmentation can also help protect the rule of law in cases where parties agree to exclude authoritarian-populist challenger parties from cooperation or coalitions. Furthermore, parties themselves exercise an important function in that they filter, select, and nominate who gets to be a possible parliamentarian, minister, or head of government.

Indicators:

- volatility of the system;
- polarisation (basic cleavages between parties, positioning of parties on the political spectrum, their homogeneity/heterogeneity);
- rules and norms that determine who gets nominated as a candidate for public office.

2.2.3 Contextual dimension

A non-aggressive socio-political order is a strong bulwark against potential threats to the rule of law. It depends on a wide range of cultural, societal, and economic factors. When balanced, contextual resilience factors can create a friendly habitat for the functioning of the rule of law, consisting of social peace, economic well-being, satisfactory living standards, and social cohesion. Such favourable preconditions can reduce the appetite for regime change or popular support for anti-democratic actors, who are more likely to dismantle the rule of law for political gains. Therefore, a steady environment functions as an enabler for the resilience of the rule of law.

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

Resilience of public discourse

The resilience of public discourse is defined as the ability of public debate to embrace heterogeneous political opinions in order to isolate fringe ideologies and buffer dangerous communication practices.

Aspect 1. Civility and mutual toleration

Definition: Democracy depends on the respect for other political opinions as well as the willingness to admit defeat in elections. Mutual toleration obliges rivals to play by constitutional rules, and accept that their opponents have an equal right to exist, compete for power, and to govern. Mutual toleration also includes politicians' collective willingness to agree to disagree, and to refrain from dehumanising or personal attacks in political competition. In such cases, the incivility of public discourse is reflected in an unnecessarily disrespectful tone towards the discussion forum, its participants, or its topics.

Indicators:

- civility of public debate;
- civility of political competition: fair play, respect, legality of means.

Aspect 2. Sound public debate

Definition: Public debate can be deliberately attacked by malign influence. Such tactics can be used by external/foreign actors as well as by domestic actors to attack their political opponents. Employing malign influence can significantly damage the resilience of public discourse and destabilise democratic culture.

The mainstreaming of radical and/or false content into the public discourse employs tactics such as influencing operations or information pollution, whereby misinformation and disinformation are intentionally introduced into public debates.

Indicators:

- polarisation of public debate;
- presence of fringe opinions in mainstream public debate;
- existing malign influence: misinformation, disinformation.

Economic resilience

Economic resilience is defined as the ability of the national economy to efficiently satisfy the needs of a society, creating circumstances that foster social peace and public order.

Aspect 1. Economic prosperity and well-being

Definition: Economic prosperity is the accumulation and reproduction of wealth within a society, which allows it to grow and prosper. Economic growth is a process of increasing wealth over time. Economic development refers to the improvements made by means of accumulated wealth and continued economic growth, such as improved living conditions, technological development, and societal progress.

Indicators:

- economic growth (overall situation);
- economic development and living conditions (subjective and objective improvement of the situation over time).

Aspect 2. Economic inequalities and welfare provisions

Definition: Economic inequalities are the uneven access to or distribution of resources and opportunities between different groups in society, be they socio-economic, ethnic, racial, or other. The welfare state can cushion inequalities by implementing redistribution schemes. A welfare state is a common societal project characterised by and dependent on solidarity and trust. It is realised by active state policies aimed at protecting citizens' economic and social well-being.

Indicators:

- existing socio-economic inequalities;
- gaps between the rich and the poor;
- effectiveness of redistribution schemes.

Social resilience

Social resilience is defined as a society's ability to deal with changing socio-demographic dynamics through successful inclusion: the political representation of diverse social groups and social strata. A high level of social resilience results in a strong sense of community and flattens or cushions social hierarchies.

Aspect 1. Diversity and inclusion

Definition: Diversity refers to the composition of a given population in terms of ethnic, racial, religious, socio-economic and other characteristics (gender, sexual orientation). Depending on how it manages to achieve a broad representation of interests, and how it allows diverse groups to enjoy upward social mobility, diversity can have a range of various impacts on society.

Indicators:

- effectiveness of integration policy – opportunity;
- inclusiveness of power structures – gender, socio-economic, rural-urban representation in power structures;
- social mobility (access to education).

Aspect 2. Sense of community

Definition: A sense of an existing community of values; a social bond that can be characterised by a high feeling of solidarity, a low perception of social distances, and low levels of polarisation between particular social groups.

Indicators:

- perceived and existing social distances;
- perception of common values, purpose, interdependence;
- polarisation within society into antagonistic camps.

2.2.4 Crises

Crises are a horizontal factor that differs from the other factors in this model. As a variable, crises cut across the three dimensions, can impact the other factors horizontally and 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 deliberate actions of governments, oppositional forces, and external agents. 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.

Crises

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.

Aspect 1. Existence of crises

Definition: Crises can be defined as objectively existing problems that are publicly perceived and mediated as swift, decisive, and negative disruptors to the status quo, which thereby create an impetus to act. Crises do not exist in a vacuum but are part of a societal process in which events and changes are mediated and narrated.

Indicators:

- objective existence of problems (e.g., recessions, environmental catastrophes, military attacks, pandemics);
- subjective public perception of such problems as constituting a crisis.

Aspect 2. Impact and instrumentalisation of crises

Definition: Crises have several 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.

Indicators:

- increased polarisation or technocratisation of public debate;
- government introduction of emergency measures that are not lifted once crisis is over, or emergency measures to implement policies unrelated to the crisis;
- opposition/external agents: rhetorical perpetuation and manipulation of the crisis by means of fake news, disinformation.

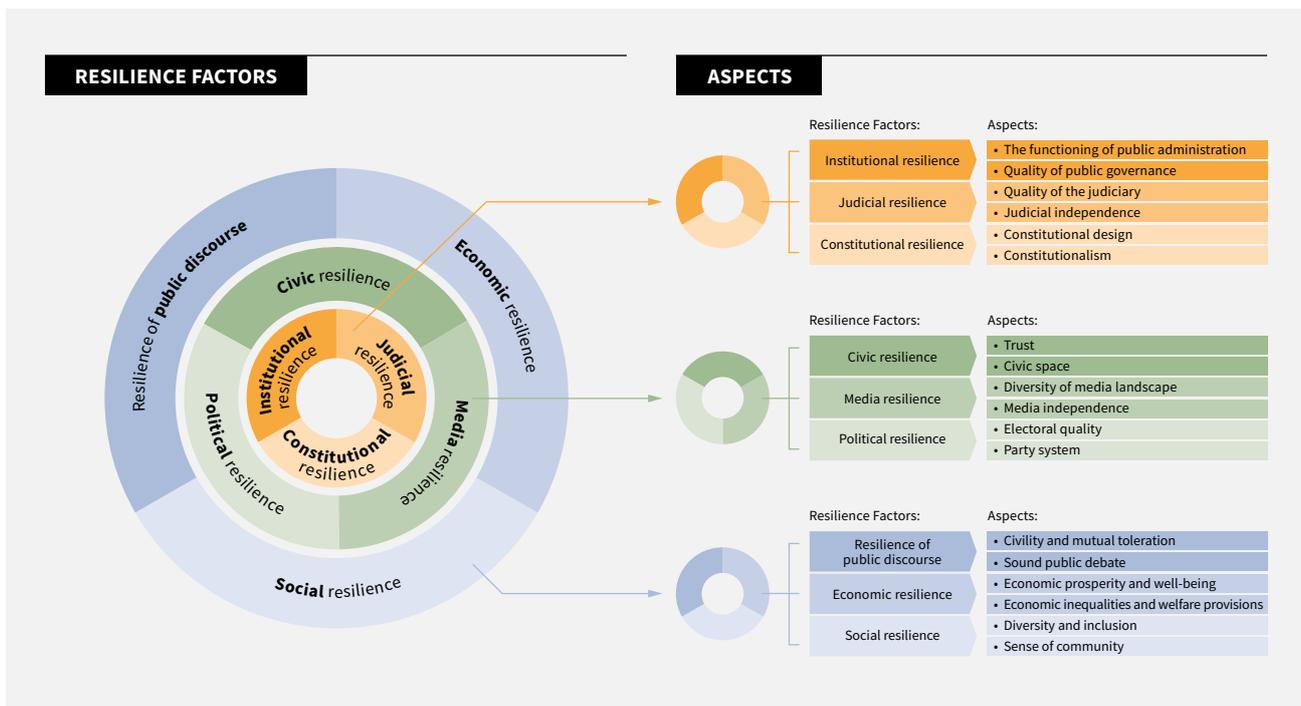


Image 2. RESILIO model: resilience factors and their aspects

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, our aim is to reflect tendencies and phenomena most relevant for the resilience of the rule of law. We have implemented a reduction strategy, eliminating those variables that seemed less significant or redundant for answering our 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, a list of which is available in [Chapter 6.3](#). 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 it in both quantitative and qualitative form. 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 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 r between the average of a resilience factor and the overall resilience scores among the EU27.

3.2 How to interpret the results

Quantitative data analysis and graphic visualisation helped 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.

3.3 Crises and the resilience of the rule of law

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,¹² thus disrupting the status quo in a decisive manner.¹³ Crises may affect specific sub-systems such as the media, the judiciary or the economy, or even the political community as a whole.

By nature, a crisis – an environmental disaster, armed conflict or economic shock – is characterised by the uncertainty of its outcomes, which thus prompts an urgency to act.¹⁴ This refers first and foremost to the executive, as government officials are often the first national point of reference for dealing with such shocks, by means of crisis management. The way in which said crisis management is undertaken can then hamper the rule of law or the factors that contribute to its resilience. For instance, during the COVID-19 pandemic,

¹² Joris Steg (2020). 'Was heißt eigentlich Krise?' in: *Soziologie* 4/2020, p. 432.

¹³ 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.

¹⁴ Arjen Boin et al. (2005). 'The Politics of Crisis Management: Public Leadership Under Pressure,' Cambridge University Press, p. 2.

legislative processes were curtailed or civic liberties (e.g., the freedom of association) were restricted by the declaration of a temporary state of emergency in some EU member states.¹⁵

Often, however, it is not only the nature of a crisis that destabilises social systems, but also its intentional instrumentalisation by political actors. For instance, governments may use a crisis to legitimise censorship, blame segments of society (especially vulnerable groups), or introduce constitutional changes that weaken checks and balances in order to consolidate their power.¹⁶

While the EU has been in a ‘permacrisis’¹⁷ 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.

¹⁵ Michael Meyer Resende (2020): ‘The Rule of Law Stress Test: EU Member States’ Responses to COVID-19,’ in: Verfassungsblog, <https://verfassungsblog.de/the-rule-of-law-stress-test-eu-member-states-responses-to-covid-19>.

¹⁶ Nonhoff, Albrecht 2023, p. 3.

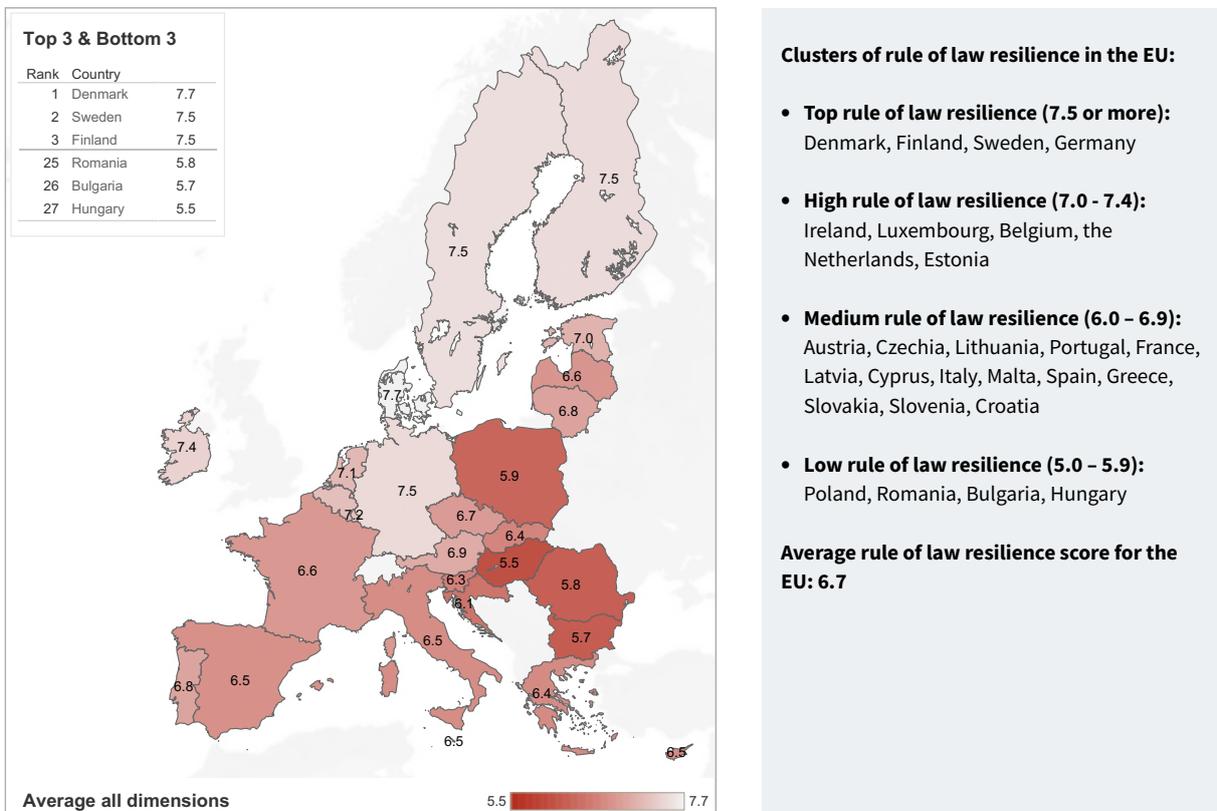
¹⁷ Fabian Zuleeg et al. (2021). ‘Europe in the age of permacrisis,’ European Policy Centre commentary, <https://www.epc.eu/en/Publications/Europein-the-age-of-permacrisis~3c8a0c>.

4. Results

4.1 Rule of law resilience in the EU and its member states

The collected data paint 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 - 1) the systemic setup of regulations and state institutions; 2) societies and their institutions like the media, civil society, and political parties; and 3) contextual factors such as prosperity and welfare provisions, which create a stable environment and fair living conditions – 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

Rule of law resilience in the EU also demonstrates regional characteristics

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 continent.¹⁸ 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.¹⁹

¹⁸ 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>.

¹⁹ 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>.

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 democratic values and citizens' trust not only in said institutions but also in each other are less developed.²⁰ 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.²¹ In addition to constitutional heritage and legal traditions, such historical events may also determine the level of rule of law resilience today.

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).

²⁰ 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>.

²¹ 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). Wertepreferenzen und politische Trends in Mittel- und Osteuropa, Institut für Europäische Politik, January 2022, https://iep-berlin.de/site/assets/files/2158/iep_wertepreferenzen_studie_04_2022.pdf.

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)	

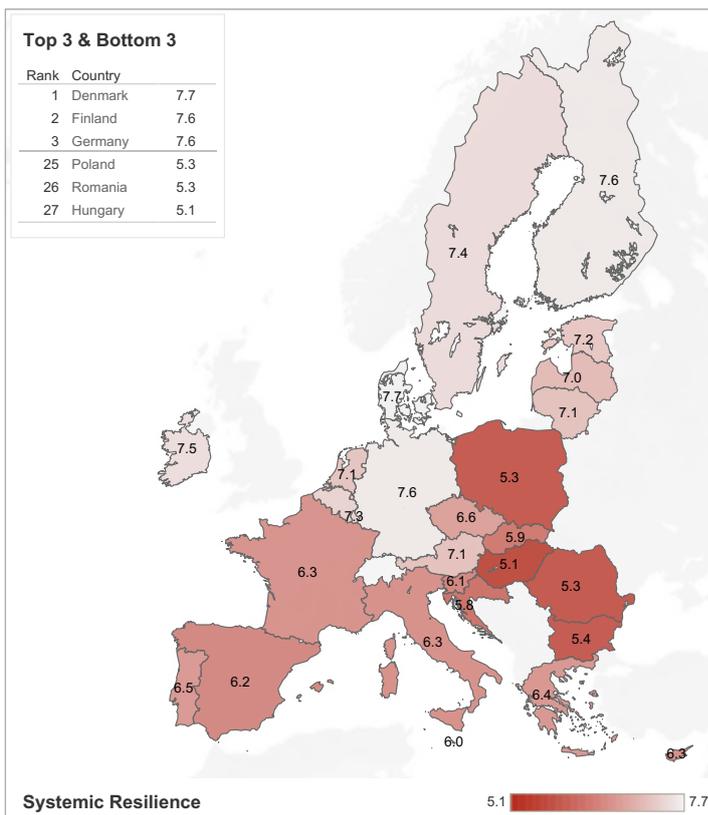
Table 1: The overall ranking of rule of law resilience in EU27 (data obtained in 2022)

The following chapters summarise the empirical findings on rule of law resilience in greater detail. The first section explains the analytical results regarding the three dimensions of the RESILIO model. The second section identifies connections between resilience factors and their aspects, and presents how their interplay contributes to an overall resilient rule of law. The third part draws conclusions on both the characteristics of rule of law resilience as well as the dimensions on which it rests.

4.2 Systemic rule of law resilience across the European Union

The average resilience of the systemic dimension lies at 6.6 across the EU (Image 4). The scores of its components (constitutional, institutional, and judicial resilience) are fairly balanced and close or identical to the average overall rule of law resilience: constitutional resilience (6.3) is not much weaker than judicial resilience and institutional resilience (both 6.7).

Denmark (7.7), Finland (7.6), Germany (7.6) lead in the ranking of systemic resilience. Central and Eastern European and South-Eastern European member states, including the three youngest ones, close the list: Hungary (5.1), Romania and Poland (5.3), Bulgaria (5.4), Croatia (5.8), and Slovakia (5.9).



Systemic rule of law resilience in the EU:

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

Average systemic resilience score for the EU: 6.6

Image 4. Systemic resilience across the EU

4.2.1 Overview: systemic resilience factors

Institutional resilience varies strongly across the EU (6.7, see Image 5). The very high resilience of public institutions in Scandinavia (above 8.0 for all three countries) and Germany (8.2) as well as Luxemburg (8.0), the Netherlands (7.8), Ireland (7.8), and Estonia (7.7) stands in stark contrast with the youngest member states: Romania (5.1), Bulgaria (5.2), and Croatia as well as Hungary (both 5.3). In general, a strong East-West division is tangible. The North-South axis also reveals differentiated resilience.

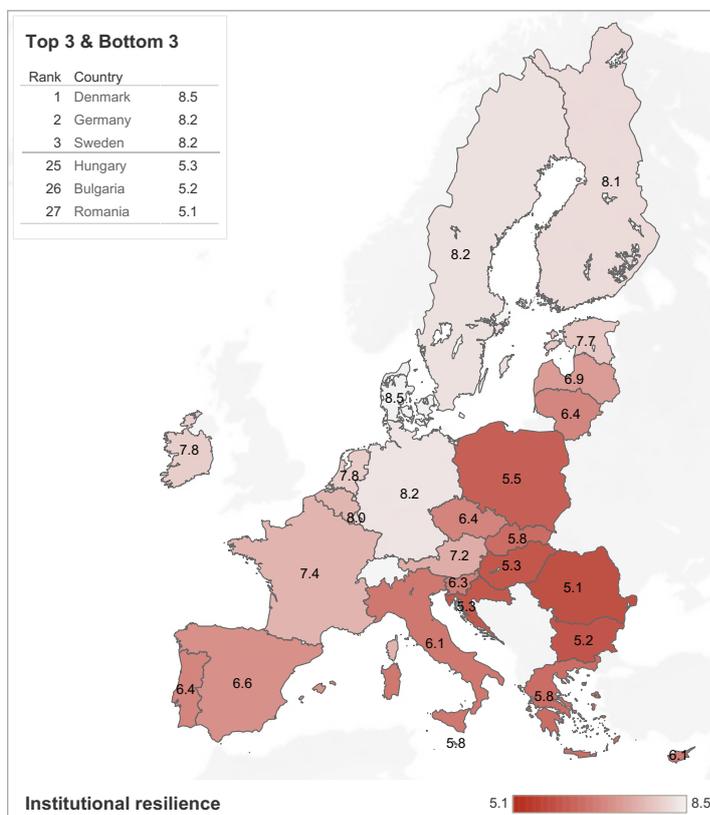


Image 5. Institutional resilience across the EU

The same is true for the aspects that constitute *institutional resilience*. However, the gaps between the top countries and those scoring the lowest are much deeper in the case of the *quality of public governance* (consisting of the presence of corruption, political pressure on public institutions, and effective governance). Here, the Nordic member states are absolute frontrunners - especially Denmark (9.2) and Finland (9.1), as opposed to Romania (4.8) and Bulgaria (4.5) at the very bottom (Image 6).

When it comes to the *functioning of public administration* (consisting of the formal structures of bureaucracy such as apolitical nomination criteria and the ethos of public service), Germany (8.4) is the leader, with Croatia (5.2), Poland (5.3), Hungary and Romania (both 5.4) lagging most behind (Image 7).

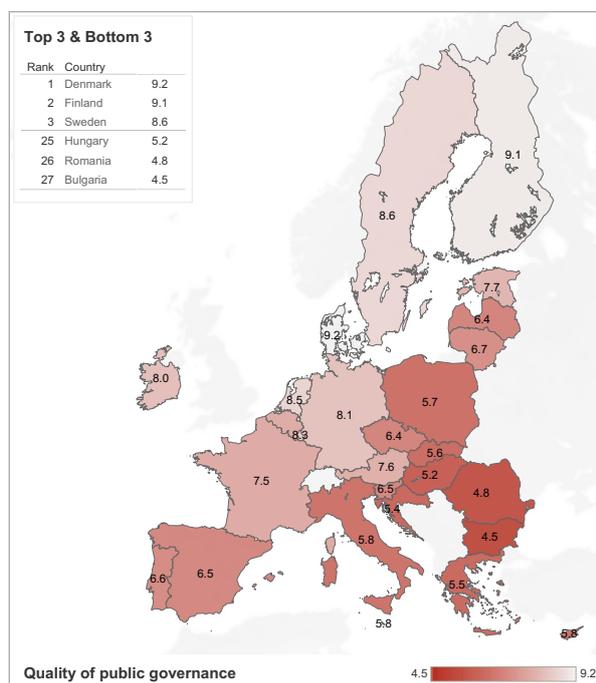


Image 6. Quality of public governance across the EU

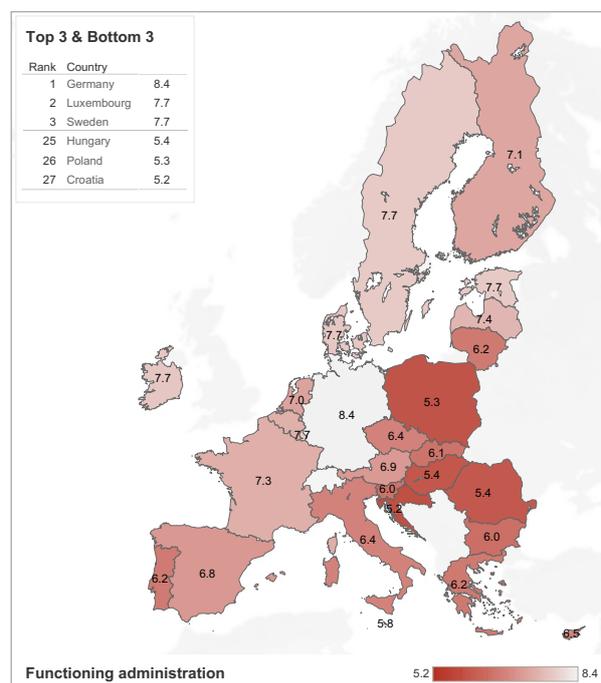


Image 7. Functioning administration across the EU

Some countries attain similar scores (either high or low) for both the *quality of governance* and *functioning of public administration* (Table 2). For example, the cases of Bulgaria and Romania illustrate weakened formal structures of bureaucracy. One of possible causes could be persistent corruption.²² However, while the functioning of state services certainly needs improvement, they score better than Poland and Hungary. This in turn might be a symptom of practices characteristic of state capture, such as partisan nominations or patronage exercised by the governing parties.²³ At the opposite end of the scale is Germany, where both the quality and functioning of the public sector result in high institutional resilience. Last but not least, the example of the Netherlands shows that a high quality of public governance does not necessarily go hand in hand with a well-functioning public administration.

²² See: Transparency International ongoing work and reporting on Bulgaria: <https://www.transparency.org/en/countries/bulgaria> and Romania: <https://www.transparency.org/en/countries/romania>.

²³ See: Edit Zgut (2022). 'Informal Exercise of Power: Undermining Democracy Under the EU's Radar in Hungary and Poland,' Hague J Rule Law 14, pp. 287–308, <https://doi.org/10.1007/s40803-022-00170-0>.

	Quality of public governance	Functioning of public administration
Bulgaria	4.5	6.0
Romania	4.6	5.4
The Netherlands	8.5	7.0
Germany	8.1	8.4

Table 2: The functioning of public administration can be undermined by a lack of quality of public governance

In the case of *judicial resilience* (6.7, see Image 8), similar observations can be made. Again, across the EU, the East-West and North-South division is visible. Denmark (8.0) presents the highest judicial resilience, followed by the Nordic member states and Benelux, Germany, Austria (all above 7.2), including very good results in the three Baltic States (with values within the range 7.0 - 7.5). Unsurprisingly, Poland and Hungary (both 5.0) reveal the lowest scores of judicial resilience, just behind Romania (5.1).

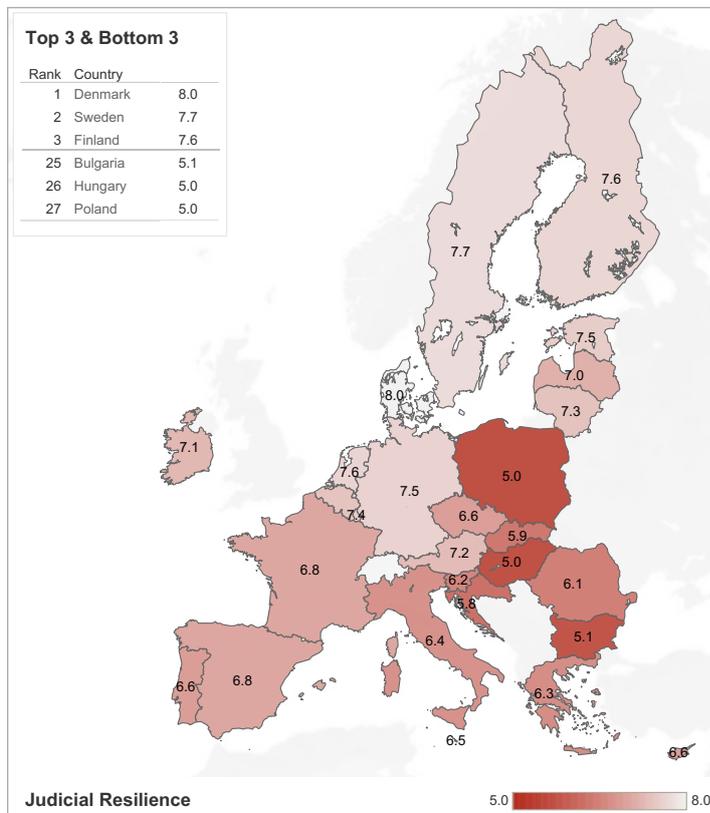


Image 8. Judicial resilience across the EU

Judicial independence (measured by the independence levels of higher courts, arbitrary judicial reforms, judicial purges and other attacks on the judiciary, as well as biased nomination processes) reaches an alarming low in Poland (3.2), where aggressive attacks on the judicial system have persisted since 2015, affecting not only the Constitutional Tribunal, the Supreme Court and ordinary courts but also the self-governance of judges and court administration.²⁴ In Hungary (4.8), similar processes have already taken place since 2010.²⁵ The gap between these two countries and the remaining EU member states is extraordinary (Image 9).

But the *quality of the judiciary* (the absence of corruption and the presence of judicial accountability in both civil and criminal justice) paints a different picture: it is Bulgaria (4.9), Hungary (5.3), Slovakia (5.7), and Croatia (5.8) that scored the lowest – not Poland (Image 10). This paradox suggests that systemic attacks which weaken the judiciary’s political independence do not necessarily result in the erosion of the judicial ethos at the individual level, as illustrated most prominently by the Polish case (Table 3).

	Judicial independence	Quality of the judiciary
Poland	3.2	6.8

Table 3: Moderate quality of the judiciary is possible with low score of judicial independence

Despite the introduction of institutional reforms aimed at bending the judiciary to political will, there still is resistance among judges and prosecutors. Their work ethos remains high. On the contrary, the quality of the judiciary may be lower – for example due to such systemic problems like corruption, patronage, or clientelism – despite its acceptable formal independence, as in the case of Bulgaria or Slovakia (Table 4).

	Judicial independence	Quality of the judiciary
Bulgaria	5.4	4.9
Slovakia	6.1	5.7

Table 4: Quality of the judiciary can be low parallel to a better score of judicial independence

The three Baltic States: Estonia (8.4), Lithuania (7.6), and Latvia (7.1) also stand out regarding the *quality of justice*, proving that the Soviet (authoritarian) past can be successfully overcome in public institutions.

²⁴ John Macy, Allyson K. Duncan (2021). ‘The Collapse of Judicial Independence in Poland: A Cautionary Tale’, *The Judicature*, Vol. 104 No. 3 (2020-21), pp. 41-50, <https://judicature.duke.edu/wp-content/uploads/2020/12/DUNCANv2-compressed.pdf>.

²⁵ Peter Čuroš (2023). ‘Attack or reform: Systemic interventions in the judiciary in Hungary, Poland, and Slovakia’, *Oñati Socio-Legal Series*, Volume 13, Issue 2(2023), pp. 626–658: Innovación legislativa en tiempos de excepcionalidad, <https://opo.iisj.net/index.php/osls/article/view/1489/version/2502>.

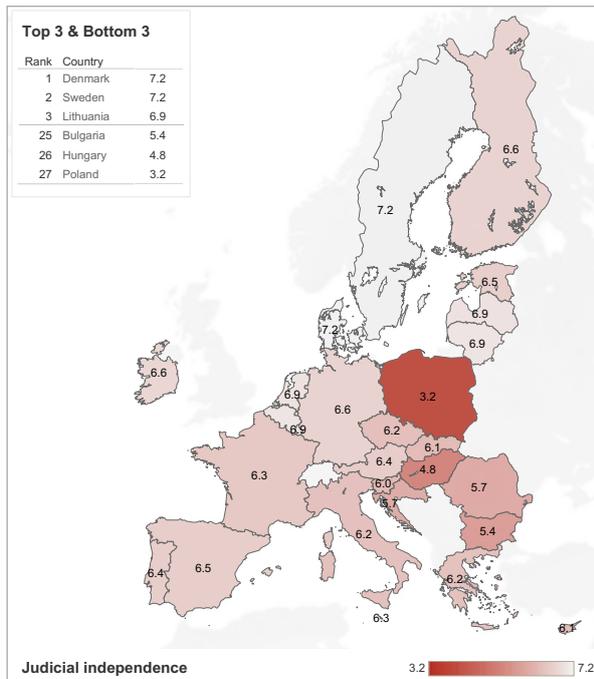


Image 9. Judicial independence across the EU

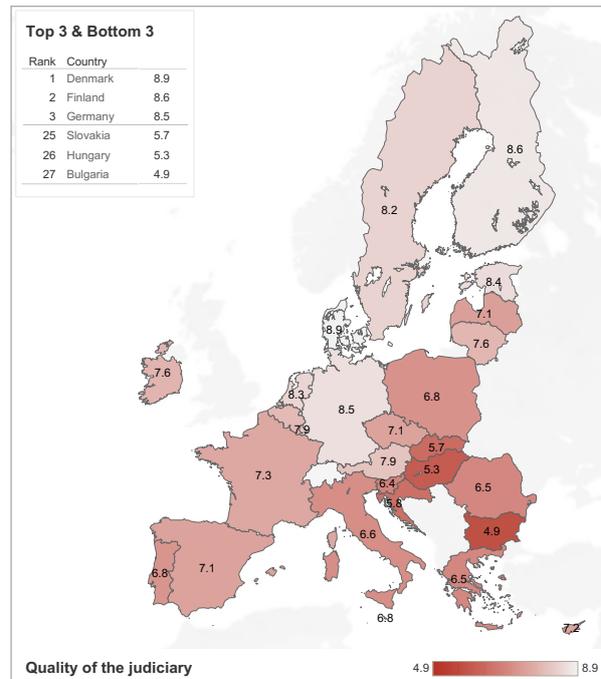


Image 10. Quality of the judiciary across the EU

A closer look at *constitutional resilience* (with an average EU-score of 6.3, see Image 11) reveals intriguing results. There are no clear patterns across Europe regarding constitutional design (describing the content of the constitution: the number of rights and liberties protected, or detailed provisions regarding the distribution of power).

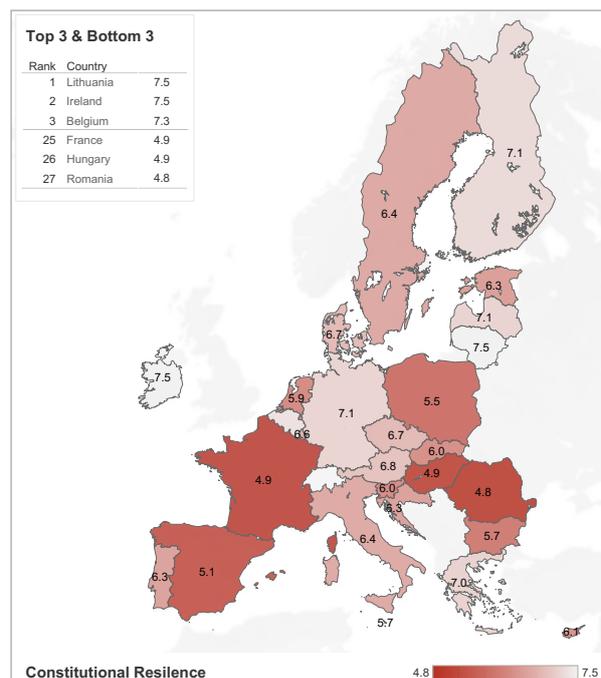


Image 11. Constitutional resilience across the EU

Constitutions define relations between the state, its institutions, and the citizens. While they reflect the time of their writing to a certain degree, they aim to be timeless by providing a general and abstract definition of the backbone of the political system. Law-making, execution of the laws, and law enforcement are dependent on state institutions, decision-makers, and citizens. Therefore, low scores of *constitutional design* do not necessarily have to coexist with low scores in *constitutionalism* (the respect of the executive for constitutional values and the performance of checks and balances).

On the contrary: in our model, a high commitment to constitutional principles is possible despite a less comprehensive *constitutional design* (Table 5).

	Constitutionalism	Constitutional design
France	7.0	2.7
Spain	6.9	3.3
The Netherlands	8.0	3.9
Romania	6.3	3.2
Estonia	7.9	4.6

Table 5: High score of constitutionalism is possible with low score of constitutional design

Nevertheless, good constitutional design can also correspond much more closely with a dedication to upholding constitutional values in society and among different branches of government, and functions as a helpful element of rule of law resilience in other cases (Table 6).

	Constitutionalism	Constitutional design
Latvia	7.0	7.1
Lithuania	7.7	7.3
Ireland	7.7	7.2
Greece	6.9	7.2
Belgium	7.9	6.9

Table 6: High score of constitutionalism is possible with high score of constitutional design

4.2.2 Interplay between systemic resilience factors

Regarding synergies between systemic resilience factors, *constitutional resilience* is to some extent interconnected with *institutional resilience* (Image 10) and *judicial resilience* (Image 11). Yet, public institutions and the judiciary can perform well even if *constitutional resilience* is low (for example in Spain and France). In other words, flaws in the legal and systemic foundations can still be compensated by other aids, like the good performance of institutions (public administration and the judiciary).

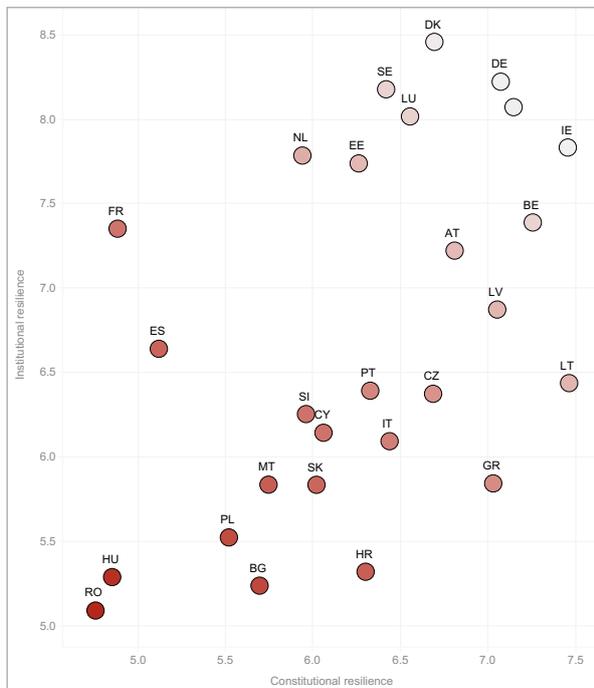


Image 12. Constitutional resilience and Institutional resilience

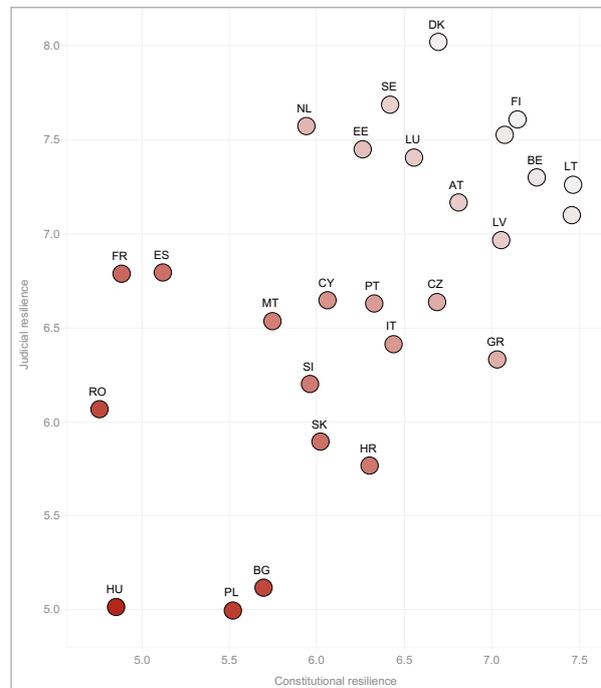


Image 13. Constitutional resilience and Judicial resilience

At the same time, there is a very strong relationship between *institutional resilience* and *judicial resilience* (Image 12). This leads to the assumption that in countries exhibiting low *judicial resilience* and low *institutional resilience*, a deeper intrinsic problem exists. These problems may result either from the pre-existing weaknesses of state structures (Romania, Bulgaria, Slovakia, Croatia) or an active attack on state institutions (as in Hungary and Poland).²⁶ On the contrary, resilient public administration coexists with a resilient judicial branch (like in the case of Nordic member states, Germany, and the Benelux countries, as well as Ireland and Estonia).

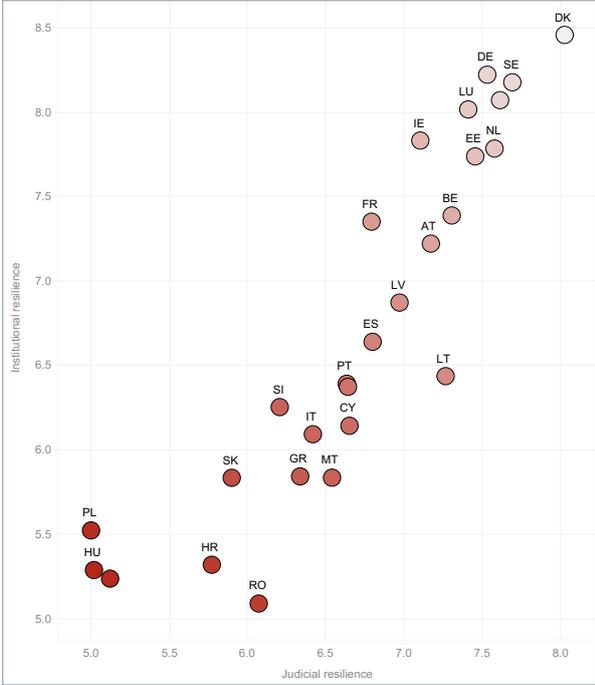


Image 14. Judicial resilience and Institutional resilience

²⁶ Compare with the results of 2021 European quality of Government Index for these countries, see: Nicholas Charron, Victor Lapuente, Monika Bauhr (2021). Sub-national Quality of Government in EU Member States: Presenting the 2021 European Quality of Government Index and its relationship with Covid-19 indicators, Working Paper Series 2021:4, The Quality of Government Institute, Department of Political Science, University of Gothenburg, https://www.gu.se/sites/default/files/2021-05/2021_4_%20Charron_Lapuente_Bauhr.pdf.

4.2.3 Determinants of systemic resilience

For all systemic resilience factors, performance aspects score consistently higher than structural aspects (Table 7). *The quality of governance, the quality of the judiciary, and constitutionalism* demonstrate higher values on average than the formal structures of state institutions (*functioning administration and judicial independence*) or the content of the constitution (*constitutional design*).

	Performance	Structure
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	7.0	6.2

Table 7: Performance and structural factors of systemic resilience

Therefore, what matters most is not the formal design of institutions, but their performance: the actions and behaviours of individuals on duty. The same is true for *constitutional resilience*. The constitution can and should be comprehensive, laying solid foundations for the functioning of the state and granting rights and liberties that organise a society. Yet, any law is only as powerful as its enforcement and accountability. It is the commitment to respect constitutional principles that is crucial.

4.3 Subsidiary rule of law resilience across the European Union

Overall, subsidiary resilience earned the highest scores of all three rule of law resilience dimensions (6.8, see Image 15). Top subsidiary resilience is seen in Denmark, Sweden, and Germany (7.9), presenting high scores in all three dimensions. Hungary (5.5) and Bulgaria (5.9) visibly lag behind, presenting the weakest subsidiary resilience. However, within the subsidiary dimension, the scores of the different resilience factors vary greatly. It is the most polarised of the identified dimensions.

In particular, the average score for *media resilience* is strikingly low (5.9). It is the weakest resilience factor in our model (Image 19). *Civic resilience* (6.5) is at the medium level and *political resilience* (8.2), represented by robust electoral systems and a pluralistic party landscape, has the highest score among all rule of law resilience factors (Image 16).

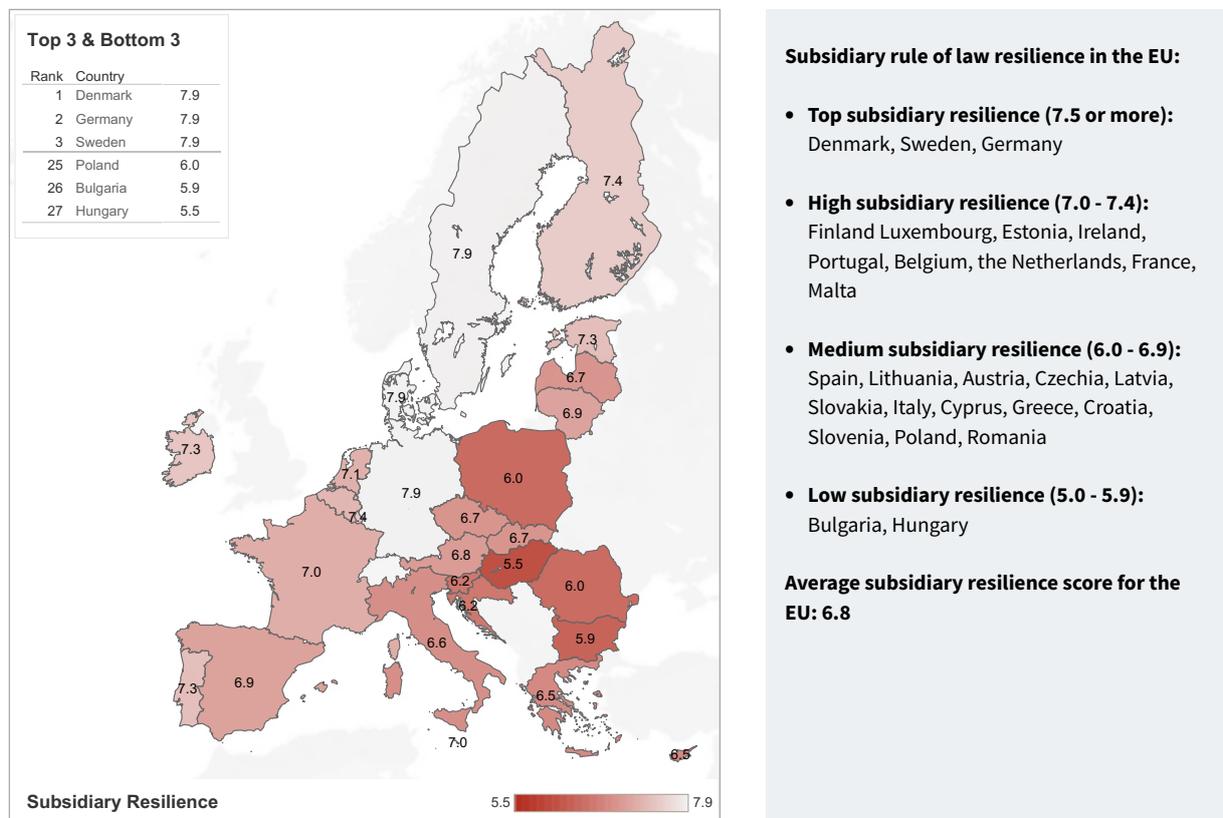


Image 15. Subsidiary resilience across the EU

4.3.1 Overview: subsidiary resilience factors

Civic resilience (6.5) is visibly the strongest in Scandinavian member states: Denmark (8.0), Sweden (7.9), and Finland (7.5), as well as Luxemburg (7.9). Again, geographic differences occur, with medium levels in Southern Europe, and lower scores in the Eastern and South-Eastern member states.

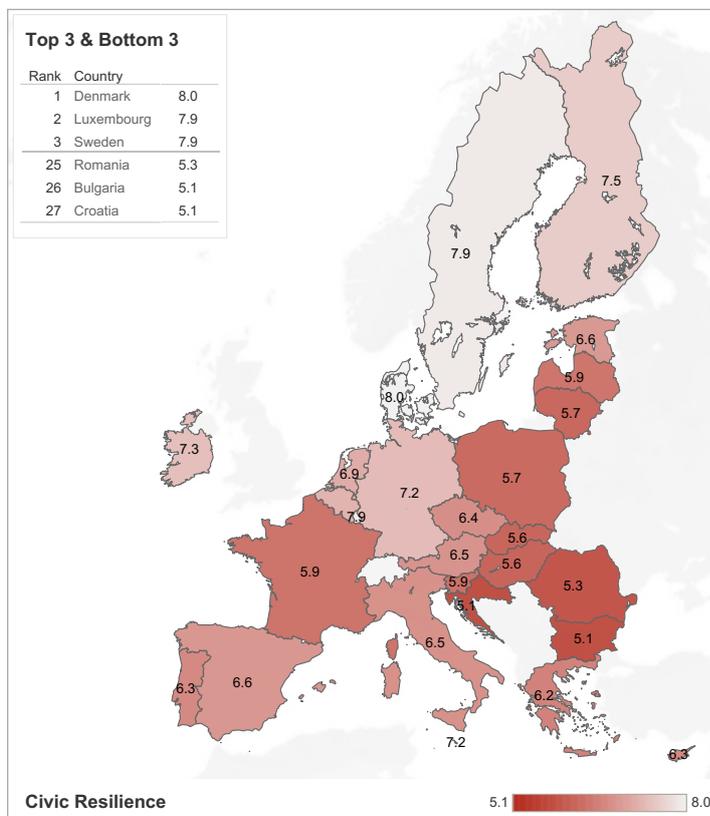


Image 16. Civic resilience across the EU

Trust is particularly low in Bulgaria (3.6), Romania (3.9), and Croatia (4.0); however, this aspect of *civic resilience* is similar both in Southern Europe and Central and Eastern Europe (Image 17). *Civic space* (the existence of an independent civil society and favourable conditions for its development) is as high in Southern Europe as in Western European countries like Germany or the Benelux countries (Image 18).

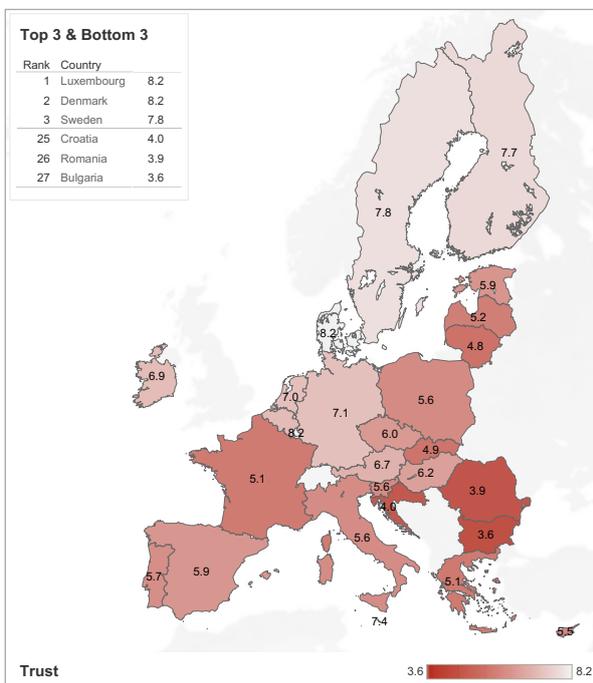


Image 17. Trust across the EU

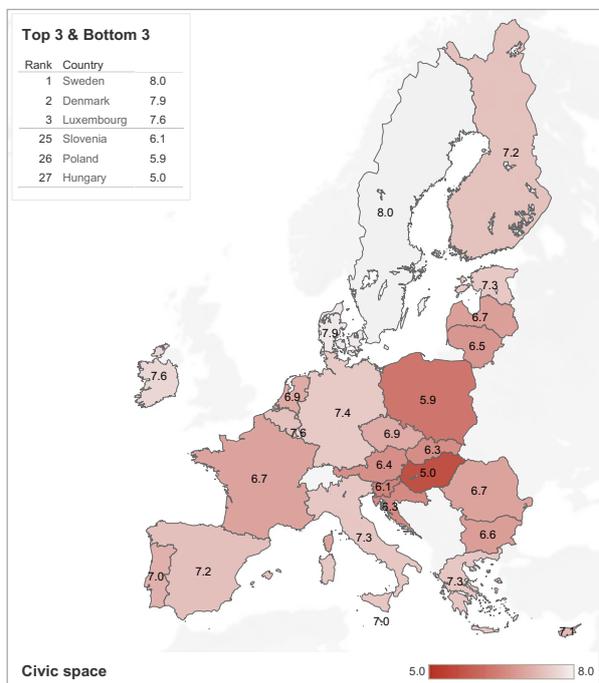


Image 18. Civic space across the EU

Looking at the eastern flank of the EU, resilience scores are lower. Interestingly, despite low trust in the system and its institutions, the civic space (organised civil society and level of its independence) can still function quite well (Table 8).

	Trust	Civic space
Bulgaria	3.6	6.6
Romania	3.9	6.7
Croatia	4.0	6.3
Slovakia	4.9	6.3
Lithuania	4.8	6.5

Table 8: Lower score of trust despite higher scores for civic space

Yet, regarding the organisation and independence of civil society, Hungary (5.0) is the most acute case, visibly reflecting shrinking spaces for civic society because of governmental action, followed by Poland (5.9, see Table 9).

	Trust	Civic space
Hungary	6.2	5.0
Poland	5.6	5.9

Table 9: Lower score of civic space despite higher trust

Media resilience (5.9) consists of two aspects – *media landscape* and *media independence* – and presents the most reasons for concern across the EU. Germany (7.9) positively stands out, exhibiting both the highest level of media de-concentration as well as media freedom. This is possibly thanks to the size of its market and consumption potential, allowing even small media outlets to be profitable, as well as a solid legal framework governing public service broadcasting. On the contrary, Hungary (4.1) and Poland (4.3) present the lowest levels of *media resilience* due to the orchestrated attacks by the Hungarian and Polish governments on media outlets.²⁷

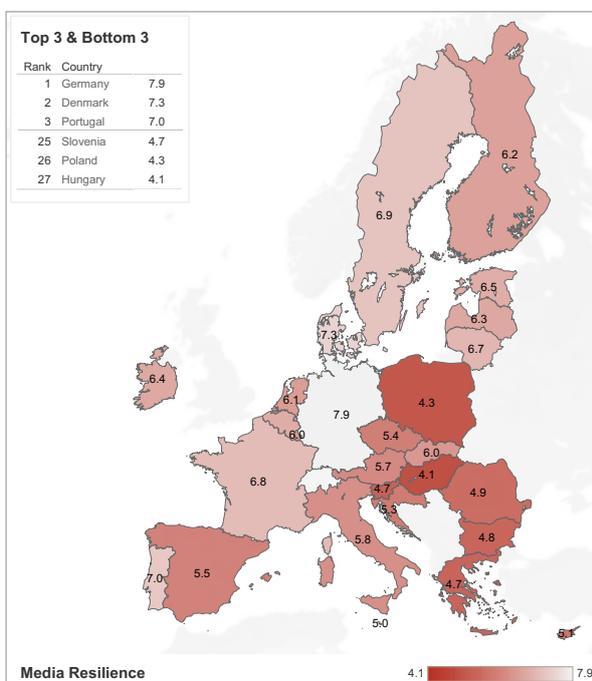


Image 19. Media resilience across the EU

²⁷ Jessica White (2023). Special Report 2023. Reviving News Media in an Embattled Europe, Freedom House, <https://freedomhouse.org/report/2023/reviving-news-media-embattled-europe>.

Hungary also scores the lowest regarding *media landscape* (consisting of the concentration and transparency of media ownership as well as the diversity of media outlets). Here, Hungary shows its lowest score overall (3.7). The Hungarian situation might have been particularly exacerbated by the concentration of broadcasting, online, and print media under one organisation, with the establishment of the Central European Press and Media Foundation (KESMA) in 2018. It controls 400 formerly privately-owned Hungarian media outlets and its board is run by confidants of the Prime Minister.²⁸ Other vulnerable media markets include Slovenia and Cyprus (both 4.4), Romania (4.5), and Austria (4.9, see Image 20).

When it comes to *media independence* (the professionalisation of journalism and freedom from political, financial, or legal pressures), Hungary (4.6) and Poland (4.7) are in a group with Bulgaria (4.5), Greece (4.7), Croatia (4.9), and Malta (5.0), which also score below the average (6.4). The highest values of *media independence* are observed in Germany and Denmark (both 8.0), Belgium (7.8), Portugal and Sweden (both 7.7), France (7.3), and Luxemburg and Ireland (both 7.2). In this case, the East-West division is more prominent – except for Estonia (7.6). Clearly, high levels of media landscape centralisation and the lack of transparency overlap with the existing pressures on journalistic work (Image 21).

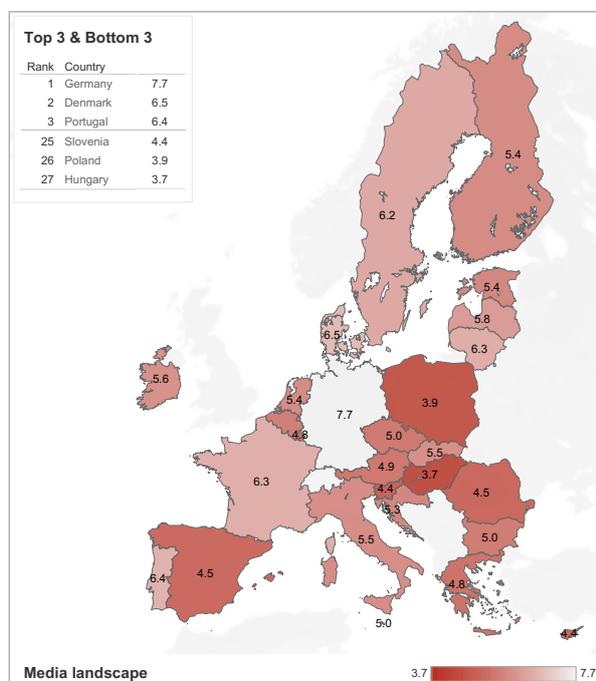


Image 20. Media landscape across the EU

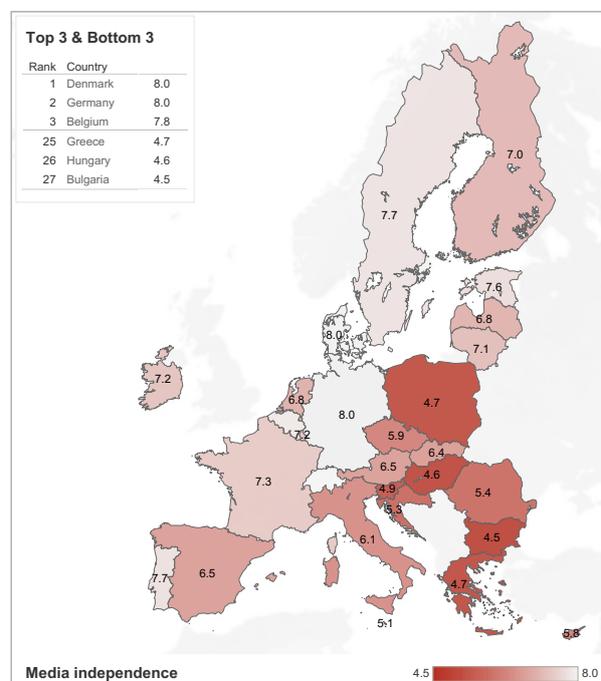


Image 21. Media independence across the EU

²⁸ Nik Williams (2021). 'A shrinking space: media capture in Orbán's Hungary,' Open Democracy, 8 February 2021, <https://www.opendemocracy.net/en/can-europe-make-it/a-shrinking-space-media-capture-in-orb%C3%A1ns-hungary/>.

Compared to other subsidiary factors, *political resilience* (8.2, see Image 22) presents the highest scores across the EU. With a few exceptions, most EU member states present high scores of electoral quality, proving that the performance of electoral democracy is highly functional in the EU. Overall, EU member states are also characterised by a stable *party system*. No particular discrepancies or divides are visible across the continent, with the exception of the outstanding scores of Sweden (8.8), and Finland and Germany (8.6). The lowest scores are observed in the eastern flank. Hungary (6.7) presents the lowest record. Bulgaria (7.7), Romania (7.8), and Poland (7.9) follow. Interestingly, Italy also belongs to this group (7.4).

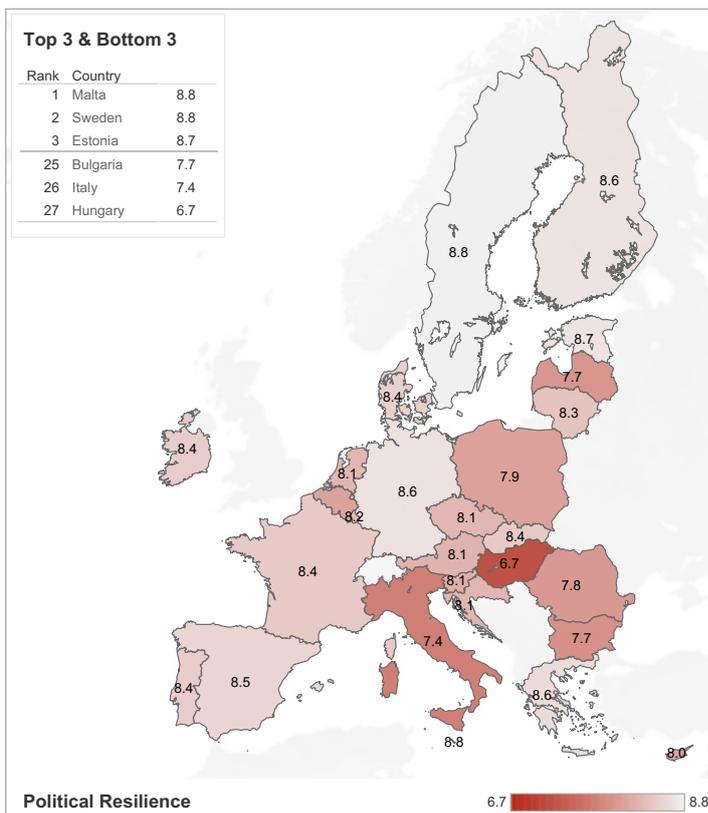


Image 22. Political resilience across the EU

The reasons for comparably low *political resilience* in these countries vary. On the one hand, it is the flaws in electoral quality (consisting of a clean electoral process and electoral competition) that are decisive in Hungary (6.1), where elections since 2014 have been repeatedly considered ‘free but not fair’ by watchdog organisations²⁹ and experts³⁰, and where the political scene at all levels (national, regional, local – with a few exceptions) is dominated by one party. Weaknesses are also emerging in Poland and Bulgaria (7.2, see Image 23).

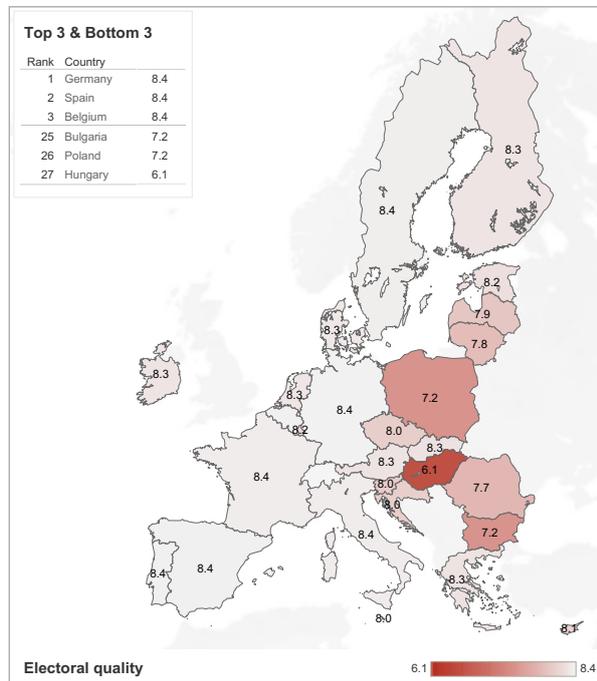


Image 23. Electoral quality across the EU

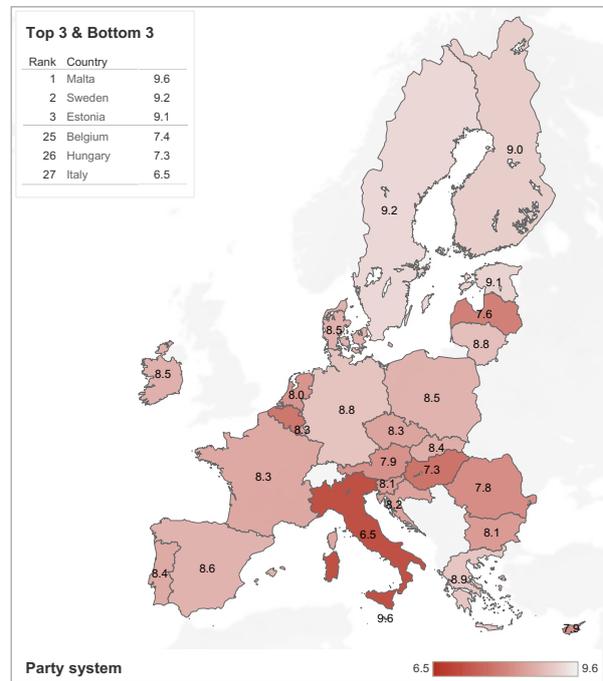


Image 24. Party system across the EU

In the Italian case, its comparably low *political resilience* is due to the vulnerable *party system*, characterised by high polarisation, volatility, and a lack of transparency in nominating party candidates (Image 24). Italy (6.5) scores the lowest in the EU, followed by Hungary (7.3), Belgium (7.4), and Cyprus and Austria (7.9 each). Nevertheless, electoral quality remains high overall (Table 10).

	Electoral quality	Party system
Hungary	6.1	7.3
Italy	8.4	6.5

Table 10: Low political resilience may derive from the low quality of electoral process or a weak party system, as observed in Hungary and Italy.

²⁹ ‘Hungary’s election: free but not fair,’ Transparency International, 4 April 2014, <https://www.transparency.org/en/news/hungarys-elections-free-but-not-fair>.

³⁰ ‘Hungary. Parliamentary elections and referendum 3 April 2022. ODIHR Election Observation Mission Final Report,’ ODHIR/OSCE, Office for Democratic Institutions and Human Rights, Warsaw, 29 July 2022, <https://www.osce.org/files/f/documents/2/6/523568.pdf>.

4.3.2 Interplay between subsidiary resilience factors

Across the EU, there is a visible gap between the lower score of *media resilience* (5.9), the average score of *civic resilience* (6.5), and the high score of *political resilience* (8.2). This shows that weak *media resilience* does not necessarily correlate with a weak civic engagement or democratic culture in politics (institutions, processes, elections). Yet, resilient countries excel in all three aspects: especially Denmark and Sweden, but Germany and Ireland also perform very well overall (Image 25).

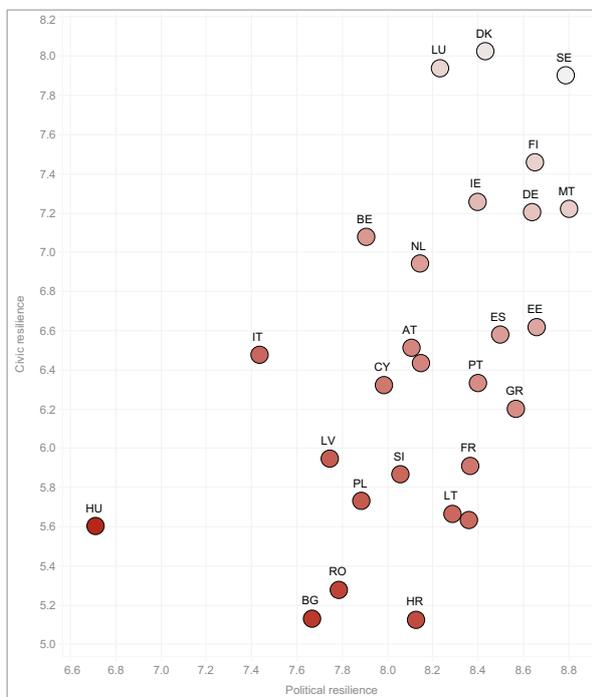


Image 25. Civic resilience and Political resilience

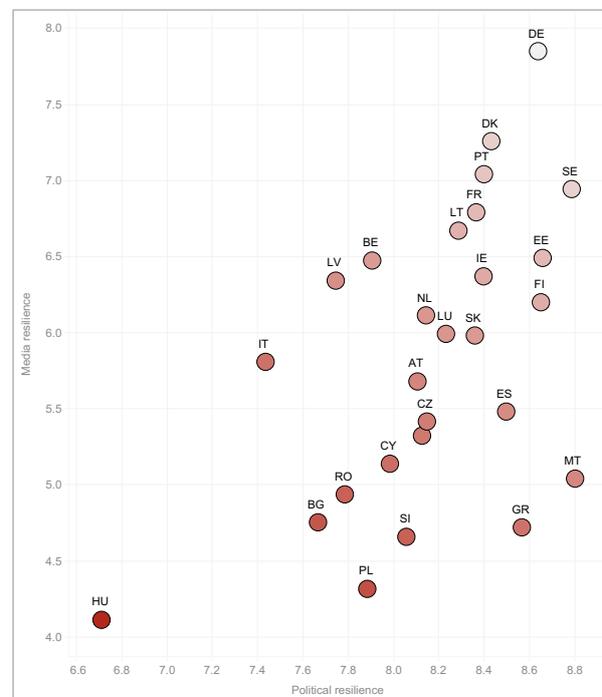


Image 26. Media resilience and Political resilience

In Hungary – the country with the most acute democratic backsliding across the entire EU – very low civic resilience (5.6) and *media resilience* (4.1) also coexist with the lowest score across the EU for *political resilience* (6.7). This is also true for Poland and Slovenia, where the latter experienced a less aggressive rule of law erosion, and where low *media resilience* coexists with comparatively low *political resilience*. The cases of Poland and Hungary demonstrate that acute democratic backsliding occurs across all dimensions (Image 26).

It is noticeable that in Poland and Hungary, a weak *media resilience* coincides with a weak *civic resilience*. Yet interestingly, this is not necessarily a universal trend. In countries that are not experiencing proactive demolition of democratic standards, *media resilience* can be high despite lower *civic resilience* (for example in Portugal, France, Lithuania, see Image 27).

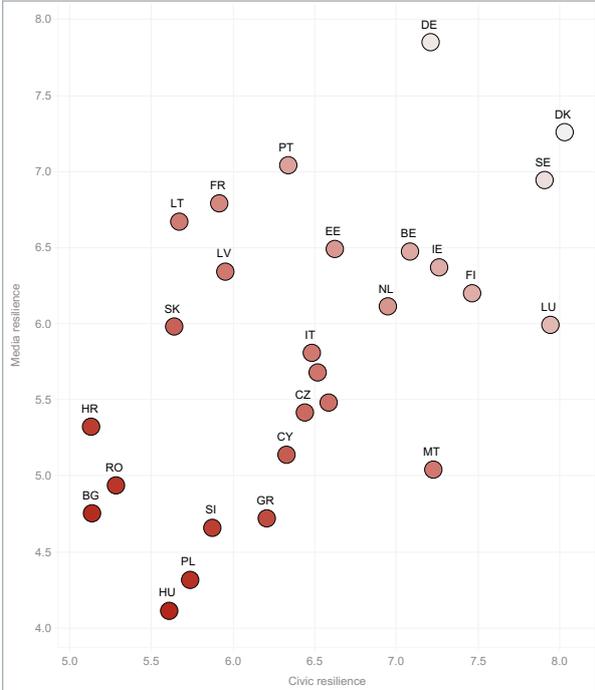


Image 27. Media resilience and Civic resilience

4.3.3 Determinants of subsidiary resilience

A closer look reveals that once again, as in the case of systemic resilience, the performance side of subsidiary resilience scores higher than the design of its elements (Table 11). However, when it comes to *civic resilience*, citizens' trust is generally lower than the robustness of the organised civil society (civic space). Yet, less trust in institutions does not necessarily have to coincide with the lack of independent, bottom-up organising by citizens and favourable conditions for the development of non-governmental initiatives.

	Performance	Structure
Media resilience	Media independence 6.4	Media landscape 5.3
Political resilience	Party system 8.3	Electoral quality 8.1
Civic resilience	Trust 6.0	Civic space 6.9

Table 11: Performative and structural factors of subsidiary resilience

4.4 Contextual rule of law resilience across the European Union

The contextual dimension of rule of law resilience demonstrates high scores, providing an overall friendly habitat for the rule of law within the EU (Image 28). It is also the least polarised of all three resilience dimensions, with scores ranging from 5.9 to 7.6. The highest values of contextual resilience are to be found in Denmark (7.6), Finland (7.4), Ireland (7.3), Sweden (7.2), and the Netherlands (7.0). Again, Hungary (5.9) proves to be the least resilient.

Clearly, *social resilience* and *economic resilience* present average or high values across the EU (7.1 and 6.7 respectively). They are the pillars of stable living conditions in the EU. On the contrary, the *resilience of public discourse* (6.2) presents as one of the most vulnerable factors of rule of law resilience, right after *media resilience* (5.9).

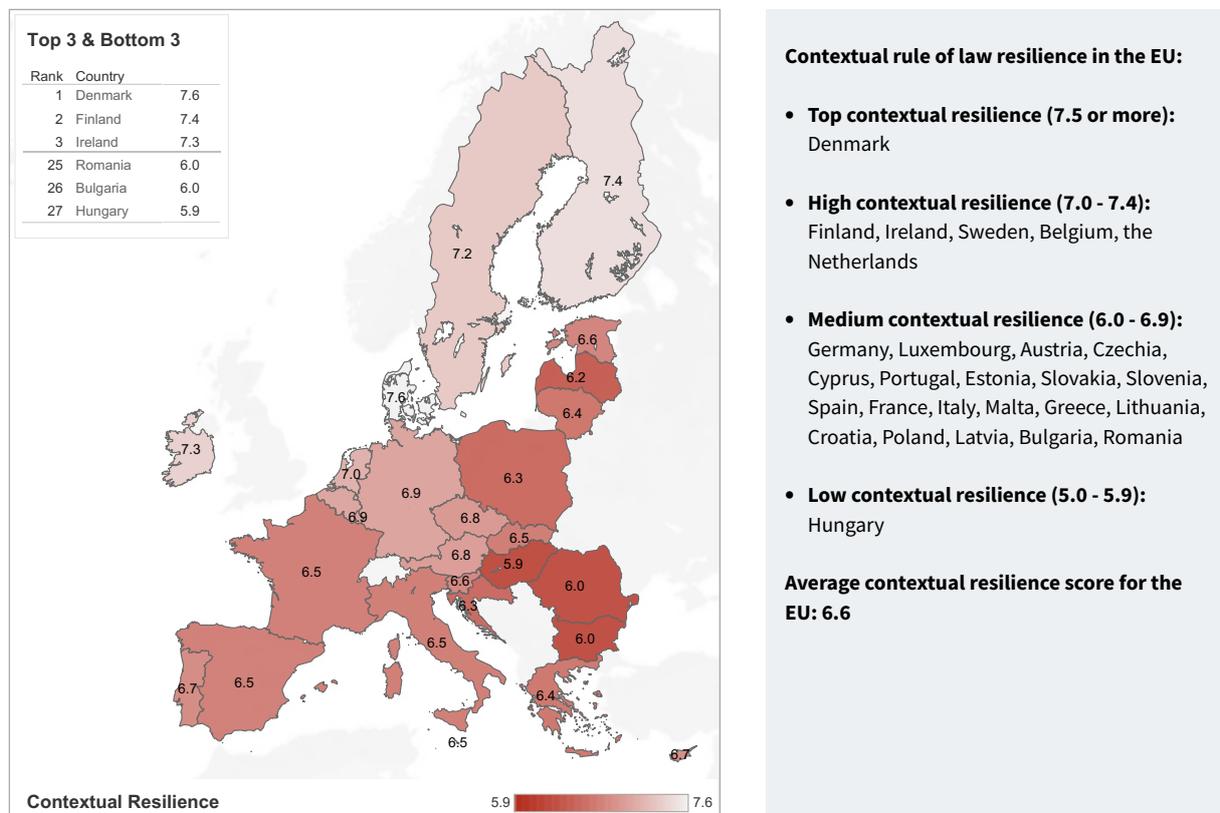


Image 28. Contextual resilience across the EU

4.4.1 Overview: contextual resilience factors

With an average score of a mere 6.2, *the resilience of public discourse* is visibly one of the most vulnerable factors of rule of law resilience across the EU (Image 29). It consists of the two resilience aspects: *civility and mutual toleration* and *sound public debate*. No stark regional differences are to be observed, except for the well-performing Nordic member states – Denmark (7.5), Finland (7.1), and Sweden (6.9) – and Ireland (7.0) at one end of the spectrum, and underperforming Hungary (5.9), Bulgaria and Romania (6.0 each) at the opposite end.

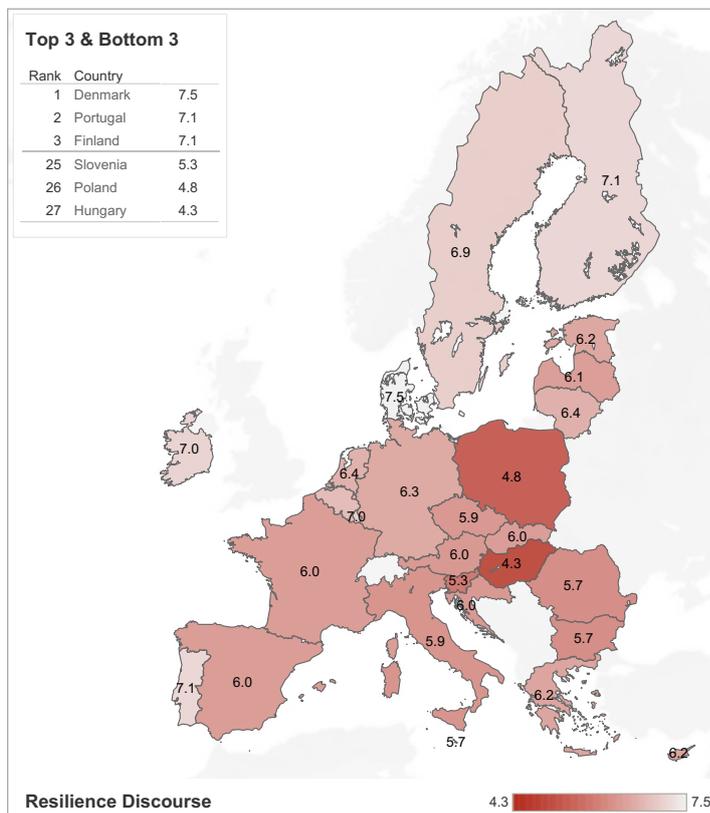


Image 29. Resilience of public discourse across the EU

Civility and toleration (consisting of respect, legality of means, fair play in public debate and political competition) is moderate across the EU (6.3), with the Nordics (Denmark, Sweden, and Finland all score above 7.0), Ireland (7.4), Portugal (7.3) and Luxembourg (7.2) leading by example. At the other end are countries that suffer democratic backsliding or which have recently experienced a populist surge: Hungary (4.3), Poland (4.6), and Slovenia (5.1, see Image 30).

The results are overall worse when it comes to *sound public debate* (6.0), understood as non-polarised and pluralistic public debate, free from malign influence. Except for Denmark (7.5) and Finland (7.1), the results are not satisfactory, oscillating between medium to low resilience levels. Once again, the situation is most worrying in Poland (4.9) and Hungary (4.3). Public debate is one of the weakest and most compromised elements of contextual resilience of the rule of law in the EU. Presumably, malign influence such as Russian dis- and misinformation campaigns contribute to the vulnerability of public debate (Image 31).

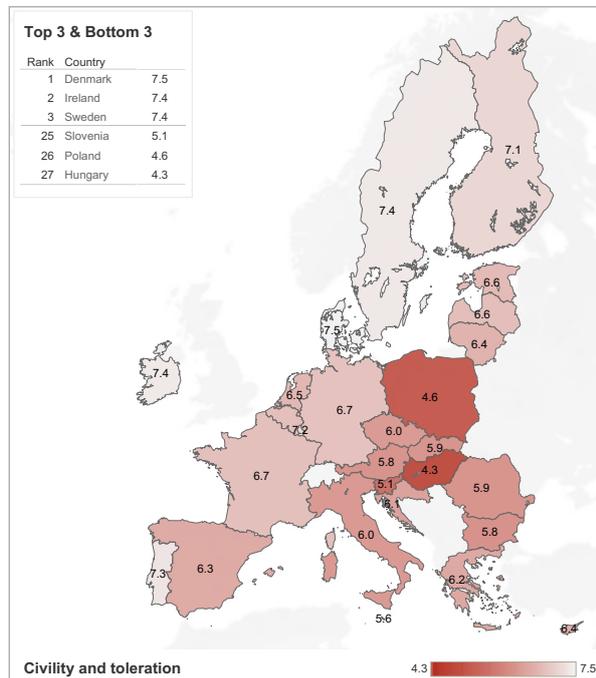


Image 30. Civility and toleration across the EU

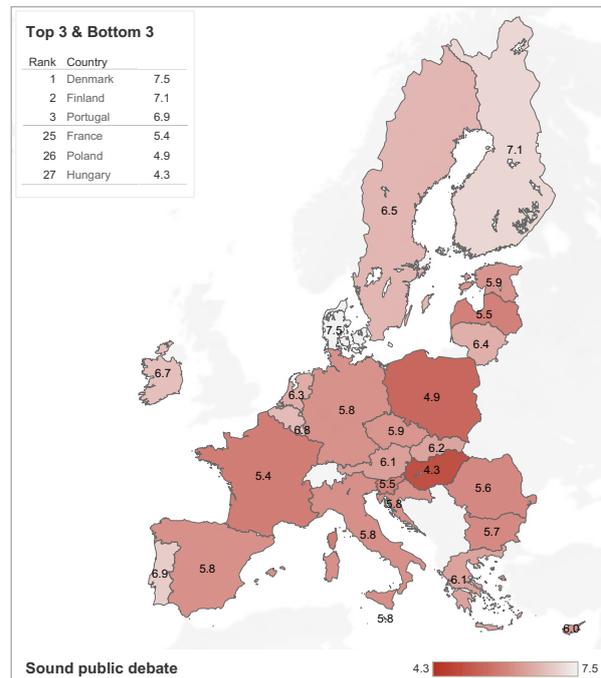


Image 31. Sound public debate across the EU

Economic resilience (6.7) presents a more optimistic picture of the EU (Image 32). In this case, Ireland (7.6) and the Nordic member states lead the ranking: Denmark and Finland (7.5), Sweden (7.3), followed by the Benelux countries: Luxembourg (7.3), and the Netherlands and Belgium (7.2). Interestingly, when it comes to *economic resilience*, Central and Eastern European countries score slightly higher than Southern European countries. This might be the result of a generous decade of structural funds flowing toward the eastern flank of the EU on the one hand, and on the other, a remnant of the Eurozone crisis exacerbated by the recession brought about by COVID-19, as the scores of Greece and Portugal (6.0 each) and Italy and Spain (6.4 each) show. Yet, the least favourable situation is to be found in the two poorest member states, Romania (5.6) and Bulgaria (5.5) (Image 33).

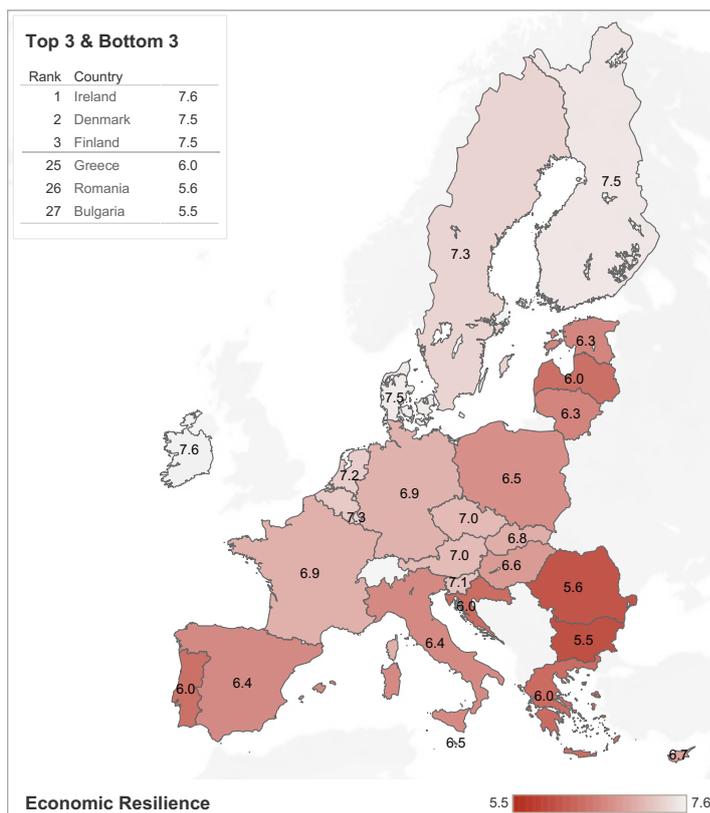


Image 32. Economic resilience across the EU

Although Northern Europe is the most prosperous and successful in redistribution patterns, *economic (in)equalities* also seem to have been effectively overcome in countries with a corporatist welfare state model, like Belgium (6.9), and Czechia, Slovakia, Slovenia (7.0 each). By analogy, countries with the Southern European welfare model (Portugal, Spain, Italy, and Greece) scored the lowest on the *economic (in)equalities* scale. In this respect, the three youngest member states visibly lag behind: Croatia (5.7), Bulgaria (5.3), Romania (5.0) (Image 34).

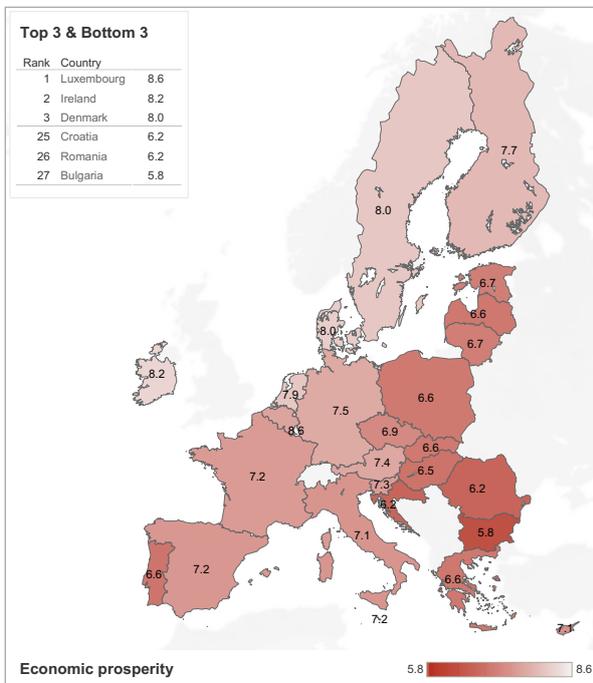


Image 33. Economic prosperity across the EU

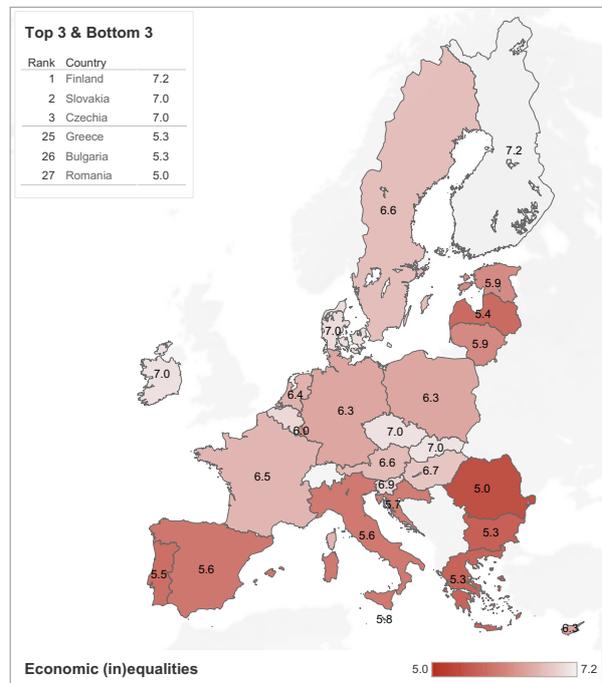


Image 34. Economic (in)equalities across the EU

Finally, *social resilience* (7.1) presents the most ambiguous image. It is the highest in Western and Central Eastern European countries and the Nordic member states, as well as in Italy and Greece. In other words, both homogenous countries like Denmark and Finland (7.7), Poland (7.7), Czechia (7.5), or Slovenia (7.5) as well as the ethnically more diverse societies of Sweden (7.5), Germany (7.5), Austria (7.5), and the Netherlands (7.4) can present high social resilience.

A closer look reveals that these highly diverse societies also score high on *diversity and inclusion* (the political participation of diverse social groups, opportunities, and access to education). The Nordic member states and the Netherlands manage to combine high scores of *diversity and inclusion* with a high *sense of community*.

On the contrary, the most homogenous of EU societies³¹ – Poland (8.5) – is also characterised by the highest *sense of community*, followed by Hungary (8.1), Slovenia (8.0), Finland (7.8). Perhaps in contrast to the diverse societies of Western Europe – which have often developed a post-national sense of belonging based on the community of common interests – the most homogenous societies in the EU still ground ‘togetherness’ in common ethnic and cultural identity (Image 35).

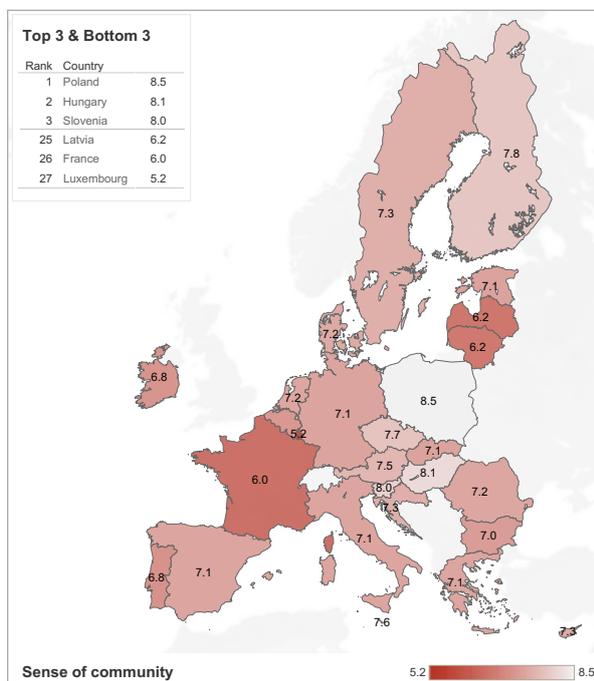


Image 35. Sense of community across the EU

³¹ See: ‘Most Racially Diverse Countries’ at Wisevoter, based on the Historical Index of Ethnic Fractionalization Dataset (HIEF) for 165 countries from 1945 to 2013, publicly available through the Harvard Dataverse, <https://wisevoter.com/country-rankings/most-racially-diverse-countries/>.

4.4.2 Interplay between subsidiary resilience factors

Overall, there is no straightforward connection between *economic resilience* and *social resilience* (Image 36). However, in some countries, these two factors are closely correlated. High *economic resilience* corresponds with high *social resilience* in the Nordic member states, as well as in Ireland and Central European welfare states (Germany, Austria, Czechia). In Romania and Bulgaria, these two factors are almost equally low. Interestingly, there also is a group of countries where, despite lower *economic resilience* (for example, due to crises or transformation), *social resilience* (integration and the sense of community) is higher (Greece and Portugal, Croatia, and Latvia).

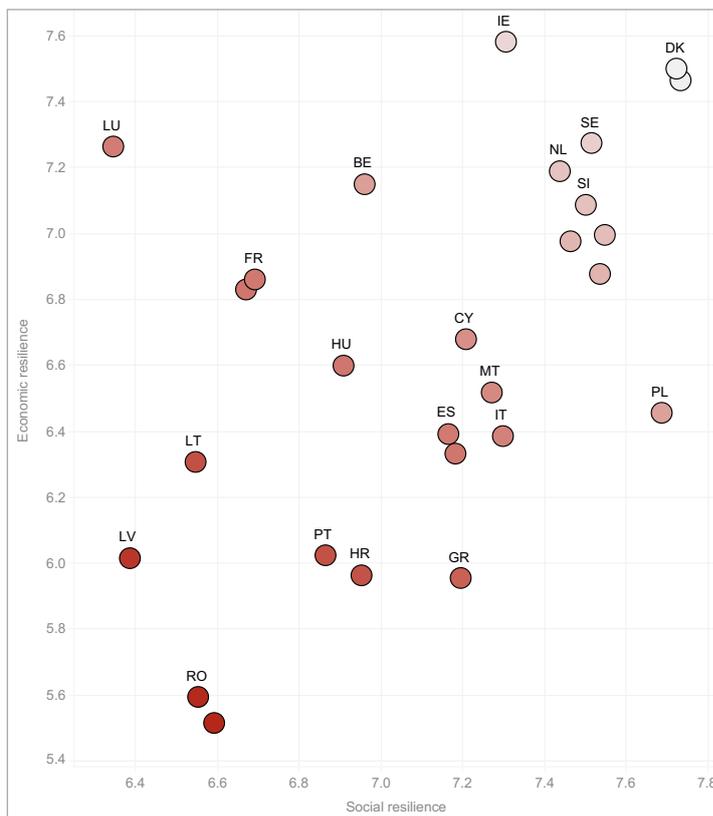


Image 36. Social resilience and Economic resilience

There is also an observed tendency that countries with higher *economic resilience* exhibit high *resilience of public discourse*. For *social resilience*, this tendency is more ambiguous. There are countries with higher *social resilience* that nevertheless maintain lower *resilience of public discourse* (especially Poland, while similar yet less pronounced phenomena are to be seen in Austria, Czechia, Slovenia, Italy, and Malta). One of the explanations might be that populist political rhetoric seems to find a more fertile ground in these countries.

In most cases, high *economic resilience* coexists with a high *resilience of public discourse* (like in the Nordic member states, Benelux, and Ireland), and the same is true for *social resilience* (Nordic member states and Ireland). At the same time, the lowest scores of *social resilience* and *economic resilience* go hand in hand with the lowest *resilience of public discourse* (Hungary, Romania, Bulgaria, see Image 37).

Clearly, countries that have experienced populist illiberal backlash (Hungary, Poland, Slovenia) stand out in comparison. Even moderate prosperity was not able to stop the deteriorating quality of public discourse. Similarly, medium to high *social resilience* – opportunities, social mobility, and a sense of community – could not mitigate the deteriorating *resilience of public discourse* in these countries either (Image 38).

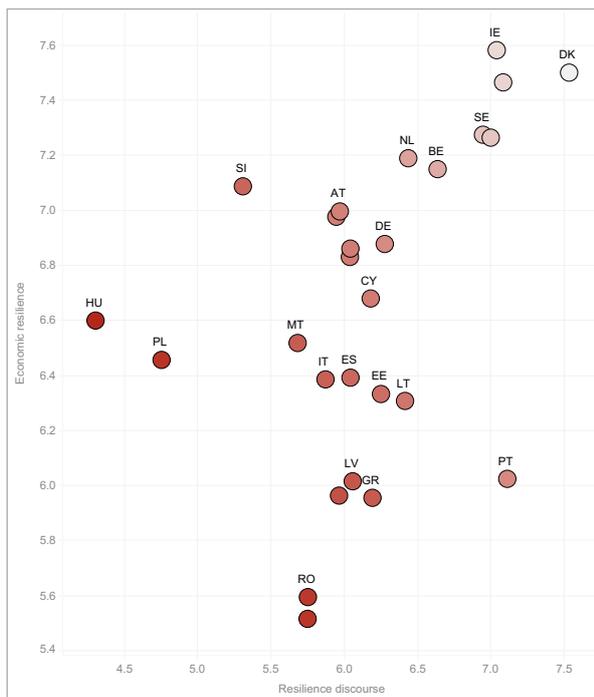


Image 37. Economic resilience and Resilience of public discourse

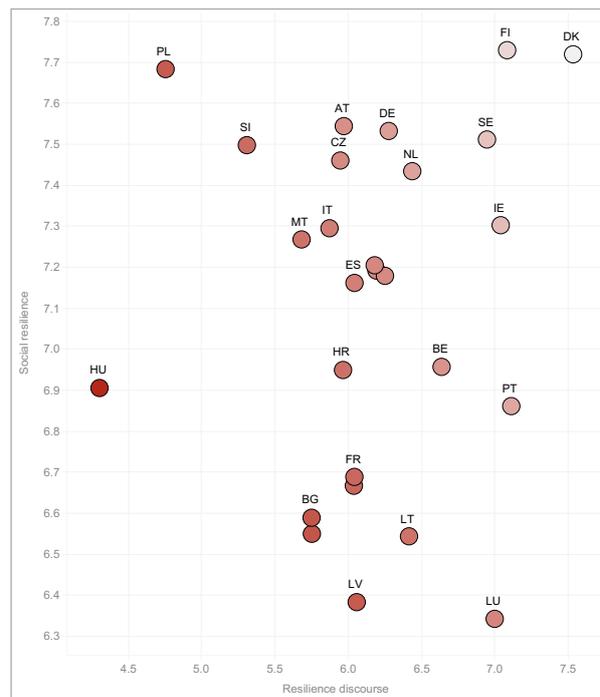


Image 38. Social resilience and Resilience of public discourse

4.4.3 Determinants of contextual resilience

There is a high level of *social resilience* in the EU. Social cohesion and inclusion can facilitate the social peace and trust necessary for respecting the rule of law, but are not necessary conditions.

In terms of *economic resilience* accumulated prosperity, economic growth as well as relatively well functioning and fair redistribution models contribute to a stable economic environment that enables the proper functioning of a rule of law system.

Of the three resilience factors within the contextual dimension, the *resilience of public discourse* scores lowest (6.2, see Table 12). The quality of public debate (*sound public debate*) as well as the guiding principles and traditions of political culture (*civility and toleration*) are undergoing erosion. The combination of objectively existing challenges to living standards together with the spread of hate speech, conspiracies, or the uncivil behaviours of public figures might fuel growing grievances or the feeling of relative deprivation and, in turn, affect popular trust in the state, system, and institutions.

	Aspect 1	Aspect 2
Social resilience	Diversity and inclusion 7.1	Sense of community 7.1
Economic resilience	Economic prosperity 7.1	Economic (in)equalities 6.2
Resilience of public discourse	Civility and toleration 6.3	Sound public debate 6.0

Table 12: Score discrepancy between the contextual resilience factors

4.5 Interplay between resilience factors

There are visible correlations between single resilience factors (Table 13). 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	Constitutional 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 13: Pearson correlation coefficient (r) between resilience factors (EU27 average)

4.5.1 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 39).

Similarly, there is a positive correlation ($r = 0.62$) between a resilient public discourse and high political resilience (Image 40); 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.

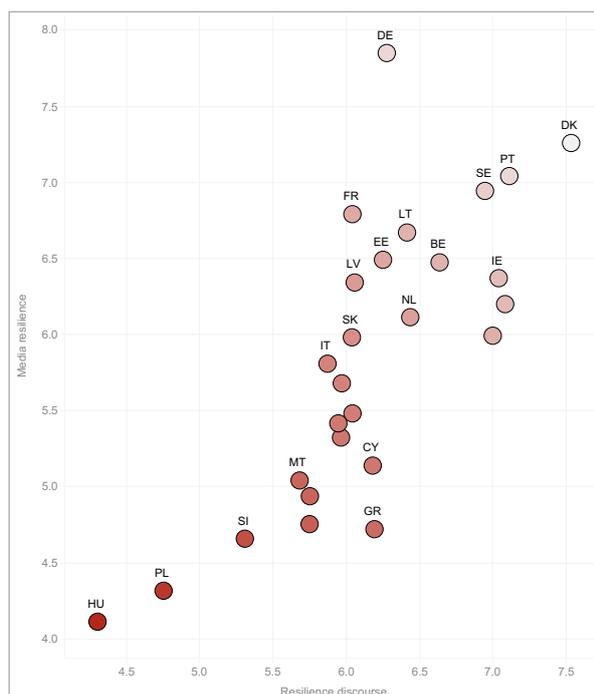


Image 39. Media resilience and Resilience of public discourse

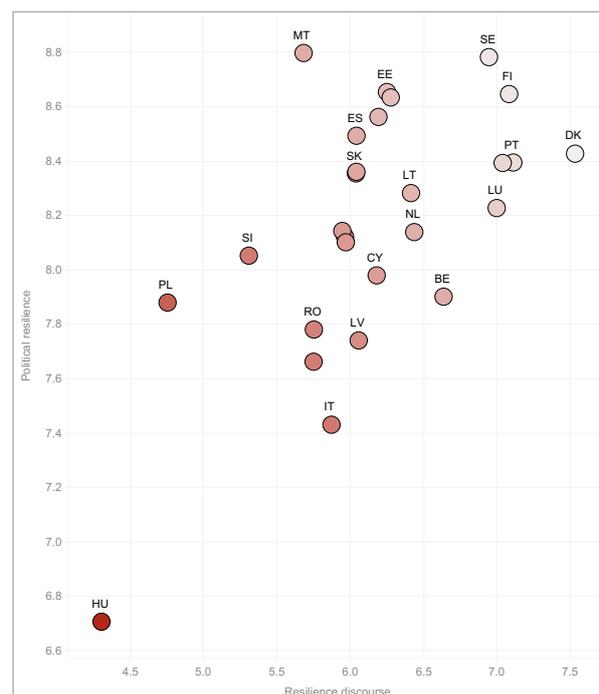


Image 40. Political resilience and Resilience of public discourse

4.5.2 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 41). 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 42).

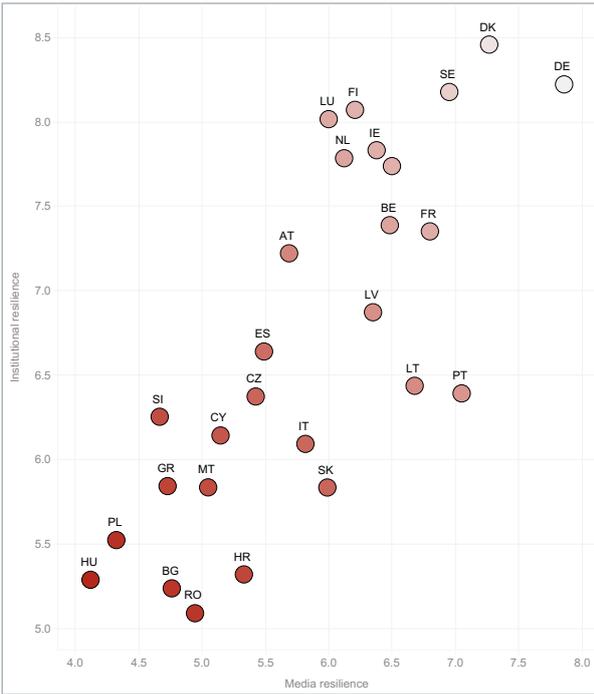


Image 41. Media resilience and Institutional resilience

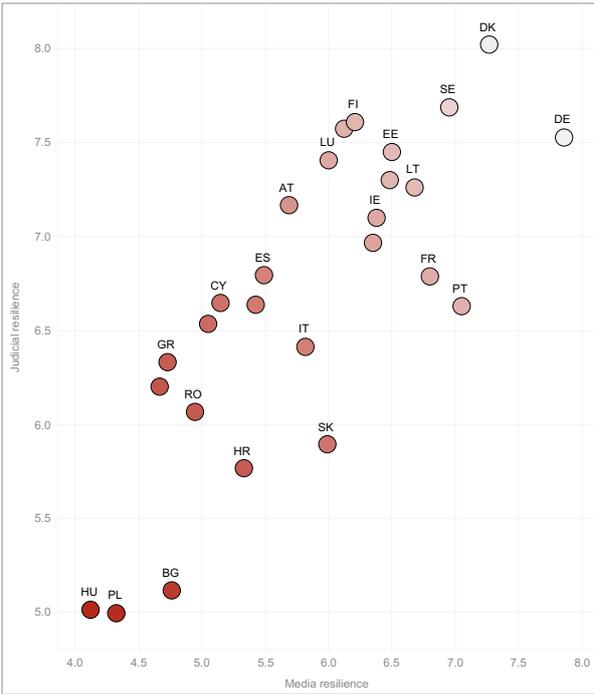


Image 42. Media resilience and Judicial resilience

4.5.3 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 43), 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 44). 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.

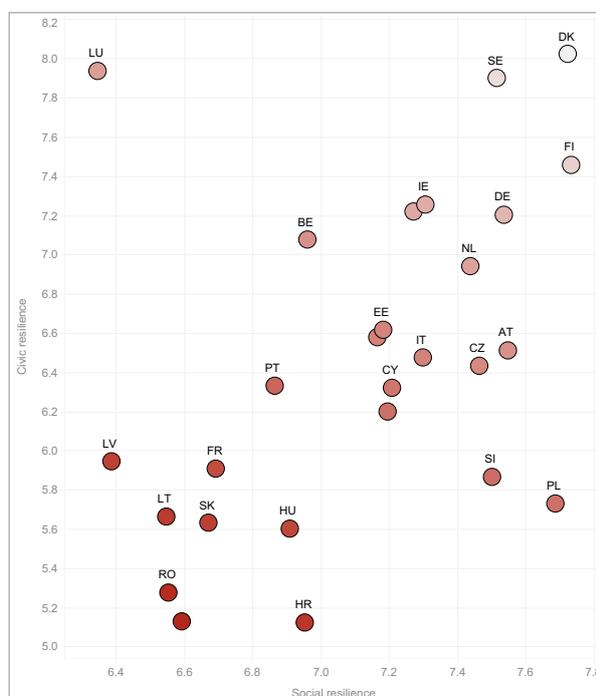


Image 43. Civic resilience and Social resilience

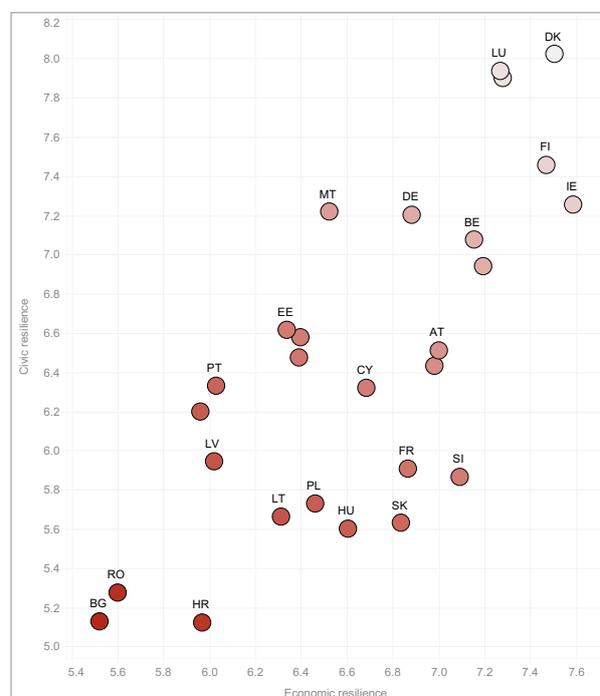


Image 44. Civic resilience and Economic resilience

4.5.4 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 45 and Image 46). 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 Luxemburg.

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 and nepotism. Similarly, this is also relevant in Poland and Hungary, due to the ongoing state capture attempts.

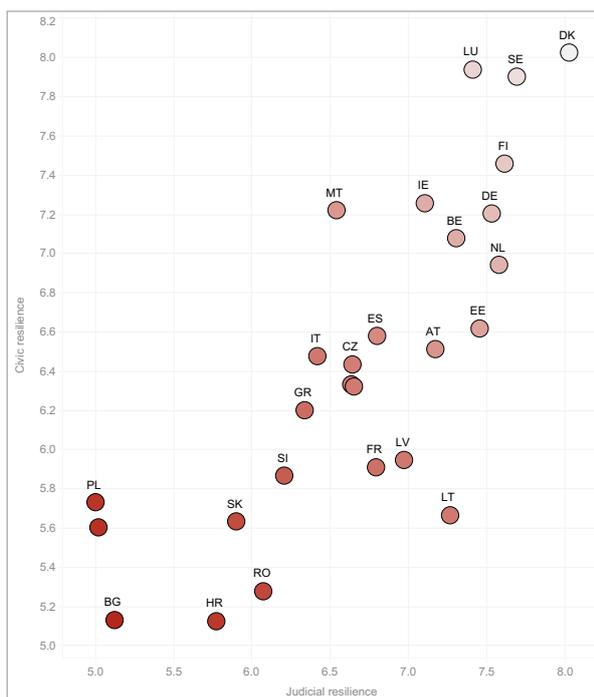


Image 45. Civic resilience and Judicial resilience

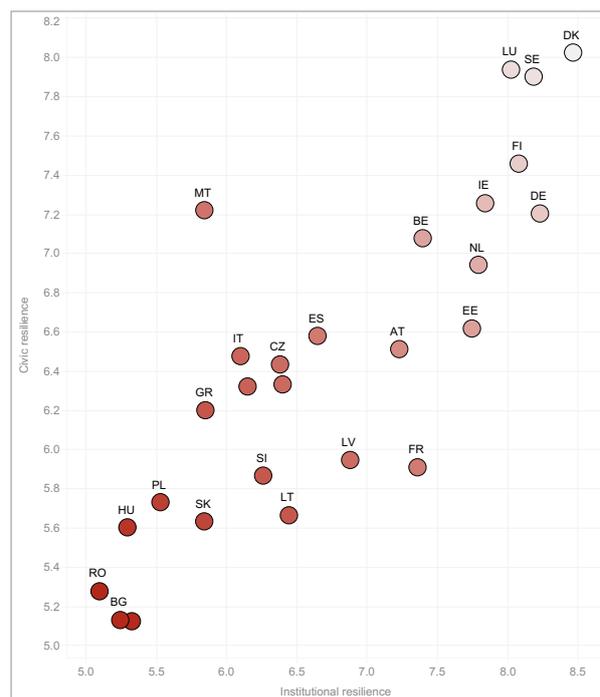


Image 46. Civic resilience and Institutional resilience

4.5.5 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 bureaucrats 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 47).

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 disproportionately weakened compared to relatively high economic resilience when democratic backsliding is taking place (like in Poland and Hungary, see Image 48).

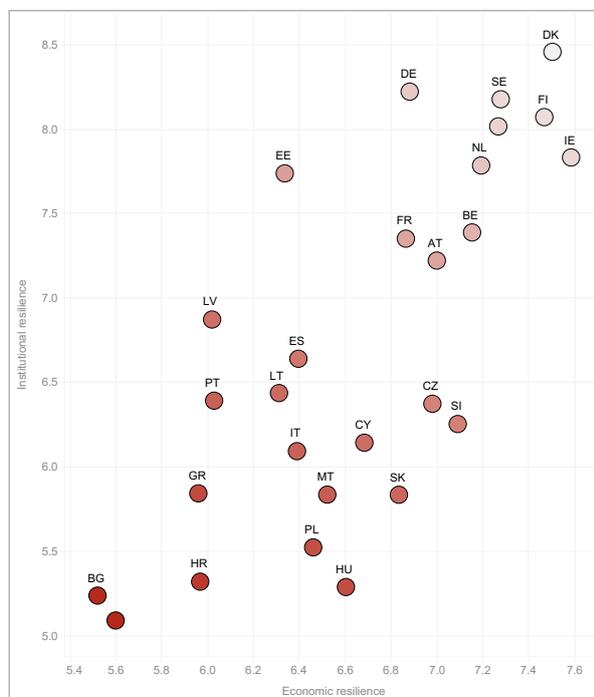


Image 47. Economic resilience and Institutional resilience

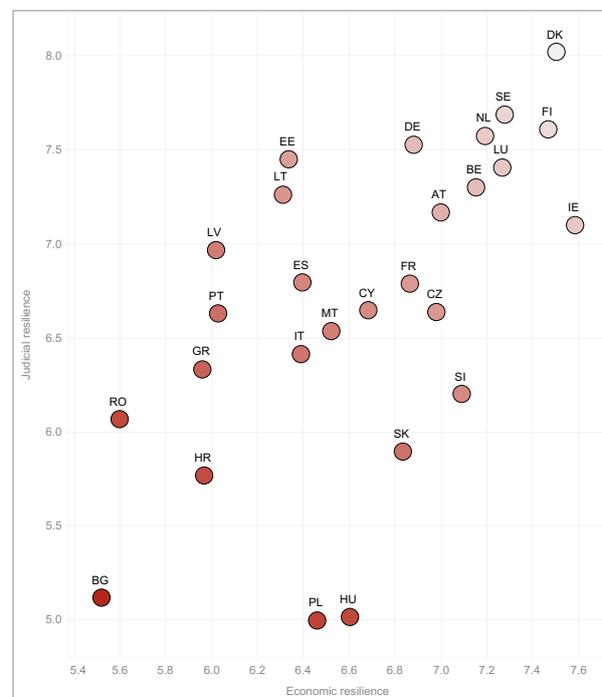


Image 48. Economic resilience and Judicial resilience

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 49). 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).

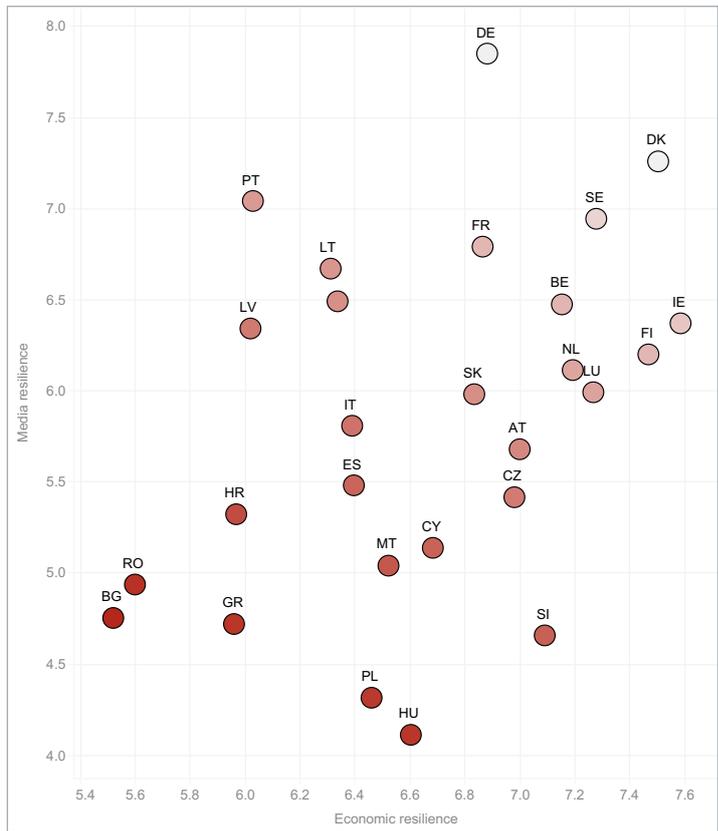


Image 49. Economic resilience and Media resilience

5. Conclusions

The summary below presents two sets of concluding remarks derived from our analysis of the empirical data gathered. The first part describes the findings regarding the overall landscape of rule of law resilience in the EU: its geographic dispersion and main trends. The second part explores the specific pillars of rule of law resilience in the EU, underscoring the purpose of this study, which is to identify how to increase rule of law resilience and what are the warning signs of possible rule of law erosion.

5.1 Characteristics of rule of law resilience across the EU

Looking at the map of rule of law resilience across the EU, distinctive trends can be observed regarding the variety with which rule of law resilience is manifested across the EU.

- **Conclusion 1: Rule of law resilience is diverse 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.

The overall average rule of law resilience in the EU reflects its internal differentiation and heterogeneity. The gaps between the top and bottom countries are very pronounced. 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).

- **Conclusion 2: Rule of law resilience is geographically dispersed**

The overall rule of law resilience for the EU is positive, yet moderate. On the one hand, no country excels in every one of the researched dimensions. Even among resilience leaders, there is room for improvement. On the other hand, no country presents a hopeless and helpless situation. Even the most vulnerable systems still demonstrate a potential to defend the rule of law.

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.

Countries with the lowest rule of law resilience are Hungary, Bulgaria, Romania, and Poland. All of them joined the EU in the last 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,³² the European Parliament,³³ and Freedom House³⁴).

• **Conclusion 3: Each resilience dimension is similarly potent in the EU**

The aggregated values for each of the three resilience dimensions are similar (Table 14). 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.

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 14: Average score for the EU, broken down into single resilience dimensions

• **Conclusion 4: Particularly high or particularly low rule of law resilience are a cumulative effect of strengths or weaknesses across all 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. In other words, a combination of robust institutions, high levels of trust, as well as economic prosperity and social cohesion are more likely to positively affect the ability of the rule of law to avert attacks (Table 15).

³² See: Democracy Index 2022 of The Economist Intelligence Unit, <https://www.eiu.com/n/campaigns/democracy-index-2022/>.

³³ ‘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>.

³⁴ Hungary, Freedom in the World 2022, Freedom House, <https://freedomhouse.org/country/hungary/freedom-world/2022>.

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. In other words, weak institutions paired with a compromised media and civic landscape as well as unfavourable socio-economic conditions can undermine the resilience of the rule of law.

	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 15: Scores of Top 3 and Bottom 3 EU member states broken into single resilience dimensions

- **Conclusion 5: 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 16). 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 16: Differences in average scores of performance and structural aspects of different resilience factors

- **Conclusion 6: 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 (thanks to 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,³⁵ or the Sustainable Governance Indicators of the Bertelsmann Foundation³⁶), as well as its other features (media freedom, human rights, voter turnout etc.). It remains to be determined what plays a primary role: whether a resilient rule of law enhances a strong democratic order, or whether robust democracy lays the foundations for a resilient rule of law. Most probably, they mutually reinforce each other.

On the contrary, a weaker rule of law resilience does not necessarily coincide with an eroded rule of law. For example, Romania and Bulgaria - despite their low resilience results - are currently not under the conditionality mechanism, although severe issues with judicial independence or corruption remain, and the Mechanism for Cooperation and Verification was formally closed only in September 2023. Poland and Hungary – the two countries disciplined by the EU – both also score the lowest for rule of law resilience (Table 17). Whereas Hungary scores the worst in rule of law resilience, Poland attained a slightly better result. These findings underscore that rule of law backsliding is the result of deliberate political action. 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 17: 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

³⁵ See: Rule of Law Index of the World Justice Project, <https://worldjusticeproject.org/rule-of-law-index/>.

³⁶ See: Sustainable Governance Indicators of the Bertelsmann Foundation, https://www.sgi-network.org/2020/Survey_Structure.

5.2 Pillars of rule of law resilience across the EU

A closer look at different model elements and their resilience scores reveals the particular factors that contribute to a resilient rule of law, as well as the connections between different resilience dimensions, factors, and aspects. The following section identifies the most important factors for the resilience of the rule of law. For this purpose, we calculated correlations between the scores of the respective rule of law resilience factors, and the overall resilience scores (Table 18). Due to their fundamental role, the highest scoring factors are called pillars of rule of law resilience.

	Pearson 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 18: Pearson coefficient correlation (r) between individual resilience factors and overall resilience score

- **Conclusion A: The bureaucracy and 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. 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.

- **Conclusion B: To thrive, rule of law resilience needs independent media, a sound public debate, and a robust civil society**

Citizens organised around common interests and goals are part of a democratic system. 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 ($r = 0.87$). It is clear that in countries with low rule of law resilience and with active cases of rule of law backsliding, civic space is the most vulnerable.

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 also can 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.

- **Conclusion C: The media and sound public discourse are currently among the weakest elements of rule of law resilience in the EU**

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 19). 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 (see Conclusion B).

Deconcentrating media ownership, increasing its transparency, securing the safety of journalistic work, and protection of media freedom are lagging in the EU. Therefore, the future of the media in the EU demands the most immediate attention.

The resilience of public discourse needs correction too, especially the soundness of public debate. On the one hand, it is the exposure to disinformation and malign influence that brings about information chaos, disrupt public debate, and the spread of toxic narratives. On the other hand, polarisation, and failing to obey the principles of mutual tolerance and civility leads to a discrediting of the entire democratic political system. It is the whistle-blowing and correcting actors who need the most support: the media and civil society.

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

• **Conclusion D: The resilience of the rule of law profits from European social model and political culture, but they do not guarantee a resilient rule of law**

The EU is one of the most prosperous and safest regions globally. This resonates with the relative welfare and social cohesion within EU member states. 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 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 very resilient when it comes to democratic processes, such as elections. Furthermore, political resilience also entails norms and principles followed by party members to register candidates, and a party system that can deal with volatility and polarisation, while at the same time maintaining stability.

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. When in power, some populist parties disrespect the principle of institutional forbearance and try to manipulate the election results, as shown by the examples of Hungary and Poland. Yet, against all odds, political culture remains a solid pillar of rule of law resilience in the EU. Preserving it will be of great importance in the future, to increase political resilience in the light of rapidly changing party systems across the EU.

- **Conclusion E: Social cohesion and the robustness of legal frameworks are not rudimentary for a resilient rule of law**

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 ($r = 0.66$). In other words, rather than the formal design of institutions, what matters most is their performance: the actions and behaviours of individuals on duty. The ethos of public service, its integrity, and professional competence can help 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 (0.94). Laws and regulations are as powerful as the commitment to obey them. Weak rules do not pose a major threat to rule of law resilience only as long as the political culture is stable and ethical. Vice versa, strong regulatory frameworks become the more important in the onset of authoritarian forces.

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.

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6.3 Data sources

F1. Institutional resilience

A1. Functioning of public administration – the executive (bureaucrats):

- To what extent are appointment decisions in the state administration based on personal and political connections, as opposed to skills and merit, variable (C) v2stcritrecadm, <https://v-dem.net/data/>
- Ethos of public service: Are public officials rigorous and impartial in the performance of their duties variable (C) v2clrspct, <https://v-dem.net/data/>

A2. Quality of public governance:

- Quality of governance: World Bank Worldwide Governance Indicators 2021, Governance Effectiveness: <https://info.worldbank.org/governance/wgi/Home/Reports>
- Existing corruption: Transparency International Corruption Perception Index 2022: <https://www.transparency.org/en/cpi/2022>
- Existing counter measures in place, e.g. anti-corruption laws: World Bank Worldwide Governance Indicators 2021, Control of corruption: <https://info.worldbank.org/governance/wgi/Home/downloadFile?fileName=cc.pdf>
- Rulers' involvement in the state administration: V-Dem; variable (v3struinvadm)

F2. Judicial resilience

A1. Quality of the judiciary:

- Quality of the justice system, WJP 2022 Rule of Law Index, Civil Justice, Factor 7.3. Civil justice is free of corruption, <https://worldjusticeproject.org/rule-of-law-index/factors/2021/Civil%20Justice/> & Criminal Justice, Factor 8. 2. Criminal adjudicative system is timely and effective, Factor 8.5. Criminal justice is free from corruption, <https://worldjusticeproject.org/rule-of-law-index/factors/2021/Criminal%20Justice/>
- Absence of corruption in the judiciary: Factor 2.2: Government officials in the judicial branch do not use public office for private gain, <https://worldjusticeproject.org/rule-of-law-index/factors/2021/Absence%2520of%2520Corruption>
- Judicial accountability: When judges are found responsible for serious misconduct, how often are they removed from their posts or otherwise disciplined? V-Dem, Judicial accountability, variable (C) v2juacct, <https://v-dem.net/data/>

A2. Judicial independence:

- Judicial appointment: Appointment procedure as an indicator of judicial independence: Sustainable Governance Indicators 2022, Bertelsmann Stiftung, https://www.sgi-network.org/2022/Robust_Democracy/Quality_of_Democracy/Rule_of_Law/Appointment_of_Justices
- High Court independence: When the high court in the judicial system rules in cases that are salient to the government, how often would you say it makes decisions that merely reflect government wishes, regardless of its sincere view of the legal record?, variable v2juhincd, <https://v-dem.net/data/>
- Lower Court independence: When judges not on the high court rule in cases that are salient to the government, how often would you say their decisions merely reflect government wishes regardless of their sincere view of the legal record?, variable v2juncind, <https://v-dem.net/data/>
- Judicial reform: Were the judiciary's formal powers altered this year in ways that affect its ability to control the arbitrary use of state authority?, variable v2jureform, <https://v-dem.net/data/>
- Judicial purges (arbitrary removal of judges from posts): Judges are sometimes removed from their posts for a reason, such as when there is strong evidence of corruption; however, some judges are removed arbitrarily, typically for political reasons. With this distinction in mind, please describe the removal of judges that occurred this calendar year, variable v2jupurge, <https://v-dem.net/data/>
- Government attacks on judiciary: How often did the government attack the judiciary's integrity in public?, v2jupoatck, <https://v-dem.net/data/>
- Court packing: The size of the judiciary is sometimes increased for very good reasons, such as when judges are added to manage an increasing caseload; however, sometimes judges are added purely for political reasons. With this distinction in mind, please describe any increases in the size of the judiciary that occurred this calendar year, variable v2jupack, <https://v-dem.net/data/>

F3. Constitutional resilience

A1. Constitutional design

- Constitutional scope: Comparative Constitutions Project, University of Illinois, Urbana-Champaign, <https://www.comparativeconstitutionsproject.org/files/TableA.2.pdf?6c8912>

- Number of rights enshrined in the constitution: Comparative Constitutions Project, University of Illinois, Urbana-Champaign, <https://comparativeconstitutionsproject.org/ccp-rankings/#1>
- Distribution of power: Constitutional power assigned to the executive; Constitutional power assigned to the legislature by the constitution; Constitutional independence assigned to the judiciary by the constitution, Comparative Constitutions Project, University of Illinois, Urbana-Champaign, <https://comparativeconstitutionsproject.org/ccp-rankings/#indices>

A2. Constitutionalism

- Respect for the constitution: Do members of the executive (the head of state, the head of government, and cabinet ministers) respect the constitution?, variable v2exrescon, <https://v-dem.net/data/>
- Performance of checks and balances: WJP 2022 Rule of Law Index, Factor 1: Constraints on Government Power (both constitutional and institutional), <https://worldjusticeproject.org/rule-of-law-index/factors/2022/Constraints%20on%20Government%20Powers/>

F4. Civic resilience

A1. Trust

- Attitude towards democracy
 - Standard Eurobarometer 97, Summer 2022, Europeans' opinions about the European Union's priorities: Question SD18a, Satisfaction with Democracy in your country, <https://europa.eu/eurobarometer/surveys/detail/2693>
 - Economist Intelligence Unit: Democracy Index 2022, category: Democratic Political Culture, <https://www.eiu.com/n/campaigns/democracy-index-2022/>
- Trust in national institutions
 - Standard Eurobarometer 97, Summer 2022, Public opinion in the European Union: Questions QA6a.2, QA6a.3, QA6a.4, QA6a.5, QA6a.6, QA6a.7, QA6a.9, QA6a.10, Trust in national institutions, <https://europa.eu/eurobarometer/surveys/detail/2693>
- Belief in self-agency: voter turnout
 - International Institute for Democracy and Electoral Assistance (International IDEA): Voter Turnout Database, <https://www.idea.int/data-tools/data/voter-turnout-database>

A2. Civic space

- Existence of organised civil society
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.10 Civil Society, variable 3.10.0.5 CSO participatory environment (v2cspcpt), <https://v-dem.net/data/>
- Independence of organised civil society
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.10 Civil Society, variable 3.10.0.1 CSO entry and exit (v2cseeorgs), <https://v-dem.net/data/>
- Existing shrinking spaces for NGOs
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.10 Civil Society, variable 3.10.0.2 CSO repression (v2csreprss), <https://v-dem.net/data/>

F5. Media Resilience

A1. Media landscape

- Concentration/dispersion of media ownership
 - European University Institute 2022: Media Pluralism Monitor 2022, Country reports, variables market plurality overall; news media concentration, <https://cmpf.eui.eu/mpm2022-results/>
 - European Journalism Centre: Media Landscapes, variable online platform concentration and competition enforcement, <https://medialandscapes.org/about>
- Transparency of media ownership
 - European University Institute 2022: Media Pluralism Monitor 2022, Country reports, indicator transparency of media ownership, <https://cmpf.eui.eu/mpm2022-results/>
- Existence of media laws
 - European University Institute 2022: Media Pluralism Monitor 2022, Country reports, indicators legal protection of right to information; independence and effectiveness of media authority; protection of freedom of expression, <https://cmpf.eui.eu/mpm2022-results/>
 - Reporters Without Borders 2022: World Press Freedom Index 2022, legal framework indicator, <https://rsf.org/en/index>

- Critical media
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.11 The Media, variable 3.11.0.5 Print/broadcast media critical (v2mecrit), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.11 The Media, variable 3.11.0.6 Print/broadcast media perspectives (C) (v2merange), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.11 The Media, variable 3.11.0.9 Media bias (v2mebias), <https://v-dem.net/data/the-v-dem-dataset/>

A2. Media independence

- Professionalisation of journalism
 - European University Institute 2022: Media Pluralism Monitor 2022, Country reports, variables: journalistic profession, standards and protection; media viability, <https://cmpf.eui.eu/mpm2022-results/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.11 The Media, variable 3.11.0.8 Media self-censorship (v2meslfcen);
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.11 The Media, variable 3.11.0.10 Media corrupt (v2mecorrpt), <https://v-dem.net/data/the-v-dem-dataset/>
- Existing violations of media freedom and journalistic independence
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.11 The Media, variable 3.11.0.1 Government censorship effort – media (v2mecenefm), <https://v-dem.net/data/the-v-dem-dataset/>
 - Reporter without borders 2022: World Press Freedom Index 2022, indicators sociocultural context; safety, https://rsf.org/en/methodology-used-compiling-world-press-freedom-index-2023?year=2023&data_type=general
- Existing pressures on media institutions (financial, legal, political restrictions)
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.11 The Media, variable 3.11.0.7 Harassment of Journalists (v2meharjrn), <https://v-dem.net/data/the-v-dem-dataset/>
 - European University Institute 2022: Media Pluralism Monitor 2022, Country reports, variables: political independence of media; independence of PSM governance and funding; state regulation of resources and support to media sector; commercial and owner influence over editorial content, <https://cmpf.eui.eu/mpm2022-results/>

F6. Political resilience

A1. Electoral quality

- Clean electoral process
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Democracy Indices, 2.2.6 V-Dem Clean elections index (v2xel_frefair), <https://v-dem.net/data/>
- Electoral competition:
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.2 Political Parties, variable 3.2.0.1 Barriers to parties (v2psbars), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.2 Political Parties, variable 3.2.0.4 Opposition parties autonomy (v2psoppaut), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.1 Elections, variable 3.1.2.5 Elections multiparty (v2elmulpar), <https://v-dem.net/data/>

A2. Party system

- Volatility of the system:
 - Casal Bértoa, F. (2023): Database on WHO GOVERNS in Europe and beyond, PSGo, Electoral Volatility TEV (last election): <https://whogoverns.eu/party-systems/electoral-volatility/>
 - Emanuele, V. (2015 [2022]), Dataset of Electoral Volatility and its internal components in Western Europe (1945-2015), Rome: Italian Center for Electoral Studies, variable TV, <http://www.vincenzoemanuele.com/dataset-of-electoral-volatility.html>
- Polarisation:
 - Casal Bértoa, F. (2023): Database on WHO GOVERNS in Europe and beyond, PSGo, Polarisation (last election): <https://whogoverns.eu/party-systems/polarization/>
- Rules and norms which determine who gets nominated as a candidate for public office :
 - Bertelsmann Stiftung 2022: Sustainable Governance Indicators, Robust Democracy, Indicator D1 Electoral Processes, variable D1.1 Candidacy Procedures, <https://www.sgi-network.org/2022/Data>

F7. Discourse resilience

A1. Civility and mutual toleration

- Civility of public debate
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.6 Deliberation, variable 3.6.0.3 Respect counterarguments (v2dlcountr), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 6 Digital Society Survey, variable 6.5.11 Political parties hate speech (v2smpolhate), <https://v-dem.net/data/>
- Civility of political competition
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 6 Digital Society Survey, variable 6.1.1 Government dissemination of false information domestic (v2smgovdom), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 6 Digital Society Survey, variable 6.1.3 Party dissemination of false information domestic (v2smpardom), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.1.3 Election Outcomes, variable 3.1.3.1 Election losers accept results (v2elaccept), <https://v-dem.net/data/>
 - Freedom House, Freedom in the World 2022: Question C3, Does the government operate with openness and transparency? https://freedomhouse.org/sites/default/files/2023-03/FITW_2023%20MethodologyPDF.pdf

A2. Sound public debate

- Polarisation of the public debate
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 6 Digital Society Survey, variable 6.5.10 Polarisation of society (v2smpolsoc), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 3.15 Civic and Academic Space, variable 3.15.1.1 Political polarisation (v2cacamps), <https://v-dem.net/data/>
- Presence of fringe opinions
 - Freedom House, Freedom in the World 2022: Question D4, Are individuals free to express personal views on political or other sensitive topics without fear of surveillance or retribution? https://freedomhouse.org/sites/default/files/2023-03/FITW_2023%20MethodologyPDF.pdf
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 6.4 Online Media Polarisation, variable 6.4.2 Online media perspectives (v2smonper), <https://v-dem.net/data/>
- Existing malign influence
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 6 Digital Society Survey, variable 6.1.5 Foreign governments dissemination of false information (v2smfordom), <https://v-dem.net/data/>
 - V-Dem Institute: Varieties of Democracy Index 2022, V-Dem Indicators, 6 Digital Society Survey, variable 6.1.6 Foreign governments ads (v2smforads), <https://v-dem.net/data/>

F8. Economic resilience

A1. Prosperity and well-being:

- GDP per capita: World Population Review, <https://worldpopulationreview.com/country-rankings/poorest-countries-in-europe>
- Subjective life quality: Average Life Evaluation, World Happiness Report 2022, <https://worldhappiness.report/ed/2022/happiness-benevolence-and-trust-during-covid-19-and-beyond/#ranking-of-happiness-2019-2021>
- Objective life quality: UNDP Human Development Index (HDI), <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>

A2. Economic (in)equalities & welfare provisions:

- Social exclusion and poverty: People at risk of poverty or social exclusion % 2021, Eurostat, https://ec.europa.eu/eurostat/databrowser/view/sdg_01_10/default/table?lang=en
- Effective welfare state: Impact of social transfers on reducing poverty, % 2021, Eurostat, <https://ec.europa.eu/eurostat/databrowser/view/tespm050/default/table?lang=en>
- Economic gaps: GINI index, The World Bank, https://data.worldbank.org/indicator/SI.POV.GINI?name_desc=false

F9. Social resilience

A1. Diversity and inclusion:

- Opportunity: social Progress Index, https://datafinder.qog.gu.se/variable/spi_opp
- Political participation: Democracy Index 2022, Economist Intelligence, https://pages.eiu.com/rs/753-RIQ-438/images/DI-final-version-report.pdf?mkt_tok=NzUzLVJJUS00MzgAAAGJsGPxamOW0bpPUgM3QX0G9nqeUZhAvPqiG_GZgeXiU0QJ3EtdKnLHHYPVra19ptZVYTTb5ZDQl_6IJYEKSeqNPjG7BhN0SttK7BuGH0CIPJ9t1Q
- Average power distribution: Power distributed by gender (C) (v2pepwrgen), Power distributed by sexual orientation (C) (v2pepwrt), Power distributed by social group (C) (v2pepwsoc), Power distributed by socioeconomic position (C) (v2pepwses), Power distributed by urban-rural location (C) (v2pepwrggeo): <https://v-dem.net/data/>
- Educational equality (v2peedueq): <https://v-dem.net/data/>

A2. Sense of community:

- People in country have a lot of things in common: Eurobarometer 96 European citizenship, <https://europa.eu/eurobarometer/api/deliverable/download/file?deliverableId=82056>
- The share of respondents who answered 'a lot' or 'some' to the question: 'How much do you trust people in your neighbourhood?': Welcome Global Monitor, <https://ourworldindata.org/grapher/share-people-trust-neighborhood?country=HUN~FRA~DEU~BGR~BEL~AUT~HRV~CYP~CZE~DNK~EST~FIN~GRC~ITA~IRL~LVA~LTU~MLT~NLD~POL~PRT~ROU~SVK~SVN~ESP~SWE>
- Is society polarised into antagonistic, political camps: V-Dem Political polarisation (C) (v2cacamps): <https://v-dem.net/data/>

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