



An EU mechanism on democracy, the rule of law and fundamental rights

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An EU mechanism on democracy, the rule of law and fundamental rights

European Added Value Assessment accompanying the European Parliament's legislative own-initiative report (Rapporteur: Michal Šimečka)

European Parliament legislative-initiative reports are automatically accompanied by a European Added Value Assessment (EAVA). Such assessments are aimed at evaluating the potential impacts, and identifying the advantages, of proposals made in legislative-initiative reports. This EAVA accompanies the legislative-initiative report prepared by the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), presenting a proposal for an EU mechanism on democracy, the rule of law and fundamental rights (DRF), on the basis of an interinstitutional agreement in accordance with Article 295 TFEU. The EAVA assesses the impacts of the status quo in which EU common values are violated due to (lack of) Member State action. The EU's response to DRF violations has so far not tackled the problem comprehensively. The status quo results in impunity for criminal activities, undermines human dignity and violates fundamental rights. Furthermore it erodes the basis for mutual trust among Member States. Moreover, the status quo denies opportunities for individuals to live out their human potential. There is evidence of a positive correlation between respect of DRF and countries' economic performance. Despite the inherent difficulty in monetising DRF violations precisely, and adopting a broad perspective on the analysis of the status quo, the costs of such violations are estimated at around €1.1 trillion per year, corresponding to 9 % of the EU's gross domestic product (GDP). This EAVA assesses the potential added value of an EU pact on DRF covering all Member States, comparing it to the European Commission's approach, which only covers the rule of law, and to further integration requiring Treaty change. It concludes that the pact proposed by the European Parliament would lead to significant benefits in terms of more effective monitoring and enforcement of EU values. An estimate of its potential positive effects on the EU economy indicates annual gains of €413 billion corresponding to 3.3 % of EU GDP, far outweighing the costs of its development.

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Executive summary

European Parliament legislative-initiative reports are accompanied by a European Added Value Assessment (EAVA).¹ Such assessments are aimed at evaluating the potential impacts, and identifying the advantages, of proposals made in legislative-initiative reports. This EAVA accompanies a legislative-initiative report prepared by Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), Rapporteur Michal Šimečka (Renew Europe, Slovakia), on a European Union (EU) mechanism on democracy, the rule of law and fundamental rights (DRF), on the basis of an interinstitutional agreement in accordance with Article 295 TFEU.²

As discussed in Chapter 1, in Article 2 of the Treaty on European Union (TEU), EU Member States agreed to adhere to a set of common values. These EU common values include democracy, the rule of law and fundamental rights, including those of minorities. Democracy, the rule of law and fundamental rights need to be deployed together as they are in a triangular, mutually reinforcing relationship that together safeguards the constitutional core of the EU and its Member States. Serious allegations have been made regarding the DRF record of a number of Member States, and certain national emergency measures taken since the outbreak of the Covid-19 pandemic have threatened common EU values further. Allegations of DRF breaches also extend to situations in which Member States act in a transnational context.

A distinction should be made between the scenario in which there are recurrent fundamental rights violations and/or there is pervasive corruption for instance, and the scenario in which a government seeks to systematically weaken the checks and balances within the governance system of the Member State concerned. For the first scenario, dialogue and capacity-building may suffice to rectify the situation. In the second scenario, the emphasis of the EU's reaction should shift towards the EU Treaties' enforcement mechanisms, including the special procedures provided for in Article 7 TEU.

The current problems related to democracy, the rule of law and fundamental rights in the EU Member States are not limited to the EU's monitoring and supervision of its Member States. Their compliance with United Nations and Council of Europe instruments, and the implementation of European Court of Human Rights judgments, leads to formidable challenges in EU Member States. The issues related to compliance concern not only the Member States but equally EU institutions. Finally, the EU can only claim full democratic legitimacy to enforce and promote the rights and values listed in Article 2 TEU in internal and external policies if it observes those standards itself.

The EU has so far been unable to comprehensively tackle violations of EU values through its ordinary monitoring and enforcement activities. The reasons for this failure are a combination of the fragmented nature, weak enforceability, insufficient use and effectiveness of the monitoring and enforcement pathways, as well as a lack of effective follow-up. In particular, monitoring activities, have become increasingly relevant for the enforcement of EU values. However, they fail to detect internal linkages between the elements assessed and lack appropriate sanctions. European Commission dialogues with Member States in the context of its 'rule of law framework' and 'rule of law dialogues' among Member States have also not prevented systemic threats from materialising in a number of Member States. Preliminary references concerning the interpretation of EU law are an important tool in clarifying the need for Member State compliance with EU values, even where they act outside the scope of EU law. The main weakness of this procedure is that references have to be made by national judges. Infringement procedures have been used to enforce EU values,

¹ Prepared by the European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament's Directorate-General for Parliamentary Research Services.

² [Report on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights](#), (2020/2072(INL)), adopted on 22 September 2020.

however, even if their increased use would certainly reduce the enforcement gap, by their very nature, beyond addressing the specific violations they often do not, or rather cannot, fully restore the systemic damage that has been inflicted. Moreover, Article 7 TEU procedures have not so far resulted in the concerns raised being addressed.

Chapter 2 presents the impact of DRF violations. Notably, the status quo results in impunity for criminal activities as well as violations of human dignity and fundamental rights, including those of EU citizens. In a context within which judicial authorities lack independence from the government, prosecutors will not be willing or able to take on certain cases against powerful individuals (who are either politically active or are 'protected' by those in power), including those involving fraud affecting the Union's financial interests. The current situation not only affects human dignity, particularly of those suffering institutional discrimination, but also prevents the effective exercise of fundamental rights by EU citizens and third-country nationals alike. Moreover, it should be pointed out that Member States rely on each other's compliance with EU law, rights and values. Therefore, depreciation of EU values in one Member State will have EU-wide effects in many ways, notably undermining the basis for mutual recognition of decisions taken in that Member State in areas such as free movement and EU citizenship, asylum and criminal justice. Moreover, the status quo denies opportunities for individuals to live out their human potential. This lack of opportunities has a number of negative economic consequences at the individual level. They materialise in areas such as employment, health, education, housing, social engagement and access to justice. These negative impacts are largely related to violations of the right to equal treatment. For example, focusing on the employment dimension, there is extensive evidence of costs borne by individuals who are victim of discrimination in hiring practices, salaries and career development. Pay gaps, employment gaps and pension gaps affecting such areas of inequality as gender, race, religion and belief, migration background, sexual orientation, age and disability imply important costs in terms of lost income.

Economic costs of violations of DRF also appear at the aggregate societal level because of missed investments, loss of tax revenues due to the above-mentioned missed individual income, and lower social welfare, for example due to increased inequalities. There is evidence in economic literature of a positive correlation between respect of DRF and countries' economic performance. Consistent with this literature, this study finds this positive correlation across the EU-27 countries. In this quantification exercise, DRF is measured using indexes from the World Justice Project (WJP) and the World Bank. This study simulates the economic gains that the EU-27 would have, assuming all EU Member States increased their adherence to DRF (as measured by the above-mentioned indexes) towards the highest values. Despite the inherent difficulty in monetising DRF violations precisely, and adopting a broad perspective on the analysis of the status quo, the costs of DRF violations are estimated at around €1.1 trillion per year, corresponding to 9 % of EU GDP. While these results have to be interpreted with caution, they indicate that the cost of DRF violations in the EU may be substantial.

Chapter 3 discusses the proposed EU 'pact' on DRF. The pact, originally proposed by the European Parliament in 2016, had two core elements: 1) an annual European report on the situation of DRF in Member States (annual DRF report), with country-specific recommendations drawn up by the European Commission in consultation with a panel of independent experts; and 2) an EU policy cycle for DRF, involving EU institutions and national parliaments, incorporating the European Commission's rule of law framework and the Council's rule of law dialogue. The pact would be based on an interinstitutional agreement (IIA) between the European Parliament, European Commission and Council. The basis for the annual DRF report would be a draft prepared by a panel of independent experts, as well as a variety of sources and existing tools for assessment, reporting and monitoring of Member States' activities. It would subsequently be adopted by the Commission and lead to Council conclusions, and the adoption of a European Parliament resolution following an

inter-parliamentary debate involving the European Parliament and national parliaments. These could require the Commission to take action, ranging from enhanced monitoring and 'systemic infringement action', which entails bundling several infringement cases together, to triggering a DRF dialogue, or procedures to enforce EU values under Articles 7(1) and 7(2) TEU.

Initially, the European Commission rejected most of Parliament's recommendations, doubting their technical and legal feasibility. However, it has since engaged in a 'rule of law review cycle' culminating in an 'annual rule of law report' covering all Member States. The rule of law report, published on 30 September 2020, covers significant developments in Member States, both positive and negative, within four areas: 1) justice systems, and in particular their independence, quality and efficiency; 2) the anti-corruption framework; 3) certain issues related to media pluralism; and 4) other institutional issues related to checks and balances. Beyond relying on existing sources of information on Member States' compliance with international obligations, during the preparation of its rule of law report, the Commission consulted international organisations and professional associations. It furthermore relied on a network of contact points on the rule of law nominated by the Member States for exchange of information and dialogue. In addition to the input from Member States, the Commission consulted stakeholders, and moreover conducted (virtual) country visits. The European Commission has encouraged the European Parliament and the Council to follow up on the rule of law report in their discussions. The European Parliament and national parliaments are also encouraged to develop specific inter-parliamentary cooperation and dialogue on rule of law issues.

The current LIBE committee legislative-initiative report³ builds on the 2016 legislative initiative, and makes direct use of Parliament's right to propose an IIA. Parliament also continues to insist on a scope for the annual report that includes country-specific recommendations covering all EU common values covered by Article 2 TEU. However, according to the Parliament's wishes, the report would no longer be based on a draft prepared by a panel of independent experts. Instead, these experts and the Fundamental Rights Agency would advise an 'interinstitutional working group on EU values'. The drafting of the annual report would remain in the hands of the European Commission. The draft IIA also introduces the possibility for the Commission to, either on its own initiative or upon a request from the European Parliament or the Council, draft an urgent report on a situation in one or several Member States where imminent and serious damage to Union values is identified. In terms of follow-up, the idea of a monitoring cycle remains in place. While respecting the individual roles and prerogatives of EU institutions, an explicit link is also made with the launch of infringement procedures under the proposed mechanism on protecting the EU budget against generalised rule of law deficiencies (budgetary conditionality).⁴ In accordance with the draft IIA, the three institutions would agree that the annual reports should guide their actions concerning Union values, notably as regards triggering the Article 7(1) TEU procedure. The draft IIA also prescribes 'modalities "aimed at enhancing the effectiveness of the procedure laid down in Article 7 TEU"'. Finally, the draft IIA would also introduce an obligation on the three institutions to consider, inter alia, whether Union policies requiring a high level of mutual trust can be sustained in light of systemic deficiencies identified in the annual report.

Chapter 4 assesses the potential added value of an EU pact on DRF covering all Member States, should it be adopted, comparing it to the Commission's approach, which only covers the rule of law and further integration requiring Treaty change. From a legal perspective, the EAVA concludes that

³ [Report on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights](#) (2020/2072(INL)), adopted on 22 September 2020

⁴ Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM (2018)324 of 2 May 2018

the EU has the competence to establish such a monitoring report with a view to protecting its 'constitutional core', i.e. the values it shares with the Member States. This obligation also extends to matters where Member States act outside the scope of the implementation of EU law. The EU should be able to monitor compliance with EU values in the Member States for it to be able to effectively exercise its competences under Article 7 TEU. An interinstitutional agreement would be an appropriate way to ensure legal certainty and coordination between the Commission, Parliament and Council, notably as regards the scope, methodology and follow-up to their monitoring exercises. The gaps identified in DRF monitoring and enforcement cannot be filled by Member States acting alone. The added value of action at EU level is that responsibility for DRF monitoring and evaluation exercises can be clearly allocated and coordination ensured. In addition, swifter and more effective cooperation could be achieved in DRF enforcement. The proportionality of EU intervention should be guaranteed through a methodology for the DRF report which is not unduly burdensome and costly in terms of data collection and reporting requests to Member States.

Parliament envisages a broad scope for the monitoring exercise, also taking on board possible threats to democracy and fundamental rights. Parliament's approach takes into account the links between all EU values. In terms of sources and methods, it should be recognised that such monitoring will require a tedious exercise of making relevant data sources comparable to allow for meaningful conclusions and findings to be drawn. It should be kept in mind that the analysis of DRF compliance needs to be based on a scientifically robust methodology and provide an independent, impartial and holistic assessment, in the sense that information is triangulated to provide a proper context of individual violations, both within the Member State concerned and as regards the transnational connections and implications. The practical and effective involvement of independent experts and the European Union Agency for Fundamental Rights (FRA), should ensure that these criteria are met. The fact that the Commission is ultimately responsible for drafting the report, should alleviate that institution's concerns. At the same time, during the negotiations on the IIA, further questions will need to be answered in terms of the exact division of labour between the working group, independent experts, the FRA and the Commission. The selection criteria for the experts should ensure their quality and independence.

Explicit links between the findings of the report and the launching of infringement procedures, budgetary conditionality, the sustainability of cooperation requiring a high level of mutual trust and the triggering of the Article 7(1) TEU procedure are necessary, since recommendations that are not backed up by the threat of sanctions are not going to lead to a more effective enforcement of EU values. However, a significant further step could be taken by changing the Treaties and reducing the majorities required to trigger the Article 7 procedure and determine the existence of a violation under both paragraphs 1 and 2 of Article 7. Based on the correlation found between DRF indicators and GDP per capita in the EU, and on assumptions on the potential impact of the pact on DRF indexes, the EAVA assesses the potential economic added value of an EU pact on DRF covering all Member States, comparing it to the Commission's approach, which only covers the rule of law and further integration requiring Treaty change. It concludes that the EU pact would lead to significant benefits in terms of more effective monitoring and enforcement of EU values. Although such estimates have to be considered with caution, an approximation of its potential positive effects on the EU economy, compared with the status quo, indicates annual gains of about €413 billion, corresponding to 3.3 % of EU GDP, far outweighing the costs for its development.

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Glossary

AFSJ- Area of freedom, security and justice

CJEU Court of Justice of the European Union

CONE Cost of Non-Europe

CVM Cooperation and Verification Mechanism

DRF Democracy, Rule of Law and Fundamental Rights

EAVA European Added Value Assessment

ECHR European Convention on Human Rights

FDI Foreign Direct Investments

FRA Fundamental Rights Agency

GDP Gross Domestic Product

IIA Interinstitutional agreement

OECD Organisation for Economic Co-operation and Development

TCN Third Country Nationals

UNDP United Nations Development Programme

WJP World Justice Project's Rule of Law Index

WGI World Bank's Worldwide Governance Indicators

1. Introduction

1.1. Compliance with EU common values in the Member States

In Article 2 of the Treaty on European Union (TEU) Member States agreed⁵ to adhere to a set of common values. Compliance with these common EU values is also a requirement for EU accession.⁶ Moreover, they form the basis for EU external policy.⁷ The requirements imposed by the EU on candidate countries and third countries must reflect those imposed on its own Member States. Common EU values include democracy, which inter alia requires free and fair elections, a free and pluralistic media landscape, and an open civic space allowing individuals to assemble and express their views freely. Furthermore, they include the rule of law, a key requirement of which is that the law should be enforced by independent and impartial judicial authorities, inter alia ensuring effective judicial protection for individuals. Moreover, all EU Member States have committed to ensuring that fundamental rights, including those of minorities, are respected. Democracy, the rule of law and fundamental rights need to be deployed together as they are in a triangular, mutually-reinforcing relationship⁸ that together safeguards the constitutional core of the EU and its Member States. For example, free and fair elections require common action to respond to online disinformation campaigns aimed at influencing the outcome, and a guarantee that courts examining electoral disputes are independent. Furthermore, measures aimed at safeguarding the rights of minorities, including the Roma⁹ and LGBTI persons¹⁰ will not succeed without tackling institutional forms of discrimination.

Serious allegations have been made regarding the DRF record of a number of Member States. Here, a distinction should be made between: 1) the scenario in which there are recurrent fundamental rights violations and/or there is pervasive corruption; and 2) the scenario in which a government seeks to systematically weaken the checks and balances within the governance system of the Member State concerned. This latter scenario is referred to as 'constitutional capture'.¹¹ Academics have proposed a 'sunshine approach'¹² for the first scenario, entailing dialogue and capacity-building. This could, for instance, result in support for Member States to strengthen their national prevention, investigation and prosecution capacity in the fight against corruption and the quality and efficiency of the justice system, as well as detention conditions. Under this scenario, Council of

⁵ C. Hillion, [Overseeing the rule of law in the European Union, legal mandate and means](#), Swedish Institute for European Policy Studies, European Policy Analysis 2016/1, p.2: 'The values of the Union are "common to the Member States", and as such they must be respected for states to keep their membership rights intact.'

⁶ In accordance with Article 49 TEU.

⁷ In accordance with Article 21 TEU.

⁸ S. Carrera, E. Guild, N. Hernanz, [The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU, Towards an EU Copenhagen Mechanism](#), CEPS, 2013.

⁹ European Parliament [resolution](#) of 25 October 2017 on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism (2017/2038(INI)), P8_TA(2017)0413.

¹⁰ LGBTI stands for lesbian, gay, bisexual, transgender and intersex persons; European Parliament [resolution](#) of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones (2019/2933(RSP)) P9_TA(2019)0101.

¹¹ J.W. Müller, Rising to the challenge of constitutional capture, [Protecting the rule of law within EU member states](#), Eurozine, 24 March 2014.

¹² W. van Ballegooij and T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2016; Annex II, [Assessing the need and possibilities for the establishment of an EU scoreboard on democracy, the rule of law and fundamental rights](#) by P. Bárd, S. Carrera, E. Guild and D. Kochenov, with a thematic contribution by W. Marneffe, section 4.9.

Europe bodies, such as the European Commission for Democracy through Law (Venice Commission),¹³ Group of States against Corruption (GRECO)¹⁴ and the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),¹⁵ as well as the FRA,¹⁶ can provide important assistance to Member States in their efforts to address DRF violations.

In the second scenario, the emphasis 'should shift'¹⁷ towards the EU Treaties' enforcement mechanisms. Article 7 TEU contains a procedure which is meant to address this situation. It allows relevant EU institutions to act in situations where there is 'a clear risk of a serious breach' of EU values by a Member State (Article 7(1)), or where there is a 'serious and persistent breach' of EU values laid down in Article 2 TEU (Article 7(2)). Ultimately, the Member State concerned can be sanctioned through the suspension of membership rights in accordance with Article 7(3).¹⁸ The Article 7(1) TEU procedure has been activated by the European Commission regarding Poland¹⁹ and by the European Parliament on Hungary.²⁰ Romania²¹ and Bulgaria²² for the moment remain subject to the cooperation and verification mechanism (CVM),²³ with the Commission monitoring their progress in the fields of judicial reform, corruption and (for Bulgaria) organised crime. Furthermore, the European Parliament has recently specifically addressed the situation in Malta,²⁴ Slovakia²⁵ and

¹³ Council of Europe, [Venice Commission](#).

¹⁴ Council of Europe, [GRECO](#).

¹⁵ Council of Europe, [CPT](#).

¹⁶ [FRA](#) website.

¹⁷ W. van Ballegooij and T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2016; Annex II, [Assessing the need and possibilities for the establishment of an EU scoreboard on democracy, the rule of law and fundamental rights](#) by P. Bárd, S. Carrera, E. Guild and D. Kochenov, with a thematic contribution by W. Marneffe, section 4.9.

¹⁸ For further details see Pech et al, W. van Ballegooij and T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2016; Annex I, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights](#) by L. Pech, E. Wennerström, V. Leigh, A. Markowska, L. De Keyser, A. Gómez Rojo and H. Spanikova; Annex I, 2016, section 2.1.

¹⁹ European Commission, Reasoned proposal in accordance with Article 7(1) of the Treaty on European Union regarding the rule of law in Poland, Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, [COM\(2017\)835](#) final of 20 December 2017; European Parliament [resolution](#) of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM(2017)0835 – 2017/0360R(NLE)) P9_TA-PROV(2020)0225.

²⁰ European Parliament [resolution](#) of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)), P8_TA(2018)0340.

²¹ Report from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism, [COM\(2019\)499](#) final of 22 October 2019. European Parliament [resolution](#) of 13 November 2018 on the rule of law in Romania (2018/2844(RSP), P8_TA(2018)0446.

²² Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Cooperation and Verification Mechanism, [COM\(2019\)498](#) final of 22 October 2019.

²³ European Commission, [CVM](#).

²⁴ European Parliament [resolution](#) of 18 December 2019 on the rule of law in Malta following the recent revelations surrounding the murder of Daphne Caruana Galizia (2019/2954(RSP)), P9_TA(2019)0103.

²⁵ European Parliament [resolution](#) of 19 April 2018 on protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová (2018/2628(RSP)) P8_TA(2018)0183; European Parliament [resolution](#) of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)) P8_TA(2019)0328.

Czechia²⁶ A Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG)²⁷ was also set up by the European Parliament's LIBE committee to monitor breaches of democracy, the rule of law and fundamental rights, and the fight against corruption within the EU.

Certain national emergency measures taken since the outbreak of the Covid-19 pandemic, have threatened these values further.²⁸ The impact was felt not only in terms of the extraordinary powers granted to governments and the reduction of parliamentary scrutiny and judicial oversight, but also in terms of the severe curtailing of a range of fundamental rights.²⁹ The impact of these measures was particularly felt by vulnerable groups, including women and children at risk of domestic violence,³⁰ older people,³¹ the Roma,³² asylum-seekers³³ and prisoners.³⁴ In this context, the European Parliament has emphasised that all measures taken at national and/or EU level must be in line with the rule of law, strictly proportionate to the exigencies of the situation, clearly related to the ongoing health crisis, limited in time and subjected to regular scrutiny.³⁵ It also called on the Commission to urgently assess whether national emergency measures are in conformity with the Treaties.³⁶

Allegations of DRF breaches also extend themselves to situations in which Member States act in a transnational context. An example of this concerns the complicity of several EU Member States with a programme run by the United States Central Intelligence Agency (CIA), involving the transportation, illegal detention and torture of prisoners (CIA rendition) between 2001 and 2006. Despite consistent efforts by the European Parliament and a number of national parliaments,³⁷ the full extent of this complicity is still unknown, as large parts of a relevant report by the US Senate³⁸

²⁶ European Parliament [resolution](#) of 19 June 2020 on the reopening of the investigation against the Prime Minister of the Czech Republic on the misuse of EU funds and potential conflicts of interest (2019/2987(RSP)) P9_TA(2020)0164

²⁷ European Parliament Committee on Civil Liberties, Justice & Home Affairs (LIBE), [working document](#) on Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG) Report (LIBE/9/02808), Author: Sophia in 't Veld, Chair DRFM, PE650.662v01-00, 10 July 2020.

²⁸ [The impact of Covid-19 measures on Democracy, the Rule of Law and Fundamental Rights in the EU](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020; K. Binder, M. Diaz Crego, G. Eckert, S. Kotanidis, R. Manko and M. Del Monte, '[States of emergency in response to the coronavirus crisis: Situation in certain Member States](#)', EPRS, European Parliament, 2020; N. Atanassov, H. Dalli, C. Dumbrava, G. Eckert, U. Jurviste, A. Radjenovic, S. Voronova, '[States of emergency in response to the coronavirus crisis: Situation in certain Member States II](#)', EPRS, European Parliament, 2020; N. Bentzen, A. Boström, M. Del Monte, I. Odink, M. Prpic, M. Tuominen, '[States of emergency in response to the coronavirus crisis: Situation in certain Member States III](#)', EPRS, European Parliament, 2020; Z. Alexandre, M. Del Monte, G. Eckert, S. Kotanidis, V. Langova and V. Rakovska, '[States of emergency in response to the coronavirus crisis: Situation in certain Member States IV](#)', EPRS and Unit for Legislative Quality, DG Presidency, European Parliament, 2020.

²⁹ FRA, [Coronavirus disease \(COVID-19\) outbreak in the EU – impact on fundamental rights](#), 2020.

³⁰ FRA, [Coronavirus disease \(COVID-19\) outbreak in the EU – impact on fundamental rights](#), bulletin no 1, 2020, p. 32.

³¹ FRA, [Coronavirus pandemic in the EU-Fundamental rights implications: with a focus on older people](#), bulletin no 3, 2020, p. 31.

³² FRA, [Coronavirus disease \(COVID-19\) outbreak in the EU – impact on fundamental rights](#), bulletin no 1, 2020, p. 32.

³³ A. Radjenovic, [Tackling the coronavirus outbreak: Impact on asylum-seekers in the EU](#), EPRS, 2020.

³⁴ FRA, [Coronavirus disease \(COVID-19\) outbreak in the EU – impact on fundamental rights](#), bulletin no 1, 2020.

³⁵ European Parliament [resolution](#) of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences, P9_TA(2020)0054, paragraph 46.

³⁶ Ibidem, paragraph 47.

³⁷ European Parliament [resolution](#) of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA (2013/2702(RSP)), P7_TA(2013)0418 with further references.

³⁸ Report of the Senate Select Committee on Intelligence Study on the Central Intelligence Agency's Detention and Interrogation Programme, [S. Report 113-288](#) of 9 December 2014; European Parliament [resolution](#) of 8 June 2016 on

remains confidential and accountability efforts in several EU Member States have stalled or never progressed. Similarly, a number of Member States have failed to seriously address³⁹ issues raised in the resolution following the LIBE committee inquiry regarding electronic mass surveillance of EU citizens,⁴⁰ notably by comprehensively evaluating and revising, where necessary, their national legislation and practices governing the activities of the intelligence services.

1.2. Shortcomings in the current EU framework to address DRF violations

The current problems related to democracy, the rule of law and fundamental rights in EU Member States are not limited to the EU's monitoring and supervision of its Member States. Their lack of compliance with United Nations and Council of Europe instruments,⁴¹ and the implementation of European Court of Human Rights judgments, leads to formidable challenges in EU Member States.⁴² This problematic situation has a direct effect on EU measures and cooperation, as these are based on the presumption of compliance with these international obligations. An example is found in the area of detention, where several Member States have been found to have systemic problems as regards prison conditions, notably overcrowding amounting to inhuman or degrading treatment,⁴³ putting the principles of mutual trust and mutual recognition of judicial decisions in criminal matters at risk.

The issues related to compliance concern not only Member States, but equally EU institutions. The EU can only claim full democratic legitimacy to enforce and promote the rights and values listed in Article 2 TEU in internal and external policies⁴⁴ if it observes those standards itself. The accession of the EU to the European Convention on Human Rights (ECHR), as required by Article 6.2 of the TEU, has not yet been achieved. It is argued that accession to the ECHR would enhance EU institutions' compliance with fundamental rights because it would place their actions under the external scrutiny of the European Court of Human Rights.⁴⁵ However, the proposed draft agreement on the accession was found to be incompatible with EU law by the Court of Justice, which raised concerns related to respect for the autonomy of EU law and the principle of mutual recognition on which intra EU

follow-up to the European Parliament resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA, P8_TA(2016)0266.

³⁹ European Parliament [resolution](#) of 29 October 2015 on the follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens, P8_TA(2015)0388, paragraph 3.

⁴⁰ LIBE committee inquiry, [Electronic mass surveillance of EU citizens, Protecting fundamental rights in a digital age](#), proceedings, outcome and background documents, 2013-2014.

⁴¹ For details, see Bárd et al, Annex II, 2016, section 1.3, Annex 1 and Annex 3 of J. McGuinn, V. Cilli, A. Siino et al, Cost of Non-Europe in the area of Democracy, the Rule of Law and Fundamental Rights, in annex; W. van Ballegooij, [The cost of non-Europe in the area of procedural rights and detention conditions](#), EPRS, European Parliament, 2017, section 1.1.

⁴² Parliamentary Assembly, Council of Europe, The implementation of judgments of the European Court of Human Rights, [Resolution 2178 \(2017\)](#).

⁴³ In breach of Article 3 ECHR and Article 4 of the EU Charter; For figures see the [Council of Europe Annual Penal Statistics: CJEU judgment](#) of 5 April 2016, in joined cases C-404/15 (*Aranyosi*) and C-659/15 PPU (*Căldăraru*), ECLI:EU:C:2016:198, paragraph 88.

⁴⁴ Article 3(1) and 3(5) TEU; Council of the European Union.

⁴⁵ W. van Ballegooij and T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2016; Annex I, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights](#), L. Pech, E. Wennerström, V. Leigh, A. Markowska, L. De Keyser, A. Gómez Rojo and H. Spanikova, section 2.4.5.

cooperation is based.⁴⁶ Negotiations aimed at overcoming the issues raised by the Court of Justice are ongoing.⁴⁷

A recent EPRS study on protecting common EU values within the Member States⁴⁸ discusses more extensively the fact that the EU has so far been unable to comprehensively tackle violations of EU values, either through its ordinary monitoring and enforcement activities, or the special procedures provided for in Article 7 TEU. The reasons for this are a combination of the fragmented nature of these activities, weak enforceability of certain tools and the insufficient use and effectiveness of others, as well as a lack of effective follow-up. In particular, monitoring activities, such as the EU Justice Scoreboard⁴⁹ and the European Semester⁵⁰ for economic governance have become increasingly relevant for the enforcement of EU values. However, they fail to detect internal linkages between the elements assessed and lack appropriate sanctions. The FRA provides the EU institutions, bodies, offices and agencies and its Member States with assistance and expertise relating to fundamental rights. Its mandate is, however, limited to Member State actions when implementing EU law and currently does not allow for systematic monitoring of DRF in the Member States.⁵¹

Commission dialogues with Member States in the context of its 'rule of law framework'⁵² and 'rule of law dialogues' among⁵³ Member States have also not prevented systemic threats from materialising in a number of Member States. Preliminary references⁵⁴ concerning the interpretation of EU law have been an important tool to clarify the need for Member State compliance with EU values, even where they act outside the scope of EU law.⁵⁵ The main weakness of this procedure is that references have to be made by national judges. These might not refer relevant questions,⁵⁶ due to a lack of capacity, knowledge or independence from the government. Infringement procedures⁵⁷ have been used to enforce EU values.⁵⁸ However, even if their increased use would certainly reduce

⁴⁶ Court of Justice of the European Union, [Opinion 2/13](#) of 18 December 2014. Opinion pursuant to Article 218(11) TFEU – draft international agreement – Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms – Compatibility of the draft agreement with the EU and FEU Treaties.

⁴⁷ Council of Europe, [EU accession to the ECHR](#).

⁴⁸ M. Díaz Crego, R. Mañko, W. van Ballegooij, [Protecting EU common values within the Member States, An overview of monitoring, prevention and enforcement mechanisms at EU level](#), EPRS, European Parliament, September 2020.

⁴⁹ European Commission, [EU Justice Scoreboard](#).

⁵⁰ European Commission, [European Semester](#).

⁵¹ [Council Regulation \(EC\) No 168/2007](#) of 15 February 2007, establishing a European Union Agency for Fundamental Rights, OJ L 53 of 22 February 2007; it has been argued that the FRA could contribute towards the monitoring of EU values even without a change of its mandate; see [Strengthening the Fundamental Rights Agency, the Revision of the Fundamental Rights Agency Regulation](#), Directorate-General for Internal Policies, European Parliament, June 2020, sections 3.3.2 and 3.3.3.

⁵² European Commission, [Rule of law framework](#).

⁵³ Presidency conclusions – Evaluation of the annual rule of law dialogue, Council of the European Union, [14173/19](#), 19 November 2019.

⁵⁴ Article 267 TFEU; [Recommendations](#) to national courts and tribunals, in relation to the initiation of preliminary ruling proceedings, OJ C 439/1 of 25 November 2016.

⁵⁵ CJEU [judgment](#) of 27 February 2018 in case C-64/16, *Associação Sindical dos Juizes Portugueses*, ECLI:EU:C:2018:117, paragraphs 34, 35.

⁵⁶ L.D. Spieker, [The Court gives with one hand and takes away with the other, The CJEU's judgment in Miasto Łowicz](#), Verfassungsblog, 26 March 2020.

⁵⁷ Article 258-260 TFEU; European Commission, [Infringement procedure](#).

⁵⁸ e.g. in CJEU [judgment](#) of 24 June 2019 in case C-619/18, *European Commission v. Poland*, ECLI:EU:C:2019:531, paragraphs 54-59.

the enforcement gap,⁵⁹ by their very nature, beyond addressing the specific violations they often do not, or rather cannot, fully restore the systemic damage that has been inflicted. Moreover, the European Parliament has indicated that the Article 7(1) TEU procedures regarding Poland and Hungary have not resulted in the concerns raised being addressed.⁶⁰ This is notably due to a lack of sufficient willingness among Member States so far to actively confront one of their peers during dedicated hearings. The lack of effective cooperation among EU institutions and between those institutions and Member States, notably in the context of Article 7(1), may be seen to violate the principle of sincere cooperation in accordance with Articles 4 and 13 TEU.⁶¹ Finally, the Article 7(2) and 7(3) TEU procedures for the determination of a 'serious and persistent breach' of common values and the subsequent adoption of sanctions have not been used so far, and the majority requirements in the European Council make it unlikely that they ever will be.⁶²

⁵⁹ W. van Ballegooij, [Area of freedom, security and justice: cost of non-Europe](#), EPRS, European Parliament, 2019.

⁶⁰ European Parliament [resolution](#) of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary, P9_TA(2020)0014, paragraph 3.

⁶¹ Pech et al, Annex I, 2016, section 4.1.1.

⁶² The 'preventive mechanism' under Article 7(1) requires a majority of four-fifths of the Council's members; the 'sanctioning mechanism' under Article 7(2) requires unanimity in the European Council.

2. Impact of DRF violations

2.1. Impacts on the fight against impunity, human dignity, fundamental rights and mutual trust

The status quo described in Section 1 results in impunity for criminal activities as well as violations of human dignity and fundamental rights, including those of EU citizens. In a context within which judicial authorities lack independence from the government, prosecutors will not be willing or able to take on certain cases against powerful individuals (who are either politically active or are 'protected' by those in power), including those involving fraud affecting the Union's financial interests.⁶³ The present situation not only affects human dignity, particularly of those suffering institutional discrimination, but also prevents the effective exercise of fundamental rights by EU citizens and third country nationals alike. The annexed study drafted by Milieu discusses a number of these impacts on rights and freedoms enjoyed under the Charter of Fundamental Rights of the European Union⁶⁴ in more detail.⁶⁵ For example, an ineffective judicial system may lead to violations of human dignity, notably the prohibition of inhuman or degrading treatment⁶⁶ in overcrowded prisons due to the excessive use of pre-trial detention. Hate speech by public figures and discrimination, including on the basis of people's sexual orientation not only violates the right to non-discrimination,⁶⁷ but also the free movement and residence rights of EU citizens.⁶⁸ A lack of judicial independence impairs the right to an effective remedy and to a fair trial.⁶⁹

Moreover, it should be pointed out that Member States rely on each other's compliance with EU law, rights and values. Therefore, depreciation of EU values in one Member State will have EU-wide effects in many ways, notably undermining the basis for mutual recognition of decisions taken in that Member State in areas such as free movement and EU citizenship,⁷⁰ asylum⁷¹ and criminal justice.⁷² For example, Court of Justice of the European Union (CJEU) case law has confirmed that judicial cooperation in criminal matters, where individual rights are directly at stake, cannot function properly when there are serious concerns regarding the independence of judicial authorities.⁷³ This has already led to a more general suspension of judicial cooperation between certain Member States in the context of European Arrest Warrant procedures, pending the reply to preliminary questions raised with the CJEU.⁷⁴

⁶³ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198/29 of 28 July 2017.

⁶⁴ Charter of Fundamental Rights of the European Union, OJ C 326/391 of 26 October 2012.

⁶⁵ Annex I – of J. McGuinn, V. Cilli, A. Siino et al, Cost of Non-Europe in the area of Democracy, the Rule of Law and Fundamental Rights, in annex, Chapter 3.

⁶⁶ Article 4, EU Charter.

⁶⁷ Article 21, EU Charter.

⁶⁸ Article 45, EU Charter.

⁶⁹ Article 47, EU Charter.

⁷⁰ e.g. CJEU [judgment](#) of 5 June 2018 in case C-673/16, *Coman*, ECLI:EU:C:2018:385, paragraph 36.

⁷¹ e.g. CJEU [judgment](#) of 21 December 2011 in joined cases C-411/10 (*N.S.*) and *M.E.* (C-493/10), ECLI:EU:C:2011:865, paragraph 86.

⁷² e.g. CJEU [judgment](#) of 5 April 2016, in joined cases C-404/15 (*Aranyosi*) and C-659/15 PPU (*Căldăraru*), ECLI:EU:C:2016:198, paragraph 88.

⁷³ CJEU [judgment](#) of 25 July 2018 in case C-2016/18 PPU (*L.M.*), ECLI:EU:C:2018:586, paragraph 60.

⁷⁴ District Court of Amsterdam of 31 July 2020, Case [13/751021-20; Dutch court: Polish judiciary no longer independent](#), Politico, 31 July 2020; [IRK legt alle overleveringen naar Polen voorlopig stil](#) (District Court of Amsterdam suspends all

2.2. Violations of DRF and their economic impacts at individual and societal level

DRF violations also have a number of economic impacts both at the individual and the societal level. Economic impacts of DRF violations for individuals can be observed in such areas as employment, social engagement, health, housing, education, and justice. Such consequences were already discussed in an EPRS study on the Cost of non-Europe (CoNE) in the area of freedom, security and justice⁷⁵ published in 2019. Connected to these, impacts on aggregate indicators such as investments, GDP, tax revenues, societal welfare (measured e.g. by poverty and inequality) are also observed. This has been highlighted in previous EPRS studies, e.g. the costs due to the pervasive corruption in a number of EU Member States.⁷⁶ A summary table of EPRS analysis can be found in Table 2 of the annexed study.

2.2.1. Economic costs at the individual level

The translation of impacts on individual rights in their economic costs borne by individuals is summarised in Figure 1:

surrenders to Poland for the moment), District Court of Amsterdam, 3 September 2020; W. van Ballegooij, [European Arrest Warrant, European Implementation Assessment](#), EPRS, European Parliament, 2020, section 2.2.6 (relationship with fundamental rights and EU values).

⁷⁵ W. van Ballegooij, [Area of freedom, security and justice: Cost of Non-Europe](#), EPRS, European Parliament, 2019.

⁷⁶ W. van Ballegooij, T. Zandstra, [Organised Crime and Corruption: Cost of Non-Europe Report](#), EPRS, European Parliament, 2016.

Figure 1 – Violations of individual rights and their direct economic impacts for individuals



Source: authors' elaboration on J. McGuinn, V. Cilli, A. Siino et al, Cost of Non-Europe in the area of Democracy, the Rule of Law and Fundamental Rights, in annex.

Focusing on the **employment** dimension, there is extensive evidence of costs borne by individuals who are victim of unequal treatment and discrimination in hiring practices, salaries and career development. Pay gaps, employment gaps and pension gaps affecting such areas of inequality as gender, race, religion and belief, migration background, sexual orientation, age and disability imply important costs in terms of lost income. As examples, the lost earning due to the gender pay gap on the EU labour market is estimated at €241-379 billion.⁷⁷ EPRS studies estimate that the cost borne

⁷⁷ W. van Ballegooij and J. Moxom, [Equality and the Fight against Racism and Xenophobia: Cost of Non-Europe Report](#), EPRS, European Parliament, 2018.

by third country nationals (TCNs) due to unequal treatment on the labour market amounts to €21 billion,⁷⁸ and the pay gap for asylum seekers to €1.4-1.9 billion.⁷⁹

Discrimination resulting from violations of the right to equal treatment may have immediate consequences for victims, such as physical injury or feelings of fear and insecurity. Moreover, impacts on health may also result from discrimination in access to quality healthcare.⁸⁰ As underlined in the annexed study, medical research has found that discrimination can lead to a range of mental health problems, such as chronic depression and generalised anxiety disorder, as well as substance abuse.⁸¹ The EPRS Cost of non-Europe report on equality and the fight against racism and xenophobia⁸² distinguishes several categories of **health impacts** related to discrimination on grounds of gender, race, religion and belief, including the economic impacts of physical and emotional impairment due to violence against women (which is estimated at €134 billion annually). Moreover, it has been highlighted that asylum seekers in the EU enjoy levels of living and health conditions below the levels observed for EU nationals. This adds to the increased risk of loss of life during the asylum journey, due to gaps in EU asylum policy that lead to violations of fundamental rights in the area of human dignity and individual freedoms.⁸³

Unequal treatment and limited citizens' rights moreover affect social cohesion with consequences on individual **social engagement**. In addition, as underlined in the annexed study, individuals exposed to discrimination may be discouraged from engaging with those from a different background, leading to lower social cohesion and increased social and territorial fragmentation. The EPRS Cost of non-Europe report on legal migration⁸⁴ noted that third-country nationals (TCNs) often face barriers to family reunification. Costs of these barriers have been estimated at €6.9-8.7 billion annually.

As underlined in the case of health, access to goods and services can be hindered by systematic discriminatory practices. This is displayed, for example, by limited access to **housing**. The EPRS Cost of non-Europe report on equality estimates the cost of discriminatory practices in the housing market for LGBTI+ individuals and for people with disabilities at €19-49.1 billion annually.

Unequal treatment and violations of the principles of solidarity can also have impacts on **educational outcomes**, which has direct implications on people's incomes. For example, lost earnings among people with disabilities due to lower educational attainment are estimated around €61-98 million.⁸⁵ Discrimination in the field of education takes the form of limited access to scholarships,⁸⁶ early school-leaving,⁸⁷ and other factors limiting both access and educational

⁷⁸ W. van Ballegooij and E. Thirion, [The cost of non-Europe in the area of legal migration](#), EPRS, European Parliament, 2019.

⁷⁹ W. van Ballegooij and C. Navarra, [The cost of non-Europe in asylum policy](#), EPRS, European Parliament, 2018.

⁸⁰ FRA, [Inequalities and multiple discrimination in access to and quality of healthcare](#), 2013.

⁸¹ V.M. Mays and S.D. Cochran, [Mental health correlates of perceived discrimination among lesbian, gay, and bisexual adults in the United States](#), *American Journal of Public Health*, vol. 91, no. 11, 2001, pp. 1869-1876.

⁸² W. van Ballegooij and J. Moxom, 2018.

⁸³ W. van Ballegooij and C. Navarra, [The Cost of Non-Europe in Asylum Policy](#), EPRS, European Parliament, 2018.

⁸⁴ W. van Ballegooij and E. Thirion, 2019.

⁸⁵ W. van Ballegooij and J. Moxom, 2018.

⁸⁶ The cost of restricted access to scholarships due to age discrimination is estimated at the level of €6.2-8.6 billion annually (van Ballegooij and Moxom, 2018).

⁸⁷ See, for example, G. Brunello and M. De Paola, [The Costs of Early School Leaving in Europe](#), *IZA Journal of Labour Policy*, vol. 3, no 22, 2014, pp. 1-31.

attainment, which, together with being a problem per se and a waste of potential intellectual resources, in their turn impact pay gaps, as discussed above.

The EPRS CoNE on equality⁸⁸ identifies barriers to **access to justice** for victims of discrimination and hate crimes as a key horizontal issue. Barriers include limited compliance with remedies applied to instances of discrimination, under-reporting of hate crimes, and gaps and barriers in criminal justice practices in the fight against hate crime. The annexed study underlines that speech and hate crime often remain unprosecuted and invisible, meaning that its victims remain unprotected, with their rights not fully respected.⁸⁹ The EPRS CoNE report on procedural rights and detention conditions⁹⁰ quantifies the costs at the individual level of some deficiencies in access to justice: the gaps related to mutual recognition instruments such as the European Arrest Warrant may result in a range of negative consequences for individuals. The excessive use of pre-trial detention is another expression of gaps in access to justice and leads to a loss of freedom and to direct economic costs for individuals. These have been estimated between €62 and €713 per detainee, per month, depending on the country.⁹¹

2.2.2. Economic costs at the aggregate level

Most economic literature – briefly presented below – seems to agree on a positive correlation between democracy, rule of law and fundamental rights, and countries' long-run economic performance.

The channels through which this correlation runs are multiple. Marslev and Sano,⁹² for example, identify and explore four possible pathways through which fundamental rights may affect economic growth: reduced economic inequality, human development, effective institutions and governance and absence of conflict and political instability.

The study in annex focuses on the impacts of DRF violations depicted in Figure 2: lower investments, lower tax revenues, increased costs of state budgets, brain drain and impact on societal welfare (namely increased poverty and inequality), and ultimately lower GDP.

⁸⁸ W. van Ballegooij and J. Moxom, 2018.

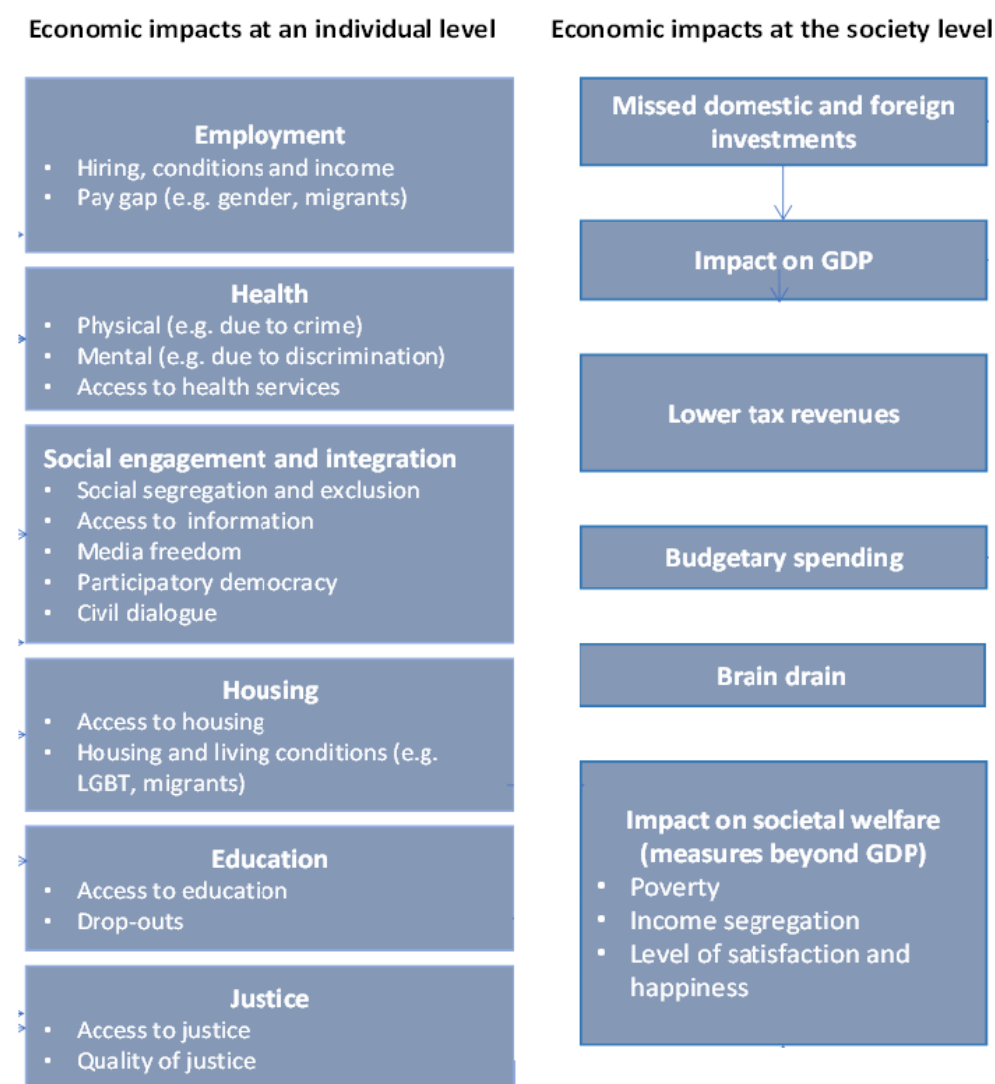
⁸⁹ FRA, [EU-MIDIS I – Data in Focus Report 6 – Minorities as Victims of Crime](#), 2012.

⁹⁰ W. van Ballegooij, [Procedural Rights and Detention Conditions](#), EPRS, European Parliament, 2017.

⁹¹ W. van Ballegooij, [Procedural Rights and Detention Conditions](#), EPRS, European Parliament, 2017.

⁹² K. Marslev and H.O. Sano, *The Economy of Human Rights. Exploring Potential Linkages between Human Rights and Economic Development*, Matters of Concern, the Danish Institute for Human Rights, 2016/2.

Figure 2 – Economic impacts at the individual and aggregate level due to DRF violations



Source: authors' elaboration on J. McGuinn, V. Cilli, A. Siino et al, Cost of Non-Europe in the area of Democracy, the Rule of Law and Fundamental Rights, in annex.

A number of studies have found that **investments** are positively correlated, especially with control of corruption, meaning that greater control of corruption leads to greater investment levels, both domestic and foreign. Indeed, corruption can hinder prospective profits and may introduce distortions that constitute barriers to long-term growth, since 'well-connected' businesses thrive at the expense of others, and corruption may lead to barriers to entry, misallocation of government spending, and private sector rent capture.⁹³

⁹³ S. Haggard and L. Tiede, [The rule of law and economic growth: where are we?](#), *World Development*, Vol. 39, No 5, 2011, pp. 673-685.

Lower **tax revenues** in the presence of DRF violations are a direct consequence of lower earnings due to widespread discrimination. In the EPRS CoNE report on equality these are estimated to be between €1.3-4.9 billion annually.⁹⁴

At the same time, there is evidence of increased **costs for state and EU budgets**: victims of discrimination may need support for unemployment and social assistance benefits, as well as to increased expenditure on specialised services in social care, which are estimated around €11 billion annually.⁹⁵ Gaps in EU asylum policies also lead to higher budgetary spending.⁹⁶ This includes increased costs of border security and surveillance because of the lack of legal channels for arrival in the EU (these costs are estimated at €352 million per year), impacts on funds for external action and development cooperation associated with attempts to limit departures from countries of origin (these are estimated to about €1.7 billion), and costs related to a number of inefficiencies in handling asylum applications, in transfers of asylum seekers under the Dublin system, including excessive use of detention, and in the costly procedures of forced returns at the expense of voluntary returns (overall inefficiencies are estimated to cost between €2.5 and €4.9 billion). Another source of increased costs for state budgets that derives from gaps and challenges in DRF is the excessive use of pre-trial detention measures.⁹⁷

The relationship between outward migration and economic growth is a complex one, since both positive and negative effects are at play, e.g. remittances, on one hand, and risk of labour shortages in some sectors (health, notably) on the other (as underlined in the annexed study with reference to eastern Europe). While usually positive impacts are considered to dominate,⁹⁸ among the consequences of emigration that may represent a long-run challenge for 'sending' countries, is '**brain drain**', i.e. the loss of educated people, human capital and skills. Interestingly, lack of political participation and representation seems to be among the drivers of emigration, as indicated by the results of a large United Nations Development Programme report on African migrants to the EU.⁹⁹

The annexed study reports that low effectiveness and accountability of government action affect citizens' **welfare** across different measures, e.g. violations in DRF and corruption negatively affect availability of and access to welfare and social services (affordable housing, health, education services, etc.) for large sections of the population. This potentially affects social outcomes, such as infant mortality, poverty and inequality. Poverty and inequality have in turn a negative impact on economic growth, as e.g. underlined by the Organisation for Economic Co-operation and Development (OECD), which argues that the rise in inequality in OECD countries has led to a 0.35 % decline in annual growth rates for the past 25 years.¹⁰⁰

⁹⁴ Discrimination against asylum seekers on the labour market was analysed in the EPRS CoNE on asylum and found to result in worse employment conditions and a higher risk of working in the shadow economy, which translates into lower tax revenue in the range of €652-783 million annually. See W. van Ballegooij and C. Navarra, [The Cost of Non-Europe in Asylum Policy](#), EPRS, European Parliament, 2018.

⁹⁵ This is especially due to the costs related to gender-based violence and costs of social support for mental health. See W. van Ballegooij and J. Moxom, [Equality and the Fight against Racism and Xenophobia: Cost of Non-Europe Report](#), EPRS, European Parliament, 2018.

⁹⁶ W. van Ballegooij and C. Navarra, [The Cost of Non-Europe in Asylum Policy](#), EPRS, European Parliament, 2018.

⁹⁷ W. van Ballegooij, [Procedural Rights and Detention Conditions](#), EPRS, European Parliament, 2017.

⁹⁸ J. Gibson and D. McKenzie, [The economic consequences of 'brain drain' of the best and brightest: microeconomic evidence from five countries](#), *The Economic Journal*, Vol. 122, No 560, 2012, pp. 339-375.

⁹⁹ UNDP, [The Scaling Fences: Voices of Irregular African Migrants to Europe](#), October 2019.

¹⁰⁰ OECD, [Does income inequality hurt economic growth?](#), *OECD Focus Paper*, OECD: Paris, 2014.

Impact of democracy, rule of law and fundamental rights on GDP

Turning to the effect of respect for DRF on countries' economic performance – as measured by GDP and its growth rate – most economic analysis points at a positive correlation between the two. A seminal study in this field,¹⁰¹ looking for the main determinants of economic growth, finds that indicators of rule of law have a positive and significant effect. Most of the analysis focuses on developing countries, however a notable exception¹⁰² finds that a 1 % increase in the value of rule of law index increases income per capita by 0.04 %, and a 1 % increase in the index measuring 'voice and accountability' (political participation, freedom of expression, media freedom, freedom of association) increases income per capita by 0.02 %.

Great attention has been devoted to the negative impact of corruption on GDP.¹⁰³ The pioneering work of Mauro in this direction found that countries with higher indicators of corruption experienced statistically significantly lower levels of GDP per capita growth as well as investment rates.¹⁰⁴ The EPRS CoNE report in the area of corruption tested this correlation in the former EU-28,¹⁰⁵ and found that corruption is associated with more unequal societies, weaker rule of law, reduced voter turnout in national parliamentary elections and lower trust in EU institutions. The study developed an econometric model that provided an estimate of the economic impact of corruption on GDP, according to which a one-unit increase of the Corruption Perception Index reduces GDP per capita by about 4.5 %. According to this estimate, **corruption costs the EU between €218 and €282 billion.**¹⁰⁶

Most recent (since 2000), literature finds a positive correlation between democracy and economic growth.¹⁰⁷ Among the most recent works on the subject, Acemoglu and co-authors,¹⁰⁸ find that a country that transitions from non-democracy to democracy achieves about 20 % higher GDP per capita in the following 25 years with respect to a country that remains a non-democracy.

An empirical analysis specifically focusing on fundamental rights protection and economic growth has been conducted by the Danish Institute for Human Rights.¹⁰⁹ The authors find that there is a significant causal effect from freedom and participation rights to economic growth, when accounting for the development of empowerment in the long term. They construct an 'empowerment index' encompassing freedom of domestic and foreign movement, freedom of speech, freedom of assembly and association, workers' rights, electoral self-determination and freedom of religion. They find that a permanent one-unit increase in the empowerment index in a given country will increase growth (in that country) by approximately 0.62 percentage points in the

¹⁰¹ R.J. Barro, Determinants of economic growth in a panel of countries, *Annals of economics and finance*, 4, 2003, pp. 231-274.

¹⁰² A. Ozpolat, G.G. Guven, F.N. Ozsoy and A. Bahar, Does rule of law affect economic growth positively. *Research in World Economy*, 7(1), 2016, p. 107.

¹⁰³ The abovementioned study by Ozpolat et al finds that a 1 % increase in control of corruption increases income per capita by 0.03 %.

¹⁰⁴ P. Mauro, [Corruption and growth](#), *Quarterly Journal of Economics*, 1995.

¹⁰⁵ W. van Ballegooij and T. Zandstra, 2016.

¹⁰⁶ This estimate is based on an analysis of the correlation between corruption and GDP and on the projection of a convergence scenario between EU countries. By accounting for the entire gap across EU Member States, the cost of corruption in the EU would be far greater and amount to between €817 and €990 billion.

¹⁰⁷ Inter alia, D. Rodrik and R. Wacziarg, Do democratic transitions produce bad economic outcomes?, *American Economic Review*, 95(2), 2005, pp. 50-55.

¹⁰⁸ D. Acemoglu, S. Naidu, P. Restrepo and J.A. Robinson, Democracy does cause growth, *Journal of Political Economy*, 127(1), 2019, pp 47-100.

¹⁰⁹ S.A. Koob, S.S. Jørgensen and H.O. Sano, An Econometric Analysis of Freedom And Participation Rights, *Matters of Concern, the Danish Institute for Human Rights*, 2017/1.

long-term. Recent studies have moreover found evidence of the negative effects of limitations of access to justice.¹¹⁰ These range from 0.5 % to 3 % of GDP in most countries, imposing costs on individuals, families and societies.

In enquiring as to the correlation between measures of democracy, rule of law and fundamental rights protection and GDP in the EU, the study in annex uses two different DRF scores, one from the World Justice Project's *Rule of Law Index* (WJP),¹¹¹ and the other from the World Bank's *Worldwide Governance Indicators* (WGI).¹¹² The variables selected to represent the extent of DRF violations are illustrated in Table 1 below.

It is important to underline the **limitations of the use of 'scores'** to measure inherently qualitative dimensions, and to aggregate measures at the country level that may be highly heterogeneous within countries. The study in annex discusses these limitations in Section 5.1, and several authors¹¹³ have engaged in this debate. These scores or indexes should not be taken as an accurate representation of each country situation, however. Their practical advantage is that they allow for comparisons to be drawn and for empirical investigation into their correlation with economic dimensions. Caution is required in using them and the interpretation of the related results.

Both WJP and WGI provide (or allow for the construction of) the aggregate measures used in investigating the relationship with economic performance in this study. However, as shown in the annexed study, all individual dimensions appear to have a positive correlation with GDP.

Table 1 – Variable selection for quantifying DRF violations

DRF violation	Variable for conceptualisation	Comment on choice
Lack of separation of powers; checks and balances	WJP: Constraints on Government Powers	Measures the extent to which governments are limited by the power of the legislature, judiciary and auditors; and whether misuse of office is subject to checks and sanctions.
Restrictions on press and media pluralism	RSF: Press Freedom Index (PFI) ¹¹⁴	WJP and WGI both include indicators that relate to fundamental rights such as freedom of expression and belief, or which include press freedom as a sub-component. However, they do not have a separate press and media freedom variable. This indicator therefore uses the Reporters Without Borders (RSF) Press Freedom Index, as an established and high-profile assessment of press freedom in the world.
Lack of legal certainty	WGI: Rule of law, estimate	Perceptions of the extent to which citizens have confidence in and abide by the rules of society, especially with regard to contract enforcement, property rights, police and courts, and the likelihood of crime or violence.
Discriminatory acts and inequality	WJP: Fundamental rights	Equal treatment; due process; freedom of opinion, expression, belief and religion; right to life; freedom of association and assembly; right to privacy; labour rights. WGI lacks human rights indicators, thus WJP is used in its stead.

¹¹⁰ OECD and World Justice Project, [Building a Business Case for Access to Justice](#), OECD: Paris, 2020.

¹¹¹ World Justice Project, [Rule of Law Index 2020](#), Washington, DC: World Justice Project, 2020.

¹¹² D. Kaufmann, A. Kraay and M. Mastruzzi, [The Worldwide Governance Indicators: Methodology and Analytical Issues](#), World Bank Policy Research Working Paper, No 5430, 2010.

¹¹³ Inter alia, R.M. Gisselquist, Developing and evaluating governance indexes: 10 questions, *Policy Studies*, vol. 35, no 5, 2014, pp. 513-531.

¹¹⁴ As the PFI index runs from best-to-worst, the standardisation with other variables has reversed the scale. Like the other DRF variables, it now runs from 0 (worst performer) to 1 (best performer).

DRF violation	Variable for conceptualisation	Comment on choice
Shrinking space for civil society and dialogue	WGI: Voice and accountability	Captures the extent to which citizens are able to participate in government selection, as well as the extent to which their freedom of expression and association are respected.
Ineffective justice systems and restrictions in access to justice	WJP: Civil Justice and Criminal Justice ¹¹⁵	Access to justice is affordable, free from discrimination, undue influence and corruption; judgments are enforced without bias, without undue delay; due process is respected; criminal justice measures are effective in reducing crime; and alternative dispute resolution mechanisms are available in civil justice cases.
Corrupt practices	WGI: Control of corruption	Perceptions of the extent to which public power is exercised for private gain, including petty and grand corruption, as well as state capture by elite and private interests.

Source: Milieu (2020) in Annex.

When turning to the multivariate analysis, the study confirms the positive correlation between DRF scores and GDP per capita, as shown in Table 2 below.¹¹⁶

The DRF score is constructed by using either WJP or WBI indexes and is 'adapted' to the EU scale, taking a value of 0 for the lowest value of the index (either WJP or WBI) among the EU-27 and a value of 1 for its highest value. All countries then will score between 0 and 1.

The table below indicates the impact of this DRF score on GDP per capita. The asterisks indicate where the impact is statistically significant. The coefficient is interpreted as: a one-unit improvement (i.e. a country moving from the 'lowest-score position' (0) to the 'highest-score position' (1)) of a Member State in the DRF Index, corresponds to a 30.4 %-31.1 % increase in GDP per capita. Alternatively, a 1 % increase in the DRF Index is associated with an approximate 0.3 % increase in GDP per capita (other factors such as education, employment rate, research and development expenditure, social spending, or inequality being equal). Further detail can be found in Section 5.3.2 of the annexed study.

These estimates point at a **significant positive correlation between high respect of DRF and GDP per capita at the country-level.**

While the positive direction of the correlation is corroborated by substantial literature, the magnitude of the coefficients has to be taken with **caution**. As is well set-out in the annexed paper, data limitations have an important impact on the analysis, both for the time span available and the limited variations across EU countries. These estimations are especially likely to represent an upper boundary, if compared to similar exercises in the academic literature on the topic. Moreover, from this literature we know that, while the present study can use only a relatively short time span, most beneficial effects of improved protection of fundamental rights and democratic practices appear in the long-term.

¹¹⁵ WJP includes two variables pertaining to justice: Criminal Justice and Civil Justice. As these are highly correlated in their ranking of countries (Pearson correlation of 0.91), and measure different, complementing dimensions of the justice system, both of which are relevant to the DRF violation, an average of the two is used.

¹¹⁶ This analysis is conducted using a Random Effect model and data for the EU-27 in the years 2013-2018. See Annex for greater detail.

Table 2 – Regression results of overall WJP score and WGI score against log of GDP per capita, EU-27, 2013-2018

Variables	Using WJP scores	Using WBI scores
DRF Score (normalised)	0.311***	0.304***
	(0.091)	(0.111)

Source: Milieu (2020) in Annex.

According to these estimates, it is possible to measure the cost of the 'status quo', i.e. the cost for European Union Member States of not having all the highest score in terms of DRF.¹¹⁷

The aggregate figures are presented in Table 3 below and point to a **substantial cost of violations of DRF for the European economy**, at about 9 % of EU-27 GDP. This is obtained by comparing the current scores of Member States with a hypothetical situation where all countries converge towards the highest values of the DRF measures.

Table 3 – Average annual reduction in GDP under the status quo (€ million)

WJP Score		WBI Score	
Effect on overall GDP (€ million)	% GDP	Effect on overall GDP (€ million)	% GDP
1 113 084	9.0 %	1 173 014	9.4 %

Source: authors' elaboration on Milieu (2020) in Annex.

These estimates have to be taken with particular caution, since, together with the limitations underlined above, they suffer from the limitations linked to benchmarking across countries. Scores and benchmarks are purely instrumental to the quantitative analysis and do not derive from a proper country-level analysis, which would be beyond the scope of the present assessment. Finally, it has to be noted that this projection implicitly relies on the assumption that the correlation between DRF and GDP can be at least partially interpreted as a causal relation. Despite many advances in the academic literature in this direction and the efforts made in the annexed paper, this can be only partially assessed.

¹¹⁷ The annexed study provides greater detail and the results disaggregated by country (Section 7.2.2, Scenario 1 – status quo).

3. An EU mechanism on democracy, the rule of law and fundamental rights

3.1. 2016 Legislative initiative proposing an EU 'pact' on DRF

As discussed, the current weaknesses in EU DRF monitoring and enforcement activities notably concern their fragmentation and lack of effectiveness in redressing DRF violations. In this context, the European Parliament has, since 2016, repeatedly called for an **EU 'pact' on DRF**.¹¹⁸

The pact proposed in 2016 (depicted in Figure 3 below) had two core elements:

- an annual European report on the situation of DRF in Member States (annual DRF report), with country-specific recommendations drawn up by the Commission in consultation with a panel of independent experts;¹¹⁹ and
- an EU policy cycle for DRF, involving EU institutions and national parliaments, incorporating the Commission's rule of law framework and the Council's rule of law dialogue.¹²⁰

The pact would be based on an IIA¹²¹ between the European Parliament, European Commission and Council. A draft prepared by a panel of independent experts would provide the basis for the annual DRF report,¹²² as well as a variety of sources and existing tools for assessment, reporting and monitoring of Member States' activities.¹²³ The idea of a panel of independent experts was inspired by the EU Network of Independent Experts on Fundamental Rights, active between 2002 and 2006,¹²⁴ and the Council of Europe's Venice Commission.¹²⁵ Such a panel has also been referred to as a 'Copenhagen Commission', with reference to the criteria to judge whether a country is sufficiently democratic to begin the process of accession to the EU.¹²⁶ It would subsequently be adopted by the Commission and lead to Council conclusions and the adoption of a European Parliament resolution, following an inter-parliamentary debate involving the European Parliament

¹¹⁸ European Parliament [resolution](#) of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, P8_TA(2016)0409.

¹¹⁹ European Parliament [resolution](#), Annex, Articles 2, 4 and 8.

¹²⁰ European Parliament [resolution](#), Annex, Article 2.

¹²¹ Article 295 TFEU.

¹²² European Parliament [resolution](#), Annex, Article 8.

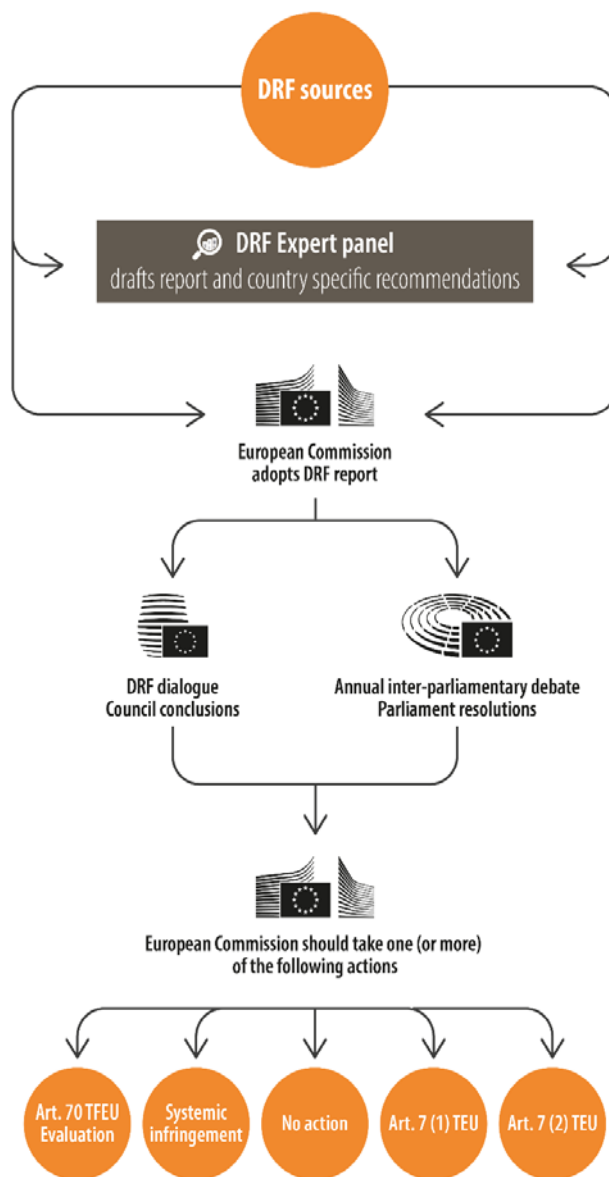
¹²³ European Parliament [resolution](#), Annex, Article 6.

¹²⁴ See [The implementation of the Charter of Fundamental Rights in the EU institutional framework](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2016, p. 25.

¹²⁵ European Parliament [resolution](#) of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)), P7_TA(2013)0315, paras. 76, 79-81; European Commission for Democracy through Law ([Venice Commission](#)).

¹²⁶ J.W. Müller, [Protecting Democracy and the Rule of Law inside the EU, or: Why Europe Needs a Copenhagen Commission](#), *Verfassungsblog*, 13 March 2013.

Figure 3 – EU 'pact' on DRF



Source: EPRS based on authors' own elaboration.

and national parliaments.¹²⁷ These could require the Commission to take action, ranging from enhanced monitoring and 'systemic infringement action',¹²⁸ which entails bundling several infringement cases together, to triggering a DRF dialogue or procedures to enforce EU values under Articles 7(1) and 7(2) TEU.

3.2. Commission response: An annual rule of law report

Initially, the European Commission rejected most of Parliament's recommendations, doubting their technical and legal feasibility.¹²⁹ However, the Commission published a consultation in 2019,¹³⁰ followed by communication proposing a 'blueprint for action',¹³¹ entailing a 'rule of law

¹²⁷ European Parliament [resolution](#), Annex, Article 10.

¹²⁸ K.L. Scheppele, 'Enforcing the Basic Principles of EU law through Systemic Infringement Actions', in C. Closa and D. Kochenov (eds.), *Reinforcing the Rule of Law Oversight in the European Union*, Cambridge University Press, 2016.

¹²⁹ Follow up to the Parliament resolution on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, adopted by the Commission on 17 January 2017, [SP\(2017\)16](#).

¹³⁰ Commission communication, [Further strengthening the Rule of Law within the Union, State of play and possible next steps](#), COM (2019)163 of 3 April 2019, and [Stakeholder contributions](#), 17 July 2019.

¹³¹ Commission communication, [Strengthening the rule of law within the Union, A blueprint for action](#), COM (2019)343, 17 July 2019.

review cycle¹³² culminating in an 'annual rule of law report'¹³³ covering all Member States. The Commission will publish its first report on 30 September 2020.¹³⁴ The Rule of Law Report covers significant developments in Member States, both positive and negative, within four areas:

- 1 Justice systems, and in particular their independence, quality and efficiency;
- 2 The anti-corruption framework;
- 3 Certain issues related to media pluralism; and
- 4 Other institutional issues related to checks and balances.

The report focuses on a synthesis of significant developments introduced by a brief factual description of the legal and institutional framework relevant for each pillar. Furthermore, it presents both challenges and positive aspects, including good practices. Beyond sources of information such as the FRA's European Fundamental Rights Information System (EFRIS),¹³⁵ during the preparation of its rule of law report the Commission consulted international organisations and professional associations. It furthermore relied on a network of contact points on the rule of law nominated by their Member States for exchange of information and dialogue.¹³⁶ In addition to the input from Member States, the Commission consulted targeted stakeholders and conducted (virtual) country visits. The Commission does not go into extensive detail as regards the exact response that the European Parliament and the Council¹³⁷ should give to the annual rule of law report; both institutions are encouraged to follow up on the rule of law report in their discussions. The European Parliament and national parliaments are also encouraged to develop inter-parliamentary cooperation and dialogue specifically on rule of law issues.¹³⁸ The Presidency of the Council has proposed to base the Council's annual dialogues on the rule of law on the Commission's annual report.¹³⁹ This will take the form of two discussions: an annual one discussion of the report as a whole and its horizontal aspects, and a half-yearly one on the first country-specific chapters of the report, so that all Member States will be covered in turn.¹⁴⁰

3.3. 2020 Legislative-initiative report

This EAVA accompanies a further legislative own-initiative report, building on the 2016 legislative own-initiative and making direct use of Parliament's right to propose an IIA.¹⁴¹ Beyond an IIA, Parliament also continues to insist on a scope for the annual report that includes country-specific

¹³² Commission communication, [Strengthening the rule of law within the Union, A blueprint for action](#), COM (2019)343, 17 July 2019, p. 9.

¹³³ Commission communication, [Strengthening the rule of law within the Union, A blueprint for action](#), COM (2019)343, 17 July 2019, p. 11

¹³⁴ European Commission, [Adjusted Commission work programme 2020](#), COM (2020)440, 27 May 2020; [Annex I](#), p. 5.

¹³⁵ FRA, [EFRIS](#).

¹³⁶ Ibidem.

¹³⁷ Commission communication, [Strengthening the rule of law within the Union, A blueprint for action](#), COM (2019)343, 17 July 2019.

¹³⁸ European Commission, European Rule of Law mechanism: Methodology for the preparation of the Annual Rule of Law Report, Ares(2020)1737645 - 24/03/2020.

¹³⁹ Presidency conclusions – Evaluation of the annual rule of law dialogue, [Council doc. 14173/19](#) of 19 November 2019, point 11.

¹⁴⁰ [Together for Europe's recovery, Programme for Germany's Presidency of the Council of the European Union 1 July to 31 December 2020](#), p. 18.

¹⁴¹ [Report on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights](#), (2020/2072(INL)), adopted on 22 September 2020.

recommendations¹⁴² covering all common EU values covered by Article 2 TEU.¹⁴³ However the report would no longer be based on a draft prepared by a panel of independent experts. Instead, the experts and the FRA would together advise an 'interinstitutional working group on EU values' on the methodology for the annual DRF report and in terms of identifying the main positive and negative developments in each Member State.¹⁴⁴ The three institutions may consult the panel at any stage of the annual monitoring cycle.¹⁴⁵

The drafting of the annual report would remain in the hands of the European Commission on the basis of a stakeholder consultation¹⁴⁶ and fact-finding visits by designated representatives of any of the three institutions.¹⁴⁷ Where the annual report as drafted by the Commission diverges from the findings of the independent panel of experts, the European Parliament and the Council may request the Commission to explain its reasons to the working group.¹⁴⁸

In terms of follow-up, the idea of a monitoring cycle remains in place. The Parliament and the Council shall adopt positions on the annual report by means of resolutions and conclusions, including reflections on the extent to which previous recommendations have been implemented by the Member States.¹⁴⁹ In this context, the EP shall also organise – in cooperation with national parliaments – an interparliamentary debate on the findings of the annual report.¹⁵⁰ The Commission shall, either on its own initiative or upon a request from the European Parliament or the Council, enter into a dialogue with one or several Member States, with the aim of facilitating implementation of the recommendations.¹⁵¹ The findings of the annual report should also be considered in the determination of funding priorities.¹⁵²

The draft IIA also introduces the possibility for the Commission to, either on its own initiative or upon a request from the European Parliament or the Council, draft an urgent report on a situation in one or several Member States that threaten imminent and serious damage to Union values. The Commission shall prepare the report in consultation with the Working Group. The Commission shall draft the urgent report without delay and make it public no later than two months following the European Parliament or Council request. The findings of the urgent report should be incorporated in the next annual report. This urgent report may specify recommendations aimed at addressing the imminent threat to Union values.¹⁵³

While respecting the individual roles and prerogatives of EU institutions, an explicit link is also made with the launch of infringement procedures under the proposed mechanism on protecting the EU budget against generalised rule of law deficiencies (budgetary conditionality).¹⁵⁴ This measure

¹⁴² LIBE Report, annex, paragraphs 10-12.

¹⁴³ LIBE Report, annex, paragraph 1.

¹⁴⁴ LIBE Report, annex, paragraph 3.

¹⁴⁵ LIBE Report, annex, paragraph 4.

¹⁴⁶ LIBE Report, annex, paragraph 5, 6.

¹⁴⁷ LIBE Report, annex, paragraph 8.

¹⁴⁸ LIBE Report, annex, paragraph 7.

¹⁴⁹ LIBE Report, annex, paragraph 13.

¹⁵⁰ LIBE Report, annex, paragraph 14.

¹⁵¹ Ibidem.

¹⁵² LIBE Report, annex, paragraph 15.

¹⁵³ LIBE Report, annex, paragraph 18.

¹⁵⁴ LIBE Report, annex, paragraph 16, 19; Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM (2018)324 of 2 May 2018; For an overview, including the academic debate regarding the pros and cons of this

would introduce a general rule of law conditionality into the EU's financial rules. Any Member State where a generalised rule of law deficiency is found could be subject to sanctions, including the suspension of payments and commitments, reduced funding and a prohibition on concluding new commitments. Negotiations on this proposal are also still ongoing, with Parliament and Council positions wide apart in terms of scope and procedure.¹⁵⁵ In particular, the draft IIA provides that institutions agree to use the findings of the annual report in their assessment of whether there are generalised deficiencies as regards the rule of law in the Member States, as well as in any other relevant assessment for the purposes of existing and future budgetary tools.¹⁵⁶

In accordance with the draft IIA, the three institutions would agree that the annual reports should guide their actions concerning Union values, notably as regards triggering the Article 7(1) TEU procedure.¹⁵⁷ Furthermore, the institution initiating a proposal under Article 7 TEU should be able to present the proposal in the Council and be fully informed and involved at all stages.¹⁵⁸ This would address the current situation in which the European Parliament is not allowed to participate in Council discussions regarding an Article 7(1) TEU procedure it triggers.¹⁵⁹ The LIBE committee report also prescribes 'modalities "aimed at enhancing the effectiveness of the procedure laid down in Article 7 TEU"' notably streamlining hearings, state-of-play sessions and recommendations aimed at redressing the concerns expressed in the reasoned proposal, together with timelines for implementation.¹⁶⁰ Finally, the draft IIA would also introduce an obligation on the three institutions to consider, inter alia, whether Union policies requiring a high level of mutual trust can be sustained in light of systemic deficiencies identified in the annual report.¹⁶¹ As discussed in Section 2, mutual trust is a cornerstone for various areas of European integration ranging from the single market to asylum and judicial cooperation in criminal matters.

proposal see R. Manko, [Protecting the EU budget against generalised rule of law deficiencies](#), EPRS, European Parliament, 2020.

¹⁵⁵ EPRS, [legislative train](#) on protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.

¹⁵⁶ LIBE Report, annex, paragraph 25.

¹⁵⁷ LIBE Report, annex, paragraph 16, 22.

¹⁵⁸ LIBE Report, annex, paragraph 24.

¹⁵⁹ L. Pech, D. Kochenov, S. Platon, [The European Parliament Sideline On the Council's distorted reading of Article 7\(1\) TEU](#), Verfassungsblog, 8 December 2019.

¹⁶⁰ LIBE Report, annex, paragraph 24.

¹⁶¹ LIBE Report, annex, paragraph 20.

4. EU added value of the EU pact on democracy, the rule of law and fundamental rights

4.1. Legal assessment

This European Added Value Assessment (EAVA) evaluates the potential impacts, and identifies the advantages, of an EU pact on DRF. It does so based on evidence provided by two in-depth research papers,¹⁶² and updated with more recent relevant literature. This EAVA discusses the legal basis, subsidiarity and proportionality,¹⁶³ scope and the division of responsibility for drafting the annual report on DRF in the Member States and its follow-up.

EU competence and legal basis

In accordance with Articles 2, 3(1) and 7 TEU, the EU has the competence to intervene to protect its 'constitutional core', i.e. the values it shares with the Member States.¹⁶⁴ This obligation also extends to matters where Member States act outside the scope of the implementation of EU law.¹⁶⁵ The EU should be able to monitor compliance with EU values in the Member States for it to be able to effectively exercise its competences under Article 7 TEU.¹⁶⁶ In addition, as discussed in Section 2.1., a depreciation in EU values in one Member State erodes the basis for mutual recognition of decisions taken in that Member State. In light of the obligation to uphold and promote the values of the Union, as well as the duty of sincere cooperation stemming from the Treaties, each Member State is required to actively engage in the attempts of the Union to restore adherence to the values in any part of the Union's territory.¹⁶⁷ Furthermore, in accordance with the principle of congruence, the requirements imposed by the EU upon candidate countries¹⁶⁸ and upon third countries are also imposed upon its own Member States. As regards the legal basis for the adoption of an EU pact on DRF, as discussed in Section 3.3., the LIBE committee preferred option is an IIA based on Article 295 TFEU, acknowledging that the institutions have to act within the limits of the powers conferred on them by the Treaties.¹⁶⁹ Such an IIA would be an appropriate way to ensure legal

¹⁶² W. van Ballegooij and T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2016; Annex I, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights](#) by L. Pech, E. Wennerström, V. Leigh, A. Markowska, L. De Keyser, A. Gómez Rojo and H. Spanikova; Annex II, [Assessing the need and possibilities for the establishment of an EU scoreboard on democracy, the rule of law and fundamental rights](#) by P. Bárd, S. Carrera, E. Guild and D. Kochenov, with a thematic contribution by W. Marneffe

¹⁶³ Article 5(1)-5(3) TEU; European Commission, [Better regulation toolbox no 5, legal basis, subsidiarity and proportionality](#).

¹⁶⁴ Bárd et al, Annex II, 2016, Section 3.2.

¹⁶⁵ This is because Article 2 TEU does not contain a similar limitation in the scope of its application to that found in Article 51 of the Charter of Fundamental Rights of the European Union (O.J. C 326, 26 October 2012).

¹⁶⁶ L. Pech, [The Rule of Law in the EU: The Evolution of the Treaty Framework and Rule of Law Toolbox](#), Reconnect Working paper No 7, March 2020, p. 22 (discussing the Commission's Rule of Law Framework): 'Notwithstanding the soft law nature of the Framework and the lack of any binding acts the Commission may adopt on this basis, the Council Legal Service strongly questioned the legality of the Framework. Both the Council and the Court of Justice have since acknowledged the Framework and in doing so, implicitly rejected the Council Legal Service's analysis.'; Presidency conclusions – Evaluation of the annual rule of law dialogue, [Council doc. 14173/19](#) of 19 November 2019: '10. We agree that this yearly stocktaking could make use of the Commission's annual rule of law reports, which would create synergies between the institutions.'

¹⁶⁷ C. Hillion, [Overseeing the rule of law in the European Union, legal mandate and means](#), Swedish Institute for European Policy Studies, European Policy Analysis 2016/1.

¹⁶⁸ In accordance with Article 49 TEU.

¹⁶⁹ Report on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights

certainty and coordination between the European Commission, Parliament and Council, notably as regards the scope, methodology and follow-up to their monitoring exercises. In particular, within the context of an IIA, cooperation could be organised in terms of programming and regular exchanges, with the aim of achieving a common understanding among the EU institutions on the methodologies used to assess DRF compliance. An example of an IIA is the 2016 IIA on better law-making (IIA).¹⁷⁰ The IIA is underpinned by the principle of 'sincere and transparent cooperation' recognising 'their joint responsibility in delivering high-quality Union legislation'.¹⁷¹ These two elements are certainly transposable to upholding EU values. At the same time, the IIA acknowledges the powers of the individual institutions and the procedures laid down in the Treaties.¹⁷² It contains provisions on programming and coordination, including exchanges on best practice and methodologies.¹⁷³ As indicated, these aspects are also transposable as common programming and understanding among the EU institutions on the methodologies used to assess compliance with DRF. No such IIA underpins the Commission's rule of law review discussed in Section 3.2.¹⁷⁴ At the same time, the model chosen by the European Commission resembles the Economic Semester, in which Parliament plays a minor role and Council is criticised for watering down many of the Commission's recommendations,¹⁷⁵ although in the Semester, the Council has the final say, whereas the Commission writes the rule of law report.

Subsidiarity and proportionality

The gaps identified in DRF monitoring and enforcement cannot be filled by Member States acting alone. The added value of action at EU level in the shape of an IIA is that responsibility for DRF monitoring and evaluation exercises can be clearly allocated and that coordination between EU institutions can be ensured. In addition, swifter and more effective cooperation among EU institutions and between those institutions and Member States could be achieved in DRF enforcement. The proportionality of EU intervention should be guaranteed through a methodology for the DRF report which is not unduly burdensome and costly in terms of data collection and reporting requests made to Member States. Possibilities to borrow from existing monitoring and evaluation instruments in other international or regional fora should be explored. The process cannot, however, be 'contracted out' entirely to third parties, since non-EU actors fail to take due account of the relevance of these instruments or their links with existing European law and policies, as well as general principles of EU law. The latter include the principle of mutual recognition of decisions as underlined by the CJEU in its opinion on the draft agreement on EU accession to the European Convention on Human Rights (ECHR),¹⁷⁶ referred to in Section 1.2.

(2020/2072(INL)), 25 September 2020.

¹⁷⁰ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12 May 2016, p. 1-14.

¹⁷¹ Ibidem, recital 1 and 2.

¹⁷² Ibidem, paragraph 1 and 2.

¹⁷³ Ibidem, paragraph 17.

¹⁷⁴ Cf. W. van Ballegooij, [European added value of an EU mechanism on democracy, the rule of law and fundamental rights Preliminary assessment](#), EPRS, European Parliament, 2020.

¹⁷⁵ A Delivorias and C. Scheinert, [Introduction to the European Semester. Coordinating and monitoring economic and fiscal policies in the EU](#), EPRS, European Parliament, 2019, section 3.1.

¹⁷⁶ CJEU, [Opinion 2/13](#) of 18 December 2014, Opinion pursuant to Article 218(11) TFEU – Draft international agreement – Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms – Compatibility of the draft agreement with the EU and FEU Treaties, ECLI:EU:C:2014:2454, paras. 191-194.

Scope, sources and methods

Parliament envisages a broad scope for the monitoring exercise, which also takes possible threats to democracy and fundamental rights on board,¹⁷⁷ whereas, as discussed in Section 3.2., the Commission focuses only on certain components of the rule of law. However, the Commission also produces an annual report on the application of the Charter of Fundamental Rights.¹⁷⁸ The Commission will also present a European democracy action plan, the aim of which will be to counter disinformation and to adapt to evolving threats and manipulations, as well as to support free and independent media.¹⁷⁹ These therefore remain stand-alone publications that only partially cover the aspects identified by Parliament. Parliament's approach also takes account of the link between all EU values, as illustrated by two examples concerning the Roma and mass surveillance (see box)¹⁸⁰. These examples demonstrate that democracy, the rule of law and fundamental rights need to be deployed together. In terms of sources and methods, beyond the lack of comprehensive data of sufficient quality, the differences in standards, sources, data-handling methods and the interpretation of the various international and EU tools to be covered by the annual DRF report should be recognised. They are so different in nature and fundamentals that they require a tedious methodological exercise in order to render them

Examples showing how EU values are interlinked

1. Protection of minorities – the situation of the Roma

The Roma community is still subject to anti-gypsyism, including institutional forms of discrimination and forced evictions and expulsions. As a recent European implementation assessment on national Roma integration strategies (NRIS) concludes: 'to succeed, Roma inclusion actions in all policy areas must be linked to common values and include awareness raising among the general public'. A CEPS study conducted for Parliament's LIBE committee challenges the premise that the situation of Roma should be addressed as an 'integration' challenge to be tackled via socio-economic policies, and not as historically-rooted 'anti-gypsyism' to be tackled via rule of law and transitional justice measures. It therefore calls for a 'mechanism that could capture and prevent or remedy institutional forms of discrimination, as for example, high-level politicians spreading hate-speech towards Roma and other ethnic, linguistic and religious minorities, or the misuse of EU funds allocated for Roma integration'.

2. Mass surveillance

The mass surveillance of EU-citizens by intelligence services has been extensively discussed in a number of Parliament resolutions following the LIBE committee inquiry into the matter. Concerns in this respect relate not only to the lack of control and effective oversight over intelligence services, but also to threats to the rule of law, not least by the violation of the professional confidentiality of lawyers and a number of fundamental rights infringements, including of the freedom of expression and the rights to privacy and data protection. As a 2014 Parliament resolution stated: 'privacy is not a luxury right, but is the foundation stone of a free and democratic society'.

¹⁷⁷ LIBE Report, annex, paragraph 1.

¹⁷⁸ European Commission, [Annual Reports on the application of the Charter](#).

¹⁷⁹ [Adjusted Commission work programme 2020](#), COM(2020) 440 final of 27 May 2020, Annex I, p. 4; EPRS legislative train schedule, [European democracy action plan](#).

¹⁸⁰ Referenced in box: R. Korver, National Roma Integration Strategies, European Implementation Assessment, Ex-post evaluation unit, EPRS, April 2020; [Scaling up Roma Inclusion Strategies Truth, reconciliation and justice for addressing antigypsyism](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2019; Under mass surveillance: Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in

comparable, and to allow for meaningful conclusions and findings to be reached.¹⁸¹ The FRA's EFRS could help to achieve this aim.

Division of responsibility for drafting the annual report on DRF

In accordance with the draft IIA, the drafting of the annual report would remain in the hands of the European Commission.¹⁸² Furthermore an 'interinstitutional working group on EU values' would be established.¹⁸³ This working group would be advised by a panel of independent experts and the FRA on the methodology for the annual DRF report and in terms of identifying the main positive and negative developments in each Member State.¹⁸⁴ The Commission has expressed its opposition to the involvement of such a panel of independent experts, however, citing concerns relating to 'legitimacy, balance of inputs and the accountability of results'.¹⁸⁵ The main point seems to be that the Commission deems the involvement of such a panel to be incompatible with its role as 'guardian of the Treaties'.¹⁸⁶ On the other hand, the strong involvement of national contact points in the drafting of the Commission's annual rule of law report has been criticised for partially raising the risk that 'rule of law-deficient Member States designate a contact point that has been politically captured'.¹⁸⁷ Here it should be kept in mind that the analysis of DRF compliance needs to be based on a scientifically robust methodology and provide an independent, impartial and holistic assessment, in the sense that information is triangulated to provide a proper context of individual violations, both within the Member State concerned and as regards the transnational connections and implications. The practical and effective involvement of independent experts and the FRA, could ensure that these criteria are met. The fact that the Commission is ultimately responsible for drafting the report, should alleviate its concerns. At the same time, during the negotiations on the IIA, further questions will need to be answered in terms of the exact division of labour between the working group, independent experts, the FRA and the Commission, taking the current limitations to the FRA's mandate, the current lack of selection criteria for the experts, lack of clarity in terms of which EU institution is to provide them with a secretariat, and how they should be remunerated into account. The selection criteria in particular should ensure that experts are selected that have a proven track record of high quality research and/or practice in the area of DRF within the EU and that they are independent from the government or any other special interest.

Follow-up

As discussed in Section 3.3., in terms of follow-up, the idea of a monitoring cycle remains in place. The Parliament and the Council shall adopt positions on the annual report by means of resolutions and conclusions, including reflections on the extent to which previous recommendations have been implemented by the Member States.¹⁸⁸ Furthermore, an explicit link is made with launching

Justice and Home Affairs (2013/2188(INI)) [P7_TA\(2014\)0230](#); European Parliament [resolution](#) of 29 October 2015 on the follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens (2015/2635(RSP)) [P8_TA\(2015\)0388](#).

¹⁸¹ W. van Ballegooij and T. Evas (2016), Annex II, section 4.4.

¹⁸² LIBE Report, annex, paragraph 6.

¹⁸³ LIBE Report, annex, paragraph 3.

¹⁸⁴ LIBE Report, annex, paragraph 4.

¹⁸⁵ Footnote 1, Annex, article 7; [COM \(2019\) 343](#), p. 12.

¹⁸⁶ Article 17(1) TEU; Article 258 TFEU.

¹⁸⁷ L. Pech et al., [The Commission's Rule of Law Blueprint for Action: A Missed Opportunity to Fully Confront Legal Hooliganism](#), *Reconnect blog*, 4 September 2019.

¹⁸⁸ LIBE Report, annex, paragraph 13.

infringement procedures, budgetary conditionality,¹⁸⁹ the sustainability of cooperation requiring a high level of mutual trust¹⁹⁰ and the triggering of the Article 7(1) TEU procedure.¹⁹¹ Furthermore, the IIA prescribes 'modalities "aimed at enhancing the effectiveness of the procedure laid down in Article 7 TEU"'.¹⁹² Such explicit links are necessary since, as we have learned from the lack of compliance with the country specific recommendations related to corruption and the functioning of the justice systems made in the context of the European Semester,¹⁹³ recommendations that are not backed up by the threat of sanctions are not going to lead to a more effective enforcement of EU values. However, agreeing on a DRF pact will not resolve a number of outstanding institutional issues related to the enforcement of EU values. In particular, the Treaty would have to be changed for lesser majorities to be required to reduce the threshold to trigger the Article 7 procedure and determine the existence of a violation under both paragraphs 1 and 2 of Article 7. Irrespective of whether an IIA may be agreed upon in the future, it should be underlined that the European Parliament has its own competences to monitor compliance with EU values, in order for it to effectively exercise its right to trigger the Article 7(1) TEU procedure aimed at determining a 'clear risk of a serious breach' of common values, when necessary. Furthermore, the European Parliament and national parliaments can contribute towards trust in compliance with common EU values by exercising their Lisbon Treaty mandate¹⁹⁴ in the area of evaluation of the implementation of EU policies,¹⁹⁵ notably in the area of freedom security and justice (AFSJ).¹⁹⁶ The tools available to the European Parliament and national parliaments, including inquiries, country visits and parliamentary research, can also enhance the knowledge base related to DRF compliance in the Member States and thereby build the case for infringement procedures.¹⁹⁷

4.2. Economic assessment

As regards the proposed pact's costs and benefits, it is pointed out that societies in which DRF are respected tend to have higher GDP per capita.¹⁹⁸ In this section we summarise the potential economic impacts of an EU pact on DRF, and the possible costs of its implementation.

¹⁸⁹ LIBE Report, annex, paragraph 16, 19; Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM(2018) 324 of 2 May 2018; For an overview, including the academic debate regarding the pros and cons of this proposal see R. Manko, [Protecting the EU budget against generalised rule of law deficiencies](#), EPRS, European Parliament, 2020.

¹⁹⁰ LIBE Report, annex, paragraph 20.

¹⁹¹ LIBE Report, annex, paragraph 19.

¹⁹² LIBE Report, annex, paragraph 24.

¹⁹³ [Country-Specific Recommendations for 2018 and 2019. A tabular comparison and an overview of implementation](#), Directorate-General for Internal Policies of the Union, European Parliament, 2019; supra section 3.1.

¹⁹⁴ Consolidated version of the Treaty on the Functioning of the European Union, Protocol No 1. on the role of national parliaments in the European Union, OJ C 202, 7 June 2016, p. 203–205; Relations between the European Parliament and national parliaments under the Treaty of Lisbon European Parliament resolution of 7 May 2009 on the development of the relations between the European Parliament and national parliaments under the Treaty of Lisbon (2008/2120(INI)), OJ C 212E, 5 August 2010, p. 94–99.

¹⁹⁵ Cf. I. Anglmayer, [Better regulation practices in national parliaments](#), EPRS, European Parliament 2020.

¹⁹⁶ Article 70 TFEU.

¹⁹⁷ W. van Ballegooij, [Addressing violations of democracy, the rule of law and fundamental rights](#), EPRS, European Parliament, 2020.

¹⁹⁸ See J. McGuinn, V. Cilli, A. Siino et al, Cost of Non-Europe in the area of Democracy, the Rule of Law and Fundamental Rights, in annex; and L. Pech et al, Annex I, 2016, executive summary, Chapter 4; P. Bárd et al, Annex II, executive summary, Annex 4 (thematic contribution by W. Marneffe).

As highlighted in Section 2.2, DRF violations have a number of economic costs both at the individual and at society level, both in strict economic and in wider welfare terms. Among other effects, the literature indicates that societies in which DRF are less respected tend to attract less investment and to be more unequal. DRF violations also bring costs for the public budget and lower tax revenues, due to the diminished incomes of categories of people who fall victim to discrimination. Table 3 shows an estimation of the negative impact of the current state of violations of DRF on the EU economy and points to a substantial loss in GDP. This study then inquires to what extent this 'untapped' potential GDP could be achieved through EU common action, and namely through the proposed EU pact on DRF.

In the annexed study, three 'stylised' scenarios are constructed, based on the potential effects of the policy options depicted in the previous section (Commission annual rule of law report, DRF pact as proposed by the European Parliament, and Treaty change). It should be noted that these scenarios were constructed before the detailed content of the Commission's annual rule of law report and the Parliament's current legislative own-initiative. These assumptions will need to be further validated on the basis of closer scrutiny of these reports. Each scenario is assumed to have a different impact on Member States' respect for democracy, rule of law and fundamental rights and to allow for different extents of harmonisation across the EU. Details on the assumptions underlying the expected impact of each scenario on DRF can be found in the annexed study (Section 7.1). The scenarios and their assumed impact on DRF are described in Table 4.

Table 4 – Potential effects of policy options – scenarios

Scenario	Qualitative description	Expected impact on DRF
1. Commission annual rule of law report	<ul style="list-style-type: none"> • Scope: rule of law • Commission drafts report based on monitoring information provided by Member State network of contact points, international organisations, professional associations, stakeholders through a consultation, country visits • Expected to strengthen the rule of law by building knowledge and a common rule of law culture 	+
2. DRF pact	<ul style="list-style-type: none"> • Scope: EU values • Interinstitutional Working Group advised by a panel of independent experts, Commission draft compilation of information and data from Member States, the European Commission, United Nations, Council of Europe, FRA international organisations, professional associations, stakeholders through a consultation, country visits • Stronger enforcement mechanism (possibility of linking DRF violations to budgetary conditionality) 	++
3. Treaty change	<ul style="list-style-type: none"> • Scenario 2+ • Treaty changes under Article 7 TEU and Article 354 TFEU, reducing threshold to trigger the procedure and determine the existence of a violation under both paragraphs 1 and 2 of Article 7 • Including the possibility to suspend budgetary rights in addition to voting rights under Article 7(3) TEU 	+++

Source: authors' elaboration on J. McGuinn, V. Cilli, A. Siino et al, Cost of Non-Europe in the area of Democracy, the Rule of Law and Fundamental Rights, in annex.

Based on the scores used in Section 2.2, different scenarios are constructed, assuming countries increase their scores to different extents,¹⁹⁹ and calculating the corresponding economic gain. The economic gain is obtained using the expected increase in DRF scores under each scenario and the correlation between DRF scores and GDP, identified in Section 2.2 (around a 0.3 % increase in GDP for each 1 % increase in the score).

This operation has several limitations. First of all, the scores represent the situation of each country in a very imperfect way, and a full country-level analysis is out of the scope of this study. Second, the way the scenarios are constructed has an arbitrary component and therefore they represent only 'stylised' versions of possible paths of harmonisation across countries towards greater values of DRF measures.

¹⁹⁹ These increases are exemplified through a clustering exercise on the basis of the DRF indexes (derived by mathematical calculations, not through a country-level analysis) and a series of simulations of convergence possibilities of countries within and across clusters.

The first scenario represents the Commission's rule of law review cycle, resulting in an annual rule of law report. Under this scenario, dialogues with Member States are expected to strengthen the rule of law by building knowledge and a common rule of law culture. Under this scenario, it is expected that the mechanism will provide a (limited) incentive for Member States to improve their performance on rule of law indicators.²⁰⁰

The second scenario, corresponding to the DRF pact proposed by the European Parliament, has a broader scope, as it also encompasses democracy and fundamental rights. It is characterised by both a new monitoring mechanism and a stronger enforcement mechanism, compared to Scenario 2, with the possibility of linking DRF violations to budgetary conditionality. Under this scenario, it is expected that the mechanism would provide a strong incentive for Member States to improve their performance on DRF indicators.²⁰¹

The third scenario envisages potential Treaty changes under Article 7 TEU and Article 354 TFEU, which would reduce the threshold to trigger the procedure and determine the existence of a violation under both paragraphs 1 and 2 of Article 7. Under this scenario, the mechanism is expected to provide a much stronger incentive for Member States.²⁰²

The results of the projection of these three scenarios over GDP is shown in Table 5. For alternative models and detail per country, refer to the study in annex.

Table 5 – Average annual gain in GDP under different possible scenarios (€ million)

	WJP Score		WBI Score	
	Effect on overall GDP (€ million)	% GDP	Effect on overall GDP (€ million)	% GDP
1. Commission annual rule of law report	218 452	1.4 %	151 024	1.2 %
2. DRF pact	431 938	3.5 %	413 071	3.3 %
3. Treaty change	867 772	7.0 %	767 155	6.2 %

Source: authors' elaboration on J. McGuinn, V. Cilli, A. Siino et al, Cost of Non-Europe in the area of Democracy, the Rule of Law and Fundamental Rights, in annex.

The potential benefits of the second scenario, corresponding to the DRF pact proposed by the European Parliament, are estimated to be about **€400 billion per year in terms of increased GDP**.

This represents an important potential gain for the EU economy. As argued above, caution is needed in interpreting this figure because of the limitations of the present exercise (quantification of inherent qualitative dimensions and limitations of the index used in representing countries' specific situations, data limitations and limited span of time analysed, approximation required by the

²⁰⁰ To translate this scenario in quantitative terms, the benchmark is set at the mean performer of each cluster, i.e., in each cluster, all Member States below the group average are assumed to achieve the average value of DRF score, while the others are assumed to not change.

²⁰¹ In this case, the benchmark is set at the 'best performer' of each group, i.e. in each group, all Member States are assumed to achieve the highest level of DRF score of the group.

²⁰² In this case, the benchmark is the 'average performer' of the above group, i.e. in each group, all Member States are assumed to achieve the level of DRF score of the 'average performer' of the group above.

scenario construction process). It moreover implicitly relies on the assumption that the correlation between DRF and GDP can be at least partially interpreted as a causal relation; despite many advances of the academic literature in this direction and the efforts made in the annexed paper, this can be only partially assessed. Nevertheless, most recent and relevant literature corroborates the finding of important positive economic impacts of improvements in the field of democracy, rule of law and respect of fundamental rights.

On the cost side, the draft IIA indicates that 'the three institutions shall take the necessary steps to ensure that they have the means and resources required for the proper implementation of this Interinstitutional Agreement.'²⁰³ Based on previous findings, the present study assumes that the order of magnitude of the operational **costs would be about at €4 million per year.**²⁰⁴ The cost estimate of putting this mechanism in place is constructed on the basis of the Venice Commission.²⁰⁵ Further synergies could be achieved by the fact that the DRF European report is to replace the Cooperation and Verification Mechanism for Bulgaria and Romania in due course.²⁰⁶ However, the 2016 EPRS EAVA²⁰⁷ pointed out that an uncertain cost factor lies in the degree of specificity of the new monitoring and mechanism (which data sources can and cannot be used, which additional data have to be collected). Additional costs could arise due to expert consultations and follow-up reports. In conclusion, the approximation of the potential positive effects of the EU pact on DRF on the EU economy is of **annual gains of €413 billion, corresponding to 3.3 % of EU GDP**, far outweighing the costs for its development.

²⁰³ LIBE Report, annex, paragraph 26.

²⁰⁴ P. Bárd et al, Annex II, 2016, Annex 4 (Thematic contribution by W. Marneffe).

²⁰⁵ Council of Europe, [Venice Commission](#).

²⁰⁶ LIBE Report, annex, paragraph 21; European Commission, [CVM](#).

²⁰⁷ W. van Ballegooij and T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2016.

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The Cost of Non-Europe in the area of Democracy, the Rule of Law and Fundamental Rights

Democracy, the Rule of Law, and respect of Fundamental Rights (DRF) are founding values of the EU, enshrined under Article 2 of the Treaty on the European Union (TEU). The Study identifies a non-exhaustive but comprehensive list of DRF violations, combining similar concepts that remain too close to disentangle and emphasising where they provoke individual and economic impacts. These are: lack of separation of powers, institutional checks and balances, restrictions of media freedom and pluralism, lack of legal certainty, discriminatory acts and inequality, shrinking space for civil society and dialogue, ineffective justice systems, restrictions in access to justice, and corrupt practices. Individual-level DRF violations have socioeconomic repercussions at individual level on employment, social engagement, health, housing, education, and justice, and at aggregated, macroeconomic level, on GDP, budgetary expenditures, tax revenues, and societal welfare. The Study identifies a strong correlation between DRF violations and negative economic impacts (measured in GDP terms), using a random effect panel regression. The limitations in available data, and relative lack of an unambiguous, comparative variable for measuring a country's DRF situation, means that a certain remedy to the endogeneity problem faced by the study requires further research, which is beyond the scope of this paper.

The study demonstrates that the cost of the status quo in DRF violations is substantial, with estimates ranging between EUR 1.1-1.2 trillion per year, corresponding to 9-9.4% of overall EU GDP. The adoption of a limited monitoring mechanism focusing on the Rule of Law, based on dialogues with the Member States would allow for some progress in this area, but without any change in enforcement mechanism, would likely have minimal impact, leading to gains of around 1.2-1.4% of annual GDP. Broadening the scope of such a monitoring mechanism across all areas of DRF and involving more stakeholders, as well an enforcement mechanism linked to budgetary conditionalities is estimated to have greater gains of around 3.3 – 3.5% of annual GDP. A more far-reaching final scenario, which would involve modification of the EU Treaty to reduce thresholds on declaring Member State violations and the possible suspension of budgetary rights is estimated to bring major gains of between 6% and 7% of annual GDP.

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Executive summary

Democracy, the rule of law, and respect of fundamental rights (DRF) are founding values of the EU, enshrined under Article 2 of the Treaty on European Union (TEU). Consistent respect for DRF in all Member States is a cornerstone of the EU legal system, as it ensures mutual trust between Member States, makes the EU an area of freedom, security and justice, and facilitates proper functioning of the internal market¹. This Study aims to provide an assessment of the Cost of Non-Europe (CoNE) in the area of DRF. The CoNE concept is that the absence of common action at EU level might prevent full efficiency in a certain sector and/or hinder a collective public good that might otherwise exist. This Study identifies the main impacts of DRF violations on fundamental rights, individuals and macroeconomic performance. Related scenarios or policy options for enhanced EU action are then identified and quantified, allowing an understanding of the EU added value or CoNE in this area.

What is DRF

DRF and the interrelations between its elements is broad and complex². Article 2 TEU stipulates that the EU is founded on 'the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'. While democracy, the rule of law and fundamental rights can be examined separately, their interdependency is an inherent feature of the founding values listed in Article 2 TEU³.

Each concept includes several elements:

- **Democracy** is 'the rule of the people'. The EU's (unique) vision of democracy includes democratic equality, representative democracy, participatory democracy, transparency and deliberation⁴.
- The **rule of law** concerns governance. According to the European Commission for Democracy through Law (Council of Europe Venice Commission), it has six elements: legality (including a transparent, accountable and democratic process for enacting law); legal certainty (people know what the law is and how the courts interpret it, and neither will change unpredictably); prohibition of arbitrariness (the exercise of power cannot be unlimited); access to justice before independent and impartial courts, including judicial review of administrative acts; respect for human rights; non-discrimination and equality before the law⁵.
- **Fundamental human rights** are commitments enshrined in the EU Charter of Fundamental Rights, covering civil, political, social, economic and cultural rights in their individual and collective dimensions⁶.

The three concepts are strictly interrelated. The rule of law goes hand-in-hand with the protection and enforcement of fundamental rights. At the same time, limitations on fundamental rights can only be based in the law if justified and necessary in a democratic society. Democracy is intrinsically linked to the rule of law and fundamental rights and is closely linked to the principle of equality -

¹ European Commission, [Communication on Further strengthening the Rule of Law within the Union – State of play and possible next steps](#), 3 April 2019.

² Carrera et al., Guild E. and Hernandez N., [The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU, Towards the Copenhagen Mechanism](#), CEPS, 2013, pp. i, 35, 36.

³ Ibid., p. 20.

⁴ Timmer et al., A., Majtényi, B., Häusler, K., Salát, O., ['EU Human rights, democracy and rule of law: from concepts to practice'](#), FRAME Deliverable 3.2, 31 December 2014, p. iii.

⁵ Council of Europe, [The Rule of Law Checklist](#), March 2016/2016, p. 7.

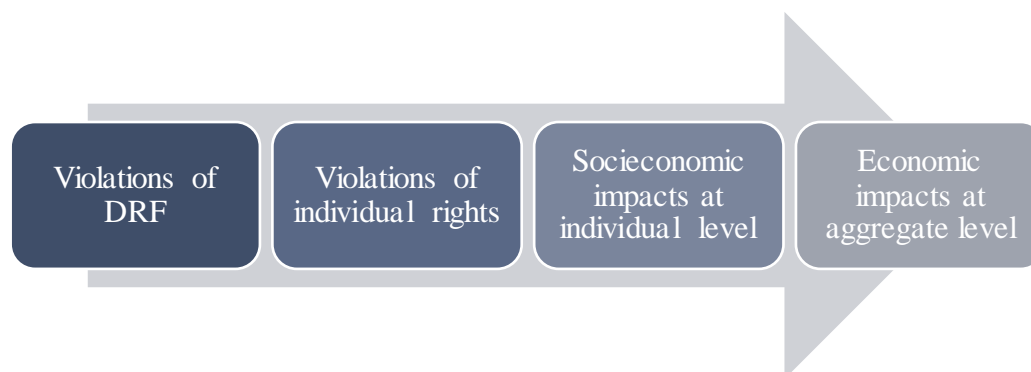
⁶ Timmer, A., Majtényi, B., Häusler, K., Salát, O., ['EU Human rights, democracy and rule of law: from concepts to practice'](#), FRAME Deliverable 3.2, 31 December 2014, p. iii.

itself a fundamental right – and is upheld in the Charter under the Title dealing with Citizens’ Rights. Any democratic society inherently relies on the rule of law⁷. The mutually reinforcing relationship between DRF thus safeguards the constitutional core of the EU and its Member States⁸.

Violations of DRF and their impacts

The Study examined the impact of key DRF violations, both in terms of individual rights and economic impacts at individual and societal levels (see Figure 1).

Figure 1: DRF violations and their impacts



DRF violations can have a multiplicity of individual and economic impacts, chief among which are:

- **Lack of separation of powers, institutional checks and balances** – essential to sustain an independent judiciary and the rule of law, in turn required for effective protection of fundamental rights;
- **Restrictions of media freedom and pluralism** – vital to the democratic functions of the EU and its Member States but challenged by political interference;
- **Lack of legal certainty** – in the lack of accessible, stable, consistent, foreseeable and easy to understand legislation;
- **Discriminatory acts and inequality** - less favourable treatment due to a particular characteristic, which falls under a ‘protected ground’;
- **Shrinking space for civil society and dialogue** - can lead to obstacles to access financial resources, difficulties in accessing decision makers and feed into law and policy-making;
- **Ineffective justice systems, restrictions in access to justice** – including the excessive length of proceedings, high evidentiary thresholds and excessive court fees and costs, which can compromise the effective functioning of the judicial system;
- **Corrupt practices** - defined as ‘abuse of power for private gain’, including both the public and private sectors.

Impacts on fundamental rights

DRF violations infringe and impact several individual rights. Many of these impacts are interlinked, i.e. one aspect of a DRF violation may have multiple individual or economic impacts. Equally, economic impacts can have repercussions on the rights of individuals.

The selection of impacts on individual rights analysed here focuses on those linked to the EU Charter of Fundamental Rights, where the literature supports measurement and possible quantification of those impacts. These are outlined briefly below.

⁷ Carrera S., Guild E. and Hernandez N., [The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU, Towards the Copenhagen Mechanism](#), CEPS, 2013.

⁸ [Resolution](#) of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, European Parliament, Annex, Article 7.

Violations of human dignity

Violations of human dignity can be related to the interplay of three DRF violations (lack of separation of powers, checks and balances; corrupt practices; ineffective justice systems) and can impact the **right to life** (Article 2 of the Charter), the **prohibition of torture and inhuman or degrading treatment or punishment** (Article 4) and the **prohibition of slavery and forced labour** (Article 5). For instance, the prohibition of torture and inhuman or degrading treatment or punishment (Article 4) defines an absolute right, ensures that public authorities do not inflict this treatment or punishment, and empowers the State to intervene to stop such behaviour. Lack of separation of powers and a lack of proper and robust institutional checks and balances could potentially lead to an abuse of power by public authorities, infringing Article 4 of the Charter. An ineffective judicial system encroaches on suspects' rights where pre-trial detention (PTD) is used excessively or when detention conditions are inhuman and degrading, including due to overcrowding⁹.

Restrictions to people's freedoms

Restrictions to people's freedoms are a broad notion, encompassing several DRF aspects, including lack of separation of powers, discriminatory acts and inequality, restrictions of media freedom and pluralism, shrinking space for civil society and dialogue, lack of legal certainty and corrupt practices. These sets of DRF violations have negative impacts on many of the individual rights enshrined in the Charter of Fundamental Rights. The Study focused on: **protection of personal data** (Article 8 of the Charter), **freedom of thought, conscience and religion** (Article 10), **freedom of expression and information** (Article 11), **freedom of assembly and association** (Article 12), **freedom of arts and sciences** (Article 13), right to education (Article 14), **freedom to choose an occupation and the right to engage in work** (Article 15), **right to property** (Article 17), and **right to asylum** (Article 18). For instance, the freedom of thought, conscience and religion ensures that everyone is free to consider or hold a thought, religion or belief. Discriminatory acts and inequality, along with populism, have led to an increase in discrimination against religious minorities, antisemitism, an intolerance for religious groups and increased hate crime, which represent an obstacle to individual enjoyment of the right to freedom of religion. Expression of religious intolerance, manifestations of antisemitism and hate speech need to be adequately prohibited by a robust criminal justice system that identifies and penalises such action.

Unequal treatment

DRF violations in the areas of discriminatory acts and inequality, lack of legal certainty and ineffective justice systems can lead to **unequal treatment** that negatively impacts the **right to non-discrimination** (Article 21 of the Charter) and the **right to equality between women and men** (Article 23). For example, discriminatory acts and inequality infringe the right to non-discrimination, including discrimination based on sexual orientation. Across Member States, homophobic statements, policy decisions and actions by public authorities against the rights of LGBTIQ persons still happen frequently. The ILGA-Europe's 9th Annual Review notes that hate speech by public figures - including online hate speech and physical attacks on LGBTIQ people - has increased, as have reports of obstacles to accessing healthcare and bullying of LGBTIQ people at workplaces and in schools.

Violations of the principle of solidarity

Violations of the **principle of solidarity** can be traced to discriminatory acts and inequality, which negatively impact the **right to social security and social assistance** (Article 34 of the Charter) and the **right to healthcare** (Article 35). Discriminatory acts and inequality, including xenophobia, particularly affect minority groups in accessing housing. In recent years, the housing market has

⁹ Ibid., pp. 12, 125.

undergone considerable and potentially unsustainable change, including higher rental prices. At the same time, public spending has decreased, with little or no effective housing control mechanisms. Vulnerable people, including those with low incomes, workers in precarious jobs, young people and migrants are particularly susceptible to violations of their right to housing.

Restrictions to citizens' rights

Restrictions to citizens' rights impact **the right to vote and to stand as a candidate** at elections (Articles 39 and 40 of the Charter) and the **right to good administration** (Article 41), and can be related to corrupt practices. Such corrupt practices drive governments and public institutions to operate less efficiently and effectively. They also reduce transparency, infringing the right to good administration. Governments' handling of public procurement is an essential factor in determining good governance (or otherwise) of states, with embezzlement of public funds by corrupt public officials violating the right to good administration.

Restrictions to the justice system

Restrictions to the justice system can be traced to a lack of separation of powers and corrupt practices, which negatively impact the **right to an effective remedy and to a fair trial** (Article 47 of the Charter). Corrupt practices, a lack of separation of powers and inadequate institutional checks and balances stifle the proper functioning of the judicial system and make it incapable of guaranteeing the rule of law and safeguarding fundamental rights. This impairs the right to an effective remedy and a fair trial.

Socioeconomic impacts at individual level

DRF violations that manifest through cross-cutting phenomena (e.g. corruption, discrimination) have severe economic implications at individual and aggregate level. The review of these impacts is based on literature and previous CoNE studies, which identified impacts of DRF violations on employment, social engagement, health, housing, education, and justice, initially on individuals, as a direct effect of violations of their fundamental rights.

Impacts on employment

The CoNE on Equality¹⁰ found an extensive body of literature focusing on individual impacts of discrimination in the **employment sector**, particularly hiring practices, salaries and promotions. Pay gaps affecting areas of inequality (gender, race, religion and belief, sexual orientation, age, disability) are the most frequently reported economic impacts of discrimination. That study provides annual estimates of costs related to pay gaps in these areas, with the gender pay gap the highest, at an estimated EUR 241-379 billion. According to the CoNE on Asylum, asylum seekers, experience poorer employment conditions on average, leading to an estimated pay gap of EUR 1.4-1.9 billion annually¹¹.

Impacts on health

Discrimination resulting from violations of the right to equal treatment may have immediate consequences for victims, such as **physical injury or feelings of fear and insecurity**. Medical research has shown that discrimination can lead to a range of **mental health problems**, such as chronic depression and generalised anxiety disorder, substance abuse¹² and possibly greater risk of attempted suicide. These individuals tend to have lower scores on indicators of psychological well-

¹⁰ van Ballegooij and Moxom, 2018.

¹¹ *Ibid.*

¹² Mays, V.M. and Cochran, S.D., '[Mental health correlates of perceived discrimination among lesbian, gay, and bisexual adults in the United States](#)', *American Journal of Public Health*, vol. 91, no. 11, 2001, pp. 1869-1876.

being, such as happiness, life satisfaction and self-esteem¹³. Impacts on health may stem from discrimination in access to quality healthcare¹⁴. The CoNE on Equality distinguishes several categories of health impacts related to discrimination on grounds of gender, race, religion and belief. The impacts of physical and emotional impairment due to violence against women were estimated at EUR 134 billion annually, which is the highest estimate across the categories of health impacts related to discrimination¹⁵.

Impacts on social engagement

Individuals exposed to discrimination may be discouraged from engaging with those from a different background, leading to **lower social cohesion**¹⁶. Individuals discriminated against on grounds of race and religion/belief were found to be exposed to a higher probability of living in areas with high concentration of racial and ethnic groups, which aggravates social fragmentation¹⁷.

Impacts on housing conditions

Discrimination can manifest in **differential access to goods and services, including housing**. Such discriminatory practices occur, for example, when LGBTIQ individuals experience poorer housing conditions due to their sexual orientation, or when people with disabilities must face higher costs of living due to their health. Estimates of these two impacts are provided in the CoNE on Equality, totalling EUR 19-49.1 billion annually¹⁸.

Impacts on education

Discrimination can lead to **poorer educational outcomes**. This can happen, for example, where a person with a disability does not receive adequate access to education, or when at-risk young people drop out of school or do not undertake follow-up education due to health problems or discrimination-induced fear. The CoNE on Equality provides quantitative estimates of education-related impacts in terms of restricted access to scholarships due to age discrimination (EUR 6.2-8.6 billion annually) and in terms of lost earnings for people with disabilities (EUR 61-98 million)¹⁹.

Impacts on access to justice

The CoNE on Equality²⁰ identifies barriers to access to justice for discriminated individuals as a key horizontal issue. Barriers to access to justice include problems with compliance with sanctions applied to instances of discrimination at national level²¹. Other challenges include lack of adequate skills and awareness among staff responsible for fighting hate crime. The under-reporting of hate crime further hinders the effective access to justice for victims. Furthermore, victims and witnesses

¹³ Pascoe and Smart Richman, L., '[Perceived discrimination and health: a meta-analytic review](#)', *Psychological Bulletin*, vol. 135, no 4, 2009, pp. 531-554.

¹⁴ European Union Agency for Fundamental Rights (FRA), '[Inequalities and multiple discrimination in access to and quality of healthcare](#)', 2013.

¹⁵ van Ballegooij and Moxom, 2018.

¹⁶ Ysseldyk, R., Talebi, M., Matheson, K., Bloemraad, I. and Anisman, H., '[Religious and ethnic discrimination: Differential implications for social support engagement, civic involvement, and political consciousness](#)', *Journal of Social and Political Psychology*, vol. 2, no. 1, 2014, pp. 347-376.

¹⁷ van Ballegooij and Moxom, 2018.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ [Report](#) on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), COM(2014) 2 final, European Commission, 2014.

of such types of crimes are often reluctant to report them, especially to the police²². For these reasons, victims of hate crime and hate speech often remain unprotected, with their rights not fully respected²³. Recent studies have found evidence of the effects of limitations on access to justice, ranging from 0.5-3% of GDP in most countries, imposing costs on individuals, families and societies, as well as on the benefits of access to justice interventions that accrue to individuals, families and societies²⁴.

Economic impacts at aggregate level

Previous CoNE studies and extended literature have identified macroeconomic impacts of DRF violations on changes in GDP, budgetary expenditures, tax revenue and societal welfare.

Two significant economic areas that may be **adversely impacted by DRF violations are domestic and foreign investment**. With the quality of governance suffering as a result of these violations, economic growth, investment and private capital accumulation also decrease, particularly where corruption is rife²⁵. The associated political instability may further damage economic growth, with domestic and foreign capital redirected towards more stable, neighbouring states²⁶. As foreign direct investment (FDI) is positively associated with increased economic growth, this can have serious consequences for a country's continued growth and prosperity.

Impacts on GDP

Corrupt practices are a major aspect of DRF violations, which can impact GDP directly (in cases of fraud or organised crime) or indirectly through decreased domestic and foreign investment due to lack of legal certainty. Literature examining these impacts focuses primarily on the impact of corruption on the economic growth rate.

The CoNE on Corruption²⁷ found that corruption leads to a higher level of social inequality, reduced turnout in parliamentary elections, higher levels of crime, deficiencies in the rule of law and lower trust in the EU. The study developed an econometric model that provided an estimate of the economic impact of corruption on GDP, according to which corruption costs the EU between EUR 179 – 900 billion in GDP terms on an annual basis. Next to corruption, various forms of discrimination, especially discrimination affecting the labour market result in negative consequences for GDP.

Tax revenue

The CoNE on Equality estimates impacts on tax revenues. These are derived from productivity loss estimates and, across all discrimination grounds, total between EUR 1.3-4.9 billion annually²⁸.

Budgetary spending

The CoNE on Equality provides some estimates of the impacts of discrimination with respect to budgetary spending. Discrimination may lead to higher outlays for unemployment and social

²² [Report](#) on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, COM(2014) 27 final, European Commission, 2014.

²³ FRA, [EU-MIDIS I – Data in Focus Report 6 – Minorities as Victims of Crime](#), 2012.

²⁴ OECD and World Justice Project, ['Building a Business Case for Access to Justice'](#), OECD: Paris, 2020.

²⁵ Everhart, S., Martinez-Vasquez, J. and McNab, R., ['Corruption, governance, investment and growth in emerging markets'](#), *Applied Economics*, vol. 41, no 13, 2009, pp. 1579-1594.

²⁶ Abu Murad, M.S. and Alshyab, N., ['Political instability and its impact on economic growth: the case of Jordan'](#), *International Journal of Development Issues*, 2019, vol. 18, no 3, 2019, pp. 366-380.

²⁷ van Ballegooij and Zandstra, 2016.

²⁸ van Ballegooij and Moxom, 2018.

assistance benefits, as well as increased expenditure on specialised services in social care. These burdens were estimated at the level of EUR 11 billion annually²⁹.

According to the CoNE on Asylum, gaps in EU asylum policies lead to higher budgetary spending, due to increased costs of border security and surveillance, fighting organised crime related to human trafficking, control of irregular migration, attempts to limit departures from countries of origin, and inefficiencies in transfers of asylum seekers³⁰.

Impacts on economic growth

Economic growth may be affected by negative phenomena, such as discrimination and corruption, that typically occur as a consequence of DRF violations. Economic growth can also be impaired due to resulting decreases in domestic investment and FDI. Economic growth is determined by development in GDP, thus the persistent detrimental impact of gaps and deficiencies on GDP will translate into deteriorating economic prosperity in the longer term.

Brain drain

Long-term persistent outflows of skilled labour ('brain drain') may have significant consequences for the economy of countries of origin. Several studies have estimated the negative (productivity, missing returns from public investment in the education system) and positive (remittances) effects of migration on the countries of origin and of destination (higher availability of skilled workforce)³¹.

However, there is no clear consensus on the impact of the status of democracy on brain drain. For example, some studies investigating migration in the US found no significant impact of democracy level on brain drain³². On the other hand, the level of corruption - often found to be correlated with deficiencies in DRF - is likely to be a significant factor in skilled migration, fuelling brain drain³³.

Lower societal welfare: measures beyond GDP

Segments of the population suffer from inequality and social exclusion, which goes beyond the notion of poverty and designates a broader set of concerns. Inequality and social exclusion refer to the involuntary exclusion of individuals and groups from society's political, economic and societal processes, preventing their full participation in society. This undermines the full realisation of EU DRF values³⁴, with segments of the population marginalised, living in poorer health and housing conditions, experiencing long periods of unemployment and underemployment, with limited knowledge/access to welfare mechanisms and representation that could help them overcome some of their difficulties. This translates into lower wages and pensions for individuals, higher healthcare costs for the government and, over time, lower tax base, tax revenue and GDP, thereby reducing the resources available to address these problems.

Economic literature has analysed the relationship between the rule of law and five major categories of economic impacts in a broad sense: growth, human capital (education and health), government

²⁹ *Ibid.*

³⁰ van Ballegooij and Navarra, 2018

³¹ Atoyan, R., Christiansen, L., Dizioli, A., Ebeke, C., Ilahi, N., Ilyina, A., Mehrez, G., Qu, H., Raei, F., Rhee, A. and Zakharova, D., '[Emigration and its Economic Impact on Eastern Europe](#)', IMF Staff Discussion note, July 2016, and Reymen, D. et al., '[Labour Market Shortages in the European Union](#)', DG IPOL, European Parliament, 2015.

³² Mitra, A. and Bang, J., '[Brain Drain and Institutions of Governance: Educational Attainment of Immigrants to the US 1988-1998](#)', Middlebury College, Department of Economics, Middlebury College Working Paper Series, no. 35, 2010.

³³ Dimant, E., Krieger, T. and Meierrieks, D., '[The effect of corruption on migration, 1985-2000](#)', *Applied Economics Letters*, vol. 20, no. 13, 2013, pp. 1270-1274.

³⁴ Department of Economic and Social Affairs of the United Nations Secretariat (DESA), '[Analysing and Measuring Social Inclusion in a Global Context](#)', 2009.

policy, institutions, and investment³⁵. That analysis confirms that reduced equality fuels social discontent, which destabilises the political structure and undermines investment and future growth³⁶.

What are the policy options to address the gaps and barriers?

There is no single perfect mechanism to monitor violations of EU values and enforce decisions - gaps and shortcomings are identified for all EU and non-EU mechanisms. The current gaps imply late detection of issues at national level, which undermines DRF and weakens the EU's ability to ensure respect for the founding values of the Union.

Some gaps warrant particular attention:

- Fragmentation of the current 'state of play';
- Absence of a comprehensive monitoring mechanism that covers all DRF areas;
- Weak enforcement that manifests in a high threshold to trigger procedures under Article 7 TEU (among others).

Scenarios for EU action in the area of DRF monitoring and enforcement

The paper identified four possible scenarios representing possible policy options for enhanced EU action in the area of DRF monitoring and enforcement. The scenarios illustrate the various extents to which DRF mechanisms can be implemented so as to overcome some of the problems and barriers identified above. The Study then assesses how far the different scenarios will contribute to reducing the negative impacts of DRF violations and related costs. The added value of EU action in the DRF area is finally indicated by the reduction of negative impacts of each scenario, minus the costs of their implementation.

The four scenarios or policy options are in line with the overall scope of the Study and with the actions implemented or proposed under the current policy framework and EU Toolbox. They are built incrementally and foresee a progressively broader scope, starting with the monitoring and enforcement mechanisms currently in place. The costs of gaps and barriers in Scenario 1, modelling the status quo with the DRF measures that are currently in place, are used to estimate the potential gains from the further actions and measures implemented in Scenarios 2-4.

- **Scenario 1: Do-nothing option.** This represents the current situation (status quo), where no additional action is taken. It incorporates the monitoring and enforcement mechanisms currently in place and thus provides a baseline to assess the effect of the other three scenarios. Current tools for monitoring (including the Rule of Law Framework, the Council's Rule of Law dialogue(s), Evaluation mechanisms in the Area of Freedom, Security and Justice (AFSJ), the Special Cooperation and Verification Mechanism for Romania and Bulgaria, European Semester, EU Justice Scoreboard and others (e.g. FRA reports)) and enforcement (including preventive and sanctioning procedures under Article 7 TEU, infringement proceedings (Article 258 Treaty on the Functioning of the European Union (TFEU)) and preliminary references (Article 267 TFEU), which is only indirectly relevant) are kept in place.
- **Scenario 2: Rule of law-based monitoring.** This includes measures relating to the rule of law within the EU. First, within the framework of the Rule of Law Review Cycle, dialogues with Member States will strengthen the rule of law by building knowledge and a common rule of law culture. The monitoring mechanisms focus on the compilation of information and data from the Member States, European Commission and FRA, and other stakeholders, such as the

³⁵ Sonora, R., '[Income Inequality, Poverty, and the Rule of Law: Latin America vs the Rest of the World](#)', MPRA Paper No. 91512, 2019.

³⁶ Alesina, A. and R., '[Income distribution, political instability, and investment](#)', *European Economic Review*, vol. 40, 1996, pp. 1203–1228.

Council of Europe, international organisations, civil society and individuals, based on a targeted stakeholders consultation³⁷. A network of national contact points nominated by Member States would be established to act as a forum for discussion. An Annual Rule of Law Report will cover significant developments within four main areas in all Member States (justice system, anti-corruption framework, media pluralism, institutional checks and balances) and result in more comprehensive information on the respect of the rule of law in every Member State. Publishing such information regularly and rigorously will make it easier to undertake sanctioning procedures where DRF rights are violated (e.g. under Article 7 TEU). The scenario is limited in scope, however: additional DRF violations are not included and the institutional and political thresholds for implementing sanctions remain in place. The expected impact on DRF is therefore limited.

- **Scenario 3: DRF monitoring + budgetary conditionality.** This has a broader scope, as it encompasses DRF in its entirety. It is based on an interinstitutional agreement, ensuring better coordination between institutions and judicial oversight by the Court of Justice of the European Union (CJEU). It is characterised by a new monitoring mechanism, and a stronger enforcement mechanism than in Scenario 2. The monitoring will be conducted in the form of an annual report covering all Member States, drawn up by the European Commission in consultation with a panel of independent experts. This will incorporate and complement existing instruments, including the Justice Scoreboard, the Media Pluralism Monitor, the anti-corruption report and peer evaluation procedures, and replaces the Cooperation and Verification Mechanism for Bulgaria and Romania. International organisations will participate in monitoring and may propose members of the expert panel. Scenario 3 also envisages enhanced enforcement mechanisms, with the possibility of linking DRF violations with budgetary consequences, for example suspending EU funding in case of generalised rule of law deficiencies. However, while this may foster improved interinstitutional dialogue and raise the profile of DRF issues in the EU, the impact of addressing these violations would still be considered moderate, as the enforcement mechanisms are not far-reaching.
- **Scenario 4: Treaty change reducing Article 7 thresholds.** This envisages potential far-reaching Treaty changes, reducing the threshold to trigger the investigation procedure and determine the existence of a DRF violation. That reduction for starting the procedure will be from one-third to one-quarter of Member States in the European Council, while the threshold for determining a breach will be lowered from a majority to four-fifths of Council Members. The possibility for the European Parliament to prompt the procedure and perhaps hold the hearing in front of the Council (in the presence of the Commission and the Parliament) will also be included. Similar changes apply to the determination of a serious and persistent DRF breach by a Member State (one-quarter rather than one-third of Members required to trigger the procedure, and a qualified majority rather than unanimous agreement to establish a breach). The possibility of suspending budgetary rights and voting rights in case of repeated, serious breaches could also be considered. Tools available for monitoring and follow-up, synergies with activities of other international DRF organisations, and timing of the cycle would remain the same as in Scenario 3.

Comparative benefits of scenarios for EU action in the area of DRF monitoring and enforcement

The Study estimates the EU added value of the four scenarios (reduction in the negative impacts of each scenario minus the costs of implementing new measures³⁸), allowing for an exploration of how

³⁷ See: <https://eulawlive.com/commission-launches-consultation-for-drafting-the-first-annual-rule-of-law-report/>

³⁸ Costs were estimated from previous studies, which monetise them at about EUR 3-4 million per year (van Ballegooy and Evas, 2016) for the maintenance of a permanent annual insourced Scoreboard cycle administered by an independent EU Rule of Law Commission, which is similar to the set-up of Scenario 3.

different elements of the proposed EU Pact on Democracy, the Rule of Law and Fundamental Rights can contribute to counteracting the costs and negative effects of DRF violations in the EU.

In the **first scenario**, reflecting the status quo and incorporating the monitoring and enforcement mechanisms currently in place, estimates point to substantial costs of DRF violations of between **EUR 1.1 and 1.2 trillion** per year, or **between 9% and 9.4% of the overall EU GDP**³⁹. For individual Member States, the costs are higher in the EU-13 than the EU-15 Member States. This can have knock-on effects for the levels of social provision and poverty prevention in a society, with the state having lower funds at its disposal. While data limitations complicate statistical correlations, descriptive statistics indicate that countries with a lower DRF score also tend to have higher inequality and at-risk-of-poverty levels than other Member States. While the high costs may be seen as a pessimistic outlook, they also imply that many Member States are far below their potential in respect of DRF and that reform may contribute to a strengthened economy and civil society.

In the **second scenario**, additional rule of law-related mechanisms are expected to provide an incentive for Member States to improve their performance on DRF. The estimates point to a rather limited EU added value, as the gains from EU action are estimated at between **EUR 151 and 218 billion** per year, corresponding to **1.2% and 1.4% of EU GDP**. If fully implemented, this scenario would recover 13-20% of the GDP 'lost' in the status quo as an effect of current DRF violations. While the figures are estimates, and are subject to a number of assumptions, they nevertheless suggest the macroeconomic benefit of even limited further EU action on the area of DRF monitoring and enforcement.

While a statistical link with other indicators could not be established, this limited improvement in GDP may be accompanied by a slight improvement in other economic indicators. An improving economy may lead to an improved business environment, with additional investment and employment opportunities. Social factors such as access to social services or poverty prevention could further benefit from this situation, if the gains are directed towards addressing social issues. The addition of stronger rule of law mechanisms may improve the situation for businesses and actors relying on an impartial and functioning legal system, with further knock-on effects for society as a whole.

The **third scenario** has a broader scope, as it encompasses mechanisms relating to the wider DRF arena. Further incentives for DRF improvement may be found by linking DRF violations to budgetary penalties and the possible reduction of EU funding. Although this scenario could help to curb DRF violations, the impact is still considered moderate, as the enforcement mechanisms are not far-reaching and current voting thresholds to establish violations or penalties are retained.

The Scenario 3 mechanism is expected to provide a strong incentive for Member States to improve their performance on DRF. The estimates point to non-negligible gains from EU action in the area of DRF monitoring and enforcement, of between **EUR 413 and 432 billion** per year, corresponding to **3.3-3.5% of EU GDP**. This would recover 35-39% of the GDP 'lost' in the status quo as an effect of the current DRF violations. Overall, EU-13 Member States seem to gain more than EU-15 Member States from the EU reforms envisioned in Scenario 3. Here, too, the improvement in economic situation is expected to be followed by improvements in both the economic and social sphere. Given the expansion of measures into DRF and not just the rule of law, the situation may particularly benefit those belonging to groups that face either direct or indirect discrimination, or have struggled to exercise their political and democratic rights.

³⁹ Variation in estimates result from using two separate indices to assess the DRF situation in European countries, to sensitivity check the end results.

It is likely that such improvements may take some time to manifest, and an immediate, linear improvement is unlikely. However, it is illustrative of what can be achieved if EU action were to incorporate enhanced enforcement mechanisms in the area of DRF violations.

The **fourth scenario** envisages potential Treaty changes under Article 7 TEU and Article 354 TFEU, which would reduce the threshold to trigger the procedure and determine the existence of DRF violations. This would be a possible means of overcoming the current obstacles in triggering infringement procedures and further include the possibility to suspend both budgetary rights and voting rights of Member States found to be in grave or systematic violation of DRF regulations. This mechanism is expected to provide a much stronger incentive for Member States to improve their performance on DRF compared to both the baseline and the other two scenarios. The estimates point to major gains, of between **EUR 767 trillion and 868 trillion** per year or **6-7%% of EU GDP**. Altogether, this translates into a recovery of 65-78% of the GDP 'lost' in the status quo as an effect of the current DRF violations, if reforms are implemented entirely and effectively. Under scenario 4, all Member States (with the exception of the overall best performer) are expected to realise significant economic gains. Under this scenario, EU-13 Member States seem to gain more from EU action (as they lose more from the current status of DRF violations than EU-15 countries). This result may be optimistic, as it is likely that such improvements would take significant time to realise. The basic assumption of this scenario is the implementation of enhanced enforcement mechanisms within the Treaties, which may prove politically difficult. This scenario is best viewed as an illustrative indication of what might be achievable in the long-term, if the enforcement mechanisms were far-reaching and breaches of DRF norms carried significant risk of penalties.

Overview of EU added value of scenarios for EU action in the area of DRF monitoring and enforcement

Table 1 below summarises the key results of this section, presenting the key characteristics, expected impact and related quantitative estimates of EU action on DRF for each scenario. Scenario 1 represents the status quo and the estimates thus represent the impacts of the current gaps and barriers on economic performance (measured as share of GDP). Scenarios 2-4 present possible EU actions in the area of DRF monitoring and enforcement, with estimates showing possible improvements in economic performance (measured as share of GDP) resulting from EU action on DRF.

Table 1: EU added value of scenarios for enhanced EU action in the area of DRF monitoring and enforcement

Scenario	Qualitative description	Expected DRF impact	Quantitative estimations
Scenario 1 (status quo)	<ul style="list-style-type: none"> ➤ Different scope for DRF reporting and enforcement; ➤ Co-existence of several tools for monitoring (e.g. Rule of Law Framework, Council Rule of Law dialogue(s) Evaluation mechanisms in the AFSJ (AFSJ), (CVM), European Semester, EU Justice Scoreboard, FRA reports); ➤ Very high thresholds for triggering enforcement mechanisms, likely to have very limited impact on DRF violations. 	N/A	<ul style="list-style-type: none"> ➤ Substantial costs of DRF violations for the EU; ➤ Estimated loss of EUR 1.1-1.2 trillion per year, corresponding to 9-9.4% of overall EU GDP.
Scenario 2 (rule of law-based monitoring)	<ul style="list-style-type: none"> ➤ Introduces measures focusing on the rule of law; ➤ Dialogues with Member States expected to strengthen the rule of law by building knowledge and a common rule of law culture; ➤ Monitoring information provided by Member States, international organisations, civil society and individuals based on a targeted stakeholders' consultation ; ➤ Likely to have only minimal impact on addressing DRF violations. 	+	<ul style="list-style-type: none"> ➤ Limited EU added value; ➤ Gains between EUR 151 and 218 billion, i.e. to 1.2% and 1.4% of the EU GDP; ➤ Estimated 13%-20% improvements in GDP terms compared to the baseline scenario (Status Quo).
Scenario 3 (DRF monitoring and budget conditionality)	<ul style="list-style-type: none"> ➤ Focus on wider DRF area; ➤ New monitoring and mechanism, involving independent experts, compilation of information and data from Member States, the European Commission, FRA, UN, Council of Europe, and country visits; ➤ Stronger enforcement mechanism (with the possibility of linking DRF violations to budgetary conditionalities); ➤ Impact still moderate, as the enforcement mechanisms are not far-reaching. 	++	<ul style="list-style-type: none"> ➤ Non-negligible gains from EU action in the area of DRF monitoring and enforcement; ➤ Gains between EUR 413 and 432 billion, i.e. between 3.3% and 3.5% of the EU GDP; ➤ Estimated 35%-39% improvements in GDP terms compared to the baseline scenario (Status Quo).
Scenario 4 (Treaty change)	<ul style="list-style-type: none"> ➤ Most far-reaching scenario; ➤ Envisages potential Treaty changes under Article 7 TEU and Article 354 TFEU, reducing threshold to trigger the procedure and determine the existence of a violation under both paragraphs 1 and 2 of Article 7; 	+++	<ul style="list-style-type: none"> ➤ Major gains from EU action in the area of DRF monitoring and enforcement; ➤ Gains between EUR 767 and 868 billion, i.e. between 6% and 7% of the EU GDP,

Scenario	Qualitative description	Expected DRF impact	Quantitative estimations
	<ul style="list-style-type: none"> ➤ Includes the possibility to suspend budgetary rights in addition to voting rights; ➤ Possibility for the European Parliament to prompt the procedure; ➤ Impact potentially bigger, as enforcement mechanisms are quite far-reaching. 		<ul style="list-style-type: none"> ➤ Estimated 65-78% improvement in GDP terms compared to the baseline scenario (Status Quo).

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1. Introduction

The concept of cost of non-Europe dates back to the 1980s, when the Albert-Ball⁴⁰ and Cecchini⁴¹ reports on the potential economic benefits of the completion of a single market in Europe brought the notion into mainstream EU policy analysis. The central idea is that the absence of common action at EU level might prevent achieving full efficiency in a certain sector and/or realising a collective public good that might otherwise exist. The concept is closely linked to that of 'EU added value', which tries to identify and quantify the benefit of undertaking (and, by extension, the cost of not undertaking) policy action at European level in a certain policy field⁴².

This paper follows a series of other pieces of work undertaken by the European Added Value Unit (within the European Parliamentary Research Service, EPRS) in recent years in areas related to democracy, rule of law and fundamental rights, and builds on their results to advance the analysis. These papers include: the *Cost of Non-Europe in the Area of Corruption and Organised Crime* (2016)⁴³, *Procedural Rights and Detention Conditions: Cost of non-Europe Report* (2017)⁴⁴, *The Cost of Non-Europe in Asylum Policy* (2018)⁴⁵, *Equality and the Fight Against Racism and Xenophobia: Cost of Non-Europe Report* (2018)⁴⁶, and the *Cost of non-Europe in the area of legal migration* (2019)⁴⁷.

1.1. Scope and objectives

This Study aims to provide an assessment of the Cost of Non-Europe (CoNE) in the area of democracy, the rule of law and fundamental rights (DRF). Starting from identification of impacts on individuals' rights, individuals' economic conditions, and economic performance of violations of selected aspects of DRF, the Study will assess the (negative) effects of economic performance and the (negative) effects at individual level of preventing the effective exercise of fundamental rights and freedoms and not addressing the related gaps and barriers.

In particular, the Study will:

- Identify and quantify the impacts of violations of selected aspects of DRF on:
 - Individuals, in preventing the effective exercise of fundamental rights and freedoms and on (negative) economic effects (e.g. income, access to education, health);
 - Macroeconomic performance (i.e. Gross Domestic Product (GDP)-type indicators), taking into account other dimensions such as State budget expenditure, tax revenues, corruption, access to justice and freedom of the media;
- Identify and model the gaps and barriers at EU level in monitoring and enforcing EU values, notably in the DRF area;

⁴⁰ Ball, R.J. and Albert, M., [Towards European economic recovery in the 1980s: Report to the European Parliament](#), New York, NY: Praeger, 1984.

⁴¹ Checchini, P., Catinat, M., Jacquemin, A. 'The Benefits of a Single Market', Wildwood House, 1988.

⁴² Teasdale, A., ['Europe's two trillion euro dividend: Mapping the Cost of Non-Europe, 2019-24'](#), EPRS, European Parliament, 2019, p. 3

⁴³ van Ballegooij, W. and Zandstra, T., ['Organised Crime and Corruption: Cost of Non-Europe Report'](#), EPRS, European Parliament, 2016; RAND Europe, 'Annex II: Corruption'.

⁴⁴ van Ballegooij, W., ['Procedural Rights and Detention Conditions'](#), EPRS, European Parliament, 2017; RAND Europe, 'Annex I: Research Paper on the Costs of Non-Europe in the Area of Procedural Rights and Detention Conditions'

⁴⁵ van Ballegooij, W. and Navarra, C., ['The Cost of Non-Europe in Asylum Policy'](#), EPRS, European Parliament, 2018; Milieu, 'Annex: The Cost of Non-Europe in the area of Asylum'.

⁴⁶ van Ballegooij, W. and Moxom, J., ['Equality and the Fight against Racism and Xenophobia: Cost of Non-Europe Report'](#), EPRS, European Parliament, 2018; Milieu, 'Annex I'

⁴⁷ van Ballegooij, W. and Thirion, E., ['The cost of Non-Europe in the Area of Legal Migration'](#), EPRS, European Parliament, 2019

- Develop scenarios representing possible enhanced EU action in the area of DRF monitoring and enforcement upward harmonisation patterns in DRF across the EU and calculate their potential gains;
- Assess the EU added value of the EU Pact on Democracy, the Rule of Law and Fundamental Rights, as proposed by the European Parliament, taking into account its position on the Commission's first annual Rule of Law Report.

1.2. General approach and limitations

The Study uses a combination of extensive literature review - including both academic literature and previous CoNE studies in related subjects - and estimations and modelling based on available datasets and indices. The identification of DRF violations, their repercussions on individual rights and their economic impacts (both on individuals and at aggregate level) was the driving process for the Study, guiding the identification of the impacts to quantify and providing the basis for modelling the impacts of possible scenarios enhanced EU action in the area of DRF monitoring and enforcement upward modernisation.

The Study has limitations:

- The broad definition of DRF and violations adopted;
- The indices available for measuring DRF violations differ in methodology, aggregation and ultimate focus, as well as coverage of countries relevant to this Study, present trade-off between coverage (of countries and/or years) and aspects of DRF included. The analysis of the available indices and the selection criteria are detailed later (section 5.1);
- There is a great degree of uncertainty on the functioning and effectiveness of some mechanisms, such as the Commission's Rule of Law Review Cycle and the upcoming first annual Rule of Law Report, and even greater uncertainty on instruments still under discussion, i.e. the European Parliament initiative to introduce the EU Pact on Democracy, Rule of Law and Fundamental Rights (section 6);
- This uncertainty required a certain number of assumptions, which are clearly outlined where relevant;
- This Study was undertaken in a constrained timespan (three months), which determined the extent of the analysis and made it impossible to carry out a stakeholder consultation.

1.3. Content of the report

The report is structured as follows:

- **Section 1:** Introduction;
- **Section 2** describes the causal chain from main drivers and problems in societies to violations of DRF.
- **Section 3** outlines their main impacts of DRF violations on the rights of individuals, linking the violations to the key impacts identified, using the logical model developed for the Study and evidence from literature;
- **Section 4** describes the main economic impacts of DRF violations, both at individual and at aggregated level;
- **Section 5** defines the approach developed for quantifying the impacts of the most relevant DRF violations;
- **Section 6** focuses on the analysis of the EU framework and existing initiatives in DRF, their scope and objectives, as well as their problems and gaps;
- **Section 7** defines possible scenarios for enhanced EU action in the area of DRF monitoring and enforcement, which should help in overcoming (some of) the problems and gaps identified and realise EU added value;

The report includes the following Annexes:

- **Annex I** lists the sources used by the Study;
- **Annex II** provides detailed tables and figures for the statistical analysis and estimations of the costs on non-Europe in the area of DRF.

2. Violations of democracy, rule of law and fundamental rights

Democracy, the rule of law, and respect of fundamental rights are founding values of the EU, enshrined under Article 2 of the Treaty on European Union (TEU). The permanent respect of DRF in all Member States is a cornerstone of the EU legal system, as it is crucial to ensure mutual trust between Member States, to make the EU an area of freedom, security and justice, and to ensure proper functioning of the internal market⁴⁸. Threats to these EU fundamental values therefore challenge the legal, political and economic basis of the EU itself⁴⁹. Violations of democracy, the rule of law and fundamental rights (DRF violations) can result in a multiplicity of individual and economic impacts.

In order to assess the CoNE in the context of DRF, possible DRF violations must first be identified (section 2.1), together with the ways in which such violations manifest and how they can be defined (section 2.2).

2.1. Identifying violations of democracy, rule of law and fundamental rights

In line with the European Parliament's position, this Study goes beyond the aspects of rule of law, to include and discuss aspects of democracy and fundamental rights⁵⁰.

The notion of DRF and their interrelation is broad and complex, and has been the subject of a long debate, focusing on the boundaries of each and their interdependency⁵¹. Article 2 TEU stipulates that the Union is founded on 'the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'. While these three notions can be examined separately, their interdependency is in fact an inherent feature of all the founding values listed in Article 2 TEU⁵².

Each concept includes several elements:

- **Democracy** is 'the rule of the people'. The EU's (unique) vision of democracy includes democratic equality, representative democracy, participatory democracy, transparency and deliberation⁵³.
- The **Rule of Law** is about governance. In its 2014 New Framework to Strengthen the Rule of Law, the European Commission recalls that 'the principle of the Rule of Law has progressively become a dominant organisational model of modern constitutional law and international organisations /.../ to regulate the exercise of public powers'⁵⁴. In its April 2019

⁴⁸ European Commission, [Communication on Further strengthening the Rule of Law within the Union – State of play and possible next steps](#), 3 April 2019, pg 1, 2.

⁴⁹ European Commission, [Communication on strengthening the rule of law within the Union – A blueprint for action](#), 17 July 2019, pg 1.

⁵⁰ European Parliament [Resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights](#), 10 October 2016. See also, European Parliament, [An EU mechanism on democracy, the rule of law and fundamental rights](#), 27 October 2016.

⁵¹ Carrera S., Guild E. and Hernandez N., [The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU, Towards the Copenhagen Mechanism](#), CEPS, 2013, pg i, 35, 36.

⁵² Ibid pg 20.

⁵³ Timmer, A., Majtényi, B., Häusler, K, Salát, O., ['EU Human rights, democracy and rule of law: from concepts to practice'](#), FRAME Deliverable 3.2, 31 December 2014, p. iii.

⁵⁴ European Commission, [A New EU Framework to Strengthen the Rule of Law](#), (pp. 3-4), 11 March 2014.

'Communication on further strengthening the Rule of Law within the Union', the European Commission defined the concept of the rule of law as follows: 'under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. The rule of law includes, among others, principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law'.⁵⁵

- According to the European Commission for Democracy through Law (Council of Europe Venice Commission), the rule of law has six elements: legality, including a transparent, accountable and democratic process for enacting law; legal certainty (people know what the law is and how the courts interpret it, and neither will change unpredictably); prohibition of arbitrariness (the exercise of power cannot be unlimited); access to justice before independent and impartial courts, including judicial review of administrative acts; respect for human rights; non-discrimination and equality before the law⁵⁶.
- **Human rights** are commitments enshrined in the EU Charter of Fundamental Rights covering civil, political, social, economic and cultural rights in their individual and collective dimensions⁵⁷.

The EU is moving towards substantive conceptions of fundamental rights, the rule of law and democracy, and interprets these concepts broadly⁵⁸. There are multiple interrelations between the three concepts. The rule of law goes hand-in-hand with the protection and enforcement of fundamental rights. At the same time, limitations on fundamental rights can only be based in the law if justified and necessary in a democratic society. Democracy is intrinsically linked to the rule of law and fundamental rights and closely linked to the principle of equality which is, itself, a fundamental right. It is upheld in the Charter under the Title dealing with Citizens' Rights. Any democratic society inherently relies on the rule of law⁵⁹. The mutually reinforcing relationship between DRF thus safeguards the constitutional core of the EU and its Member States⁶⁰.

The complex nexus between the three concepts creates not only a myriad of interrelations but also a broad range of potential abuses. While an exhaustive account of these abuses goes beyond the scope of the present Study, it is reasonable to prioritise those linked to the core of the concepts examined and that have gained prominence as indicators of the 'declining' quality of DRF in the EU⁶¹. Such a typology would include abuses linked to the separation of powers and the lack of institutional checks and balances, restrictions of media freedom and pluralism, lack of legal certainty, discriminatory acts and inequality, shrinking space for civil society and dialogue, ineffective justice systems, restrictions in access to justice and corrupt practices.

⁵⁵ European Commission, [Communication on strengthening the rule of law within the Union – A blueprint for action](#), 17 July 2019, pg 1; European Parliament, [Protecting the rule of law in the EU - Existing mechanisms and possible improvements](#), November 2019, pg 2.

⁵⁶ Council of Europe, [The Rule of Law Checklist](#), March 2016, pg 7.

⁵⁷ Timmer, A., Majtényi, B., Häusler, K, Salát, O., ['EU Human rights, democracy and rule of law: from concepts to practice'](#), FRAME Deliverable 3.2, 31 December 2014, pg iii.

⁵⁸ Ibid., pg iii.

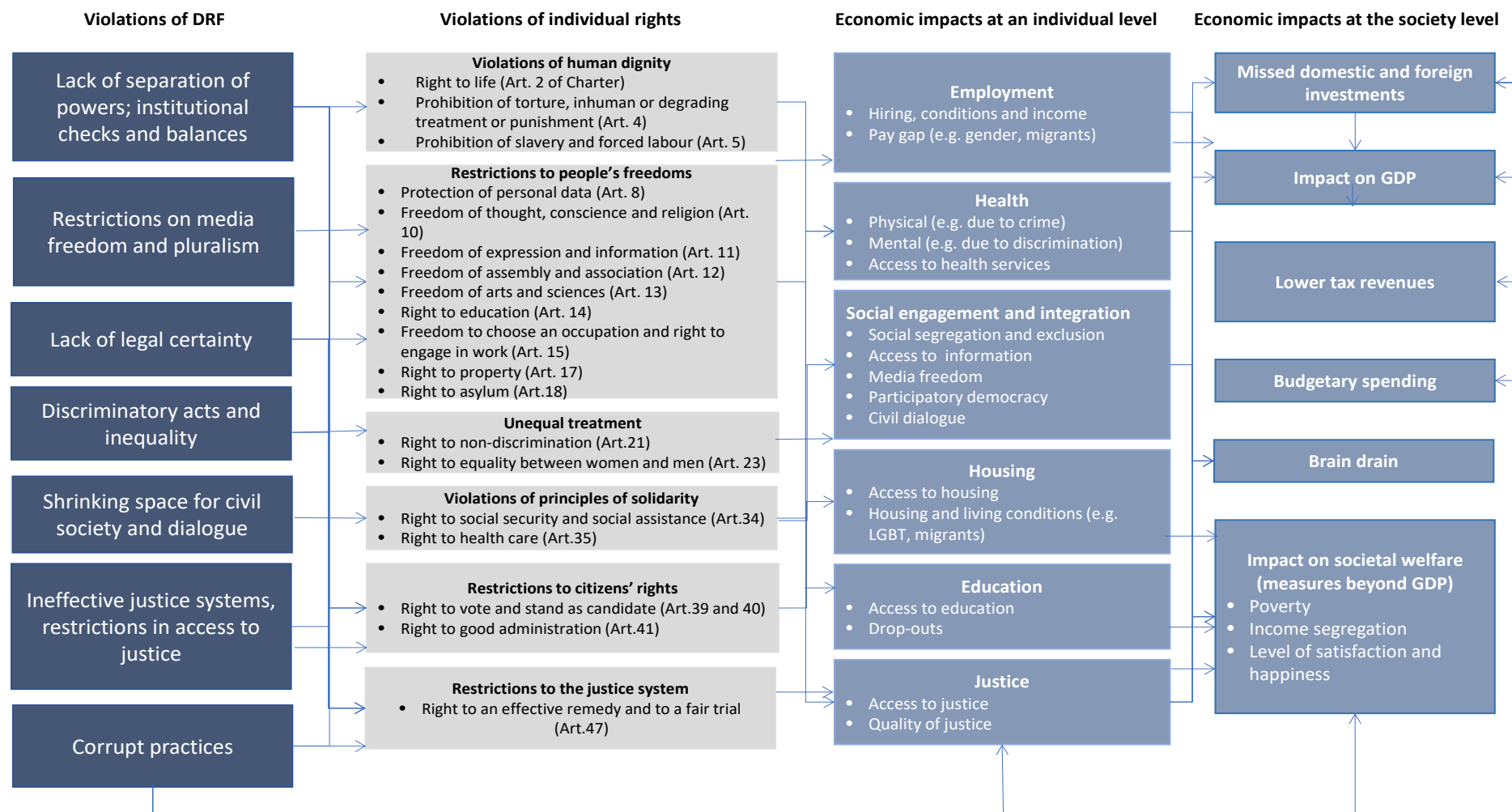
⁵⁹ Carrera S., Guild E. and Hernandez N., [The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU, Towards the Copenhagen Mechanism](#), CEPS, 2013.

⁶⁰ [Resolution](#) of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, European Parliament, Annex, Article 7.

⁶¹ [Bond](#) I. and [Gostyńska-Jakubowska](#) A., ['Democracy and the rule of law: Failing partnership?'](#), Brussels: Centre for European Reform, 20 January 2020.

Figure 2 below provides an illustration of the possible DRF violations, and their impacts on individuals' rights and economic performance, at both individual and society level.

Figure 2: Violations of democracy, the rule of law and fundamental rights – individual and economic impacts



Source: Milieu elaboration

Column 1 of Figure 2 contains the various aspects of DRF. The aspects of DRF violations discussed in this Study were identified and chosen on the basis of various literature, particularly Article 7 of the 2016 European Parliament Resolution⁶².

In order to present a non-exhaustive but comprehensive list of DRF violations, similar concepts have been combined, as they are interdependent and too close to disentangle. For example, the aspect of 'Lack of separation of powers, institutional checks and balances' represents and includes the importance of having both the separation of powers and functioning institutional checks and balances to ensure the proper functioning of a State and avoid any abuse of powers by public authorities⁶³. Another example is 'Discriminatory acts and inequality', which incorporates the elements of xenophobia, antisemitism and populism. Finally, the 'Ineffective justice system' incorporates various elements of the justice system, including effectiveness, efficiency, impartiality, independence and access to justice.

The aspects of DRF were chosen where their violations provoke an individual and economic impact, and the link between the violation and impact is established and can be sustained by literature. This is why certain aspects of DRF violations tend to be 'broader' than others. For example, 'Lack of legal certainty' and 'Corrupt practices', where the link between these violations and their impacts on the individual and the economy has already been established⁶⁴.

Finally, certain DRF aspects mentioned under Article 7 of the 2016 European Parliament Resolution have not been included in Column 1 of Figure 2. This is chiefly due to the lack of literature and data, including economic data that could sustain the causality between aspects of DRF and individual and economic impacts⁶⁵. The following section provides an explanation of the various aspects of DRF violations.

2.2. Main aspects of DRF Violations

Lack of separation of powers, institutional checks and balances

Democratic control and separation of powers are essential to sustain an independent judiciary and the rule of law, which in turn are required for effective protection of fundamental rights⁶⁶. As recently re-affirmed by the Commission 'An unclear law-making process can make it easier for political

⁶² [Resolution](#) of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, European Parliament, Annex, Article 7.⁶³

These elements are mentioned in the [European Parliament Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights](#) (2015/2254(INL)), Annex, Article 7; Communication on Strengthening the rule of law within the Union: A blueprint for Action, [COM\(2019\) 343 final](#), European Commission, 17 July 2019; Council of Europe, [The Rule of Law Checklist](#), Study 711/2013, March 2016.

⁶³ These elements are mentioned in the [European Parliament Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights](#) (2015/2254(INL)), Annex, Article 7; Communication on Strengthening the rule of law within the Union: A blueprint for Action, [COM\(2019\) 343 final](#), European Commission, 17 July 2019; Council of Europe, [The Rule of Law Checklist](#), Study 711/2013, March 2016.

⁶⁴ van Ballegooij and Zandstra, 2016, Chapter 2, p. 25 onwards

⁶⁵ For example, 'impartial nature of the state', 'reversibility of political decisions after elections', 'permanence of a state', 'transparency and accountability', 'legality', 'conflict of interest'. In addition, 'Title I to VI of the Charter' and the 'European Convention on Human Rights (ECHR)' have not been discussed under Column 1 of Figure 2, as fundamental rights are discussed in assessing the individual impacts of DRF violations. Other DRF aspects supported by sufficient literature are described in section 2.2. An overview of estimations of DRF aspects available in economic literature is provided in section 4.

⁶⁶ [Resolution](#) of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, European Parliament, p.5

majorities to weaken or bypass checks and balances. Repeated public attacks from one branch of the State on another erode the fundamental principle of the separation of powers⁶⁷.

Restrictions of media freedom and pluralism

A democratic functioning of the EU and its Member States requires media to be independent and pluralistic. However, journalists and other media actors in the EU face various challenges, including violence, threats and other forms of pressure, interference by political actors, and financial and economic pressure, both direct and indirect⁶⁸.

Lack of legal certainty

Legal certainty is one of the fundamental principles of a democratic society. It manifests in the lack of accessible, stable, consistent, foreseeable and easy to understand legislation. Cases of retroactivity of national legislation and revision of the *res judicata* (unless there are cogent reasons for revising this) also constitutes a violation of the principle of legal certainty⁶⁹.

Discriminatory acts and inequality

Equality is one of the fundamental values on which the European Union is founded. This is duly reflected in Articles 8 and 10 of the TFEU which establish the aim to eliminate inequalities between men and women, and to combat discrimination, and under Title III on Equality of the Charter of Fundamental Rights of the European Union^{70 71}. The EU legal system explicitly prohibits direct and indirect discrimination. Direct discrimination concerns less favourable treatment due to a particular characteristic, which falls under a 'protected ground'. Indirect discrimination, on the other hand, is less favourable treatment disguised within a neutral rule, criterion or practice that affects a group defined by a 'protected ground' in a significantly more negative way compared to others in a similar situation.

Discrimination can manifest itself in different sectors, including access to goods and services, employment, education, social security and healthcare. Individuals can also be discriminated against on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Individuals may also experience cases of multiple or intersectional discrimination⁷².

Shrinking space for civil society and dialogue

Civil society plays an important role in building and strengthening democracy, monitoring, and restraining the power of the state and promoting good governance, transparency, effectiveness, openness, responsiveness and accountability. The quantity, quality and intensity of obstacles affecting civil society's ability to carry out their work provide an indication of a country's general state of fundamental rights, democracy and the rule of law⁷³. DRF violations can shrink the space for civil society and dialogue, in the form of challenges arising from the regulatory framework,

⁶⁷ 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. 8

⁶⁸ European Union Agency for Fundamental Rights (FRA), [Violence, threats and pressures against journalists and other media actors in the European Union](#), 16 November 2016.

⁶⁹ Council of Europe, [The Rule of Law Checklist](#), Study 711/2013, March 2016, p. 25 onwards..

⁷⁰ Treaty on the Functioning of the European Union, OJ C 326, 26 October 2012; [Charter of Fundamental Rights of the European Union](#), OJ C 326, 26 October 2012, Title III – Equality.

⁷¹ van Ballegooij and Moxom, 2018, p 12.

⁷² Council of Europe, [Intersectionality and Multiple discrimination](#).

⁷³ European Union Agency for Fundamental Rights (FRA), [Civic space – experiences of organisations in 2019](#), 28 July 2020.

disadvantageous changes in legislation or inadequate implementation of laws, negative media reports, hurdles to accessing financial resources and ensuring their sustainability, difficulties in accessing decision makers and contributing to legal and policy-making, and verbal or online attacks/harassment of human rights defenders, including hate speech and negative discourse aimed at delegitimising and stigmatising civil societies⁷⁴.

Ineffective justice systems, restrictions in access to justice

The justice system needs to have certain characteristics: a fair and public hearing before an independent and impartial tribunal previously established by law, the right to the timely resolution of disputes, the right for any suspect and accused person to be advised, defended and represented and to receive legal aid where certain conditions occur, and the right to an effective remedy⁷⁵. Violations of these principles can compromise the effective functioning of the justice system.

While some restrictions on access to justice may be justified when they have a legitimate aim and are proportionate, others are not permitted. These are, for instance, the excessive length of proceedings, high evidentiary thresholds and excessive court fees and costs.

Corrupt practices

There is no one overarching definition of corruption. Several definitions refer to the specific manifestations of corruption. The Organisation for Economic Co-operation and Development (OECD), the Council of Europe and the United Nations Conventions do not provide a definition of corruption, but identify offences defining a range of corrupt behaviours. The OECD Convention refers to the offence of bribery of foreign public officials, while the Council of Europe Convention refers to offences like trading in influence, bribing domestic and foreign officials, as well as embezzlement, misappropriation or other diversion of property by a public official and obstruction of justice⁷⁶. At European level, there is also no one definition of corruption, however, a common definition utilised by the European Institutions is 'abuse of power for private gain'⁷⁷. At national level, there is no unified criminal definition of corruption within Member States, resulting in different ways of recording corruption-related offences.

Like other EU studies, this Study takes the definition from the 2014 EU Anticorruption Report as a starting point: 'abuse of power for private gain'⁷⁸. This definition allows a relatively broad scope to examine several forms of corruption, which includes both the public and private sectors and can be put in place by a range of actors.

DRF are at the core of a well-functioning state. DRF violations infringe a number of rights and have an **impact on individuals** (see Column 2 of Figure 2). It is important to note that most of these impacts are interlinked, implying one aspect of a DRF violation may have more than one individual or economic impact. Furthermore, economic impacts can have repercussions on the rights of individuals. For instance, violations related to unbalanced separation of powers or lack of legal certainty can impact individuals' rights with regard to violation of physical integrity, restriction to freedom and accessing economic and social rights, as well as economic impacts, such as missed investment, lower economic growth due to corruption and lower welfare of society.

DRF violations have **economic impacts**, as illustrated under the third and fourth column of Figure 2. The impacts of these violations uses indicators such as GDP and tax revenue as the main output

⁷⁴ FRA, [Civic space – experiences of organisations in 2019](#), 28 July 2020; FRA, [Challenges facing civil society organisations working on human rights in the EU – Summary](#), 17 May 2018.

⁷⁵ European Commission, [The EU Justice Scoreboard 2020](#).

⁷⁶ OECD, ['Corruption – A glossary of international criminal standards'](#), OECD: Paris, 2007, p. 19.

⁷⁷ van Ballegoij and Zandstra, 2016, pp. 8, 17.

⁷⁸ [Report](#) on EU Anti-Corruption, European Commission 3 February 2014, p. 2.

indicators. These give an indication of a country's productivity and growth, as well as the incomes and funds of the executive. Where persistent violations of the rule of law occur, growth may be impeded or reduced, as an uncertain business climate or corrupt governance can lead to a decrease in both foreign and domestic investment. Tax revenues may be lower than expected due to corruption or governance failures, which could prevent the effective collection of taxes. Social consequences such as brain drain may follow when these factors combine to limit job growth and the economic prospects of young and educated citizens. Finally, corruption and rule of law violations may lead to increased economic inequality and deprivation if the country is not able to fund and/or operate social assistance programmes. These effects are analysed in more detail in section 4 below and quantified in section 5 below. Before turning to that economic analysis, however, the next section (section 3) details the impacts on individuals in terms of violations of fundamental rights, with specific reference to the EU Charter of Fundamental Rights.

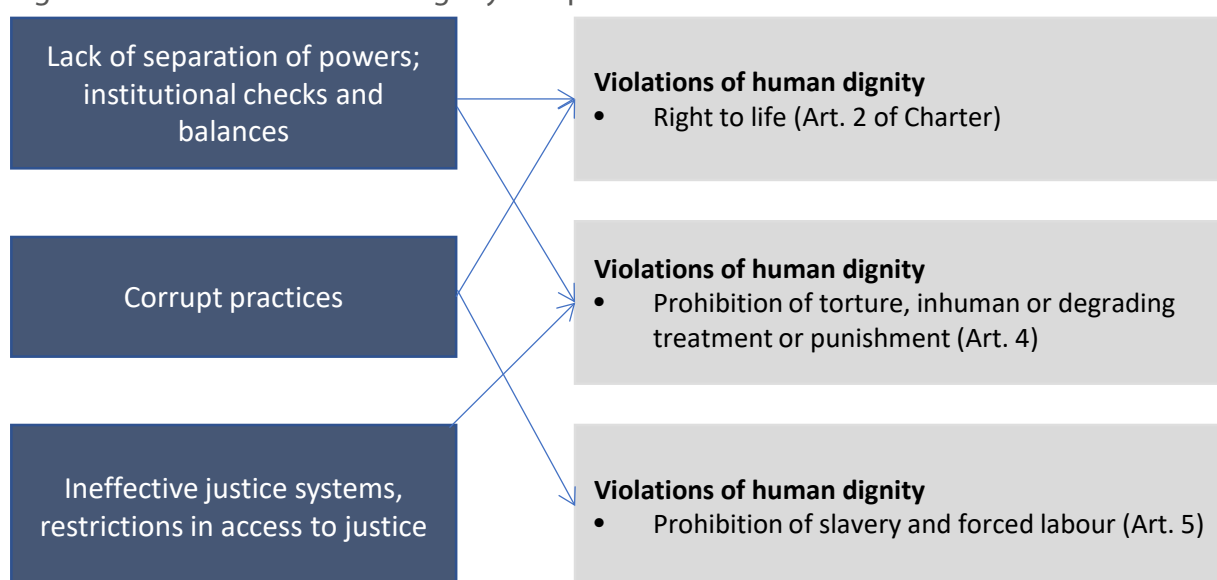
3. Impacts on individuals

The analysis presented in this section focuses on a selection of individual rights that are potentially impacted by DRF violations. These are selected according to the EU Charter of Fundamental Rights and based on availability of literature supporting measurement and possible quantification of those impacts. For each of the impacts on individual rights selected, the analysis also presents a schematic representation of the main impact channels (focusing on the relevant elements from Figure 2).

The analysis includes violations of human dignity (section 3.1), restrictions to people's freedom (section 3.2), unequal treatment (section 3.3), violations of the principle of solidarity (section 3.4), restrictions to citizens' rights (section 3.5) and restrictions to the justice system (section 3.6).

3.1. Violations of human dignity

Figure 3: Violations of human dignity – Impacts on individuals

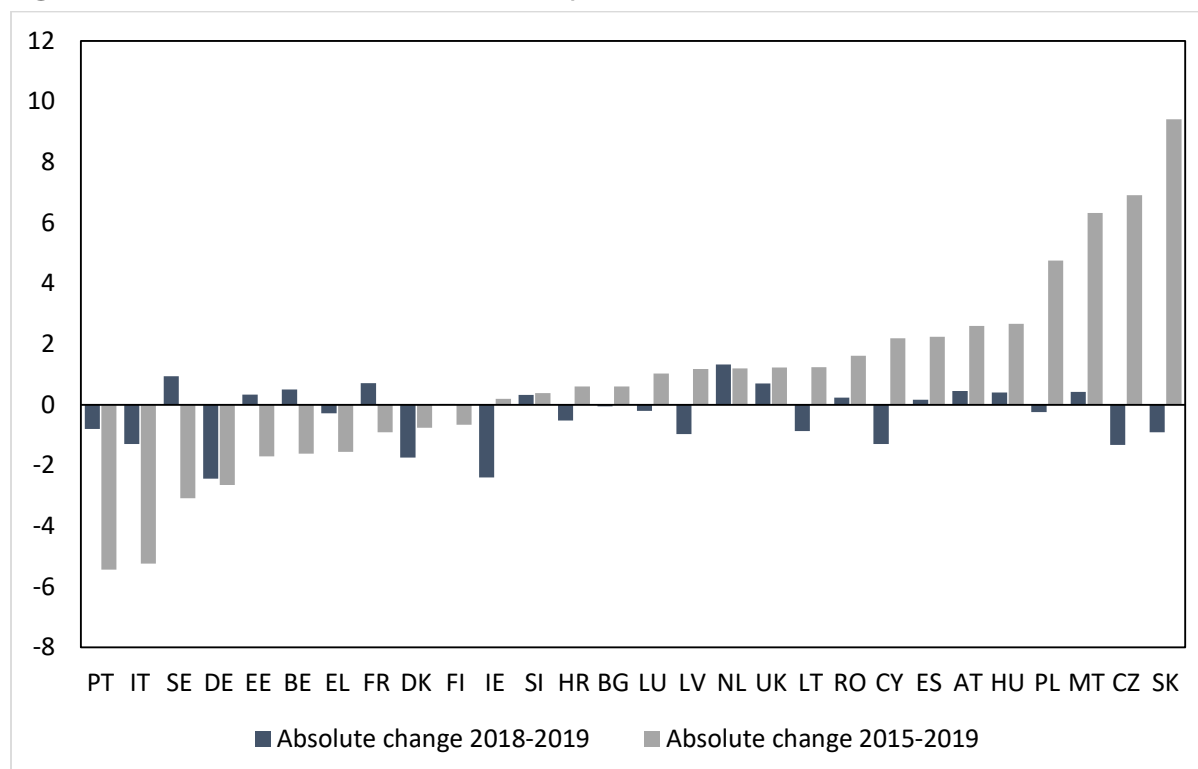


Source: Milieu elaboration

The right to life (Article 2 of the Charter) is one of the most fundamental provisions of the Charter and represents one of the basic values of a democratic society. Everyone has the right to have one's life safeguarded and governments must take measures - including by enacting laws - to ensure that the right to life is not violated. DRF violations, such as the **lack of separation of powers, institutional checks and balances**, and **corrupt practices** can undermine the right to life and physical and mental integrity of reporters, journalists, activists and whistle-blowers. Press freedom is an illustration of this. The 2019 World Press Freedom Index indicates that, as a region, the EU registered the second largest deterioration in press freedom (1.7%), with several Member States ranking lower than previous years⁷⁹.

⁷⁹ Reporters Without Borders (RSF), ['2019 World Press Freedom Index - A cycle of fear'](#), RSF: Paris.

Figure 4: World Press Freedom Index – EU performance



Changes are the absolute point changes in the Press Freedom Index between 2018 and 2019, and 2015 and 2019. The index measures the extent to which press freedom and independence is respected and does not otherwise provide indications on the quality of a country's media. Lower scores indicate a higher level of respect for press freedom - positive values in the above figure therefore indicate a worsening in this situation.

Source: Milieu elaboration from [World Press Freedom Index](#)

As violations and threats against journalists increase within the EU, the security of reporters has declined. In recent years, the EU has seen a spike in the harassment of journalists. Reporters are increasingly working in a hostile and unsafe environment, faced with judicial persecution, forced to be under permanent police protection due to fear of loss of life, arrested or even murdered, especially when reporting on corruption and/or organised crime⁸⁰.

The prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter) defines an absolute right and ensures that public authorities do not inflict this treatment or punishment. It also empowers the State to intervene to stop such behaviour from anyone else. **Lack of separation of powers** and a **lack of proper and robust institutional checks and balances** could potentially lead to an abuse of power by the public authorities and in turn infringe Article 4 of the Charter. Such infringement can be seen within the context of abuse by public authorities, such as the police. This type of abuse primarily takes place when a suspected person is apprehended and the force used is either unnecessary or excessive, while ill-treatment and torture occur during police interviews⁸¹. This could have an impact on the individual's mental and psychological health, which, in turn, has a detrimental effect on the enjoyment of other rights under the Charter, including the right to employment and the enjoyment of private and family life⁸². An

⁸⁰ Council of Europe Commissioner for Human Rights, [Annual report](#), 2019, Section 2.2; Euronews, [European Reporters working in increasingly 'intense climate of fear'](#), 19 April 2019.

⁸¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, [28th General Report of the CPT](#), 2018, p. 30, para. 65.

⁸² [van Ballegooij](#), 2017, pp. 7, 32..

ineffective judicial system encroaches on suspects' rights where pre-trial detention (PTD) is used excessively, or when detention conditions are inhuman and degrading, including due to overcrowding⁸³.

The prohibition of torture, inhuman or degrading treatment or punishment has also been infringed within the migration context due to an increase in **populism, xenophobia** and **abuse of powers by the State**, due to lack of separation of powers and adequate institutional checks and balances. Systematic deficiencies in asylum procedures and reception conditions for asylum seekers (overcrowding and sub-standard conditions, inadequate provision of healthcare, low personnel levels, etc.) may risk asylum seekers suffering from inhuman and degrading treatment, contrary to Article 4 of the Charter⁸⁴. In addition, the transfer of an asylum seeker to the responsible Member State for processing an asylum application would be contrary to the right enshrined under Article 4 of the Charter if such transfer would expose the asylum seeker to extreme material poverty to the extent that they cannot meet their most basic needs, such as food, personal hygiene and a place to live⁸⁵. The detention conditions of migrants within certain detention centres has been found to amount to inhuman and degrading treatment due to overcrowding, insufficient food and little possibility of physical exercise⁸⁶.

The prohibition of slavery and forced labour (Article 5 of the Charter) prohibits trafficking in human beings. As **corruption** surges, gender-based violence, including human trafficking for sexual exploitation, increases. The direct link between corruption and human trafficking has long been established, as organised trafficking in human beings requires systematic corruption for organised crime groups to keep operations under the radar, facilitate the trafficking process, escape investigations, prosecutions and criminalisation⁸⁷. The flow of human trafficking for sexual exploitation into Europe is high, with victims (especially women and minors) trafficked from all corners of the world. However, despite the high flow of victims and notwithstanding that this illicit organised crime generates billions of euro per year for organised criminal groups, Member States continue to report low conviction rates for the offence of trafficking in human beings and use of the services of victims of trafficking⁸⁸.

⁸³ Ibid, pp. 12, 125.

⁸⁴ Court of Justice of the European Union (CJEU), C-411/10 and C-493/10, N.S. v. Secretary of State for the Home Department, 21 December 2011; van Ballegooij and Navarra, 2018, p. 7.

⁸⁵ CJEU, C-163/17, *Jawo*, 19 March 2019, para 92.

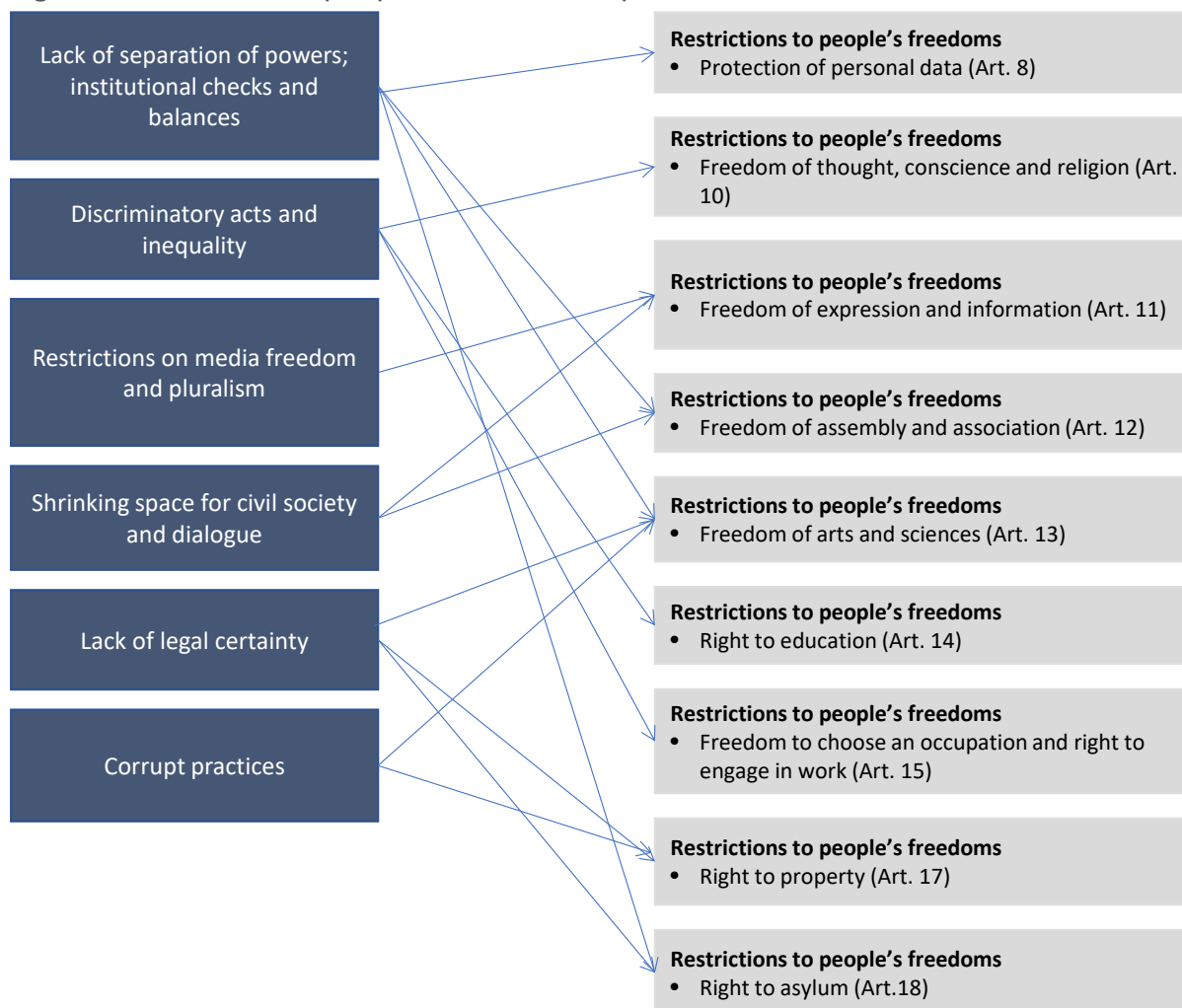
⁸⁶ European Court of Human Rights (ECtHR), *M.D. v. Greece*, No. 60622/11, 13 November 2014, paras. 43-45.

⁸⁷ OECD, '[Trafficking in Persons and Corruption](#)', OECD: Paris, 2016, p. 3; United Nations Office on Drugs and Crime (UNODC), '[The role of corruption in trafficking in persons](#)', 2011, p. 6 - 9.

⁸⁸ [Second report](#) on the progress made in the fight against trafficking in human beings (2018) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, European Commission, 3 December 2018.

3.2. Restrictions to people's freedoms

Figure 5: Restrictions to people's freedom – Impacts on individuals



Source: Milieu elaboration

The protection of personal data (Article 8 of the Charter) ensures that everyone's data is protected, with data processing required to be carried out in line with the principles of necessity and proportionality. It secures each person's right to access and rectify their personal data⁸⁹. **Lack of separation of powers, and robust institutional checks and balances** could lead to an **increase in abuse of powers** by the State when collecting, storing and utilising personal data, to the detriment of the data subject⁹⁰. It was raised in the context of the COVID-19 pandemic - the most recent example of the inherent difficulties in balancing the right to protection of personal data with other rights (such as the protection of the health of the population in the case of a pandemic, or safety in case of terror attacks). As Member States scramble to control the public health situation resulting from the pandemic, several have declared a state of emergency and have undertaken various initiatives to map out and track the spread of the virus, monitor the effectiveness of the stay-at-home measures, and ensure that people stay at home, including through the use of GPS location

⁸⁹ FRA, [Handbook on European Data Protection Law](#), 2018.

⁹⁰ FRA, [Surveillance by intelligence services: fundamental rights safeguards and remedies in the European Union, Volume II, Summary](#), 9 May 2018.

data⁹¹. The CoE Data Protection Commissioner stated that while data protection should by no means hinder saving lives, the pandemic needs to be addressed in line with the right to the protection of personal data. This is the case not only for public authorities but also for private parties (e.g. online platforms, telecommunication services) that share anonymised data to help to model the spread of the virus⁹². The **lack of separation of powers and institutional checks and balances** could prompt abuse by the public authorities by carrying out mass surveillance and collecting personal data that is not necessarily in the interest of national security, thus potentially encroaching upon the individual's privacy and data protection rights⁹³.

The freedom of thought, conscience and religion (Article 10 of the Charter) ensures that everyone is free to consider or hold a thought and/or a religion or belief. **Discriminatory acts and inequality**, along with **populism**, have, however, led to an increase in discrimination against religious minorities, antisemitism, an intolerance for religious groups and increased hate crime, which represent an obstacle to individual enjoyment of the right to freedom of religion. According to the CoNE on Equality, there has been a surge in antisemitism and Islamophobia⁹⁴. Several Member States reported an increase in antisemitic acts between 2017 and 2018, including attacks on places of worship and schools, desecration of cemeteries, various forms of vandalism, as well as violence in Jewish museums⁹⁵. A 2018 survey on antisemitism undertaken by the EU Agency for Fundamental Rights (FRA) found that 89% of Jews living in the EU felt that antisemitism had increased over the past five years, with half of the respondents indicating that antisemitism was a severe problem in their country of residence. Particularly worrying are the high percentages of respondents who reported that antisemitism stems from online sources, the media, politics and public spaces⁹⁶. Similarly, the Second European Union Minorities and Discrimination Survey (2017) found that Muslims residing in Member States experienced high level of discrimination, physical violence and harassment, with one in five Muslims indicating that religion was a primary motivation⁹⁷. Certain Member States have taken measures that affect certain religious groups like Muslims and Jews, for example by prohibiting non-stunned slaughtering or restricting the export of kosher meat, which in turn affects specific communities across the Union⁹⁸. Expression of religious intolerance, manifestations of antisemitism and hate speech need to be adequately prohibited by a robust criminal justice system that identifies and penalises such action.

The freedom of expression and information (Article 11 of the Charter) ensures that everyone has the right to express their opinion, as well as to receive and share information, without any interference. This is essential to ensure democratic governance and accountability and for people to be able to form an opinion. **Restrictions on media freedom and pluralism** violate Article 11 of

⁹¹ Dumbrava, C., ['Tracking mobile devices to fight coronavirus'](#), EPRS, European Parliament, 2020; FRA, [Coronavirus pandemic in the EU – Fundamental Rights implications: with a focus on contact-tracing apps](#), Bulletin No. 2, April 2020; Agrawal, Aditi, ['Keeping track of surveillance in the time of coronavirus'](#), Medianama, 23 March 2020.

⁹² Council of Europe, [Statement by the Chair of the Committee of Convention 108 and the Data Protection Commissioner of the Council of Europe](#), 30 March 2020.

⁹³ van Ballegooij, W., ['European added value of an EU mechanism on democracy, the rule of law and fundamental rights: Preliminary assessment'](#), EPRS, European Parliament, 2020, p.9; FRA, [Surveillance by intelligence services: fundamental rights safeguards and remedies in the European Union, Volume II, Summary](#), 9 May 2018.

⁹⁴ van Ballegooij and Moxom, 2017, p. 80-83; World Jewish Congress, ['Antisemitism and FRA: Survey on discrimination and hate crime against Jews in EU'](#), 2012.

⁹⁵ United Nations General Assembly, [Elimination of all forms of religious intolerance – Report of the Special Rapporteur on freedom of religion or belief](#), 20 September 2019, Section II, pg 3-4.

⁹⁶ FRA, [Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU](#), December 2018; pg 11, 15, 21. For further information, see FRA, [Antisemitism – Overview of data available in European Union 2008 – 2018](#), November 2019.

⁹⁷ FRA, [Second European Union Minorities and Discrimination Survey: Muslims – Selected Findings](#), September 2017.

⁹⁸ United Nations General Assembly, [Eliminations of all forms of religious intolerance – Report of the Special Rapporteur on freedom of religion or belief](#), 20 September 2019, para 41.

the Charter. Journalists and whistleblowers are key actors in a democratic society, as they carry out an essential role of exposing wrongdoing and corruption by releasing information that is of interest to the general public and thus, exerting political pressure. Journalists and whistle-blowers are less likely to report information or blow the whistle on activities deemed illegal, unethical or of general interest to the public if there is a lack of effective legal protection⁹⁹. In some Member States, the security of journalists has been in stark decline, with harassment, intimidation and retaliation increasing in recent years, as well as impunity for murder¹⁰⁰. The backsliding of the rule of law and the lack of judicial impartiality and independence in certain Member States (see *Restrictions to the right to justice* below), has had the effect of charging and penalising government-critical journalists for defamation¹⁰¹. Ultimately, the individual negative effect in the context of Article 11 of the Charter is that media houses, journalists and whistle-blowers cannot share information, with the result that people are deprived of the (pluralistic) information that is essential to forming an opinion. The restriction of media freedom and pluralism has also had an impact on the individual's right to life, as explained in section 3.1 above.

The freedom of assembly and association (Article 12 of the Charter) ensures the right of people to come together and collectively defend, pursue and/or promote collective ideas. This right protects opinions and the freedom to express them. The **lack of separation of powers leading to an abuse of powers by public authorities**, as well as the **shrinking space for civil society** to voice their concerns, are two aspects of DRF violations that can impact individuals, particularly in respect of on the freedom of assembly and association. For example, civil societies have been under attack in some Member States, where legislation has allegedly been adopted with the aim of hindering or restricting the work of civil society and NGOs, as well as threatening the organisations' dissolution. This interferes with civil societies and NGOs exercising their right to freedom of assembly and association, as well as, the right to freedom of expression and information¹⁰². In addition, in response to demonstrations, States have taken measures to limit people from exercising their right to assembly and association, including for example resorting to criminalisation for calling un-notified assemblies¹⁰³. During the yellow-vest protests, several manoeuvres were utilised by the State police to discourage people from participating in protests, including through the use of interrogations, identity checks, searches and confiscation of protection gear. Such tactics undermined the right of assembly and association in order to demonstrate against a common cause¹⁰⁴. Excessive violence by State police during demonstrations have also been reported, with some demonstrators being arbitrarily arrested and several injured¹⁰⁵. Human rights defenders - who work for the promotion of rights of others including by organising and/or taking part in peaceful protests - have also had their

⁹⁹ Transparency International, ['Repercussions for revealing corruption'](#), 18 April 2019

¹⁰⁰ Council of Europe, [Hands-off press freedom: Attacks on media in Europe must not become a new normal](#), *Annual Report by partner organisations to the Council of Europe Platform to promote the protection of journalism and safety of journalists*, 2020, pp 7-8, Euronews, [European Reporters working in increasingly 'intense climate of fear'](#), 19 April 2019.

¹⁰¹ RSF, ['2020 RSF Index: Europe's journalists face growing dangers'](#), RSF: Paris.

¹⁰² CJEU, C-78/18, [European Commission v. Hungary](#), 18 June 2020, para. 143, Civil Liberties Union for Europe, [Analysis of Hungarian Parliament Bill T/14967 in light of EU rules on anti-money laundering and terrorist financing and free movement of capital](#), April 2017, FRA, [Challenges facing civil society organisations working on human rights in the EU – Summary](#), 17 May 2018.

¹⁰³ Council of Europe Commissioner for Human Rights, [Shrinking space for freedom of peaceful assembly](#), 9 December 2019.

¹⁰⁴ United Nations General Assembly, [Report of the special rapporteur on the rights of freedom of peaceful assembly and of association – Observations on communications transmitted to Governments and replies received](#), 24 June 2019, para. 86.

¹⁰⁵ Ibid., para. 86.

right to freedom of assembly and association infringed, experiencing judicial and administrative harassment, arbitrary arrest and long imprisonment sentences¹⁰⁶.

The freedom of arts and sciences (Article 13 of the Charter) ensures that arts and scientific research are free from any constraint and that academic freedom is respected. **Lack of separation of powers, and institutional checks and balances** leading to **abuse of powers, lack of legal certainty** and **corrupt practices** can infringe the right to academic freedom. The Central European University operated in a situation of legal uncertainty due to newly introduced legislation that foreign-registered universities could not operate in Hungary. With the university unable to operate in Hungary, it was forced to shut down parts of its operations resulting in a flagrant violation of academic freedom¹⁰⁷.

The right to education (Article 14 of the Charter) ensures that everyone has the right to education and access to vocational and continuing training. **Discriminatory acts and inequality** can have an adverse effect on minority groups, including asylum seekers, accessing the education system¹⁰⁸.

The freedom to choose an occupation and the right to engage in work (Article 15 of the Charter) ensures that persons have a right to engage in work. When third-country workers and minority groups, including asylum seekers and refugees, are subject to **discriminatory acts and inequality**, this can affect their ability to enter the labour market. Notwithstanding their education level, they may still experience barriers to entering the job market, thus hindering their right to engage in work¹⁰⁹.

The right to property (Article 17 of the Charter) ensures that everyone has the right to own, use and dispose of lawfully acquired property. **Lack of legal certainty** and **corrupt practices**, including high-level abuse of government power may encroach on this right. For example, corruption can take the form of bribes that need to be paid to register property, change or forge titles, acquire information related to the land, approve permits and re-zone areas.¹¹⁰

The right to asylum (Article 18 of the Charter) ensures that persons who are persecuted by their own country and are fleeing have the right to ask for protection from another sovereign country. The **lack of institutional checks and balances** has led to an **abuse of powers by some Member States**, which do not ensure that people fleeing persecution and serious harm can exercise their right to asylum¹¹¹. Some Member States have allegedly taken push-back measures at the European borders force arriving migrants back over the border¹¹². Pushbacks are immediate, thus the national authorities do not consider the individual circumstances nor give the individuals the possibility to apply for asylum. This is a flagrant violation of Article 18 of the Charter and is not in line with the principle of *non-refoulement*. Recent reports found Member States suspending access to asylum,

¹⁰⁶ Council of Europe Parliamentary Assembly, Committee of Legal Affairs and Human Rights, [Situation of Human Rights Defenders in Council of Europe member states](#), 26 June 2019, para. 6; Front Line Defenders, [Statement: Front Line Defenders visit to Catalonia 18-20 December 2019](#), 23 December 2019.

¹⁰⁷ CJEU, C-66/18, [Commission v. Hungary](#), 5 March 2020 (Advocate General Opinion); European Parliament Resolution of 12 September 2018 on a [proposal calling on the Council to determine, pursuant to Article 7\(1\) of the Treaty of the European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded](#) (2017/2131 (INL)) paras 33-36; EU Observer, [Soros university forced out of Budapest, despite EU pledges](#), 3 December 2018; [Dunja Mijatovic: Report following her visit to Hungary from 4 to 8 February 2019, 21 May 2019](#), para. 67-70.

¹⁰⁸ van Ballegooij and Navarra, 2018, p. 26.

¹⁰⁹ Ibid, pp. 25, 26; van Ballegooij and Thirion, 2019, pp. II, 10, 12.

¹¹⁰ Transparency International, ['Corruption in the Land Sector'](#), April 2011, pg. 2, 4

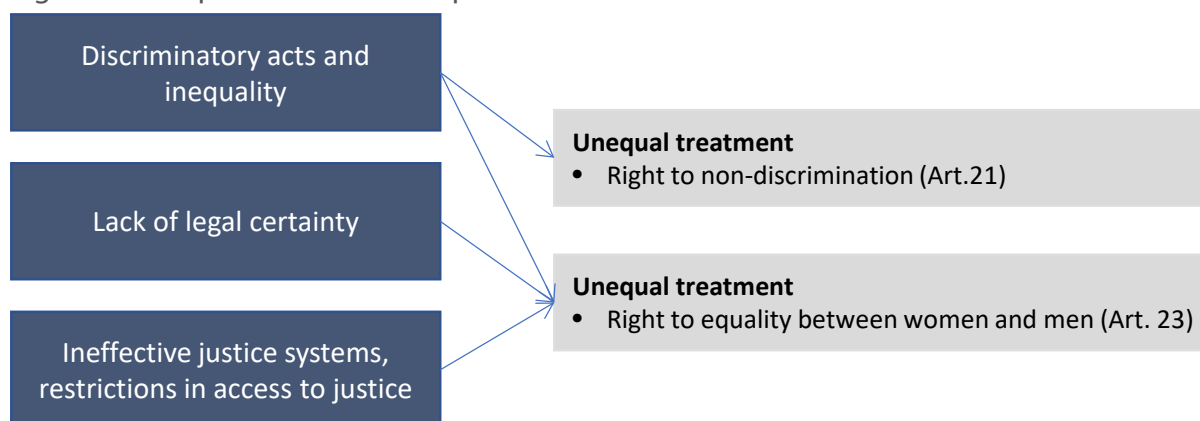
¹¹¹ FRA, [Migration: Key Fundamental Rights Concerns – Quarterly Bulletin 2-2020](#), 27 May 2020.

¹¹² European Council on Refugees and Exiles (ECRE), ['Access to the territory and push backs – Cyprus'](#), 2020; ECRE, ['Access to the territory and push backs – Greece'](#), 2020; ECRE, ['Access to the territory and push backs – Italy'](#), 2020; ECRE, ['Access to the territory and push backs – Malta'](#), 2020; ECRE, ['Access to the territory and push backs – Spain'](#), 2020.

thereby denying asylum-seekers from exercising their right to asylum¹¹³. As a means of coping with the COVID-19 pandemic, some Member States closed-off their ports and declared them to be unsafe. This left several asylum-seekers adrift in the Mediterranean Sea, denying them the possibility to disembark and ask for asylum¹¹⁴. The **lack of legal certainty** – particularly due to the deficiencies in the asylum procedures and reception conditions - undermines migrants' right to asylum, with some applicants unable to effectively access procedures or to receive due consideration¹¹⁵.

3.3. Unequal treatment

Figure 6: Unequal treatment – Impacts on individuals



Source: Milieu elaboration

The right to non-discrimination (Article 21 of the Charter) ensures that there is equality among all people irrespective of their sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation¹¹⁶. **Discriminatory acts and inequality** are aspects of DRF violations that infringe the right to non-discrimination, including discrimination on the basis of sexual orientation. Across Member States, homophobic statements, policy decisions and actions undertaken by public authorities against the rights of LGBTIQ people still happen frequently¹¹⁷. In accordance with the 9th Edition of ILGA-Europe's Annual Review, hate speech by public figures - including online hate speech and physical attacks on LGBTIQ people - has increased, coupled with reports of obstacles to accessing healthcare, bullying of LGBTIQ people at workplaces and in schools¹¹⁸. For example, several municipalities in an Eastern European Member State have created 'LGBT-Free Zones' with the aim of preserving the traditional family and thus, discriminating on the ground of sexual orientation¹¹⁹. The Court of Justice of the European Union (CJEU) recently handed down a judgment on discrimination on grounds of sexual orientation, finding that homophobic

¹¹³ Radjenovic, A., ['Tackling the coronavirus outbreak: Impact on asylum-seekers in the EU'](#), 2020, pp. 1, 3; Human Rights Watch, ['Greece: Grant asylum access to new arrivals – Authorities prevent access to services, plan transfers to mainland detention'](#), 20 March 2020.

¹¹⁴ [Press release](#) on the Central Mediterranean Migration route in times of COVID-19, European Parliament, 15 June 2020; FRA, [Migration: Key Fundamental Rights Concerns – Quarterly Bulletin 2-2020](#), 27 May 2020, pg. 3; ECRE, [150 stranded at sea as Malta and Italy declare ports 'unsafe'](#), 10 April 2020.

¹¹⁵ van Ballegooij and Navarra, 2018, pp. 7, 26.

¹¹⁶ See also 'Discriminatory acts and inequality' in section 2.2

¹¹⁷ FRA, [Does hope or fear prevail among Europe's LGBTI people?](#), 14 May 2020.

¹¹⁸ ILGA-Europe, ['Annual Review of the situation of LGBTI people paints a picture at odds with the widespread notion that in Europe the work is done'](#), 3 February 2020.

¹¹⁹ [Resolution](#) of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones, European Parliament; Reporting Democracy, [A third of Poland declared 'LGBT-Free Zone'](#), 25 February 2020.

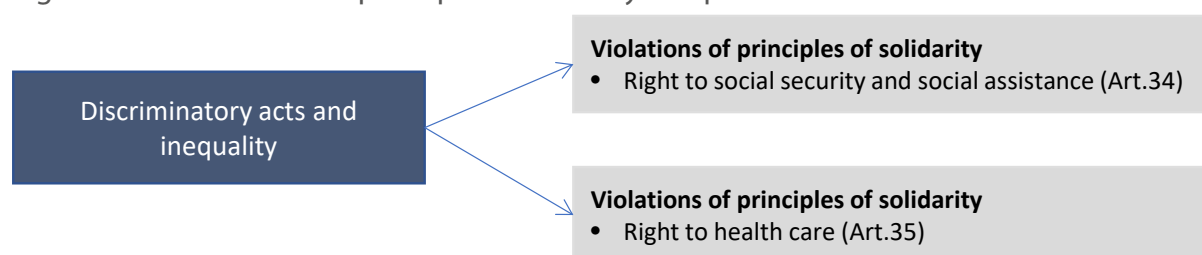
statements by a person speaking on a national radio programme (stating that persons of certain sexual orientation would not be employed nor would he want to use their services) were discriminatory on the basis of sexual orientation of workers¹²⁰.

Discriminatory acts and inequality can undermine the right to non-discrimination on the ground of sex, as set out in **Article 23 of the Charter**. For example, the gender employment gap and the gender pay gap remain worrying issues in society¹²¹. As governments do not take the necessary legislative and policy decisions to bridge the gap between women and men in employment, the difference in employment rates between both genders still stands at 11%, with only 68% of women in the EU employed, compared to 79% of men. Similarly, the differences in the gender pay gap in the EU stand at a staggering 16%, meaning that women earn 16% less than their male counterparts¹²². The lack of government decisions - including removing barriers and ensuring equal opportunities for women to enter politics - is evident in the number of women in national parliaments, with women representing only one-third of all members of parliament in national parliaments within the EU. However, most Member States have adopted legislation to enhance gender equality and have dedicated gender equality bodies to ensure the proper implementation of gender-balanced action programmes, strategies and action plans¹²³.

Violence against women is another aspect of gender-based discrimination that can take many forms, including psychological violence, physical and sexual harassment. While there is no exhaustive data that accurately map the total number of female victims of violence in Europe, studies show that one in three women has experienced physical and/or sexual violence, one in ten women has experienced a form of sexual violence, and one in twenty has been raped¹²⁴. **Lack of legal certainty** and an **ineffective justice system** increase the difficulties faced by victims of violence in accessing justice, deterring women victims of violence from reporting report crimes and thus increasing impunity. Corruption has a gender impact, as it can limit women's access to public services, such as the police authorities. The psychological, mental and physical health of the victim are severely affected, violating more fundamental rights beyond the right to non-discrimination based on sex¹²⁵.

3.4. Violations of the principle of solidarity

Figure 7: Violations of the principle of solidarity – Impacts on individuals



Source: Milieu elaboration

¹²⁰ CJEU, C-507/18, NH v. Associazione Avvocatura per i diritti LGBTI, 23 April 2020, para. 66.

¹²¹ van Ballegooij and Moxom, 2018, pp. 16, 21, 25.

¹²² European Institute for Gender Equality (EIGE), [What lies behind gender pay gap?](#), 31 October 2019.

¹²³ EIGE, [Gender equality in parliaments across the EU and the European Parliament](#), 2019.

¹²⁴ FRA, [Violence against women: an EU-wide survey](#), 2015, pg 3, 14, 21, 51.

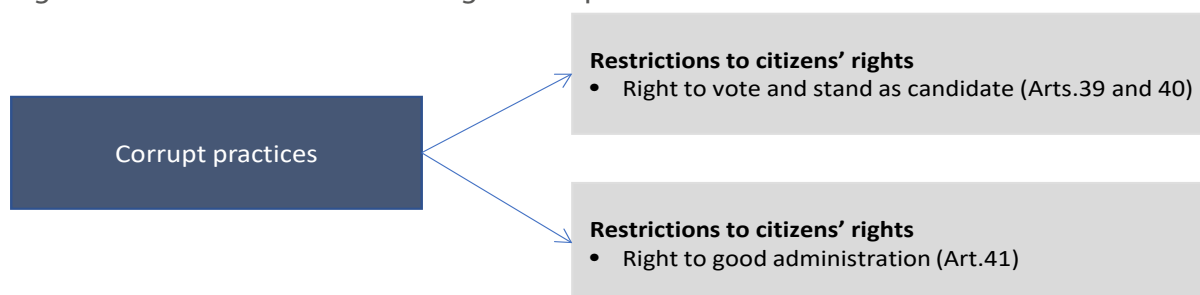
¹²⁵ Shreeves, R. And Prpic, M., ['Violence against women in the EU – State of Play' EPRS, European Parliament](#), 2019, pp. 2-3.

The right to social security and social assistance (Article 34 of the Charter) recognises the importance of social and housing assistance to combat social exclusion and poverty. Having a place to live is the basis for an individual's security and stability. **Discriminatory acts and inequality**, including **xenophobia**, particularly affect minority groups in accessing the housing system. In recent years, the housing market has undergone considerable and potentially unsustainable change, including the liberalisation of the rental market, higher property and rental prices. At the same time, public spending has decreased, with little or no effective housing control mechanisms¹²⁶. Vulnerable people, including those with low incomes, workers in precarious jobs, young people and migrants are particularly susceptible to having their right to housing violated¹²⁷. Prejudice against certain ethnic groups, for example Roma people, might impact their right to housing, as house owners might be less inclined to rent property to Roma people due to social prejudice and discrimination. As they are included to be excluded from the housing market, only sub-standard property might be available for rent, increasing the risk of eviction and negative impacts on their health and sanitation¹²⁸.

The right to healthcare (Article 35 of the Charter) ensures that everyone has the right to access healthcare and to benefit from medical treatment. **Discriminatory acts and inequalities** can have a tremendously negative impact on minority groups and their right to access the health system. Discrimination against Roma people, for example, has resulted in poor access to the health system and ill-health¹²⁹, which contributes to a lower life expectation than the rest of the European population¹³⁰. In addition, studies show that the fear of being discriminated against has prevented Roma people from accessing the healthcare system¹³¹. Discrimination against asylum seekers similarly impacts their right to healthcare. This is particularly evident in poor and overcrowded reception conditions, limiting their ability to access primary healthcare¹³².

3.5. Restrictions to citizens' rights

Figure 8: Restrictions to citizens' rights – Impacts on individuals



Source: Milieu elaboration

¹²⁶ Baptista, I. And Marlier, E., ['Fighting homelessness and housing exclusion in Europe'](#), European Social Policy Network (ESPN), 2019, p. 13.

¹²⁷ Ibid.

¹²⁸ European Federation of National Organisations Working with the Homeless (FEANTSA), ['The EU ROMA Framework beyond 2020 – A homelessness service providers perspective'](#), 2019, pp. 1-2.

¹²⁹ FRA, [Second European Union Minorities and Discrimination Survey, Roma – Selected Findings](#), 2018, pg. 29-30; FRA, [Survey on Minorities and Discrimination in EU](#), 2016. For further information see also, Bux U., [Scaling up Roma Inclusion strategies: Trust, reconciliation and justice for addressing antigypsyism](#), Directorate General for Internal Policies of the Union, European Parliament, 2019.; [Report](#) on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism, 11 October 2017.

¹³⁰ Korver, [Framework for national Roma integration strategies up to 2020 – European Implementation Assessment, April 2020](#), pg 19-20.

¹³¹ European Public Health Alliance, ['Closing the life expectancy gap of Roma in Europe'](#), 2018

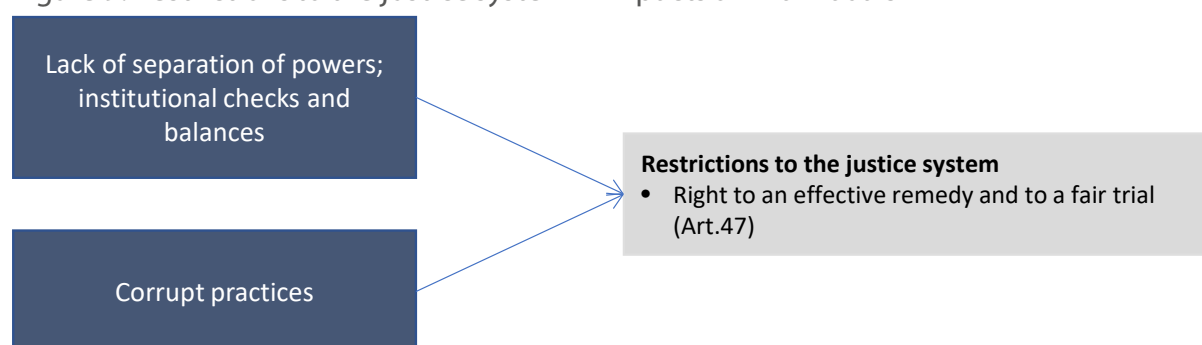
¹³² van Ballegoij and Navarra, 2018.

The right to vote and to stand as a candidate at elections of the European parliament and municipal elections (Articles 39 and 40 of the Charter) ensures that every EU citizen has the right to vote and to stand as a candidate. Voting is a very important part of democracy as it gives people the right to vote for their representatives and their ideas. Fair elections and electoral integrity are essential to upholding the democratic process, which can be undermined by **corrupt practices** and lack of good governance. Recently, evidence has surfaced that parliamentary elections in some Member States were not entirely fair, with irregularities such as forging voter logs, intimidating voters and ballot counters, and potential tampering with the national electoral software¹³³.

The right to good administration (Article 41 of the Charter) ensures that public affairs are handled impartially, fairly and within a reasonable time, and it allows citizens to demand the proper conduct of public authorities. **Corrupt practices** drive governments and public institutions to operate less efficiently and effectively and to deal with matters in a less transparent manner, infringing the right to good administration. The 2019 Corruption Perception Index reports that while the majority of Member States are among the best performing countries, some Member States still rank considerably low¹³⁴. The way public procurement is handled by public authorities is an essential factor in determining good governance (or otherwise) of states. Public procurement accounts for taxpayers' money and thus needs to be handled efficiently and effectively by public authorities. The Panama Papers revelations implicated prominent public officials in Europe, as did scandals where public officials received kickbacks, rigged bids or even had a clear conflict of interest¹³⁵. These violate the right to good administration, as money that should have been injected into the economy is pocketed by the corrupt few.

3.6. Restrictions to the justice system

Figure 9: Restrictions to the justice system – Impacts on individuals



Source: Milieu elaboration

The right to an effective remedy and to a fair trial (Article 47 of the Charter) ensures that in case of violations of rights, individuals can appear in front of independent and impartial courts to ask for their rights to be respected and to hold the executive power accountable¹³⁶. The judicial system is hit very hard when Member States are plagued with corruption. **Corrupt practices** and a **lack of separation of powers** and **inadequate institutional checks and balances** stifle the proper functioning of the judicial system and make it incapable of guaranteeing the rule of law and safeguarding fundamental rights. In accordance to the World Justice Project, for the third year in a

¹³³ Open Democracy, [Fresh evidence of Hungary vote-rigging raises concerns of fraud in European elections](#), 17 May 2019.

¹³⁴ Transparency International, [CPI 2019: Western Europe & European Union](#), 23 January 2020.

¹³⁵ [Recommendation](#) following the inquiry on money laundering, tax avoidance and tax evasion, European Parliament, 13 December 2017

¹³⁶ FRA, [Handbook on European Law relating to access to justice, 2016](#).

row there has been backsliding on the rule of law¹³⁷. In accordance with the 2020 EU Justice Scoreboard, the perception of judicial independence has decreased within the majority of the Member States¹³⁸. As illustrated by Figure 10 below, while the perception of independence has improved in about two-thirds of the Member States when compared to 2016, when compared to last year, the general perception of independence decreased in about two-fifths of all Member States, and in about half of the Member States facing challenges in this regard, and in a few Member States, the level of perception remains low¹³⁹. This impairs the right to an effective remedy and a fair trial.

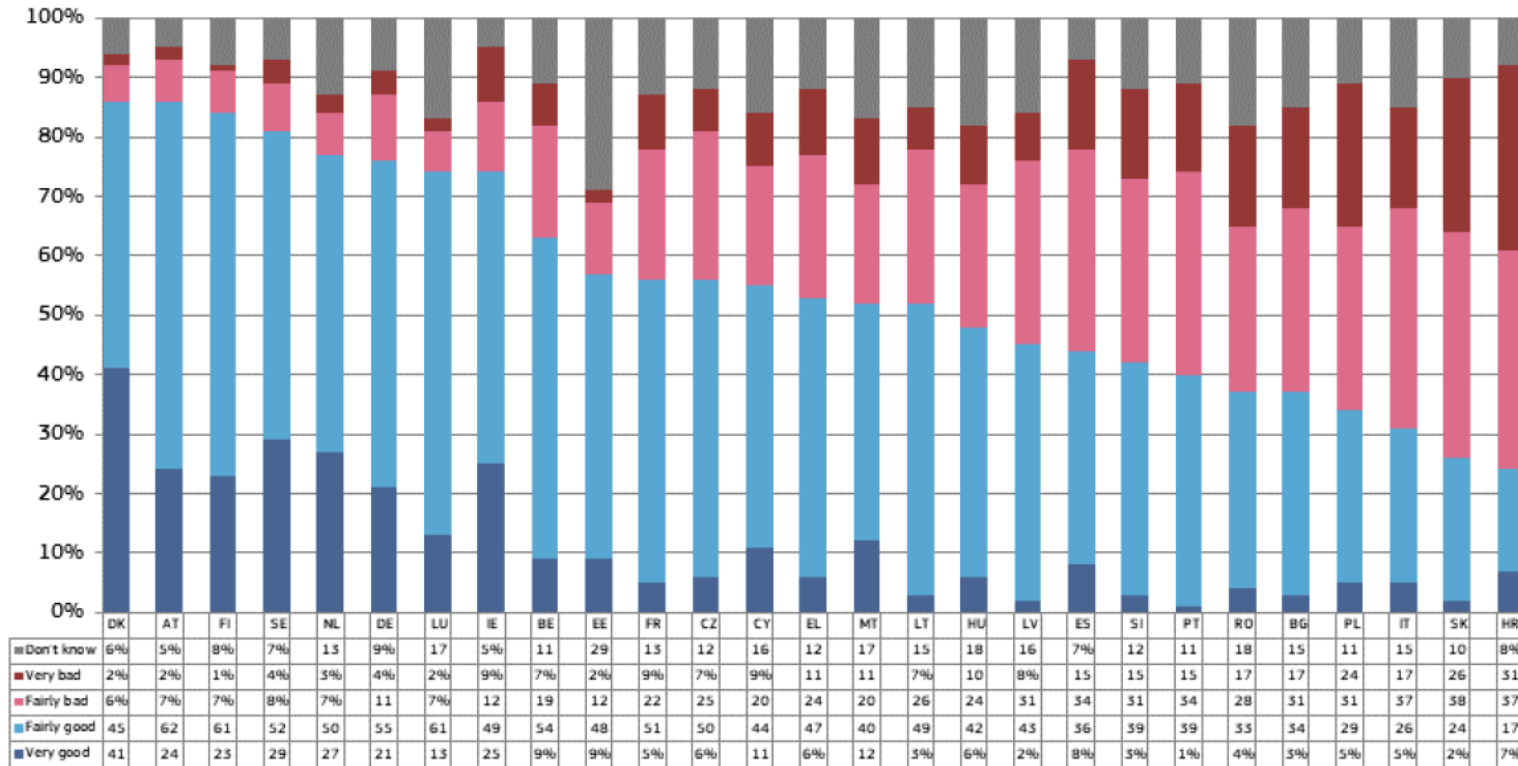
¹³⁷ World Justice Project, [Rule of Law Index, 2020](#)

¹³⁸ [The 2020 EU Justice Scoreboard](#), European Commission, 2020, pp. 46-48.

¹³⁹ [The 2020 EU Justice Scoreboard](#), European Commission, 2020, pp. 62.

Figure 10: Perceived independence of courts and judges among the general public

(source: Eurobarometer (*) — light colours: 2016, 2018 and 2019, dark colours: 2020)



(*) Member States are ordered first by the percentage of respondents who stated that the independence of courts and judges is very good or fairly good (total good); if some Member States have the same percentage of total good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is fairly bad or very bad (total bad); if some Member States have the same percentage of total good and total bad, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very good; if some Member States have the same percentage of total good, total bad and of very good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very bad.

Source: European Commission, [The 2020 EU Justice Scoreboard – Quantitative Data Factsheet](#), July 2020, p. 17

Among the actions undertaken by some Member States that have contributed to the backsliding on the rule of law and the violation of the right to justice are legislative measures that undermine the independence and impartiality of the judiciary, or quick reform of the judicial system¹⁴⁰. A recent preliminary ruling from the CJEU related to the newly introduced disciplinary regime for judges of the Supreme Court and the Ordinary Courts in a particular Member State which do not ensure the impartiality and independence of the bench. The Court found that Article 47 of the Charter precludes the application of EU law from falling within the exclusive jurisdiction of a court which is not independent and impartial. A court is not considered to be independent and impartial where the objective circumstances in which the court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to a legitimate doubt that the court shall not succumb to any influence, and shall remain neutral with respect to the interests before it¹⁴¹. In addition, recent opinions of the Venice Commission concerning the judicial systems of some Member States called for constitutional arrangements to ensure the independence of the judiciary, as well as reform of the judicial organisation and prosecution services¹⁴². Unless these specific issues within the judicial system are tackled alongside eliminating corruption, the independence and impartiality of the judicial system will continue to be eroded, undermining the right to justice.

¹⁴⁰ Council of Europe, ['The independence of judges and the judiciary under threat'](#), 3 September 2019.

¹⁴¹ CJEU, C-585/18, C-624/18 and C-625/18 [A.K. v Krajowa Rada Sądownictwa, and CP and DO v Sąd Najwyższy](#), 19 November 2019, para. 171. See also, European Parliament, [Interim Report on the proposal for a council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law](#), (COM (2017) 0835 – 2017/0360R(NLE)), para. 14-36.

¹⁴² Council of Europe, ['Venice Commission: Judicial Reforms'](#), 2018.

4. Economic impacts

As presented in section 3, violations of DRF have a broad range of implications for individuals, which can be linked to the specific rights and freedoms defined in the EU Charter of Fundamental Rights. Several cross-cutting issues linked to gaps in DRF underpin these impacts, particularly corruption, discrimination and deficiencies in migration and asylum policy, with the latter emerging as an important current topic. These intertwined issues have been studied at both an individual and aggregate economic level in recent CoNE reports¹⁴³, and the main findings in respect of economic impacts are summarised below.

The effects analysed in these studies together cover all of the areas of individual and aggregate economic impacts depicted in Figure 2, although not all have been translated into quantitative monetary estimates. Individual-level DRF violations have been divided into issues related to employment, social engagement, health, housing, education, and justice (see section 4.1), while macroeconomic impacts are presented in terms of changes in GDP, budgetary expenditures, tax revenues, and societal welfare (see section 4.2). Section 4.3 below then summarises both impact levels, in quantitative terms and structured in accordance with the categories depicted in Figure 2.

4.1. Economic impacts on an individual level

Section 3 describes a range of impacts of DRF violations on individuals, such as violations of the right to life, the right to liberty and security, and the right to non-discrimination. Not all the individual rights lend themselves to quantification and translation into monetary terms, but several such violations have been investigated from the point of view of their economic impacts on individuals, and several elements have been quantified. Four recent CoNE studies are particularly useful in this context, namely the CoNE on Equality and the fight against racism and xenophobia, which deals extensively with the economic effects of discrimination¹⁴⁴, the CoNE on Asylum Policy¹⁴⁵ and the CoNE on Procedural Rights and Detention Conditions¹⁴⁶, and the CoNE on Legal Migration¹⁴⁷. Findings of these studies in terms of economic costs for individuals are briefly summarised below, according to the structure of Figure 2.

Impacts on employment

The CoNE on Equality¹⁴⁸ found an extensive body of literature devoted to individual impacts of discrimination in the employment sector, focusing on issues such as hiring practices, salaries and promotions¹⁴⁹. Pay gaps affecting such areas of inequality as gender, race, religion and belief, sexual orientation, age and disability are one of the most popular indicators reported in literature relating to the economic impacts of discrimination. The CoNE on Equality provides annual estimates of costs related to pay gaps in these areas, with the highest number representing the gender pay gap, estimated at EUR 241-379 billion (see Table 2 for estimates of pay gaps for other areas of inequality).

¹⁴³ For an overview of the CoNE reports, see [van Ballegooij, W., 'Area of freedom, security and Justice: Cost of Non-Europe', EPRS, European Parliament, 2019.](#)

¹⁴⁴ van Ballegooij, and Moxom, 2018.

¹⁴⁵ van Ballegooij and Navarra, 2018

¹⁴⁶ van Ballegooij, 2017

¹⁴⁷ van Ballegooij, 2017

¹⁴⁸ van Ballegooij and Moxom, 2018

¹⁴⁹ Examples of studies in this area include: Kaas, L. and Manger, C., '[Ethnic discrimination in Germany's labour market: a field experiment](#)', *German Economic Review*, vol. 13, no. 1, 2012, pp. 1-20; Andriessen, I., Nievers, E., Dagevos, J. and Faulk, L., '[Ethnic discrimination in the Dutch labour market: its relationship with job characteristics and multiple group membership](#)', *Work and Occupation*, vol. 39, no. 3, 2012, pp. 237-269.

The CoNE in Legal Migration (2019)¹⁵⁰ investigated unequal treatment of migrants on the labour market, as well as difficulties which they face with work authorisation and recognition of qualifications. These issues lead to a gap in employment and a pay gap that is estimated at EUR 21 billion annually.

According to the CoNE on Asylum¹⁵¹, asylum seekers experience worse employment conditions on average, leading to a pay gap estimated at EUR 1.4-1.9 billion annually.

Corruption associated with violations of DRF has indirect impacts on the employment sector, including changes in the behaviour of individuals and firms, which can lead to distortions of the labour market, lower productivity of labour, physical and human capital¹⁵².

Impacts on health

Discrimination resulting from violations of the right to equal treatment may have immediate consequences for victims, such as physical injury or feeling of fear and insecurity¹⁵³. According to medical research, discrimination can lead to a range of mental health problems, such as chronic depression and drug addiction¹⁵⁴. Discriminated individuals tend to suffer from a lower level of well-being that can be reflected in lower scores of indicators relating to happiness, life satisfaction and self-esteem¹⁵⁵. Discrimination may be related to a greater risk of attempted suicide¹⁵⁶. Discrimination in access to quality healthcare can also lead to negative health impacts¹⁵⁷. The CoNE on Equality¹⁵⁸ distinguishes several categories of health impacts related to discrimination on grounds of gender, race, religion and belief. Impacts of physical and emotional impairment due to violence against women were estimated at EUR 134 billion annually, which is the highest estimate across the categories of health impacts related to discrimination. Table 2 provides estimates related to other categories.

The CoNE in Asylum Policy (2018)¹⁵⁹ provides estimates of discrimination in the area of living conditions of asylum seekers that are, on average, below the levels observed for EU nationals. According to that study, the costs of impacts on living conditions of asylum seekers amounts to EUR 11.8-17.7 billion annually. The value of life lost, estimated on the basis of annual statistics on the number of deaths of asylum seekers during travel across the Mediterranean, constitutes the bulk of these estimates.

¹⁵⁰ van Ballegooij and Thirion, 2019

¹⁵¹ van Ballegooij and Navarra, 2018.

¹⁵² OECD, ['Issues Paper on Corruption and Growth'](#), OECD: Paris, 2013

¹⁵³ van Ballegooij and Navarra, 2018.

¹⁵⁴ Mays, V.M. and Cochran, S.D., ['Mental health correlates of perceived discrimination among lesbian, gay, and bisexual adults in the United States'](#), *American Journal of Public Health*, vol. 91, no. 11, 2001, pp. 1869-1876.

¹⁵⁵ Pascoe, E.A. and Smart Richman, L., ['Perceived discrimination and health: a meta-analytic review'](#), *Psychological Bulletin*, vol. 135, no 4, 2009, pp. 531-554

¹⁵⁶ Clements-Nolle, K., Marx, R. and Katz, M., ['Attempted suicide among transgender persons: the influence of gender-based discrimination and victimisation'](#), *Journal of Homosexuality*, 2006, vol. 51, no. 3, pp. 53-69; Gomez, J., Miranda, R. and Polanco, L., ['Acculturative stress, perceived discrimination, and vulnerability to suicide attempts among emerging adults'](#), *Journal of Youth and Adolescence*, vol. 40, no. 11, 2011, pp. 1465-1476.

¹⁵⁷ FRA, ['Inequalities and multiple discrimination in access to and quality of healthcare'](#), 2013.

¹⁵⁸ van Ballegooij and Moxom, 2018.

¹⁵⁹ van Ballegooij, and Navarra, 2018.

Impacts on social engagement and integration

Discriminated individuals may be reluctant to engage in social activities, leading to lower social cohesion¹⁶⁰. Individuals discriminated against on grounds of race and religion/belief were found to be exposed to a higher probability of living in areas with high level of ethnic segregation, which aggravates social fragmentation¹⁶¹.

The CoNE on Legal Migration¹⁶² noted that third-country nationals (TCNs) often face barriers in family reunification. Costs of these barriers have been estimated at EUR 6.9-8.7 billion annually.

Housing conditions

Discrimination can manifest in differential access to goods and services, including housing. Such discriminatory practices occur, for example, when LGBT individuals suffer worse housing conditions due to their sexual orientation, or when people with disabilities must face higher costs of living due to their health condition. Estimates of these two impacts are provided in the CoNE on Equality, totalling EUR 19-49.1 billion annually¹⁶³. According to a study for the Directorate-General for Justice and Consumers (DG JUST), discrimination in the housing market may have broader repercussions in terms of individual well-being¹⁶⁴.

According to the CoNE on Legal Migration¹⁶⁵, many third-country nationals experience problems in finding secure, long-term residence, imposing an additional burden on individuals. The number of TCNs who struggle with these issues has been estimated at 100,000 annually.

Education

Discrimination can lead to poorer educational outcomes¹⁶⁶. This can happen, for instance, when a person with a disability does not receive adequate access to the education system, or when at-risk young people drop out of school or do not undertake follow-up education due to health problems or fear instilled as a result of discriminatory practices. The CoNE on Equality¹⁶⁷ provides quantitative estimates of education-related impacts in terms of restricted access to scholarships due to age discrimination (at the level of EUR 6.2-8.6 billion annually) and in terms of lost earnings for people with disabilities. Impacts of discrimination on educational attainment are implicit factors of calculations of the pay gaps outlined in the section on employment – lower salaries of people discriminated against on such grounds as gender, race and ethnicity, religion and belief, and sexual orientation are also partly due to a lower than average level of education attained by these groups of individuals.

Justice

The CoNE on Equality¹⁶⁸ identifies barriers to access to justice for discriminated individuals as a key horizontal issue. Barriers to access to justice include problems with compliance with sanctions

¹⁶⁰ Ysseldyk, R., Talebi, M., Matheson, K., Bloemraad, I. and Anisman, H., '[Religious and ethnic discrimination: Differential implications for social support engagement, civic involvement, and political consciousness](#)', *Journal of Social and Political Psychology*, vol. 2, no. 1, 2014, pp. 347-376.

¹⁶¹ van Ballegooij, and Moxom, 2018.

¹⁶² van Ballegooij and Thirion, 2019.

¹⁶³ van Ballegooij, and Moxom, 2018.

¹⁶⁴ Ringelheim J. & Bernard N., '[Discrimination in Housing: Report for the Network of Legal Experts in the Non-discrimination Field](#)', DG JUST, 2013.

¹⁶⁵ van Ballegooij and Thirion, 2019..

¹⁶⁶ See, for example, Brunello, G. and De Paola, M., '[The Costs of Early School Leaving in Europe](#)', *IZA Journal of Labour Policy*, vol. 3, no. 22, 2014, pp. 1-31.

¹⁶⁷ van Ballegooij and Moxom, 2018.

¹⁶⁸ *Ibid.*

applied to instances of discrimination at national level¹⁶⁹. Other challenges include lack of adequate skills and awareness among staff responsible for fighting hate crime. The under-reporting of hate crime further hinders the effective access to justice for victims. Furthermore, victims and witnesses of such types of crimes are often reluctant to report them, especially to the police¹⁷⁰. For these reasons, victims of hate crime and hate speech often remain unprotected, with their rights not fully respected¹⁷¹.

While the CoNE on Equality does not provide any quantitative estimates of individual costs related to deficiencies in access to justice, the CoNE on Procedural Rights and Detention Conditions¹⁷² investigated such cost elements. This study found that the gaps related to mutual recognition instruments such as the European Arrest Warrant may result in a range of negative consequences for individuals. PTD leads not only to a loss of freedom, it also imposes direct economic costs in terms of lost earnings, as well as indirect costs in terms of reputational damage and missed educational opportunities. The study estimated that the average monthly earning loss varies between EUR 62 and EUR 713 per detainee and month, depending on the country¹⁷³.

Recent studies have found evidence of the effects of limitations on access to justice, ranging from 0.5% to 3% of GDP in most countries, imposing costs on individuals, families and societies, as well as on the benefits of access to justice interventions that accrue to individuals, families and societies¹⁷⁴. Investments in improving access to justice (especially for lower income groups, recipients of public benefits and other disadvantaged individuals) is expected to improve the functioning of the legal system and reduce its costs – for example, legal aid may lead to a greater number of guilty pleas, harsher sentences, and higher costs for the justice system (as a result of more appearances and adjournments and more delays).

4.2. Economic impacts at an aggregate level

DRF violations that manifest through cross-cutting phenomena such as corruption and discrimination have severe implications, not only at an individual level but also at an aggregate level of society. The CoNE studies described provide estimates of aggregate economic impacts, primarily in terms of GDP loss (which translates in the longer term into impacts on economic growth) and lower tax revenue, while a range of impacts are also estimated in terms of additional budgetary spending. A few impacts identified in the course of this Study were not included in previous CoNE studies – these include missed domestic and foreign investment, brain drain, and impacts on societal welfare beyond GDP-based measures.

The mechanisms underlying the identified aggregate impacts, together with some major estimates thereof, are briefly described below. Table 2 provides a summary (from the literature) of the quantitative estimates of the impacts relevant for the Study (these are presented along with the individual impacts described in section 3).

¹⁶⁹ [Report](#) on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), COM(2014) 2 final, European Commission, 2014.

¹⁷⁰ [Report](#) on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, COM(2014) 27 final, European Commission, 2014.

¹⁷¹ FRA, [EU-MIDIS I – Data in Focus Report 6 – Minorities as Victims of Crime](#), 2012.

¹⁷² van Ballegooij, 2017

¹⁷³ The report does not provide annual EU estimates and therefore, they are not reported in the summary

¹⁷⁴ OECD and World Justice Project, ['Building a Business Case for Access to Justice'](#), OECD: Paris, 2020.

Missed domestic and foreign investments

Two significant economic areas that may be adversely impacted by DRF violations are domestic and foreign investment. With the quality of governance suffering as a result of these violations, economic growth, investment and private capital accumulation also decrease, particularly where corruption is rife¹⁷⁵. The associated political instability - civil unrest, excessive policing or political turbulence, for example - may further damage economic growth, with domestic and foreign capital redirected towards more stable, neighbouring states¹⁷⁶.

A number of studies have found that foreign direct investment (FDI) is correlated with lower corruption and a stable regulatory and political environment¹⁷⁷. Essentially, corruption can act as a 'tax on profits', where the costs of business increase while the expected profits decrease, reducing the attraction of investment in the first place¹⁷⁸ (see section on impacts of corruption below). With FDI positively associated with increased economic growth, this can have serious consequences for a country's continued growth and prosperity. Other literature suggests that private capture can be another mechanism preventing economic growth in the presence of damaged rule of law and corruption¹⁷⁹. According to this argument, corruption introduces distortions that constitute barriers to long-term growth, as businesses become 'well connected' to a corrupt government or bureaucracy. Such conditions may be favourable for protectionism, creation of monopolies, misallocation of public assets and their private expropriation.

The evidence is more mixed for other DRF violations, with some scholars finding indications that the reputational damage of human rights violations decreases FDI¹⁸⁰. However, other researchers have found that such investor concerns can be outweighed by a high degree of economic freedom¹⁸¹ or high human capital¹⁸². Recent studies have established a positive relationship between press freedom, economic growth and FDI, drawing a link between a freer media and a country's economic development, which is negatively affected by corruption¹⁸³.

Impacts on GDP

All violations of DRF can have impact on GDP through a combination of various impact channels that can exist in parallel and reinforce each other.

Corrupt practices are a major aspect of DRF violations, which can impact GDP directly (in cases of fraud or organised crime) or indirectly through decreased domestic and foreign investment due to lack of legal certainty. Literature examining these impacts focuses primarily on the impact of

¹⁷⁵ Everhart, S., Martinez-Vasquez, J. and McNab, R., ['Corruption, governance, investment and growth in emerging markets'](#), *Applied Economics*, vol. 41, no 13, 2009, pp. 1579-1594.

¹⁷⁶ Abu Murad, M.S. and Alshyab, N., ['Political instability and its impact on economic growth: the case of Jordan'](#), *International Journal of Development Issues*, 2019, vol. 18, no 3, 2019, pp. 366-380.

¹⁷⁷ For example, Castro, C. and Nunes, P., ['Does corruption inhibit foreign direct investment?'](#) *Revista de Ciencia Política*, vol. 51, no 1, 2013, 61-83; Avioutsikii, V. and Tensaout, M., ['Does politics matter? Partisan FDI in Central and Eastern Europe'](#), *Multinational Business Review*, vol. 24, no 4, 2016, pp. 375-398; Su, W., et al., ['Determinants of foreign direct investment in the Visegrad Group countries after the EU enlargement'](#), *Technological and Economic Development of Economy*, vol. 24, no 5, 2018, pp. 1955-1978.

¹⁷⁸ Castro, C. and Nunes P., *ibid*, p. 70.

¹⁷⁹ Haggard, S. and Tiede, L., ['The rule of law and economic growth: where are we?'](#) *World Development*, Vol. 39, No 5, 2011, pp. 673-685.

¹⁸⁰ Blanton, S. and Blanton, R., ['What Attracts Foreign Investors? An Examination of Human Rights and Foreign Direct Investment'](#), *The Journal of Politics*, Vol. 69, No 1, 2007, pp. 143-155.

¹⁸¹ Mathur, A. and Singh, K., ['Foreign direct investment, corruption and democracy'](#), *Applied Economics*, Vol. 45, No 8, 2013, pp. 991-1002.

¹⁸² Su, W., et al, *ibid*.

¹⁸³ Alam, A. and Shah, S., ['The Role of Press Freedom in Economic Development: A Global Perspective'](#), *Journal of Media Economics*, vol. 26, no. 1, 2013, pp. 4-20.

corruption on the economic growth rate. In the absence of statistics (given that they concern a grey area), estimates of corruption and its impact rely on proxy indicators, often based on surveys or on expert assessments¹⁸⁴. The use of proxy indicators adds further complexity to the analysis.

Mauro (1995) investigated the relationship between corruption and economic development. He found that a higher level of corruption leads to statistically significant lower rates of growth of GDP per capita and also to lower investment rates¹⁸⁵. Similar results were found in more recent studies (e.g. Mo, 2001¹⁸⁶; Pellegrini and Gerlagh, 2004¹⁸⁷).

The CoNE on Corruption¹⁸⁸ found that corruption leads to a higher level of social inequality, reduced turnout in parliamentary elections, higher levels of crime, deficiencies in the rule of law and lower trust in the EU. The study developed an econometric model that provided an estimate of the economic impact of corruption on GDP, according to which corruption costs the EU between EUR 179 – 900 billion in GDP terms on an annual basis.

Next to corruption, various forms of discrimination, especially discrimination affecting the labour market - a principal factor in generating value added in the economy - result in negative consequences for GDP. These effects are described in more detail in the previous section on economic impacts on an individual level.

The results of econometric modelling of impacts of DRF violations on GDP are presented in section 5 below.

Tax revenues

The CoNE on Equality, in addition to GDP impacts, provides estimates of impacts at an aggregate economy level in terms of lower tax revenues. These are derived from productivity loss estimates and, across all discrimination grounds, total between EUR 1.3-4.9 billion annually.

Discrimination on the labour market of asylum seekers was analysed in the CoNE on Asylum¹⁸⁹ and found to result in worse employment conditions and higher risk of illegal or grey sector work (shadow economy), which translates into lower tax revenue in the range of EUR 652-783 million annually.

Budgetary spending

The CoNE on Equality provides some estimates of impacts of discrimination with respect to budgetary spending. Discrimination may lead to higher budgetary costs related to unemployment benefits and other social assistance, as well as to increased expenditure on specialised services in social care. These burdens were estimated at the level of approximately EUR 11 billion annually.

According to the CoNE on Asylum, gaps in EU asylum policies lead to higher budgetary spending, due to increased costs of border security and surveillance, costs of fighting organised crime related to human trafficking, costs of control of irregular migration, costs associated with attempts to limit departures from countries of origin, and costs related to inefficiencies in transfers of asylum seekers.

¹⁸⁴ Examples are the Corruption Perceptions Index (CPI), the Bribery Perception Index (BPI) and Bribe Payers Index, published by Transparency International, the Business Environment and Enterprise Performance Survey (BEEPS) performed by the European Bank for Reconstruction and Development (EBRD) and the World Bank (WB), and the Corruption Experience Index and the Business International Index, issued by Business International.

¹⁸⁵ Mauro, P., [‘Corruption and growth’](#), *Quarterly Journal of Economics*, 1995, pp. 681-712.

¹⁸⁶ Mo, P., [‘Corruption and economic growth’](#), *Journal of Comparative Economics*, Vol. 29, No 1, 2001, pp. 66-79

¹⁸⁷ Pellegrini, L. and Gerlagh, R., [‘Corruption's effect on growth and its transmission channels’](#), *Kyklos*, Vol. 57, No 3, 2004, pp. 429-456.

¹⁸⁸ van Ballegooij and Zandstra, 2016.

¹⁸⁹ van Ballegooij and Navarra, 2018.

Among these activities, the highest costs relate to control of irregular migration and human trafficking, estimated at the level of EUR 19.7-33.2 billion (see Table 2).

The CoNE on Procedural Rights and Detention Conditions¹⁹⁰ found PTD measures to be excessively costly, creating unnecessary budgetary burden. Based on the average cost of keeping a detainee in PTD, the study concluded that considerable savings could be achieved if PTD measures were reduced. Two scenarios of such reductions were considered: one scenario implied reduction of PTD in all EU countries to the average EU rate of acquittals, while the other scenario considered reduction of the length of PTD across the EU to the EU average level. These scenarios would result in savings on costs in the justice sector of EUR 162 -707 million, respectively.

Impacts on economic growth

Economic growth may be affected by negative phenomena, such as discrimination and corruption, that typically occur as a consequence of DRF violations. Economic growth can also be impaired due to decreases in domestic and foreign investments as a consequence of gaps in DRF. Economic growth is determined by development in GDP, thus the detrimental and persistent impact of any gaps and deficiencies on GDP will translate in the long-term into deteriorating economic prosperity. The Study did not make separate estimates of the impacts of violations in DRF on economic growth (see section 5.3 below).

Brain drain

A substantial share of migrants, including the highly qualified, point to socio-political factors for their emigration. As reported in the United Nations Development Programme (UNDP) study on irregular migration¹⁹¹, 62% of respondents to an extensive survey carried out among individuals who migrated to Europe from 39 African countries felt that they had been treated unfairly by their governments, with many pointing to ethnicity and political views as the reason of discrimination. 77% of respondents felt that their country's political system provided no opportunity for them to have any influence on government.

Long-term persistent outflows of skilled labour ('brain drain') may have significant consequences for the economy of the countries of origin, in both positive and negative terms. An International Monetary Fund (IMF) study¹⁹² found that emigration from southern and eastern Europe had negative economic consequences for these regions. Lower labour productivity and creation of labour shortages in some skill categories and/or in certain economic sectors may be examples of such impacts. A report prepared in 2015 for the European Parliament indicated that several countries including Hungary, Lithuania and Poland are likely to experience sectoral shortages due to emigration¹⁹³. Labour shortages occur, for example, in the healthcare sector, due to emigration of health professionals¹⁹⁴. Shortages in the health sector appear particularly in certain regions of central and eastern Europe and in selected specialist positions¹⁹⁵. Shortages in the health sector can

¹⁹⁰ van Ballegooij, 2017.

¹⁹¹ UNDP, [The Scaling Fences: Voices of Irregular African Migrants to Europe](#), October 2019.

¹⁹² Atoyan, R., Christiansen, L., Dizioli, A., Ebeke, C., Ilahi, N., Ilyina, A., Mehrez, G., Qu, H., Raei, F., Rhee, A. and Zakharova, D., ['Emigration and its Economic Impact on Eastern Europe'](#), IMF Staff Discussion note, July 2016.

¹⁹³ Reyman, D. et al., ['Labour Market Shortages in the European Union'](#), DG IPOL, European Parliament, 2015.

¹⁹⁴ Glinos, I., ['Health professional mobility in the European Union: exploring the equity and efficiency of free movement'](#), *Health Policy*, vol. 119, no. 12, 2015; Eurofound, ['Third European Company Survey, First Findings'](#), Dublin, 2013; Kaminska, M. E. and Kahancová, M., ['Emigration and Labour Shortages. An opportunity for trade unions in new Member States?'](#) *European Journal of Industrial Relations*, vol. 17, no. 2, 2011.

¹⁹⁵ Fries-Tersch, E., Tugran, T., Rossi, L. And Bradley, H., ['2017 Annual Report on intra-EU Labour Mobility'](#), European Commission, 2018, p. 128, quoting Buchan, J., Wismar, M., Glinos, I.A. and Bremner, J., [Health Professional Mobility in a Changing Europe, Vol. 2](#), 2014, p. 18.

be particularly damaging for countries of origin during times of public health crises, such as the COVID-19 pandemic in 2020.

Net economic consequences of brain drain on countries of origin are not necessarily negative. Remittances provide some support for the income level of the families and to some extent boost spending in the countries of origin. Gibson and McKenzie¹⁹⁶ investigated the impact of high-skilled migration on five countries and found large positive benefits for countries with high emigration rates. The largest benefits relate to the migrants themselves, who benefit from income gains. Another area of gains concerns greater human capital and knowledge transfer, which is partly related to return migration. The main cost reported in the study related to fiscal effects, although these were highly dependent on the tax systems of the countries of origin.

The impacts of emigration on the economies of countries of origin are not well established – while it may cause shortages in selected sectors of the economy, the overall net effect, taking into account benefits in terms of increased income and human capital gains, may even be positive. There is no clear consensus in scientific literature regarding the impact of the status of democracy on brain drain. For example, Bang and Mitra (2010)¹⁹⁷, who investigated migration in the United States (US), found no significant impact of democracy level on brain drain. On the other hand, the level of corruption which is often found to be correlated with deficiencies in DRF (see section on economic impacts of corruption) is likely to be a significant factor in migration, especially fuelling skilled migration and thus brain drain¹⁹⁸.

Lower welfare of the society: measures beyond GDP

The economic impacts of DRF violations are broader than simply monetary (measured via GDP or income indicators). Rather, they encompass a larger set of consequences, in sectors such as education, housing, healthcare and consumer goods, to which segments of the population have limited or no access, due to discrimination and/or misgovernance and corruption. The latter can lower institutional trust and limit voter turnout, with negative consequences not only for the economy but also in terms of governance and the rule of law¹⁹⁹.

Low effectiveness and efficiency of government action or actual misgovernance due to corruption negatively affect availability and access to welfare and social services (affordable housing, health, education services, etc.) by large sections of the population and potentially increase infant mortality, poverty and inequality²⁰⁰.

Segments of the population suffer from inequality and social exclusion, which goes beyond the notion of poverty and designates a broader (complex and multidimensional) set of concerns. Inequality and social exclusion refer to the involuntary exclusion of individuals and groups from society's political, economic and societal processes, preventing their full participation in society. This, in turn, undermines the full realisation of EU DRF values²⁰¹. As a consequence, segments of the population are marginalised and live in poorer health and housing conditions (reducing their life expectancy), experience long periods of unemployment and underemployment, have limited knowledge of and access to welfare mechanisms and representation that could help them

¹⁹⁶ Gibson, J., and McKenzie, D., [The economic consequences of 'brain drain' of the best and brightest: microeconomic evidence from five countries](#), *The Economic Journal*, Vol. 122, No 560, 2012, pp. 339–375.

¹⁹⁷ Mitra, A. and Bang, J., ['Brain Drain and Institutions of Governance: Educational Attainment of Immigrants to the US 1988-1998'](#), Middlebury College, Department of Economics, Middlebury College Working Paper Series, no. 35, 2010

¹⁹⁸ Dimant, E., Krieger, T. and Meierrieks, D., [The effect of corruption on migration, 1985–2000](#), *Applied Economics Letters*, vol. 20, no. 13, 2013, pp. 1270–1274.

¹⁹⁹ van Ballegooij and Zandstra, 2016.

²⁰⁰ World Bank, 2016, *ibid*.

²⁰¹ Department of Economic and Social Affairs of the United Nations Secretariat – DESA, ['Analysing and Measuring Social Inclusion in a Global Context'](#), 2009.

overcome some of their difficulties. This translates into lower wages and pensions for individuals, higher healthcare costs for the government and, over time, lower tax base, tax revenue and GDP, which in turn translates into fewer resources to address these problems (see section 4.1, and sections on impacts on GDP above).

Economic literature has analysed the relationship between rule of law and five major categories: growth, human capital (education and health), government policy, institutions, and investment²⁰². That analysis confirms that reduced level of social equality can lead to social discontent, which destabilises the political structure and undermines investment and thus future growth²⁰³. Gupta et al. (2002) demonstrated that higher levels of corruption lead to increased levels of social inequality and poverty²⁰⁴. The Organisation for Economic Co-operation and Development (OECD) provides evidence that inequality among OECD countries is rising, with the Gini coefficient rising three points over the past two decades. According to the OECD report, this change has led to a 0.35% drop in annual growth rates for the past 25 years²⁰⁵.

4.3. Summary of the estimates based on previous studies

Cost estimates presented in this Study build on previous estimations where available, as most of the policy areas which can credibly be costed have been so costed in the relatively recent past. Equality and Discrimination, the right to justice, corruption (and organised crime), issues related to legal migration and asylum and equality have all been the subject of previous CoNE studies (see summary in section 4.1). Economic impact estimates in these studies relate both to an individual and aggregate economy level. Table 2 below provides a summary of these estimates in a structure that follows Figure 2. Monetised costs are in annual EUR figures.

²⁰² Sonora, R., [‘Income Inequality, Poverty, and the Rule of Law: Latin America vs the Rest of the World’](#), MPRA Paper No. 91512, 2019.

²⁰³ Alesina, A. and R., [‘Income distribution, political instability, and investment’](#), *European Economic Review*, vol. 40, 1996, pp. 1203–1228.

²⁰⁴ Gupta, S., Davoodi, H. and Alonso-Terme, R., [‘Does corruption affect income inequality and poverty?’](#), *Economics of Governance*, vol. 3, 2002, pp. 23–45.

²⁰⁵ OECD, [‘Does income inequality hurt economic growth?’](#), *OECD Focus Paper*, OECD: Paris, 2014.

Table 2: Overview of existing economic impact estimates at individual and aggregate level

Area	Estimates	Sources
Economic impacts at an individual level		
Employment	<ul style="list-style-type: none"> Gender pay gap (lost earnings): EUR 241-379 billion Race discrimination (lost earnings): EUR 1.8-8 billion Discrimination on grounds of religion and belief (lost earnings): EUR 197 million Discrimination on the ground of sexual orientation (lost earnings): EUR 19-56 million Discrimination on the ground of sexual orientation (lost pensions): EUR 1.5-3 billion Discrimination on the ground of age (lost earnings): EUR 182-229 billion Discrimination on the ground of disability (lost earnings): EUR 529-861 million Payment gap for asylum seekers: EUR 1.4-1.9 billion Costs to TCNs due to unequal treatment on the labour market (gap in employment rate and a payment gap): EUR 21 billion 	CoNE Equality CoNE Asylum CoNE Legal migration
Health	<ul style="list-style-type: none"> Gender pay gap related mental health problems, direct costs (health-related expenditures): EUR 223-246 million²⁰⁶ Gender pay gap related mental health, indirect costs (productivity loss): EUR 318-350 million Costs related to intimate partner violence due to economic dependence: EUR 146-321 million Physical and emotional impairment due to violence against women: EUR 134 billion Costs of health services related to violence against women: EUR 14 billion Racial discrimination (higher risk of assault and poorer health status): EUR 277 million Racial discrimination (mental health, direct costs): EUR 15-23 million Racial discrimination (mental health, indirect costs – productivity loss): EUR 21-34 million Discrimination on grounds of religion and belief (lost earnings due to assault and poor health): EUR 146 million Costs of impacts on living and health conditions of asylum-seekers: EUR 11.8-17.7 billion (including value of lives lost among asylum seekers of EUR 9.3-15 billion) 	CoNE Equality CoNE Asylum CoNE legal migration

²⁰⁶ Please note that in the original study (CoNE Equality), this category of costs was listed among the costs for the society rather than in the category of costs for individuals. Division into these two categories is not always clear. In the health sector, the cost burden is typically divided between the individuals and the state budget, with the proportions depending on health sector organisation that is different in every country. Similar situation relates to the justice sector, where costs of legal proceedings are covered partly by individual parties and partly by the state budget. In the context of our study, the cost categories do not always match the categories reported in other CoNE studies, which does not affect the overall results.

Area	Estimates	Sources
Social engagement and integration	<ul style="list-style-type: none"> ➤ Racial discrimination: 5% higher probability of living in an area with high concentration of racial and ethnic groups ➤ Discrimination on grounds of religion and belief: 7% higher probability of living in an area with high concentration of racial and ethnic groups ➤ Costs related to barriers in family reunification for TNCs: EUR 6.9-8.7 billion 	CoNE Equality CoNE Legal migration
Housing	<ul style="list-style-type: none"> ➤ Personal costs related to re-housing and legal assistance in case of personal violence: EUR 7 billion ➤ Race discrimination - higher risk (4%) of poor housing conditions ➤ Discrimination on grounds of religion and belief: higher risk (5%) of having poor housing conditions ➤ Discrimination on the ground of sexual orientation (limited access to housing): EUR 4-8.1 billion ➤ Discrimination on the ground of disability (higher costs of living): EUR 15-41 billion ➤ Problems in access to secure, long-term residence (100,000 TNCs affected) 	CoNE Equality CoNE Legal migration
Education	<ul style="list-style-type: none"> ➤ Lost earnings among people with disabilities due to lower educational attainment: EUR 61-98 million ➤ Discrimination on the ground of age (access to scholarships): EUR 6.2-8.6 billion 	CoNE Equality
Justice	<ul style="list-style-type: none"> ➤ Increased use of the criminal justice system for cases related to violence against women: EUR 32 billion ➤ Increased use of the civil justice system for cases related to violence against women: EUR 2 billion 	CoNE Equality CoNE Detention conditions
Economic impacts at the society level		
Impacts on GDP	<ul style="list-style-type: none"> ➤ Gender pay gap – productivity loss measured with lost earnings EUR 318-350 million ➤ Violence against women (lost earnings): EUR 30 billion ➤ Racial discrimination (lost earnings): EUR 2.4-10.5 billion ➤ Religion and belief (lost earnings): EUR 197 million ➤ Discrimination on the ground of sexual orientation (lost earnings): EUR 25-75 million ➤ Discrimination on the ground of age (lost earnings): EUR 427 million – 1.5 billion ➤ Discrimination on the ground of disability (lost earnings): EUR 710 million – 1.2 billion ➤ Corruption: EUR 179-990 billion 	CoNE Equality CoNE Corruption
Lower tax revenues	<ul style="list-style-type: none"> ➤ Racial discrimination: EUR 854 million – 3.9 billion ➤ Discrimination on grounds of religion and belief: EUR 71 million 	CoNE Equality

Area	Estimates	Sources
	<ul style="list-style-type: none"> › Discrimination on the ground of sexual orientation: EUR 9 – 28 million › Discrimination on the ground of age: EUR 154-526 million › Discrimination on the ground of disability: EUR 255-416 million › Tax loss due to employment of asylum seekers in the shadow economy: EUR 652-783 million › Lost tax revenue due to unequal treatment TNCs on labour market: EUR 8 billion › Lost tax revenue related to barriers in family reunification for TNCs: EUR 2.6-3.2 billion 	<p>CoNE Asylum</p> <p>CoNE Legal migration</p>
Budgetary spending	<ul style="list-style-type: none"> › Increased expenditures on specialised services (social care) due to violence against women: EUR 2 billion › Increased expenditure on social services and welfare programmes: EUR 9 billion › Increased costs of border security and surveillance costs due to gaps in asylum policies: EUR 352 million › Fighting organised crime related to human trafficking in the context of gaps in asylum policies: EUR 12.3-25.6 billion › Costs related to control of irregular migration and cost of human trafficking: EUR 19.7-33.2 billion › Costs associated with the attempt to limit departures from countries of origin and transit via external action tools: EUR 1.7 billion › Costs of inefficiencies in transfers of asylum-seekers, at the application stage and in case of returns: EUR 2.5-4.9 billion › Costs of excessive pre-trial detention as compared to EU average: EUR 162-707 million 	<p>CoNE Equality</p> <p>CoNE Asylum</p>
Brain drain	<ul style="list-style-type: none"> › No quantitative estimates relating to the impacts of violations of DRF on brain drain have been found in literature – see section 4.2 for a summary of this aspect. 	

As the impacts described above are all included in the broad notion of DRF violations used for the Study, it can be argued that the estimates listed in the table above are relevant here. However, the dimensions listed above are to a large extent interrelated and overlapping, and a simple sum of the monetised impacts would likely lead to an overestimation of the overall impacts of DRF violations.

A conservative approach would suggest focusing primarily on the aggregate impacts, as these already encompass some of the individual areas.

The conservative estimate, which takes into account only the existing monetised aggregate impacts of discrimination, corruption, equality and asylum policy on GDP, places the overall impacts between EUR 213 billion and EUR 1 trillion, which correspond to about 1.5% and 7.2% of EU GDP, respectively²⁰⁷.

²⁰⁷ EU GDP measured in EUR million at market prices in 2019. Source: Eurostat

5. Quantifying the impacts

After describing the possible impacts of DRF violations on individuals and the economy, and revising literature and previous CoNE studies, the Study now focuses on assessing the strength of the correlation between a country's DRF situation and socioeconomic outcomes. Section 5.1 first presents a discussion of the data sources and rule of law indices to be used in this investigation, an assessment of their documented limitations, and a final argument on their suitability for inclusion in the analysis. Section 5.2 then provides the results of the empirical investigations on the costs of DRF violations in the EU.

5.1. Overview of indicators and indices on the rule of law and governance

To further evaluate the extent to which DRF violations affect individuals and society, a quantitative estimation of their cost to European countries is required. Quantitative political science has seen a range of rule of law and governance indices developed, focusing either on specific aspects of governance or on the broader political situation in a country. A discussion of these indices is presented below, focusing on three prominent examples, common critiques and rebuttals, and finally a description of how they will be used in the present Study.

Rule of law and governance indices

Rule of law and governance indices give researchers a means to investigate qualitative matters, allowing for comparison between countries and – in most cases – over time. Where an index is clear on what it seeks to measure, anchors this concept in wider theory and literature, is transparent about its data collection and data aggregation, and avoids data being too sensitive to design choices, it provides an important tool for comparative studies²⁰⁸. In the absence of an EU-specific dataset or scoreboard²⁰⁹, existing indices provide the best tool for quantifying and assessing the DRF situation in Europe – and with it, the extent of DRF violations.

Three main indices on governance and the rule of law will be used here: the World Justice Project's *Rule of Law Index (WJP)*²¹⁰, Freedom House's *Freedom in the World Index (FH)*²¹¹, and the World Bank's *Worldwide Governance Indicators (WGI)*²¹². These differ in methodology, aggregation and ultimate focus, but all cover a wide range of issues for a sufficiently large number of countries and years to allow for in-depth study. While a full discussion of governance indices as a concept and their appropriate methodology is beyond the scope of this paper²¹³, some common critiques and objections can be observed. Methodologically, indices may, to different degrees, be influenced in their rankings by method factors, i.e. differences in rankings or scoring compared to other indices which can only be explained by factors relating to data, methodology or aggregation. However, not

²⁰⁸ These considerations are noted as prerequisites for developing a robust governance index in Gisselquist, R.M., '[Developing and evaluating governance indexes: 10 questions](#)', *Policy Studies*, Vol. 35, No 5, 2014, pp. 513-531.

²⁰⁹ While the EU Justice Scoreboard provides an important tool for assessing justice systems in Europe, it is limited in scope and relies on institutional data. For a longer discussion of how the EU Justice Scoreboard can be strengthened with external data to assess DRF in Europe, see: Jakab, A. and Lőrincz, V., '[Rule of Law Indices and How They Could be Used in the EU Rule of Law Crisis](#)', *ESIL Conference Paper Series*, no. 7/2019, Göttingen, 4-5 April 2019.

²¹⁰ World Justice Project, '[Rule of Law Index 2020](#)', Washington, DC: World Justice Project, 2020.

²¹¹ Freedom House, '[Freedom in the World Research Methodology](#)', Washington, DC: Freedom House, 2020.

²¹² Kaufmann, D., Kraay, A. and Mastruzzi, M., '[The Worldwide Governance Indicators: Methodology and Analytical Issues](#)', World Bank Policy Research Working Paper, No. 5430, 2010.

²¹³ For summary purposes, in Table 18 in Annex II summarises the characteristics of the three indices.

all indices suffer this problem equally and robust design choices can guard against method factors²¹⁴.

Some critique has targeted the concept of country-specific indices, arguing that the aggregation of national averages ignore regional variation and changes ‘on the ground’²¹⁵. Researchers are also urged to thoroughly evaluate the quality of indicators before using them in research to ensure conceptual and data validity. Without such scrutiny, there is a risk of underemphasising the uncertainty of the exercise and thus misdiagnosing causes, characteristics and consequences of democratic performance²¹⁶. An example of where this may occur is where different components of a composite index are weighted towards a final score: if this weighting is not rooted in theory, it risks privileging one set of circumstances above others²¹⁷.

The three main indices have also faced specific critiques. Since the 1970s, **FH** has faced scrutiny both over its aggregation and its possible biases. As FH is produced by an agency affiliated with the US government and explicitly with the mission to ‘promote freedom’, some researchers have voiced concern that scores are positively biased for US allies²¹⁸ – comparison of FH to other scores indicates that such a tendency can be found for 1989 and earlier, but not thereafter²¹⁹. More recent critiques have noted that while transparency is increasing, some sub-indices are still not publicly available, together with a lack of transparency in the choice of experts and a basic aggregation method²²⁰. The index accuracy has been raised in a study comparing the correlation between the scores of four major indices of rule of law and found that while three were generally consistent in their ratings, FH stood out as having a notably lower correlation with other indices²²¹. This could be rooted in different conceptualisations of the rule of law, but may also be an indication of a weaker methodology that fails to capture complex concepts as well as other indices.

The **WGI** has faced similarly extensive scrutiny, being a prominent product of the World Bank. Two notable lines of critique are that the aggregation methodology does not allow for comparisons over time or for deeper study of the sub-indices that make up each indicator, and that the independence of estimates is in question, as data access is not as open as it could be and some indicators may have

²¹⁴ Elff, M. and Ziaja, S., ‘[Method Factors in Democracy Indicators](#)’, *Politics and Governance*, Vol. 6, No 1), 2018, pp. 92-104.

²¹⁵ For example, Harttgen, K. and Klasen, S., ‘[A Household-Based Human Development Index](#)’, *World Development*, 40(5), 2012, pp. 878-899, as cited in Gisselquist, 2014.

²¹⁶ Bersch, K. and Botero, S., ‘[Measuring Governance: Implications of Conceptual Choices](#)’, *European Journal of Development Research*, Vol. 26, No 1, 2014, pp. 124-141.

²¹⁷ For instance, in older versions of the FH, a high score in the Political Rights category could outweigh a low score in the Civil Liberties category, and vice versa. More recent FH indices take this into account through a matrix where threshold scores are used, and certain minima are required to be classified as ‘partially free’ or ‘free’.

²¹⁸ Elff and Ziaja (2018, p. 102) further note that the ‘self-declared mission “to defend human rights and promote democratic change” could lead to speculation that temporal distortions in rankings compared to other indices could be interpreted as purposeful to inspire regime change. This paper makes no assessment on whether such accusations of bias are correct, but only illustrates them as a reminder of how research design and bias can influence rule of law indices.

²¹⁹ Steiner, N.D., ‘[Comparing Freedom House Democracy Scores to Alternative Indices and Testing for Political Bias: Are US Allies Rates as More Democratic by Freedom House?](#)’, *Journal of Comparative Policy Analysis*, Vol. 18, No 4, 2016, pp. 329-349. In addition to the end of the Cold War, Steiner notes that this coincides with a major methodology redesign, which moved from essentially one expert making the rankings to a wider panel of experts.

²²⁰ Jakab, A. and Lőrincz, V., ‘[International Indices as Models for the Rule of Law Scoreboard of the European Union: Methodological Issues](#)’, MPIL Research Paper Series, no. 2017-21, 2017.

²²¹ Versteeg, M. and Ginsburg, T., ‘[Measuring the Rule of Law: A Comparison of Indicators](#)’, *Law & Social Inquiry*, Vol. 42, No 1, 2017, pp. 100-137. Three rule of law indices – WGI, WJP and the Heritage Foundation’s version – had pair-wise correlations of 0.95 higher. FH, by contrast, had pair-wise correlations around 0.80.

different, non-comparable data sources²²². These critiques have been countered by the index authors, who reject claims of bias and incompleteness and argue that the aggregation method allows them to cover gaps in data and to place highly differing data in common units, enabling comparison²²³. However, as a composite index – or rather, a set of separate composite indices, as no one aggregate WGI score is given – it has also faced critique for conceptual vagueness. Here critics hold that rather than grounding it in theory, ‘governance [is defined] by how it is operationalised’²²⁴, and the definition of ‘good governance’ is muddled by encompassing policy content, policy-making procedure and citizens’ evaluations²²⁵.

Compared to the two larger indices, the **WJP** Rule of Law Index has faced less critique. A note is due on the name of the index. Contrary to its name, its coverage goes further than rule of law itself, with eight sub-categories: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, and civil and criminal justice. It therefore conceives of rule of law a broader concept than some other indices. Its multi-faceted focus on the rule of law and grounding of scores in people’s experiences rather than formal rules, high transparency and elaborate methodology are assessed as particular strengths in a comparison by Jakab and Lőrincz (2017)²²⁶. However, it also has a smaller country coverage, including only 21 of the EU-27 countries²²⁷ and year coverage to 2012 (with cautions against comparisons between data before and after 2015). The explicit focus on the rule of law also means that some other aspects – notably around some human rights and press freedom – are less covered. It is therefore less broad than either of the other two indices, albeit more precise in its measurement than FH.

While these critiques should be kept in mind, they do not preclude against the use of indices in research. Following the guidance in some research cited above, a set of recommendations crystallise. Elff and Ziaja (2018) urge researchers to use ‘the best source available’ in terms of quality and accuracy to the concept they are trying to measure, as well as using several resources and meta indices where available. Gisselquist (2014) emphasises the importance of paying attention to variable construction and selection (i.e. are the indicators the right way of illustrating the concept of study, and is the data and method underlying their construction reliable?). The distribution of data is another consideration: European countries generally score comparatively well relative to the rest of the world in all discussed indices. It is therefore possible that for some indicators, there is not a sufficient spread in values to make a robust statistical investigation of their relationship with economic output variables. This is especially a problem for the FH variables, which are arithmetically added and thus have fewer unique values than either the WGI or WJP indices. The criteria for choosing indicators is therefore not only whether it captures the DRF violation, but also whether there is sufficient variation across the EU countries to allow for comparative investigation. The choice of variables is discussed further below.

²²² As summarized in Apaza, C.R., [‘Measuring Governance and Corruption through the Worldwide Governance Indicators: Critiques, Responses, and Ongoing Scholarly Discussion’](#), *PS: Political Science & Politics*, Vol. 42, No. 1, 2009, pp. 139-143.

²²³ Kaufman, D., Kraay, A., and Mastruzzi, M., [‘The Worldwide Governance Indicators Project: Answering the Critics’](#), *World Bank Policy Research Working Paper*, no. 4149, 2007.

²²⁴ Gisselquist, 2014, p. 519.

²²⁵ Rothstein, B. and Teorell, J., [‘Defining and measuring quality of government’](#), in Holmberg S. and Rothstein, B. (eds.) *Good Government: The Relevance of Political Science*, Cheltenham: Edward Elgar, 2012.

²²⁶ Jakab and Lőrincz, 2017, pp. 7-10.

²²⁷ Note that the investigation excludes the UK due to the country’s impending exit from the European Union. All references to ‘EU-27’ are therefore to be interpreted as the 27-country configuration of the EU which will be in place after the UK exit.

5.2. Methodology and data considerations

The results of the empirical investigations are provided for the cost of DRF violations in the EU with regard to domestic investments, incidence of poverty risk and inequality, and GDP per capita. This section first describes the methodology and approach followed for the selection of indicators, outcomes and dependent variables and the regression model, followed by the results.

5.2.1. Operationalising DRF indicators

The above discussion illustrates the importance of using rule of law and governance indices with care and being mindful when choosing the indicators that will serve to illustrate complex and abstract concepts. When investigating the relation between DRF violations and other factors – economic effects in particular – the chosen variables must adequately capture the concept, be reliable in their measurement and data sources, and precise in what they measure²²⁸. This discussion on the comparative advantages of the three main rule of law indices informs the following discussion on how to operationalise the DRF situation in each country and the statistical investigations allowed by the available data.

While it is possible to identify indicators for all individual DRF violations that adequately capture the concept – as shown in Table 3, below – this is not sufficient to enable a thorough and reliable statistical investigation. The various indices may capture the key DRF violations and dimensions but if they are to be linked to macroeconomic outcomes there are further considerations to keep in mind. In addition to the choice of appropriate dependent variables – discussed below – there must be a sufficient spread of values within the country sample to allow for comparison. Put simply, if all EU-27 countries have the same score in a DRF dimension, or their scores are clustered within a very narrow range, it is more difficult to gain significant insights into the relationship between the DRF indicator and macroeconomic variables.

This is particularly an issue for the FH index, whose arithmetic aggregation means that there is a narrower range of available scores. With EU-27 countries generally scoring high, this means that some indicators have all Member States clustered on only two or three values. This complicates statistical analysis, as there is not a full ranking of countries relative to each other, with many ‘tied’ on the same score²²⁹. The WJP and WGI index scores, presented as decimal values between 0 and 1, allow for a more precise comparison of where European countries stand in relation to one another. An illustration of the spread of values for different DRF indicators in the three indices is found in Figure 12 in Annex II.

To facilitate an easier interpretation of the DRF indicators, these are normalised around the European mean and standardised to values between 0 (worst performer in EU-27 per year) and 1 (best performer in EU-27 per year). In all instances, a higher score in one of these categories implies a *better* situation from a DRF perspective – i.e. more functional constraints on government powers, higher press freedom, higher rule of law, more respect for and adherence to notions of fundamental rights, and so on. By combining indices – including the Press Freedom Index from RSF, as none of the three indices directly address media and press freedom on its own – an appropriate instrumentalisation can be found for each category of DRF indicator identified. These variables are listed in Table 3.

²²⁸ As per the recommendations of Gisselquist, 2014.

²²⁹ This is less of an issue for studies with a worldwide focus, where many different levels of rule of law, governance and human rights are represented and a bigger sample used. An investigation beyond EU-28 is however outside the scope of this Study.

Table 3: Variables corresponding to individual DRF violations

DRF Violation	Variable for conceptualisation	Comment on choice
Lack of separation of powers; checks and balances	WJP: Constraints on Government Powers	Measures the extent to which governments are limited by the power of the legislature, judiciary and auditors; and whether misuse of office is subject to checks and sanctions.
Restrictions on press and media pluralism	RSF: Press Freedom Index ²³⁰	WJP and WGI both include indicators that relate to fundamental rights such as freedom of expression and belief, or which include press freedom as a sub-component. However, they do not have a separate press and media freedom variable. This indicator therefore uses the RSF Press Freedom Index, as an established and high-profile assessment of press freedom in the world.
Lack of legal certainty	WGI: Rule of law, estimate	Perceptions of the extent to which citizens have confidence in and abide by the rules of society, especially with regard to contract enforcement, property rights, police and courts, and the likelihood of crime or violence.
Discriminatory acts and inequality	WJP: Fundamental rights	Equal treatment; due process; freedom of opinion, expression, belief and religion; right to life; freedom of association and assembly; right to privacy; labour rights. WGI lacks human rights indicators, thus WJP is used in its stead.
Shrinking space for civil society and dialogue	WGI: Voice and accountability	Captures the extent to which citizens are able to participate in government selection, as well as the extent to which their freedom of expression and association are respected.
Ineffective justice systems and restrictions in access to justice	WJP: Civil Justice and Criminal Justice ²³¹	Access to justice is affordable, free from discrimination, undue influence and corruption; judgments are enforced without bias without undue delay; due process is respected; criminal justice measures are effective in reducing crime; and alternative dispute resolution mechanisms are available in civil justice cases.
Corrupt practices	WGI: Control of corruption	Perceptions of the extent to which public power is exercised for private gain, including petty and grand corruption, as well as State capture by elite and private interests.

However, for the present investigation of the relationship between DRF and GDP per capita, only the overall WJP score is used. This is the final score each included country is given in the WJP index, based on its eight component sub-indices. As argued in Section 5.1, the methodology and content of the WJP index is best-suited for the discussion of DRF indicators, and will therefore act as a proxy of the *general* DRF situation in a country, rather than discrete dimensions of DRF²³². Doing so allows for an evaluation of the relationship between a country's overall DRF situation and the – already complex and multi-faceted – concept of their economic situation. It also guards against problems relating to multicollinearity between individual DRF indicators, as further discussed below in Section

²³⁰ As the PFI index runs from best-to-worst, the standardisation with other variables has reversed the scale. Like the other DRF variables, it now runs from 0 (worst performer) to 1 (best performer).

²³¹ WJP includes two variables pertaining to justice: Criminal Justice and Civil Justice. As these are highly correlated in their ranking of countries (Pearson correlation of 0.91), and measure different, complementing dimensions of the justice system, both of which are relevant to the DRF violation, an average of the two is used.

²³² While the WJP index does not cover all dimensions of DRF as identified earlier in the paper, it covers most of them. Furthermore, it has extensive overlap with the indicators chosen to identify the DRF dimensions, which are listed in Table 3. The extent of this correlation is further illustrated in Figure 13 in Annex.

5.2.2. A sensitivity check is also carried out using the summed, normalised score of the individual WGI indices, to guard against method factors in the WJP index²³³.

5.2.2. Outcomes and dependent variables

Due to space constraints, the present Study cannot investigate *all* inter-relations between DRF violations, intermediate variables and outcomes. Further, as illustrated in Figure 13 in the Annex, there is an extensive correlation between the indicators of individual DRF factors. Given the limited time span and country coverage, and the already relatively narrow spread of variable values in the EU, a disaggregation into the effects of individual DRF indicators is not possible with the available data.

Aware of the constraints, the present Study therefore takes a more limited approach which focuses on an investigation of the relationship between a country's overall DRF situation and GDP per capita, which may possibly serve as the basis of future, more in-depth investigations. The significance and possible influence of unobserved variables are also discussed. Suggestions are also made in the methodology section below on further venues for research, if reliable data can be sourced.

Variables for economic dependent variables and various control variables are taken from the Quality of Government dataset (QoG)²³⁴, produced by the University of Gothenburg, and from online indicators available from Eurostat. This offers an extensive set of institutional data, governance indices and other indicators, all harmonised and available for a wide range of country-year combinations. In choosing variables from QoG, Eurostat will be prioritised to ensure reliability and comparability. The dependent GDP per capita variable and the various control and independent variables are discussed below in Section 5.3.1. A further discussion of the GDP impact of DRF, especially if a country improves its situation, is found in Section 7.2.

To further facilitate interpretation of the results, the dependent variables are given in logarithmic form. This means that the coefficient represents the percentage change in GDP per capita if a country increased their DRF performance from 0 (worst performing in the sample) to 1 (best performing in the sample). To retrieve the coefficient of change for a 1% increase in the explanatory variable, this coefficient is divided by 100²³⁵.

5.2.3. Methodology

The investigation uses data on the EU-27 countries. In order to ensure a sufficient amount of country-year combinations in the sample, data are included for the 2013-2018 period, i.e. six years of data²³⁶. This results in 162 country-year combinations when WGI is used as the focal DRF variable,

²³³ In difference to the WJP Index, there is no aggregated version available for the WGI sub-indices. Using the WGI to assess an overall DRF situation is therefore a more problematic. In the absence of a clear consensus or recommendation from the authors on how best to collate the index, the summed version was chosen as it allows for the variation in individual categories to be reflected. The use of this index should however be seen as illustrative for the purposes of sensitivity checking the results from the WJP Index regression, which would remain the preferred option if a study was to use only one of the two.

²³⁴ Teorell, J., et al., 'The Quality of Government Standard Dataset, version Jan20', University of Gothenburg: The Quality of Government Institute, 2020, <http://www.qog.pol.gu.se>, doi:10.18157/qogstdjan20.

²³⁵ In other words, the standardised scale of DRF variables from 0 to 1 can also be conceived of as 0% to 100%. The standardisation has nevertheless been made 0-1 rather than 0-100 to facilitate an easier presentation of results, which otherwise would be expressed with a large amount of decimals in many cases. Each table of results is accompanied by an explanation of significant results and how to interpret them, to further facilitate the reading experience.

²³⁶ As WJP data are not available for 2017, the data for that year is the average of the values for years 2016 and 2018.

and 114 combinations when WJP is used, as some EU-27 countries are missing from the WJP dataset²³⁷.

Limitations of the study: Multicollinearity and endogeneity

The first step of the investigation will be to test the bivariate correlation between DRF indicators and the dependent variable of GDP per capita. This helps illustrate how the different DRF dimensions overlap with economic data at a first glance. Following this, and the identification of the WJP overall score (and the sensitivity check of the summed WGI score) as having the highest explanatory power at first glance, the study moves on to the identification of appropriate control variables.

To avoid a situation where control variables are multicollinear, i.e. where they have a similar, overlapping effect on the dependent variable which may confound or distort the final statistical results, a test of multicollinearity will be carried out to ensure that results are not clouded by multiple independent variables measuring the same concept. This will be carried out by testing for the Variance Inflation Factor (VIF) and the eigenvalue of different predictors vis-à-vis a dependent variable. The VIF indicates how much a coefficient is inflated due to collinearity: the more collinear a predictor is with other predictors, the higher the VIF. The investigation therefore proceeds by first conducting a collinearity check with all control variables, and progressively removing those with the highest VIF. In accordance with common econometric guidelines, predictors with a VIF of over 10 are considered unreliable and subject to removal²³⁸. Problems of multicollinearity also apply to the individual DRF indicators, for which reason the overall index scores are used in the statistical investigation below.

Another problem which is faced, and which is more complex to address, is that of reverse causality and endogeneity: in other words, the extent to which the dependent variable influences an explanatory variable. In the present case, this would be where DRF values influence GDP per capita on the one hand, but a country's GDP per capita levels *also* influence their DRF situation. Common remedies for this complex problem include the use of lagged variables (which however makes interpretation more difficult, and may not necessarily address the extent of reverse causality in the first place) or the use of instrumental variables. Instrumental variable substitution would entail the identification of a variable which is strongly correlated to the explanatory variable which is suspected of reverse causality. A recent study of the effectiveness of various methods in protecting against reverse causality concluded that a cross-lagged panel model with fixed effects offers the best protection, but also cautions that this – and all other models using lagged variables – are also at the risk of bias if the lagged effect cannot be fully identified and supported²³⁹.

All these possible methods of addressing the endogeneity problem are complicated by the issue of data availability. First, as discussed in Section 5.1, any index seeking to measure DRF indicators is subject to extensive uncertainty in measurement and design in the first place. While identifying an appropriate instrumental variable which may 'stand in' for the overall DRF situation in a country would be preferable, this requires a further set of methodological problems to be addressed. The study would need to consider how the appropriateness of the instrumental variable varies between different DRF indices, how sensitive it is to methodological changes within these indices over time,

²³⁷ Where control variables may not have full coverage of the sample, the *N* of specific regression models may be lower. The *N* of country-year pairwise combinations is never below 105.

²³⁸ Following common guidelines in literature, the investigation will seek to use variables which have a Variance Inflation Factor of less than 10. See, particularly, Hair, J., Black, W.C., Babin, B.J. and Anderson, E.E., *Multivariate Data Analysis*, 7th edition, New York, NY: Pearson, 2010.

²³⁹ Leszczensky, L. and Wolbring, T., 'How to Deal with Reverse Causality Using Panel Data? Recommendations for Researchers Based on a Simulation Study', *Sociological Methods & Research*, 2019, pp. 1-29. See also Vaisey, S. and Allison, P., ['What You Can—and Can't—Do With Three-Wave Panel Data'](#), *Sociological Methods & Research*, vol. 46, No. 1, 2017, pp. 44-67.

and ensure that it does not add further uncertainty to the estimates. Such an investigation is beyond the scope of this study.

The use of lagged variables is likewise not a panacea, as it is not clear from our relatively limited modelling whether the relationship between GDP per capita and the DRF situation in a country is lagged – and if so, how long the lag is. It is fully feasible that any economic gain from an improvement in a country's DRF situation would be gradual and require a longer time frame than the six years between 2013 and 2018 available to us here. The fact that we are limited to more recent data faces a further complication in the Great Recession and its economic ramifications – unless the time frame covered the period both before and after the crisis, economic recovery in its aftermath may risk being misdiagnosed as economic growth in itself.

These limitations must be kept in mind when discussing the study's findings and economic estimations. The limitations in available data, and relative lack of an unambiguous, comparative variable for measuring a country's DRF situation, means that a certain remedy to the problem requires advanced econometric methods like structural equation modelling, which are beyond the scope of this paper. With this in mind, the findings presented in Section 5.3.2 are discussed in light of estimates elsewhere in literature, and the cause of possible discrepancies are discussed.

Model specification

The main part of the statistical investigation comes in the form of random effect panel regression models, where additional controls progressively added to investigate how statistical relationships change²⁴⁰. The choice of regression model requires further discussion. While a fixed effects model which controls for country-year variations in unobserved variables could be an appropriate method for investigating the complex interrelationships between GDP per capita and the DRF dimensions, a significant drawback is faced by the low availability of data, which significantly increases the uncertainty of using such a model. Hill, *et al.* (2020)²⁴¹ have highlighted further issues faced by fixed effects models, including a lack of generalisability, poor variable definition, over-interpretation of statistically and methodologically uncertain results, and a limited ability to generalise findings across longer time periods due to lack of suitable data. Given these challenges, a random effects model emerges as a more robust tool for the investigations²⁴².

However, while a random effects model is preferable for the present study, it faces its own drawbacks. An important and often-cited problem concerns the potential of biased estimated where covariates are correlated with unit effects²⁴³. Further, the use of random effects models requires that there is an understanding of – and available data on – the dynamics which affect the dependent variable, as the unobserved variation by country and year cannot be controlled for²⁴⁴. Nevertheless, the limited data availability presents larger obstacles for the use of fixed effects than random effects, for which reason random effects are used in the investigation below. Recognising the complexity of the data situation, however, sensitivity checks are made with fixed effects models for both models presented in Section 5.3.2. The results of these sensitivity checks are presented in

²⁴⁰ Random and fixed-effect panel regressions were conducted using the *plm* package in R. See Croissant, Y. and Milla, G., *Panel Data Econometrics with R: The plm package*, Oxford: Wiley, 2018.

²⁴¹ Hill, T., Davis, A., Roos, J.M., and French, M., '[Limitations of Fixed-Effects Models for Panel Data](#)', *Sociological Perspectives*, 2020, 63(3): 357-369.

²⁴² See e.g. Clark, T.S. and Linzer, D.A., '[Should I Use Fixed or Random Effects?](#)', *Political Science Research and Methods*, vol. 3, no. 2, 2015, pp. 399-408 for a further discussion on the merits and demerits of random vs. fixed effects regressions where there is low data availability and correlation.

²⁴³ *Ibid*, p. 8.

²⁴⁴ Clarke, P., Crawford, C., Steele, F. and Vignoles, A., '[The Choice Between Fixed and Random Effects Models: Some Considerations for Educational Research](#)', *IZA Discussion Paper*, no. 5287, 2010, pp. 26-27.

Annex II, and generally do not differ markedly between the two methods, with a few exceptions that are discussed in the dedicated section for each model.

The functional form of the model used is therefore that of a random effects regression model, which can be generalised as follows:

$$\log(Y_{ct}) = \beta_0 + X_{1,ct} + \dots + X_{k,ct} + \mu_t + \varepsilon_{ct}$$

where the effect on (the logarithm of) dependent variable Y for country c and year t is predicted by the constant β_0 , the random effect μ_t and the error term ε_{ct} . To this is then added additional control variables X_1 to X_k , where k represents the number of independent variables.

Two main obstacles prevent the use of methods which may otherwise have strengthened the findings. The relative lack of reliable data on countries' comparative DRF situation and the issues in building new indices to assess these, as extensively discussed above, means that it is not possible to take into account longer-term changes. While indices like FH and WGI indeed have longer time coverage than does the WJP, their indicators are less suitable for specifically investigating DRF violations in a European context. As some effects of DRF violations may take time to be noticed in output indicators – for instance, the effect of corruption or suppression of civil society could have long-term effects on economic inequality through uneven competition or discouraged private enterprise, but these may take time to materialise in the face of other economic programmes or initiatives – some effects are therefore likely missed out on.

If a longer period of reliable data was available, two additional tests can be envisioned. A longer time frame could allow for the combination of lagged economic output variables and change in DRF over time, e.g. utilising a model where the odds ratio of change in DRF score and the size of economic growth is investigated. However, this requires both a sufficiently large dataset, and precise, reliable DRF indicators, and is therefore difficult to perform in a methodologically sound manner within the present study.

A second alternative could be to utilise models of exogenous change, and investigate the relationship between socio-economic dependent variables and DRF indicators before and after EU accession: this provides a form of natural experiment where the added value of EU membership is identified²⁴⁵. However, here too the limited time frame of the data means that such an investigation is not possible. It is also feasible that more extensive, quantitatively focused studies may overcome these barriers through the use of structural equation modelling. Such an investigation is however outside the scope of this study, and ought to be focused on specific interactions between individual DRF indicators and outcome variables.

The issue of sampling also extends to the study's focus on Europe: in many dimensions the variation between Member States is not sufficiently large – in part due to the fact that some level of conformity to DRF values is required for accession into the EU in the first place – for the identification of differences relating to DRF specifically. This especially goes for individual DRF violations, where adequate study of their relationship with socio-economic outcomes would require closer qualitative study and, most likely, associated data collection to ensure that the individual violation is captured as accurately as possible.

²⁴⁵ Such an approach was used in the Cost of Non-Europe Report on Organized Crime and Corruption to investigate the effect on corruption of the Cooperation and Verification Mechanism used in Bulgaria and Romania's entries into the EU, and the possible economic gains from implementing a more extended use of such a mechanism to invigilate against corruption. See RAND, [2016, Ch. 4](#).

5.3. Assessing the economic cost of DRF

The multi-faceted nature of DRF has already been extensively discussed. With this in mind, it is not a straightforward exercise to link DRF improvements to overall economic benefits, especially given the short timeframe of our sample, which precludes extensive over-time testing. Keeping these caveats in mind, a broad sketch can still be made of how and whether improvements in a country's DRF status may improve their economic situation as well. The estimates resulting from this section will subsequently be used to discuss the wider economic effect of different scenarios for upward harmonisation, as discussed in Section 7.

5.3.1. Determining significant correlations and multicollinearity

To assess the correlation between a country's DRF situation and its economic situation, the correlation between GDP per capita and the DRF indicators are first calculated. This includes both the individual DRF indicators presented in Table 3, the WJP overall score, and the sum of scores in individual WGI indicators. R^2 values, identifying the correlation between any pair of variables, and p -values for significance are presented below in Table 4, giving a first overview of where statistically significant bivariate relationships are found.

This indicates a statistically significant relationship between GDP per capita and all individual DRF indicators, although the variation in R^2 indicates that not all variables have as much explanatory power on the variation in data.

Table 4: R^2 values and p -values for pairwise combinations of DRF indicators and socio-economic dependent variables

		WJP: Constraints on Gov. Powers	RSF: Press Freedom Index	WGI: Rule of Law	WJP: Fund. Rights	WGI: Voice/ account-ability	WJP: Justice (avg.)	WGI: Control of Corruption	WJP: Overall Index Score	WGI: Sum of sub-index scores
GDP per capita	p	***	***	***	***	***	***	***	***	***
	R^2	(0.73)	(0.33)	(0.54)	(0.71)	(0.61)	(0.74)	(0.62)	(0.74)	(0.73)

*p-values are to be interpreted as follows: * = $p < 0.1$, ** = $p < 0.05$, and *** = $p < 0.01$. Where the cell is left blank, the p -value is larger than 0.1 and no significant relationship is found. Where the correlation is positive, this is indicated by bold text. Numbers in brackets refer to R^2 values.*

However, while this is a useful way of illustrating the presence of some form of relationship between DRF indicators and the economic situation of a country, the statistical testing of how DRF influences GDP per capita will restrict itself to using the WJP overall score, with the WGI score used as a sensitivity check. First of all, the ways in which the DRF dimensions overlap, and the lack of extensive country-year data, means that a robust assessment of how they individually affect a country's economy would require more dedicated, targeted study. Second, the overall scores have the highest R^2 scores of the indicators tested, which indicates a comparatively higher explanatory power than the other indicators. While the R^2 values are only indicative of bivariate correlation and do not take into account other explanatory variables which are added below, the comparative advantage of the overall scores nevertheless indicates that these entail a reasonable proxy in the present exercise, not least given that the WJP overall score has a correlation of at least 0.90 with all other DRF dimensions (as displayed in Figure 13 in Annex II).

In addition to the WJP and WGI overall scores, additional control variables which may influence GDP per capita levels are also included. Variables for employment levels of active-age citizens (i.e. aged 15-64) and the percentage of active-age people with a higher education (tertiary or above) are included as proxies for human capital. High employment levels both indicate a better match between labour market and labour force, and generally lower costs for the state and social institutions to provide for unemployed, while the level of education in a society is regularly used as a proxy for human capital – itself associated with innovation and entrepreneurship, both with beneficial socio-economic consequences. The levels of economic inequality, as expressed by the Gini coefficient, are also included; it is expected that there is a positive relationship between lower inequality and GDP per capita.

On the business side, the levels of private investment in R&D is included as an indication of the extent to which companies are able to innovate, while on the governmental side, the level of social expenditure as a percentage of GDP is indicated. The former would be expected to be associated with higher GDP per capita as companies are able to reap the benefits of previous research investments, while the latter would generally be expected to be associated with lower GDP due to increased welfare costs and a smaller active-age – or employed – population. A VIF test is again carried out to ensure that these variables do not overlap or suffer from extensive multicollinearity.

The finally selected variables – and their sources – are listed in Table 5.

Table 5: Dependent and control variables for economic quantitative assessment

Concept	Variable	Source
Dependent variables		
GDP per capita	Eurostat: GDP at current market prices, Euro per inhabitant	eu_eco2gdpeurhab
Additional control variables		
WJP overall index score or WGI summed overall score	Overall score as provided in WJP Index, and summed score of individual WGI indices – both normalised between 1 and 0.	WJP index and wbg*_ variables in QoG, plus own elaborations
3-year lagged GDP per capita	Own elaboration based on GDP per capita value	eu_eco2gdpeurhab
Investment in R&D	Eurostat: Research and development expenditure from private business (% GDP)	Eurostat, data code [TSC00001]
Inequality	Eurostat: Gini coefficient of equivalised disposable income	Eurostat, data code [TESSI190]
Employment levels	Eurostat: Employment rates for working-age persons (15-64), % of total working-age pop.	eu_employ1564t
Net social expenditure	Eurostat: Social benefits (other than social transfers in kind) paid by general government (% GDP)	Eurostat, data code [TEC00026]
Higher educational attainment (proxy for human capital development)	Eurostat: Population 15-64 with ISCED level 5-8 (% of total population)	eu_edurstterISCED58t

NB: Where no other sources is indicated, variable names refer to the Quality of Government dataset.

There are some variables which have been included in other investigations on GDP determinants which merit a brief discussion. Notably, Barro (2011) investigated the relationship between GDP growth and a wide variety of explanatory variables, finding significant positive correlations with e.g. years of schooling for men, adherence to rule of law, and trade openness, and negative significant correlations for e.g. contemporary inflation rates²⁴⁶. To ensure that long-term trends are taken into account rather than short-term fluctuations, explanatory variables are also lagged, with the study investigating three ten-year periods from 1965 to 1995, and utilising values from both the end and the beginning of each time period as controls.

While such an investigation enables a deeper look into GDP growth dynamics, it also benefits from a time frame that is six times longer (30, as opposed to the 6 available here), and utilises a worldwide sample. In the narrower time frame available here, the use of lagged variables becomes more complex – not least since a lag of more than five years for GDP per capita would be required to cover the period both before and after the 2008-2009 Great Recession and not mistake economic recovery for growth in itself (as discussed further above in Section 5.2.3). Nevertheless, a three-year lagged variable of GDP per capita is included in the model to take into account some of the variation over time and guard against short-term spikes or outliers. Other variables which Barro investigates, such as fertility or life expectancy, see little variation over the time period of study, and common trade regulations in the EU lead to similarly low variation between countries in trade liberalisation.

Some variables used in other studies – e.g. investment, school enrolment, financial flows, productivity and tax revenues, as used by Acemoglu, *et al.* (2019)²⁴⁷ – may have some explanatory value, but either add little to statistical power of the specified model. As shown in Tables 5 and 6 below, the model as currently specified already has a high R^2 value. While the addition of further variables would be likely to increase this value, the underlying uncertainties in data mean that it may end up artificially inflated, and thereby give an impression of being a more certain prediction than it actually is. This is in addition to the risk of ‘over-fitting’ by adding too many variables to a relatively small sample. However, to ensure that the results of the estimation exercise are not an outlier, a discussion follows at the end of Section 5.3.2 which puts the estimates in context by comparing with other studies, and seeking to explain possible discrepancies.

5.3.2. Assessing the effect on GDP per capita

As discussed above, the present section uses the overall WJP Index score of each country to estimate the effect on GDP per capita. An additional sensitivity check is conducted using the WGI indicators, which have been summed to produce a single score, which allows for assessment of the overall DRF situation in a manner similar to the WJP Index. The results for the overall WJP overall score are presented in Table 6.

Table 6: Random effect regression results of overall WJP score against log of GDP per capita, EU-27, 2013-2018²⁴⁸

Logarithm of GDP per capita					
	I	II	III	IV	V
	0.447***	0.450***	0.472***	0.472***	0.311***

²⁴⁶ Barro, R., ‘[Determinants of Economic Growth in a Panel of Countries](#)’, *Analysis of Economics and Finance*, vol. 4, 2003, pp. 231-274.

²⁴⁷ Acemoglu, D., Naidu, S., Restrepo, P. and Robinson, J., ‘[Democracy Does Cause Growth](#)’, *Journal of Political Economy*, vol. 127, no. 1, 2019, pp. 47-100

²⁴⁸ A sensitivity check using fixed effects is presented in Table 19 in Annex II. The results of this are broadly in line with the estimates from the random effects model, albeit with a higher coefficient for the WJP score (0.431, i.e. a move from worst-performing to best-performing would entail a 43.1% increase in GDP per capita). Employment levels and

Logarithm of GDP per capita					
	I	II	III	IV	V
WJP: Overall Index Score (normalised)	(0.084)	(0.082)	(0.086)	(0.087)	(0.091)
Working age (15-64) employment	0.048***	0.048***	0.047***	0.047***	0.036***
	(0.004)	(0.004)	(0.005)	(0.005)	(0.005)
Population with higher education (ISCED 5-8)	0.008***	0.006**	0.005*	0.005*	0.003
	(0.003)	(0.003)	(0.003)	(0.003)	(0.003)
Private sector R&D investment		0.106***	0.118***	0.116***	0.079**
		(0.036)	(0.037)	(0.037)	(0.039)
Social spending as % of GDP			-0.005	-0.005	0.003
			(0.009)	(0.009)	(0.009)
Economic inequality (Gini)				0.0004	-0.002
				(0.005)	(0.005)
3-year lagged GDP per capita					6.095***
					(0.297)
Constant	6.095***	5.982***	6.127***	6.129***	6.593***
	(0.297)	(0.292)	(0.397)	(0.472)	(0.484)
Observations	114	114	114	114	114
R²	0.724	0.740	0.734	0.736	0.790
Adjusted R²	0.716	0.731	0.722	0.721	0.776
F Statistic	288.100***	310.374***	298.695***	298.440***	397.900***
Note: *p<0.1; **p<0.05; ***p<0.01. Standard errors in brackets. All DRF indicators normalised between 0 and 1.					

Running five models with various combinations of control variables, the overall DRF situation in a country retains a consistently highly significant and positive correlation, indicating that a better overall DRF situation is associated with higher GDP per capita. For a one-unit improvement, i.e. a country moving from the worst-performing (0) to the best performing (1) of Member States in the WJP Index, a 31.3% increase in GDP per capita is found. Put in relative terms, a 1% increase in the WJP Index is associated with a 1/100th of this increase, leading to a 0.313% increase in GDP per capita. A sensitivity check is conducted by repeating the same regression models, but instead using the WGI sub-indices. The results are presented in Table 7.

R&D investment retain positive significance, and social expenditure has a significant negative effect. As in the random effects, the 3-year lagged GDP variable has a weak, but statistically significant positive effect.

Table 7. Random effect regression results of WGI score (calculated as sum of WGI sub-indices, normalised, 0 to 1) against log of GDP per capita, EU-27, 2013-2018²⁴⁹

Logarithm of GDP per capita					
	I	II	III	IV	V
WGI: Sum of WGI sub-index scores, (normalised)	0.552*** (0.134)	0.549*** (0.133)	0.531*** (0.127)	0.570*** (0.126)	0.304*** (0.111)
Working age (15-64) employment	0.038*** (0.005)	0.038*** (0.005)	0.033*** (0.005)	0.033*** (0.005)	0.028*** (0.004)
Population with higher education (ISCED 5-8)	0.019*** (0.004)	0.018*** (0.004)	0.013*** (0.004)	0.012*** (0.004)	0.008** (0.003)
Private sector R&D investment		0.085* (0.047)	0.138*** (0.046)	0.128*** (0.045)	0.097** (0.040)
Social spending as % of GDP			-0.035*** (0.008)	-0.036*** (0.007)	-0.020*** (0.007)
Economic inequality (Gini)				-0.011*** (0.004)	-0.013*** (0.004)
3-year lagged GDP per capita					0.00002*** (0.00000)
Constant	6.457*** (0.339)	6.399*** (0.338)	7.362*** (0.382)	7.740*** (0.399)	7.759*** (0.358)
Observations	162	162	162	162	162
R²	0.599	0.607	0.657	0.674	0.764
Adjusted R²	0.591	0.597	0.646	0.661	0.753
F Statistic	235.720***	242.382***	298.905***	319.993***	498.539***
Note: *p<0.1; **p<0.05; ***p<0.01. Standard errors in brackets. All DRF indicators normalised between 0 and 1.					

²⁴⁹ A sensitivity check using fixed effects is presented in Table 20 in Annex II. These results vary compared with the random effects model to a larger degree than when the WJP score is used, and there is no longer a positive association between the WGI summed score and GDP per capita outcomes. Other variables behave as expected from the review above, with employment, education and R&D investment levels all significantly associated with increases, and social expenditure and GINI associated with decreases. The lagged GDP variable retains small, but positive and significant value. This discrepancy does not invalidate the original, random effects model, though. As discussed in the methodology section (section 5.2.3), the short time-span decreases the suitability of a fixed effects model, especially given the small country sample. Nevertheless, this acts as an illustration of the uncertainty inherent to the whole exercise, given the limited data and relative lack of an unambiguous, comparative variable for measuring a country's DRF situation of the limited data, and the impact which methodological choices can have on the final estimates.

The results are essentially in accordance with those found using the WJP Index, with a positive and statistically significant relation between measures of DRF situation in countries and GDP per capita and a similar estimate in the final Model V: here, a country moving from worst- to best-performing would be expected to see a 30.4% increase in GDP per capita, or a 0.304% increase for each percentage point increase in the normalised DRF scale.

For both models, the control variables behave broadly as expected, with employment levels and the level of R&D investments made by private businesses significantly correlated with higher GDP per capita in both. In the WGI model, there is also a significant positive relation with the proportion of people with higher education, in addition to a significant *negative* correlation with higher inequality and higher levels of poverty risk – these are not significant in any of Models III-V in the WJP model. Both models also see a weak, but statistically highly significant effect of the 3-year lagged GDP per capita variable – there is also an associated increase in R^2 and decrease in the estimated size of the DRF effect. This implies that earlier economic conditions are a significant factor in the current DRF condition of a country, even if the relation is limited in size. Indeed, higher GDP may be accompanied by better economic indicators and more social spending, which can help addressing some of the economic impacts on individuals and at aggregate level of DRF violations (see sections 4.1 and 4.2). If such a situation was present already in the previous years, it is likely that the country would enjoy limited additional benefits from further improvements in their DRF condition. The addition of stronger DRF mechanisms may improve the situation for businesses and actors relying on an impartial and functioning legal system, with further knock-on effects for society as a whole.

It is worthwhile to briefly consider how these estimates compare with other scholarship which has similarly investigated the link between DRF-adjacent variables and economic growth or wealth. An immediate difference to many other studies is that many limit their investigation to how one or a few DRF-adjacent factors affect economic growth²⁵⁰. Further, many studies which consider the economic effect of DRF generally have a focus on emerging economies, where there may be more significant gains to be made in measures such as control of corruption, electoral processes or adherence to human and fundamental rights. Some have sought to make a broader link between democracy and economic outcomes in a worldwide context, however, including also western and European countries. A notable recent study by Acemoglu, *et al.*²⁵¹ investigated the link between democratic transitions and GDP growth, with the aim to see whether there indeed is a ‘cost’ to economic growth that follows democracy. Using a large sample ranging from 1960 to 2010 and covering 175 countries, they find emphatically that democratic transitions are associated with significant economic gains, adding up to a GDP increase of 20-25% in the 25 years after transition compared to a country which remained a non-democracy.

This is close to the estimates herein of 30-33% in case of a country improving its DRF position from worst-performing to best-performing. It should be noted, however, that Acemoglu, *et al.* measure a different concept, namely the dichotomous transition of a country from non-democracy to democracy: as the measure is binary, no inference is made regarding the gains from different levels of democracy. Modelling the move between worst-performing to best-performing country in a region which already has a comparatively high level of DRF internationally is a blunter exercise, with the addition of the data uncertainties discussed at length above. However, the closeness of the estimates is reassuring, especially when one considers that it is likely that a transition from worst- to best-performing DRF status would be a long-term project – a significant GDP gain appears possible as a result from it, but this too may take 25 years or longer to be fulfilled. The value of stronger rule of law in stimulating growth has also been established elsewhere by e.g. Barro²⁵², although comparison with estimates becomes difficult there as the study concerns a worldwide sample for a

²⁵⁰ For an overview of such studies, see Section 4.2.

²⁵¹ Acemoglu, Naidu, Restrepo and Robinson, 2019.

²⁵² Barro, 2003

much longer time span, and specifically considered the impact of various estimates on annual growth, rather than GDP levels in themselves.

This exercise is necessarily illustrative, as a full investigation into how DRF factors relate to the economy would require a larger dataset and advanced econometric modelling. The issues relating to the risk of endogeneity remain, and urge caution in over-interpretation of the exact. Nevertheless, a clear association between a high DRF score and positive economic outcomes is shown. The implications for the scenarios of possible upward convergence are discussed in Section 7 below.

6. Gaps and barriers in monitoring and enforcement of EU values in the Member States

As established in the TEU, EU Member States 'shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union'²⁵³. This includes any obligation to respect and uphold DRF. Thus, the Treaties firmly anchor the EU to the protection of a set of fundamental rights²⁵⁴ that are the cornerstone of any democratic society founded on the rule of law and establish that any State that wishes to accede to the EU has to respect the values referred to in Article 2 TEU and commit to promoting them²⁵⁵.

Deficiencies in respect for the values of Article 2 TUE in one Member State impact other Member States and the EU as a whole²⁵⁶. According to the Treaties, both the EU and its Member States have competences and obligations in the area of fundamental rights and the rule of law²⁵⁷. In fact, the EU not only has a legitimate role to play in supporting national authorities to prevent and address democracy, the rule of law and fundamental rights violations but has a 'duty to intervene to protect its constitutional core and ensure that the values laid down in Article 2 TEU and in the Charter are guaranteed for all Union citizens and residents, throughout the territory of the Union'²⁵⁸.

In order to accomplish its task, the EU has equipped itself with a set of standards in some of the areas in which DRF violations can occur. Further to the key intervention of the case-law of the CJEU in recognising fundamental rights as 'general principles' of Union law protected by the CJEU itself²⁵⁹, in 2000, the adoption of the Charter, and, in 2009, its recognition as a legally binding instrument constituted a turning point in the protection of fundamental rights across the EU. Article 2 TEU does not explicitly define or prescribe specific obligations for EU Member States but these principles have been interpreted in EU primary and secondary law²⁶⁰. Although the EU does not have a generalised competence to legislate on aspects of DRF²⁶¹ both its primary and secondary legislation cover selected human rights issues, such as the right to equal treatment and the right to asylum.

In its efforts to prevent and fight DRF violations, the EU has developed its own instruments. In addition, it has relied and built on the work of other key international actors, such as the CoE and the UN, whose mission is to promote human values and prevent and respond to their violations²⁶².

²⁵³ Article 4 TEU.

²⁵⁴ Article 6 TEU.

²⁵⁵ Article 49 TEU.

²⁵⁶ van Ballegooij, and Evas, 2016, p. 99.

²⁵⁷ Ibid., p. 13.

²⁵⁸ [Resolution](#) of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, European Parliament Recital 6; van Ballegooij, and Evas, 2016, pp. 99-100.

²⁵⁹ Tridimas, T., 'Fundamental Rights, General Principles of EU Law, and the Charter', *Cambridge Yearbook of European Legal Studies*, vol. 16, 2014, pp. 361-392; CJEU, case 11/70, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, 17 December 1970; CJEU, case 4/73, *J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities*, 14 May 1974.

²⁶⁰ van Ballegooij, and Evas, 2016; see also Annex I to van Ballegooij and Evas, 2016, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights](#), p. 35

²⁶¹ van Ballegooij, and Evas, 2016, p. 12; see also Annex I to van Ballegooij and Evas, 2016, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights](#), p. 21

²⁶² [Treaty on European Union](#) (consolidated version), OJ C 326, 26 October 2012, Article 3; [Memorandum of Understanding between the Council of Europe and the European Union](#), 23 May 2007., p. 3.

In order to better analyse the scenarios for upward harmonisation under section 7 below, this section provides an overview of the current scenario in terms of existing EU and non-EU mechanisms to monitor, report and react to DRF violations and their gaps. This overview largely relies on existing literature, in particular on the 2016 European Added Value Assessment (EAVA) of EU mechanisms on democracy, the rule of law and fundamental rights²⁶³. Table 8 below summarises the existing gaps in both EU and non-EU mechanisms. For a more in-depth analysis on the existing EU mechanisms, see Table 9 under section 6.1.1.

Table 8: Measures for monitoring and addressing DRF violations

Type of measure	Gaps identified
EU mechanisms, monitoring and reporting tools	<ul style="list-style-type: none"> ➤ Fragmented framework with a lot of different monitoring and enforcement mechanisms ➤ Limited scope of monitoring (mainly on the rule of law) ➤ Weak or absent enforcement mechanisms: e.g. high threshold to fully utilise Article 7 TEU; no enforcement available for most of the monitoring mechanisms ➤ Lack of clarity regarding concepts and triggering factors (e.g. Rule of Law Framework) ➤ Limited involvement of the European Parliament (Article 7 TEU) ➤ Limited use of monitoring experience of other international organisations
Non-EU monitoring mechanisms	<ul style="list-style-type: none"> ➤ Lack of effective 'hard' enforcement mechanism ➤ Long monitoring cycles ➤ Concerns about the independence and part-time office of monitoring bodies' experts ➤ Delays in review due to late submission of country reports by national authorities

6.1. Monitoring, reporting and enforcement system

This section provides an overview of existing mechanisms that can be used to monitor, report and react to DRF violations that may occur in EU countries. This includes a wide range of mechanisms that were not all created to respond to these violations specifically. While some are useful to monitor and report on existing violations, others are accompanied by an enforcement mechanism and are therefore legally binding. Both EU and non-EU mechanisms are analysed, as all EU Member States are members of the CoE and the UN, and most have ratified key CoE and UN conventions. As such, they are 'subject to the monitoring mechanisms set up by these organisations to defend and promote DRF'²⁶⁴. For the purposes of avoiding duplications, any current or future EU mechanism should take into account the roles of each of the CoE, EU and UN mechanisms²⁶⁵.

In this framework, it is important to highlight that the term 'monitoring' used *strictu sensu* refers only to monitoring mechanisms that perform monitoring activities and assess the compliance of national legislation and policies with an agreed set of standards (e.g. convention). The Study takes a broader

²⁶³ van Ballegooij, and Evas, 2016, Ch. I; see also Annex I to van Ballegooij and Evas, 2016, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights, Ch. II](#); and Annex II, CEPS [Assessing the need and possibilities for the establishment of an EU scoreboard on democracy, the rule of law and fundamental rights, Ch. I](#).

²⁶⁴ Moxham, L. and Stefanelli, J., '[Safeguarding the rule of law, democracy and fundamental rights: a monitoring model for the European Union](#)', Bingham Centre for the Rule of Law, 2013, p. 10.

²⁶⁵ van Ballegooij, and Evas, 2016; Annex I, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights, p. 102](#).

approach, however, where monitoring also refers to EU mechanisms that do not have these characteristics.

Figure 11 below provides an overview of existing mechanisms used to monitor, report and remedy DRF violations in the EU.

Figure 11. Mechanisms used to monitor, report and remedy DRF violations

EUROPEAN UNION	
CJEU – Court of Justice of the EU	
Mechanisms to report and/or address EU values violations set out in the TEU and TFEU	
Breach of values procedure – Art. 7 TEU	Infringement proceedings – Art. 258 TFEU
Preliminary references – Art. 267 TFEU	
General soft law mechanisms	
Commission's rule of law framework	Council annual rule of law dialogues
Soft law mechanisms of limited scope	
Evaluation mechanisms in the AFSJ – Art. 70 TFEU	Cooperation and Verification Mechanism
European Semester	EU Justice Scoreboard
Reporting mechanisms	
EC conclusions on fundamental rights and the rule of law	EP’s Annual Report on the Situation of Fundamental Rights in the EU and other reports
EC Annual report on the application of the Charter	FRA reports

COUNCIL OF EUROPE		
European Court of Human Rights	Committee of Ministers - executions	
Monitoring bodies		
European Committee of Social Rights	GRECO – Group of States Corruption	
Committee for the Prevention of Torture	GRETA – Group of Experts on Trafficking in Human Beings	GREVIO – Group of Exp. on Violence a. Women & Dom.Violence
ECRI – European Comm. against Racism and Intolerance	National minorities – Advisory Committee	Regional or minority languages – Committee of Experts
Committee of Local and Regional – monitoring Committee	Lanzarote Committee – child sexual exploitation and abuse	Cybercrime – Convention Committee (T-CY)
Advisory bodies and other bodies		
Venice Commission	Commissioner for Human Rights	
Parliamentary Assembly monitoring Committee	CEPEJ – European Commission for the Efficiency of Justice	

UNITED NATIONS	
Charter-based bodies	
Human Rights Council	Special Procedures (44 thematic)
Universal Periodic Review	Commission on Human Rights
Human Rights Council Complaint Procedure	
Treaty-based bodies	
Committee on the Elimination of Racial Discrimination (CERD)	Human Rights Committee (CCPR)
Committee against Torture (CAT)	Committee on Economic, Social and Cultural Rights (CESCR)
Committee on the Elimination of Discrimination against Women (CEDAW)	Committee on the Rights of the Child (CRC)
Committee on Migrant Workers (CMW)	Committee on the Rights of Persons with Disabilities (CRPD)
Committee on Enforced Disappearances (CED)	Subcommittee on Prevention of Torture (SPT)

Source: own elaboration from FRA website and previous studies

6.1.1. EU mechanisms and their gaps

The EU has equipped itself with a number of procedures to monitor and report existing violations in order to address them and provide a remedy. Within the EU, it is possible to distinguish between the mechanisms enshrined in the Treaties (e.g. Article 7 TEU) and 'soft-law' mechanisms. These can be further divided into two categories: soft-law mechanisms of general scope, which aim to address all Member States equally (e.g. the Commission's Rule of Law Framework); and soft-law mechanisms of limited scope, focusing either on a specific topic (fundamental rights, corruption and effectiveness of justice systems) or on a specific country (the Cooperation and Verification Mechanism (CVM))²⁶⁶. In addition, a soft-law mechanism of limited scope is enshrined in the Treaties (the Evaluation mechanisms in the Area of Freedom, Security and Justice (AFSJ)). Table 9 below includes an overview of existing instruments, together with key existing gaps. The European Commission Annual Rule of Law Report is excluded from this analysis and described under scenario 2 in section 7.1 since, although the initiative was announced in 2019²⁶⁷, the first Annual Rule of Law Report will only be issued in September 2020.

Table 9: EU mechanisms for monitoring and addressing DRF violations

Mechanism	Type of mechanism	Legal basis	Gaps/barriers identified
Breach of values procedure	Legally binding mechanism	Article 7(1) TEU	<ul style="list-style-type: none"> High threshold to launch the procedure and to determine that there is a clear risk of a serious breach Limited role of the European Parliament (it can trigger the procedure, but so far has not been allowed to present the case in Council) Lack of clarity in the notion of 'clear risk of a serious breach'
		Article 7(2) TEU	<ul style="list-style-type: none"> High threshold to prompt the procedure and to determine the existence of a serious and persistent breach by a Member State Limited role of the European Parliament Lack of clarity in the notion of 'serious and persistent breach'
Infringement proceedings	Legally binding mechanism	Articles 258-260 TFEU	<ul style="list-style-type: none"> Limited scope: can be launched only in case of breach of a specific EU law provision and not to remedy systematic violations of EU values, although there is the option of bundling infringement proceedings; Limited restorative effect and lack of willingness of Member States to comply with judgments, and pay penalties
Preliminary references	Legally binding mechanism	Article 267 TFEU	<ul style="list-style-type: none"> Can be launched only by national courts Cannot be used to remedy systematic violations of EU values

²⁶⁶ van Ballegooij, and Evas, 2016; Annex I, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights](#)

²⁶⁷ COM(2019) 343 final, p. 11.

Mechanism	Type of mechanism	Legal basis	Gaps/barriers identified
Commission's Rule of Law Framework	'Soft' mechanism of general scope	N/A	<ul style="list-style-type: none"> › Limited scope: only rule of law › Lack of clarity on the notions used to trigger the Framework › Lack of balance of powers and accountability › Lack of transparency › Lack of enforceability: non-binding instrument
Council's annual dialogues on the Rule of Law	'Soft' mechanism of general scope	N/A	<ul style="list-style-type: none"> › No clear procedural details › Limited scope: only on one chosen topic › Lack of enforceability: non-binding instrument
Evaluation mechanisms in the Area of Freedom, Security and Justice (AFSJ)	'Soft' mechanism of limited scope	Article 70 TFEU	<ul style="list-style-type: none"> › Limited scope: only in the AFSJ › Lack of enforceability: non-binding recommendations
Special Cooperation and Verification Mechanism (CVM)	'Soft' mechanism of limited scope	Act of accession Romania, Bulgaria	<ul style="list-style-type: none"> › Limited scope: only for some countries › Lack of effectiveness: problems to be addressed through CVM persist › Lack of enforceability: non-binding instrument
European Semester	'Soft' mechanism of limited scope	Regulation (EU) No 1175/2011	<ul style="list-style-type: none"> › Limited role of the European Parliament › Limited scope: main focus on economic governance › Lack of effectiveness: scarce implementation of recommendations
EU Justice Scoreboard	'Soft' mechanism of limited scope	N/A	<ul style="list-style-type: none"> › Limited scope: only covers civil, commercial and administrative justice › Lack of enforceability: non-binding instrument

A key legally binding instrument is enshrined in **Article 7 TEU**. This gives the EU the power to ensure respect for its founding values. The procedure under Article 7 TEU is not meant to resolve individual breaches but, rather, aims to remedy systematic breaches through a comprehensive political approach²⁶⁸. Two mechanisms are established under Article 7 TEU but do not have to be used sequentially:

- › **Preventive mechanism** under Article 7(1) TEU allows the Council of the European Union to determine that there is a '...clear risk of a serious breach...' of EU values by a Member State. The procedure can be initiated by the Parliament, Commission or one-third of EU Member States. The Council issues a decision by a majority of four-fifths of its members after receiving Parliament's consent, which, in turn, requires a two-thirds majority of the votes cast, representing an absolute majority of all Members (Article 354(4) TFEU). The Member State concerned may not vote in the Council.
- › **Sanctions mechanism** under Article 7(2) TEU allows the Council of the European Union to determine '...the existence of a serious and persistent breach...' of EU values which can be

²⁶⁸ Communication on Article 7 of the Treaty on European Union: Respect for and promotion of the values on which the Union is based, [COM\(2003\) 606 final](#), 15 October 2003, [p. 7](#).

followed by the suspension of certain rights deriving from the application of the Treaties, including the voting rights in Council (Article 7(3) TEU). Sanctions can be triggered with a proposal from the Commission or one-third of Member States, but not by the Parliament. In a first step, on such a proposal, the European Council (i.e. Heads of State or Government) determines, by unanimity and after obtaining Parliament's consent (by a two-thirds majority of the votes cast, and an absolute majority of Members under Article 354(4) TFEU), the existence of a serious and persistent breach of EU values by a Member State. The concerned Member State may not vote in the European Council. In a second step, the Council may suspend certain membership rights of the Member State concerned, including voting rights in the Council. This decision is adopted by a qualified majority (Article 354(1) TFEU) and the Council enjoys discretion as to the choice of sanctions to be imposed. Importantly, Parliament's consent is necessary only for the first phase of the sanction mechanism, but not for the second (decision on the suspension of membership rights). The representatives of the Member State concerned do not take part in the votes at the Council and European Council, and are not counted in calculating the majorities necessary to trigger sanctions or a preventive determination, or to adopt other decisions (Article 354(1) TFEU).

The two mechanisms are independent of each other. This implies that the triggering of the preventing mechanism does not necessarily lead to sanctions, and that the sanctions mechanism does not need to be triggered by the preventive one. However, both procedures under Article 7 TEU have high thresholds and require a strong political majority in order to be prompted and to make a determination on the existence of a violation of the values referred to in Article 2 TEU. In addition, the involvement of the Parliament is limited because it can prompt the preventive mechanism under Article 7(1) TEU but not the sanctions mechanism under Article 7(2) and (3) TEU and can only express consent in the framework of the preventive mechanism under Article 7(1) TEU and first part of the sanctioning mechanism (Article 7(2) TEU). Furthermore, there is no clear definition of the notions of 'clear risk of a serious breach' under Article 7(1) TEU and of 'serious and persistent breach' under Article 7(2) TEU, nor a clear distinction from the notion of 'systemic threat' used in the Rule of Law Framework²⁶⁹. So far, the procedure under Article 7(1) TEU has been triggered twice²⁷⁰, by the European Commission in the case of Poland²⁷¹ and by the European Parliament in the case of Hungary²⁷² while the procedure under Article 7(2) TEU has never been prompted.

Another mechanism to assess the transposition of EU law in Member States is linked to the role of the Commission as 'guardian of the Treaties'. As established in Articles 258-260 TFEU, the European Commission can launch **infringement proceedings** against Member States in breach of a specific provision of Union law, including Article 2 TEU. Infringement proceedings contribute to upholding the values on which the Union is founded²⁷³. Following a decision of the CJEU, the defendant Member State shall take the necessary measures to comply with the judgment of the CJEU. If the European Commission considers that the Member State has not taken the necessary measures to comply with the Court's judgment, it can bring the case back to the Court, specifying the lump-sum

²⁶⁹ van Ballegoij, and Evas, 2016; Annex I, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights](#), pp. 37, 62.

²⁷⁰ Michelot, M., [The 'Article 7' proceedings against Poland and Hungary: what concrete effects?](#), Paris: Jacques Delors Institute, 2019

²⁷¹ Proposal on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, [COM\(2017\) 835 final](#), 20 December 2017.

²⁷² [Resolution](#) of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is Founded, European Parliament

²⁷³ De Schutter, O., ['Infringement proceedings as a tool for the enforcement of fundamental rights in the European Union'](#), Brussels: Open Society European Policy Institute, 2017, p. 27.

or penalty payment to be paid by the Member State concerned²⁷⁴. Infringement proceedings can be launched by the Commission only where there is a breach of a specific Union law provision, and not to investigate a situation of systemic violation of EU values²⁷⁵. In addition, these proceedings lack unconditional remedial effect²⁷⁶ as the Member States' attitude not to obey the European Commission's demands regarding compliant behaviour has been observed together with a decline in the initiation of infringement proceedings by the European Commission²⁷⁷.

The **preliminary ruling procedure**²⁷⁸ under Article 267 TFEU is the very 'keystone' of the EU judicial system. It is not an enforcement tool *per se*, but a tool for judicial dialogue. National courts may recur to the preliminary ruling procedure to seek an interpretation on the conformity of specific national measures to EU law. The authoritative interpretation provided by the CJEU is binding for the individual national court that asked it, as well as for all EU Member States and their authorities. Failure to comply with the interpretation of EU law provided in a preliminary CJEU ruling constitutes a breach of EU law, which can result in infringement procedures brought by the Commission²⁷⁹. 'Concerns regarding respect for the rule of law, democracy and fundamental rights and freedoms have emerged in several Member States and have led to a proliferation of cases, particularly requests for preliminary rulings, before the Court'²⁸⁰. While preliminary ruling procedure constitutes a legally binding instrument, it can only be activated by national courts and cannot function as a remedy to systematic violations of EU values. In addition, the use of the mechanism under Article 267 TFEU for the protection of the rule of law is limited by the fact that it 'depends on an independent judiciary at the domestic level, which is often questionable in cases of rule of law violations'²⁸¹ as well as in cases of DRF violations more in general.

The **Rule of Law Framework** is at the core of responses to threats to the rule of law by dialogues structured with opinions and recommendations. The Rule of Law Framework introduced in 2014 allows the Commission to react when there are specific indications of a 'systemic threat to the rule of law' and, if necessary, to provide specific recommendations to the Member State concerned. It aims to prevent threats to the political, institutional and/or legal order of a Member State from becoming a serious and persistent breach that would require triggering the procedure(s) under Article 7 TEU²⁸². The Rule of Law Framework establishes a three-pronged process: assessment, recommendation and follow-up to the Commission's recommendation. If no satisfactory follow-up is carried out by the concerned Member State, the European Commission can trigger the procedure under Article 7 TEU²⁸³. Several aspects of the functioning of this mechanism have been criticised: the lack of comprehensiveness, as the focus is mainly on the rule of law; the lack of a proper definition

²⁷⁴ [Treaty on the Functioning of the European Union \(TFEU\)](#) (consolidated version), OJ C 326, 26 October 2012, Article 260.

²⁷⁵ Kochenov, D., and Pech, L., '[Upholding the Rule of Law in the EU: On the Commission's "Pre-Article 7 Procedure" as a timid step in the right direction](#)', European University Institute Working Papers, no. 2015/24, Department of Law, 2015, p. 2.

²⁷⁶ Falkner, G., '[A causal loop? The Commission's new enforcement approach in the context of non-compliance with EU law even after CJEU judgments](#)', *Journal of European Integration*, 40:6, 2018, p. 769.

²⁷⁷ *Ibid*, pp. 775-778.

²⁷⁸ Broberg, M. and Fenger, N., *Preliminary References to the European Court of Justice*, Oxford: Oxford University Press, 2014.

²⁷⁹ Manko R., Briefing '[Protecting the rule of law in the EU – Existing mechanisms and possible improvements](#)', European Parliamentary Research Service (EPRS), European Parliament, 2019, p.7.

²⁸⁰ CJEU, [Address by the President, Mr Lenaerts](#), Press release No 1/2020, 13 January 2020.

²⁸¹ Blauburger, B. and van Hüllen, V., '[Conditionality of EU funds: an instrument to enforce EU fundamental values](#)', *Journal of European Integration*, 2020, p. 2.

²⁸² Communication from the Commission to the European Parliament and the Council of 11 March 2014 on [A new EU Framework to strengthen the Rule of Law](#).

²⁸³ Communication from the Commission to the European Parliament and the Council of 11 March 2014 on [A new EU Framework to strengthen the Rule of Law](#).

of the concept of 'systematic threat to the rule of law'; the discretionary power of the Commission to decide if an issue raised with regard to a certain Member State amounts to a systemic threat to the rule of law; the lack of transparency due to the confidential nature of the discussions with the Member State concerned; and the lack of dissuasive power, as no sanctions are foreseen in the Framework²⁸⁴. The experience gathered in entering dialogues with Poland shows that while the Rule of Law Framework dialogues help to identify issues, they do not necessarily resolve rule of law deficiencies²⁸⁵.

The **Council's annual Rule of Law dialogues** introduced in 2014 are peer-to-peer dialogues that take place in the General Affairs Council (GAC). The dialogue is based on the principles of objectivity, non-discrimination and equal treatment of all Member States, conducted on a non-partisan and evidence-based basis, and without prejudice to the principle of conferred competences, as well as the respect of national identities of Member States. Criticisms have been levelled in respect of the absence of procedural details, including timelines for the duration of dialogues, and the concrete implementation, with a surprising choice of topics (e.g. the rule of law in the digital era in 2015) and very short and doubtful conclusions²⁸⁶.

Based on Article 70 TFEU, the Council, on a proposal from the Commission, can adopt measures for collaboration between the Commission and the Member States to conduct so-called 'peer reviews' or **evaluations of Member State implementation of EU policies in AFSJ**. Member States carry out these evaluations with the support of the Commission, that oversees the procedures. Evaluations are periodic and aim to identify best practices and obstacle to cooperation, rather than investigate suspect infringements. They result in compliance assessment of Member States with regard to AFSJ policies, with recommendations on how to ensure compliance and, to the extent possible examples of best practices in the area. However, these recommendations are non-binding and judicial review is thus impossible²⁸⁷.

The **CVM** is specific to Bulgaria and Romania and aims to address the remaining shortcomings in the area of judicial reform, the fight against corruption, and organised crime. Through the CVM, the European Commission conducts careful analysis of how the shortcomings in the concerned Member States are being addressed. Progress is assessed against benchmarks, which include the effectiveness, transparency and independence of the judicial system, the fight against corruption, corruption prevention and actions taken in the fight against organised crime²⁸⁸. This is a temporary mechanism, set up in 2007, on the assumption that the then new Member States 'still had progress to make in the fields of judicial reform, corruption and (for Bulgaria) organised crime'. Some 12 years later, the mechanism is still in place and problems to be addressed through CVM persist, showing a lack of effectiveness. In addition, the mechanism only applies to two EU Member States and has no legally binding force. As an instrument that addresses pre-accession related and supposedly transitional situations, it is not suitable for addressing a threat to Article 2 TEU values in all EU Member States²⁸⁹.

²⁸⁴ van Ballegooij, and Evas, 2016; Annex I, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights, p. 173](#); Pech, L., [The Rule of Law in the EU: The Evolution of the Treaty Framework and Rule of Law Toolbox](#), Reconnect Working Paper No. 7, March 2020, p. 22.

²⁸⁵ European Commission, [Further strengthening the Rule of Law within the Union – State of play and possible next steps](#), 3 April 2019

²⁸⁶ Pech, 2020, pp. 23-24.

²⁸⁷ van Ballegooij, Evas, 2016; Annex I, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights, pp.51- 52](#).

²⁸⁸ [Cooperation and Verification Mechanism](#).

²⁸⁹ van Ballegooij, and Evas, 2016; Annex I, Milieu, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights, p. 89](#).

The **European Semester** is codified in EU regulation under Article 2a of Stability and Growth Pact (SGP) Regulation (EU) No 1175/2011. It is a process of socioeconomic policy coordination that lasts from November until July each year, in which Member States discuss their economic reform and budget plans before adopting them, while the European institutions monitor progress and address recommendations at specific times throughout the year²⁹⁰. Although this is an economic policy management tool, the more recent Economic Semester country reports also analyse the areas of labour market, education, social policies, healthcare, and issues of competitiveness, reforms and investment, where DRF violations, such as corruption and ineffective justice system, can be identified²⁹¹. In the Economic Semester, the European Parliament plays a minor role, thus leading to a lack of democratic legitimacy and the Council has been criticised for watering down many of the Commission's recommendations²⁹². The scarce and decreasing level of implementation of recommendations given under the European Semester has been similarly criticised²⁹³. While performance varies substantially across countries and policy areas, recommendations close to the DRF area, such as those on housing market, education, shadow economy and corruption and unemployment benefits, are poorly implemented²⁹⁴.

The **EU Justice Scoreboard** is an annual tool launched in 2013 to assess the independence, quality and efficiency of the national justice systems²⁹⁵. The Scoreboard provides Member States with the necessary guidance to face negative trends within their respective judicial systems. Guidance comes in the form of specific assessments and factsheets to assist Member States in rectifying their national justice systems. It is prepared by the Commission, using data from international organisations and, in particular, from the Council of Europe Commission for the Evaluation of the Efficiency of Justice (CEPEJ)²⁹⁶. The Justice Scoreboard is part of the Economic Semester and its findings can feed the qualitative analysis carried out under that mechanism. This may lead to the Commission proposing that the Council adopt Country-Specific Recommendations (CSRs) on the improvement of national justice systems in individual Member States. The Scoreboard does not itself have any enforcement or sanctions provisions. It is also limited in its scope, as it mainly covers civil, commercial and administrative justice, although in recent years some data on criminal justice have been included, for instance on money laundering²⁹⁷ and on the functioning of national prosecution services in the EU²⁹⁸. In its communication issued in July 2019²⁹⁹, the Commission committed to further developing the EU Justice Scoreboard and to use it to inform the Annual Rule of Law Report to be presented by the European Commission in 2020.

6.1.2. EU reporting tools

The EU has also equipped itself with a number of reporting tools. The European Commission, the European Council and the European Parliament issue their own annual reports: the European

²⁹⁰ Delivorias A. and Scheinert C., ['Introduction to the European Semester, Coordinating and monitoring economic and fiscal policies in the EU'](#), EPRS, European Parliament, 2019; Hillion C., ['Overseeing the rule of law in the European Union, legal mandate and means'](#) Stockholm: Swedish Institute for European Policy Studies, 2016.

²⁹¹ [Communication from the Commission: 2019 European Semester: country-specific recommendations](#), 5 June 2019, p. 12.

²⁹² Delivorias A. and Scheinert C., [Introduction to the European Semester, Coordinating and monitoring economic and fiscal policies in the EU](#), EPRS, European Parliament, December 2019.

²⁹³ Efsthathiou, K. and Wolff, G., [Is the European Semester effective and useful?](#), Bruegel Policy Contribution Issue, No 9, June 2018, p. 4.

²⁹⁴ Ibid, p. 8.

²⁹⁵ [EU Justice Scoreboard, European Commission, 2020.](#)

²⁹⁶ [The 2019 EU Justice Scoreboard, European Commission, 2019](#)

²⁹⁷ [The 2018 EU Justice Scoreboard, European Commission, 2018, pp. 20-21.](#)

²⁹⁸ [The 2020 EU Justice Scoreboard, European Commission, 2020, pp. 56-61.](#)

²⁹⁹ COM(2019) 343 final, pp. 11-13.

Commission Annual Report on the application of the Charter, the European Council Conclusions on fundamental rights and the rule of law, and the European Parliament's Annual Report on the situations of fundamental rights in the EU. Likewise, in addition to an annual report providing a comparative overview of the results from the monitoring of the situation on fundamental rights in EU Member States, FRA also publishes thematic DRF reports. In 2019, FRA launched the European Union Fundamental Rights Information System (EFRIS), which gathers reports and assessments from international human rights bodies, including the UN and the CoE³⁰⁰.

While these reports can inform and guide the work of EU institutions, they do not constitute adequate tools to effectively and systematically monitor DRF violations in Member States. This is chiefly because they do not cover all DRF issues in a systematic manner and lack enforceability, since either they do not foresee a follow-up procedure or their recommendations are not legally binding³⁰¹.

6.1.3. Non-EU monitoring mechanisms and their limitations

The CoE and the UN have not only contributed to setting DRF standards, but have also set up effective monitoring mechanisms in some key areas³⁰². These mechanisms cover EU Member States, as they are members of the CoE and the UN, and to the extent they have ratified CoE and UN conventions.

At **CoE level**, the main conventions adopted by the Member States foresee a monitoring mechanism aimed at analysing the standards enshrined in the conventions themselves. This is, for instance, the case of [GRECO](#), or the European Committee for the Prevention of Torture ([CPT](#)), which monitor Member States' compliance with the organisation's standards in the field of anti-corruption and anti-torture, respectively.

In addition to these monitoring bodies *stricto sensu*, the CoE established: the [CEPEJ](#), a body for improving the quality and efficiency of European judicial systems and strengthening court users' confidence in such systems; the European Commission for Democracy through Law ('[Venice Commission](#)'), a consultative body on issues of constitutional law whose action is based on the three ground principles of the European constitutional heritage: democracy, human rights and the rule of law; the Office of the [CoE Commissioner for Human Rights](#), an independent and impartial non-judicial institution established to monitor and evaluate the human rights situation in CoE Member States; a [department for the execution of judgments](#) of the European Court of Human rights (ECtHR), which advises and assists the Committee of Ministers in its function of supervision of the implementation of the Court's judgments and provides support to the Member States to achieve full, effective and prompt execution of judgments; and the Parliamentary Assembly Committee on the Honouring of Obligations and Commitments by Member States ([PACE Monitoring Committee](#)).

At **UN level**, a distinction is made between charter-based bodies and treaty-based bodies. Charter-based bodies include the Human Rights Council and Special Procedures. The [Human Rights Council](#) is an intergovernmental body which meets in Geneva 10 weeks a year. It is composed of 47 elected UN Member States and is a forum empowered to prevent abuse, inequity and discrimination, protect the most vulnerable, and expose perpetrators. [Special Procedures](#) is the general name given to the mechanisms established to address either specific country situations or thematic issues in all parts of the world. Special Procedures are either an individual - a special rapporteur or independent expert - or a working group. The UN has also put in place the Universal Periodic Review ([UPR](#)), a

³⁰⁰ FRA, [EU Fundamental Rights Information System \(EFRIS\)](#), 2020

³⁰¹ van Ballegooij, and Evas, 2016; Annex I, Milieu, [pp. 78-84](#).

³⁰² For a more in-depth analysis of CoE and UN standards and monitoring mechanisms on specific topics, see: van Ballegooij, and Thirion, 2019; van Ballegooij, 2017;; van Ballegooij, and Moxom, 2018; van Ballegooij, and Zandstra, 2016; van Ballegooij, and Evas, 2016.

unique peer-to-peer process that involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare the actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

Currently, there are 10 human rights [treaty bodies](#), which are committees of independent experts. Nine of the treaty bodies monitor the implementation of the [core international human rights treaties](#). The 10th body is the [Subcommittee on Prevention of Torture](#), established under the Optional Protocol to the Convention against Torture, which monitors places of detention in States Parties to the Optional Protocol. The treaty bodies are created in accordance with the provisions of the treaty that they monitor.

While these monitoring bodies provide comprehensive periodic monitoring reports on each State Party to the respective conventions, their effectiveness is undermined by the following limitations:

- **Lack of an effective ‘hard’ enforcement mechanism** to make changes happen or impose sanctions in case of violations by their State Parties. Despite the recognised expertise of monitoring bodies, the use of their reports is uneven and some countries are much less committed than others in following their recommendations. Although some ‘light’ enforcement mechanisms exist, such as the Committee of the Parties for some CoE conventions, they only consist of a peer-to-peer dialogue, with no concrete possibility to impose pressure or sanction the violating country³⁰³. The PACE Monitoring Committee constitutes an exception. The latter can in fact sanction ‘serious violation’ of the basic principles of the organisation and ‘persistent failures’ by Member States to comply with their obligations and lacking co-operation in monitoring processes by adopting a resolution and/or recommendation on the non-ratification of the credentials of a national parliamentary delegation or to annul ratified credentials. The non-ratification or annulment of the credential entails the suspension of the voting rights of a Member States, including with regard to the election of the judges of the ECtHR and the Secretary General of the organisation³⁰⁴.
- **Long monitoring cycles** that usually last four or five years. Several years usually pass between the issuing of two monitoring reports on a given country. For example, the ECRI fourth report on Hungary was issued in 2009 while the fifth report was issued in 2015 with a significant lapse of time intervened between the two³⁰⁵. Lack of human and financial resources of international organisations is one of the causes of this phenomenon which are to a certain extent remedied by the issuing of interim follow-up conclusions having a narrower scope than the monitoring reports themselves.
- **Concerns about the independence and part-time office of monitoring bodies’ experts.** Key pre-conditions for the appointment of monitoring bodies’ experts are their independence and impartiality. These concepts are often not defined in the Statute of monitoring bodies with the consequent risk of different interpretations of these prerequisites, which are essential to the proper functioning and reputation of monitoring mechanisms³⁰⁶. Due to the vagueness of the provisions governing the selection and election processes for members to these committees, Member States are left with extensive leeway to influence the results of these

³⁰³ van Ballegooij, and Zandstra, 2016.

³⁰⁴ The PACE Monitoring Committee took an unprecedented decision and suspended voting rights and some other rights of the Russian delegation in response to Russia’s Annexation of Crimea in 2014. After suspending its payment to the CoE, Russia returned without sanctions.

³⁰⁵ Council of Europe, [‘ECRI – Country monitoring in Hungary’](#), European Commission against Racism and Intolerance, 2018

³⁰⁶ [Council of Europe, ‘Final Report: Evaluation of the European Commission against Racism and Intolerance \(ECRI\)’](#), 2012, p. 3; Pech and Kochenov, 2019, p. 12.

elections³⁰⁷. While the variation in the level of independent expertise possessed by treaty bodies does not seem to strongly impact on the quality of their output overall, when it becomes more apparent, it damages the overall credibility of these instruments due to the supposedly technical and apolitical nature that treaty bodies are expected to have³⁰⁸. Monitoring bodies are usually composed of experts whose main occupation is not the monitoring activity itself - they are often legal practitioners, academics or activists appointed to perform monitoring activities in addition to their main occupation. While this is not an issue as such, concerns may arise in case of the concrete incapacity of these experts to perform all their activities.

- **Late submission of country reports by State Parties.** A country report submitted by the State Party under scrutiny is usually requested to prompt the work of a certain monitoring body. Late submission of these reports by State Parties, whether intentionally or unintentionally, causes delays in the monitoring procedure.

6.2. Monitoring and enforcement of DRF

The analysis highlights that there is no single perfect mechanism in place to monitor violations of EU values and enforce decisions, with gaps and shortcomings identified for all EU and non-EU mechanisms. The current gaps potentially imply late detection of issues at national level, which undermines DRF and weakens the EU's ability to ensure respect for the founding values of the Union.

Although all of the existing issues need to be addressed, some of the gaps warrant particular attention. These are (1) the fragmentation of the current 'state of play', (2) the absence of a comprehensive monitoring mechanism that covers all DRF areas, and (3) the weak enforcement that manifests, for instance, in the high threshold to trigger procedures under Article 7 TEU.

A proliferation of mechanisms with the addition of five new tools in the last 10 years (the European Semester in 2010, the EU Justice Scoreboard in 2013 and the Rule of Law Framework and the Council dialogues on the Rule of Law in 2014), together with the recent initiative of the European Commission to launch the Rule of Law Review Cycle³⁰⁹ and the European Parliament's decision to call for a EU Pact on Democracy, Rule of Law and Fundamental Rights³¹⁰, show a growing interest in this issue and need to reinforce the existing monitoring and enforcement. However, this proliferation risks being detrimental if not accompanied by clear harmonisation efforts.

It can be argued that international organisations, such as the UN and the CoE, have a clear set of standards and monitoring mechanisms but often lack 'hard' enforcement mechanisms. On the contrary, when a stronger power to enforce exists, for instance in the EU, no proper and effective monitoring mechanisms are in place and high thresholds or complicated procedures hamper the triggering of existing mechanisms. While some forms of cooperation exist between the EU and international organisations, such as the UN and the CoE (e.g. preparation of the Justice Scoreboard) and the need to cooperate with non-EU monitoring mechanisms is highlighted in the recent initiatives of both the European Commission and the European Parliament³¹¹, further efforts to ensure synergies in both the monitoring and enforcement should be encouraged³¹².

³⁰⁷ Carraro, V., '[Electing the experts: expertise and independence in the UN human rights treaty bodies](#)', *European Journal of International Relations*, vol. 25, no. 3, 2019, p. 845.

³⁰⁸ Ibid.

³⁰⁹ COM (2019) 343 final.

³¹⁰ [Resolution](#) of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, European Parliament

³¹¹ Ibid.

³¹² CoE PACE, [Establishment of a European Union mechanism on democracy, the rule of law and fundamental rights](#), 2019, pp. 3-4.

7. EU Added Value of the EU Pact on Democracy, the Rule of Law and Fundamental Rights

This section defines possible scenarios for enhanced EU action in the area of DRF monitoring and enforcement upward harmonisation of EU DRF actions (section 7.1). Such scenarios should help in overcoming (some of) the problems and barriers to EU action identified in the previous section, and thus contribute to addressing DRF violations. In turn, this action is expected to reduce the (negative) impacts of DRF violations and related costs. The reduced negative impacts of each scenario minus the costs represent the added value of EU action in DRF, whose preliminary approach to quantification is defined in section 7.2 below.

7.1. Identifying scenarios for possible enhanced EU action in the area of DRF monitoring and enforcement

Analysing scenarios to overcome (at least some) of the barriers and gaps based on the current overall institutional and legislative framework, and the added value that such changes would have on the economic performance and on individuals, is a key element of the Study. The analysis also aims to quantify the direct causal link between EU action, the gaps identified and the related impacts on economic performance and individuals. This links directly with the task of assessing the costs and benefits of the European Parliament initiative to introduce the EU Pact on Democracy, Rule of Law and Fundamental Rights, compared to other EU actions in this field, such as the Commission's Rule of Law Review Cycle and the upcoming first annual Rule of Law Report³¹³. It is worth mentioning that while the initiative of the European Parliament is currently under discussion, that of the Commission is under development and the first Rule of Law Report is expected in September 2020.

To model such uncertainties and provide robust results, we will define four different scenarios for enhanced EU action in the area of DRF monitoring and enforcement upward harmonisation of EU actions on DRF. These scenarios are consistent with the overall scope of the Study and with the actions implemented or proposed under the current policy framework and EU toolbox. They will be used to define the scope of different EU actions and their expected costs and benefits.

The **scenarios** correspond to different institutional and legislative frameworks, as well as various monitoring and enforcing mechanisms. They are built in an incremental manner and foresee a progressively broader scope by starting with a focus on the rule of law and moderate monitoring mechanisms (scenario 2), to a broader focus on DRF, enhanced monitoring and enforcement mechanisms (scenario 3), to a revision of the EU Treaties for a strong enforcement mechanism which can be triggered more easily (scenario 4).

The **first scenario** reflects the status quo and incorporates the monitoring and enforcement mechanisms currently in place, as described in section 6. above. Scenario 1 therefore, provides the baseline for the assessment of the other scenarios.

The **second scenario** focuses on the rule of law within the EU. Within the framework of the Rule of Law Review Cycle, dialogues with Member States will strengthen the rule of law by building knowledge and a common rule of law culture. The monitoring mechanisms focus on the compilation of information and data from the Member States, the European Commission and FRA, while consulting other stakeholders, for example international organisations like the CoE. A network of national contact points nominated by Member States would be established to act as a forum for discussion. In addition, the Annual Rule of Law Report covering significant developments within four

³¹³ COM(2019) 343 final.

main areas in all Member States (the justice system, the anti-corruption framework, media pluralism and institutional checks and balances) will result in more comprehensive information on the respect (or otherwise) of the rule of law in every Member State. With the monitoring mechanisms primarily focusing on the rule of law, DRF violations are not entirely reflected. In addition, the report would be followed by interparliamentary debates within Parliament and Council although no clarity exists regarding the follow up and the consequences of the discussion. More comprehensive information might lead to an increased likelihood of utilising the procedures under Article 7 TEU. However, with no obligation to rely on information other than that provided by the Member States and the European Commission, coupled with high thresholds to trigger the sanctioning mechanism under Article 7 TEU, it is likely that the impact on addressing violations of rule of law will be minimal.

The **third scenario** has a broader scope, as it encompasses DRF in its entirety. It is based on an interinstitutional agreement, which has the benefit of ensuring better coordination between institutions and judicial oversight by the CJEU. It is characterised by both a new monitoring mechanism compared to scenario 1 and a stronger enforcement mechanism compared to scenario 2. The monitoring is conducted in the forms of an annual report covering all Member States. The monitoring report is drawn up by the European Commission in consultation with a panel of independent experts to ensure balanced information. This will incorporate and complement existing instruments, including the Justice Scoreboard, the Media Pluralism Monitor, the anti-corruption report and peer evaluation procedures based on Article 70 TFEU and replace the CVM for Bulgaria and Romania. Synergies with international organisations are ensured by taking into account their monitoring work and by the possibility for international organisations to propose members of the panel of experts. The third scenario also envisages enhanced enforcement mechanisms with the possibility of linking DRF violations with budgetary conditionalities, for example the suspension of Union funding in case of generalised rule of law deficiencies³¹⁴. The monitoring work is aimed at triggering interparliamentary and interinstitutional dialogues, with possible European Parliament resolution and Council's conclusions. Coupled with the procedures under Article 7 TEU, such an enforcement mechanism could help to curb DRF violations. However, the impact of addressing these violations would still be considered moderate, as the enforcement mechanisms are not far-reaching.

Finally, the **fourth scenario** envisages potential Treaty changes under Articles 7 TEU and 354 TFEU. The possible changes would reduce the threshold to trigger the procedure and determine the existence of a violation under both paragraphs 1 and 2 of Article 7. In particular, changes to Art. 7(1) of the TEU would reduce the threshold to trigger the procedure from one-third to one-quarter of the Member States within the European Council, reduce the threshold (from majority of four-fifths to simple majority) for the Council to determine that there is a clear risk of a serious breach, include the possibility for the European Parliament to prompt the procedure and add the possibility to hold the hearing in front of the Council, also in the presence of the Commission and the Parliament. Changes to Art. 7(2) would reduce the threshold from one-third to one-quarter of the Member States within the European Council to prompt the procedure, and reduce the threshold (from unanimity to a qualified majority) for the Council to determine that there is a serious and persistent breach by a Member State. This would be a possible means of overcoming the current obstacles in triggering these procedures (see section 6 above). The change will also consider the possibility of suspending

³¹⁴ While the current Common Provisions Regulation (CPR) already allows the Commission to suspend European Structural and Investment Funds (ESI Funds) where a Member State does not uphold the rule of law, this possibility would be further strengthened if the Commission proposal for a regulation on the protection of the Union's budget was adopted. See [Resolution](#) of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights, European Parliament; ['Proposal for a Regulation on the Protection of the Union's Budget in case of generalised deficiencies as regards the rule of law in the Member States'](#), [European Parliament Legislative Train Schedule, 2020](#); Mańko, R. and Sapala, M., ['Protecting the EU budget against generalised rule of law deficiencies'](#), EPRS, European Parliament, 2020; Mańko, 2019; Kelemen, R.D. and Scheppele, K.L., ['How to Stop Funding Autocracy in the EU'](#), [Verfassungsblog](#), 2018.

budgetary rights in addition to voting rights (revising Art. 7(3) TEU). Tools available for monitoring and for follow-up, synergies with activities of other international organisations in the DRF area and timing of the cycle would remain as in scenario 3.

Table 10: Overview of possible scenarios for enhanced EU action in the area of DRF monitoring and enforcement

Scenario 1	Scenario 2	Scenario 3	Scenario 4
<p>Material scope: different scope for reporting and enforcement</p> <p>Geographical scope: no full coverage of all Member States</p> <p>Legal basis: TEU and TFEU</p> <p>Institutional framework: involvement of different EU institutions (European Parliament, Commission, Council of the EU, CJEU) depending on the mechanism used</p> <p>Tools available for monitoring:</p> <ul style="list-style-type: none"> › Rule of Law Framework › Council Rule of Law dialogue(s) › Evaluation mechanisms in the AFSJ › CVM › European Semester › EU Justice Scoreboard › Others (e.g. FRA reports) <p>Tools available for infringements:</p> <ul style="list-style-type: none"> › Preventive and sanctioning procedures under Art. 7 TEU, infringement proceedings (Art. 258 TFEU) and preliminary 	<p>Material scope: rule of law:</p> <ul style="list-style-type: none"> › Justice system › Media freedom › Anti-corruption framework › Institutional issues related to checks and balances <p>Geographical scope: all Member States</p> <p>Institutional framework and methodology:</p> <ul style="list-style-type: none"> › Commission to carry out the assessment › Involvement of independent experts and academics › Compilation of information and data from Member States, the European Commission, FRA, UN, CoE › Consultation of stakeholders, including international organisations such as the CoE and judicial networks, civil society organisations and individuals, based on a targeted stakeholders consultation › Country visits <p>Tools available for monitoring:</p> <ul style="list-style-type: none"> › Rule of Law Review Cycle, including Annual Rule of Law Report 	<p>Material scope: DRF – Art. 7 European Parliament Resolution 2016</p> <p>Geographical scope: all Member States</p> <p>Streamlined Union mechanism on DRF</p> <p>Institutional framework and methodology:</p> <ul style="list-style-type: none"> › Interinstitutional agreement (Art. 295 TFEU) › Panel of 37 independent experts to carry out the assessment (one per country designated by national parliament + 10 appointed by the European Parliament, chosen by a list of experts nominated by international organisations, networks of academics and experts)³¹⁵ › Compilation of information and data from Member State authorities, FRA, experts, academics, NGOs, international organisations (UN, CoE, Organisation for Security and Co-operation in Europe (OSCE), OECD), case-law, European Parliament resolutions, EU institutions contributions <p>Tools available for monitoring:</p>	<p>Material and geographical scope: same as scenario 3</p> <p>Revision of Art. 7(1) TEU:</p> <ul style="list-style-type: none"> › Reduce the threshold from one-third to one-quarter of the Member States within the European Council to trigger the procedure › Reduce the threshold (from majority of four-fifths to simple majority) for the Council to determine that there is a clear risk of a serious breach › Add the possibility to hold the hearing in front of the Council, also in the presence of the Commission and the Parliament <p>Revision of Art. 7(2) TEU:</p> <ul style="list-style-type: none"> › Reduce the threshold from one-third to one-quarter of the Member States within the European Council to prompt the procedure › Possibility for the European Parliament to prompt the procedure › Reduce the threshold (from unanimity to a qualified majority) for the Council to determine that there is a serious and persistent breach by a Member State <p>Revision of Art. 7(3) TEU:</p>

³¹⁵ Article 8(1), European Parliament [Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights](#), (2015/2254(INL))

Scenario 1	Scenario 2	Scenario 3	Scenario 4
<p>references (Art. 267 TFEU), indirectly relevant</p> <p>Synergies with other international organisations: consultation of UN and CoE monitoring reports; involvement of CoE and UN bodies in some cases (e.g. Justice Scoreboard)</p> <p>Timing:</p> <ul style="list-style-type: none"> Annual cycle in some cases (e.g. Justice Scoreboard and European Semester) but absence of regular monitoring in most cases since mainly ad hoc procedures 	<p>Tools available for follow-up</p> <ul style="list-style-type: none"> Debate within Parliament and Council but no proper follow-up <p>Tools available for infringements:</p> <ul style="list-style-type: none"> Preventive and sanctioning procedures under Art. 7 TEU Infringement action (Art. 258 TFEU) No clarity on the use of other tools <p>Synergies with other international organisations: consultation of UN and CoE monitoring reports</p> <p>Timing: Annual cycle</p>	<ul style="list-style-type: none"> Annual European Report on democracy, the rule of law and fundamental rights with Member State-specific recommendations <p>Tools available for follow-up:</p> <ul style="list-style-type: none"> Interparliamentary and interinstitutional dialogues, with possible European Parliament resolution and Council's conclusions Commission to conduct enhanced monitoring <p>Tools available for infringements:</p> <ul style="list-style-type: none"> Suspension of EU funding Preventive and sanctioning procedures (Art. 7 TEU) Systematic infringement action (Art. 258 TFEU) Evaluation of implementation of EU policies by Member States in the AFSJ (Art. 70 TFEU) <p>Synergies with other international organisations: members of the panel of independent experts proposed by international organisations; consultation of UN and CoE monitoring reports through EFRIS</p> <p>Timing: Annual cycle</p>	<ul style="list-style-type: none"> Add the possibility to suspend 'budgetary rights' <p>Revision of Art. 354 TFEU:</p> <ul style="list-style-type: none"> Amended to ensure consistency with Art. 7 TEU <p>Tools available for monitoring and for follow-up: same as scenario 3</p> <p>Synergies with other international organisations: same as scenario 3</p> <p>Timing: Annual cycle</p>

7.2. Assessing costs and benefits of scenarios for enhanced EU action in the area of DRF monitoring and enforcement

Once defined in its characteristics, each of the scenarios needs to be assessed against the analysis of the monitoring, reporting and enforcement systems, to understand if and to what extent they would address the existing gaps and support a broader EU role in addressing DRF violations.

While the impacts of DRF violations are broader than purely economic, one of the key objectives of the Study is to quantify and monetise - to the extent possible - the costs of non-Europe in the area of DRF. In particular, the aim is to estimate what share of the overall costs of DRF violations could be recovered with additional action at the EU level.

7.2.1. Methodology

It is important to point out that the estimates in this section confront large uncertainties, related to several factors. First of all, the limitations of the empirical investigations conducted by this Study on the determinants and costs of DRF violations (described in section 1.2), which do not allow for a large spectrum in the quantification of the impacts. In addition, there is a large degree of uncertainty around the functioning and effectiveness of the scenarios described in the previous sections, which are either still to produce their first report (Commission's Rule of Law Review Cycle and the upcoming first annual Rule of Law Report) or are still under discussion (European Parliament initiative to introduce the EU Pact on Democracy, Rule of Law and Fundamental Rights).

Such uncertainties required the use of a number of assumptions in the estimation methodology, which are outlined where relevant.

The design of the estimation methodology draws from available literature and particularly from the CoNE on Corruption, which is the most similar in scope and overall approach.

Similar to the CoNE on Corruption, this paper uses the regression scores from the analysis of the effects of DRF violations on GDP per capita as a basis for the estimation. Table 11 below reports the results of the analysis of the effects of DRF on GDP per capita using a random effect model, which have shown strong correlation between a high DRF score and positive economic outcomes, represented by the coefficients of the DRF scores from the regression. However, the results of these regressions need to be considered in light of the limitations of the models used. The study adopts a random effect panel regression model, which in part allows circumscribing some of the problems of the study, such as the limited time-span of data available and the relative lack of an unambiguous, comparative variable for measuring a country's DRF situation. The table only reports the results of the fifth model specification (V) reported in Table 6 and Table 20, as these are the ones controlling for the larger set of variables, and are the ones used for estimating the impacts of the different scenarios.

Both regressions show that the overall DRF situation in a country remains consistently highly significant in relation to GDP, used as measure of economic performance. The magnitude of the effect is slightly larger when using the WJP index, when an increase of 1% in the normalised WJP Index score (normalised from 0 to 100) is associated with a GDP increase of 0.331%. A similar increase of 1% in the normalised WJP index score (normalised from 0 to 100) is associated with a GDP increase of 0.304%.

For both models, the control variables behave broadly as expected, with employment levels and the level of R&D investments made by private businesses significantly correlated with higher GDP per capita in both. In the WGI model, there is also a significant positive relation with the proportion of people with higher education, in addition to a significant *negative* correlation with higher inequality and higher levels of poverty risk – these are not significant in any of Models III-V in the WJP model. Both models also see a weak, but statistically highly significant effect of the 3-year lagged GDP per

capita variable – there is also an associated increase in R^2 and decrease in the estimated size of the DRF effect. This implies that earlier economic conditions are a significant factor in the current DRF condition of a country, even if the relation is limited in size. A more detailed discussion of these results and of the inherent difficulties and limits of the analysis is provided in section 5.3. The estimations are carried out, applying the same methodology, using the WJP index and the WBI index, as a sensitivity check.

Table 11: Regression results of overall WJP score and WGI score against log of GDP per capita, EU-27, 2013-2018 (random effect)

Variables	Using WJP scores	Using WBI scores
WJP: Overall Index Score (normalised)	0.311***	0.304***
	(0.091)	(0.111)
Working age (15-64) employment	0.036***	0.028***
	(0.005)	(0.004)
Population with higher education (ISCED 5-8)	0.003	0.008**
	(0.003)	(0.003)
Private sector R&D investment	0.079**	0.097**
	(0.039)	(0.040)
Social spending as % of GDP	0.003	-0.020***
	(0.009)	(0.007)
Economic inequality (Gini)	-0.002	-0.013***
	(0.005)	(0.004)
3-year lagged GDP per capita	6.095***	0.00002***
	(0.297)	(0.00000)
Constant	6.593***	7.759***
	(0.484)	(0.358)
Observations	114	162
R²	0.790	0.764
Adjusted R²	0.776	0.753
F Statistic	397.900***	498.539***

As a next step, employing the estimates included in Table 11 above, the Study uses different scenarios and benchmarking to estimate the costs of non-Europe in the area of DRF. The scenarios used for the estimation correspond to the possible scenarios enhanced EU action in the area of DRF monitoring and enforcement upward harmonisation defined in the previous section (section 7.1).

Scenario 1 is conceptually different from scenarios 2-4 and their related estimations. Scenario 1 represents the **Status Quo** of EU action on DRF monitoring and enforcements, and thus the

estimations provided represent the impacts of the current gaps and barriers on economic performance, measured as share of GDP. In other words, Scenario 1 replies to the first research question of the Study, i.e. what is the impact of the current gaps and barriers in action and cooperation at EU in monitoring and enforcing EU values, notably democracy, the rule of law and fundamental rights in terms of a negative effect on economic performance.

On the other hand, **scenarios 2-4 represent possible EU actions** in the area of DRF monitoring and enforcement, and the estimates show possible reductions of such negative economic performance (measured as share of GDP) as an effect of EU action. Scenarios 2-4 respond thus to the second research question of the Study, i.e. what is the EU added value of the EU Pact on Democracy, the Rule of Law and Fundamental Rights as proposed by the European Parliament, taking into account its evolving position in view of the first annual Rule of Law report under preparation by the Commission. Furthermore, scenarios 2-4 are modelled as 'stylised' versions of EU actions summarised in Table 10, which are translated into increasingly ambitious frameworks for EU actions in the area of DRF monitoring and enforcement.

The benchmarking exercise defines clusters of Member States based on their performance on DRF as measured by the WJP and WGI scores³¹⁶. The estimation of the share of the overall costs of DRF violations that could be recovered with additional action at the EU level uses a set of assumptions on the expected effectiveness of the policy mechanisms described under each scenario.

Linked to the economic assessment, the estimation of the GDP gain in each scenario is related to the expected improvement of Member States' performance with respect to DRF indices. The exercise is repeated using both the WJP and the WGI scores in order to check the robustness of the assumptions and results³¹⁷. While such a modelling exercise by necessity would be illustrative rather than deterministic, it could still illustrate whether there indeed is a significant economic gain to be had from stricter adherence or enforcement of DRF in the EU. Furthermore, the lack of a longer timeframe does not allow assessing the timeframe necessary for the estimated impacts to happen – i.e. while the costs and benefits of possible enhanced EU action in the area of DRF monitoring and violations are presented as a fixed value per year, in reality it is likely that they will take years (if not decades in the most ambitious scenarios) to happen.

The clustering exercise divides the EU Member States into four groups, based on their distance from the EU average on both the WJP and the WGI scores, with a group of top performers (group 1), a group of countries right above the EU average (group 2), a third group right below the EU average (group 3), and a fourth group at the bottom of the scale (group 4). Table 12 below provides an overview of the grouping of Member States with the WJP and the WGI scores respectively³¹⁸.

Table 12: Clustering of EU Member States based on WJP and the WGI scores

Groups	WJP score	WGI score
Group 1	AT, DE, DK, FI, NL SE	AT, DE, DK, FI, LU, NL, SE
Group 2	BE, FR, EE, IE, LV, LT, LU,	BE, EE, FR, MT, IE, PT

³¹⁶ Cluster analysis is an exploratory statistical technique that finds groups of similar observations in complex datasets. Here, it groups countries by similarities in DRF. The approach consists of two stages: 1) the calculation of a distance matrix describing differences between variables of interest; 2) creation of clusters based on countries with 'low' distance to each other. There exist different metrics for distance, we used the Euclidean.

³¹⁷ Both the WJP and the WGI scores are normalised between 0 and 1.

³¹⁸ For the Member States now covered by the WJP score (namely, CY, CZ, IE, LT, LU, LV, MT, SK), the score attributed for the clustering exercise is the average of the Member States with which they share most sociopolitical and institutional characteristics.

Groups	WJP score	WGI score
Group 3	CZ, ES, MT, IT, SI, PL, PT, SK,	CZ, CY, ES, LT, LV, PL, SI, SK
Group 4	BG, CY, EL, HR, HU, RO	BG, EL, HR, HU, IT, RO

While there are some differences in the attribution of Member States to the groups between the two scores, these are not striking. In fact, many Member States are classified in the same group in both cases (all but CY, LU, LV, LT, LU, MT, IT, PT).

When considering the **costs of the policy instruments foreseen in the scenarios**, the uncertainties are even higher. Previous studies have attempted quantifications of similar mechanisms, using assumptions and estimations³¹⁹. While these quantifications are not directly applicable (as the institutional and organisational arrangements used are different from those included in the scenarios for enhanced EU action in the area of DRF monitoring and enforcement), they nevertheless provide some guidance.

Previous estimates place the costs of EU mechanisms around EUR 3-4 million per year³²⁰. Such estimates refer to the maintenance of a permanent annual insourced Scoreboard cycle administered by an independent EU Rule of Law Commission, which, for its scope and characteristics, is somewhat similar to the set-up of scenario 3. The costs categories considered in the estimates include costs for both the monitoring structure (operational and monitoring costs) and for the monitored Member States (administrative and compliance costs).

Even considering more frequent cycles and/or a larger involvement of experts and/or more site visits, is not likely to sharply increase the overall amount. Given the costs of DRF violations estimated, these costs are negligible compared to the expected benefits of EU action.

7.2.2. Estimation results of the scenarios for possible enhanced EU action in the area of DRF monitoring and enforcement

Scenario 1

The **first scenario** reflects the status quo and incorporates the monitoring and enforcing mechanisms currently in place, as described in section 6. Its estimates represent the impacts of the current gaps and barriers on DRF monitoring and enforcement on economic performance of EU Member States, measured as share of GDP. Scenario 1 therefore, provides the baseline for the assessment of the other scenarios.

In order to estimate the overall costs of DRF violations in the status quo, the benchmark is the average of the group of the best performing countries (group 1). The expected increased in GDP is calculated as the product of the regression score and the cluster score (the difference between the country normalised score and the target score for the scenario). The same approach is used to estimate the impact on economic performance of possible enhanced EU action on the area of DRF monitoring and enforcement in the other scenarios as well. Table 25 in Annex details the countries normalised scores, their cluster groups and the 'target' scores set for each scenario, under both the WJP and WBI simulations.

This approach estimates how much is lost in economic terms due to Member States failing to reach the level of respect of DRF achieved by the best-performing countries. The principle behind this approach is that, as some countries do better than others already, the level of the best performers is

³¹⁹ van Ballegooij and Evas, 2016.

³²⁰ van Ballegooij and Evas, pp. 196-204. Estimates do not include establishment costs, which are not monetised as the precise format of the Scoreboard was not determined with sufficient detail.

the least that could be achieved. Using a set of countries instead of an individual Member State as benchmarking circumvents the fact that, depending on the DRF index, different countries are classified among the best performers. While this approach can be considered overly optimistic in terms of what could possibly be achieved, by setting a high ceiling, it serves as an illustration of what is lost overall and therefore what could potentially be achieved in the longer term.

Table 13 below presents the results of the estimations for the baseline scenario³²¹.

Table 13: Average annual reduction in GDP under scenario 1 (EUR million) – Random effects

	WJP Score		WBI Score	
	Effect on overall GDP (EUR mill)	% GDP	Effect on overall GDP (EUR mill)	% GDP
AT	8,760	2.5%	11,569	3.3%
BE	30,757	7.2%	30,877	7.3%
BG	11,857	24.7%	13,075	27.3%
HR	10,648	22.9%	10,398	22.4%
CY	4,289	22.7%	2,559	13.6%
CZ	2,199	15.4%	23,225	13.2%
DK	0	0.0%	0	0.0%
EE	1,396	6.4%	1,883	8.6%
FI	0	0.0%	0	0.0%
FR	223,279	10.0%	221,332	9.9%
DE	88,094	2.9%	79,123	2.6%
EL	40,600	22.6%	47,174	26.3%
HU	27,763	24.0%	24,339	21.0%
IE	19,988	7.8%	10,541	4.1%
IT	316,186	18.8%	358,275	21.3%
LV	2,011	7.9%	4,090	16.2%
LT	3,118	8.0%	5,396	13.8%
LU	4,151	7.8%	0	0.0%
MT	1,511	15.2%	1,038	10.4%
NL	1,007	0.1%	0	0.0%

³²¹ It needs to be pointed out that in cases where the countries perform better than the target value (e.g. DK, FI, SE), it was assumed that they would maintain such performance. Therefore, the results of the estimations do not identify 'lost' GDP in the status quo situation.

	WJP Score		WBI Score	
	Effect on overall GDP (EUR mill)	% GDP	Effect on overall GDP (EUR mill)	% GDP
PL	59,559	13.6%	70,293	16.1%
PT	25,864	14.0%	21,244	11.5%
RO	33,530	19.8%	45,595	26.9%
SK	12,483	15.4%	14,090	17.4%
SI	6,768	16.8%	5,555	13.8%
ES	152,266	13.8%	171,342	15.6%
SE	0	0.0%	0	0.0%
TOT	1,113,084	9.0%	1,173,014	9.4%

The estimations point to substantial costs of DRF violations on the EU, between EUR 1.1 and 1.2 trillion per year, or between 9% and 9.4% of the overall EU GDP, depending on the DRF index used³²². The estimated loss is higher when using the WBI index, which can be attributed to the larger range of normalised scores (the range between the maximum and the minimum score is of 0.889389 using the WJP index and of 0.982142 using the WBI index) (see also Table 21 in Annex II).

Overall, the figure is not so distant from the conservative estimate from previous CoNE studies, which only takes into account the existing monetised aggregate impacts of discrimination, corruption, equality and asylum policy on GDP and places the overall impacts between EUR 213 billion and EUR 1 trillion (see table Table 2). Of course, it needs to be pointed out that this study does not include the UK, which was covered by those studies. Considering the broader notion of DRF used for the study, as well as all the assumptions and proxies used for the exercise, the difference can be considered acceptable.

Other CoNE studies have provided estimates for costs of DRF violations in DRF areas, both at individual and aggregate level. For instance, the CoNE on Equality³²³ study provides annual estimates of costs related to pay gaps hiring practices, salaries and promotions, with the gender pay gap the highest, at an estimated EUR 241-379 billion. It also estimates education-related impacts in terms of restricted access to scholarships due to age discrimination (EUR 6.2-8.6 billion annually) and in terms of lost earnings for people with disabilities (EUR 61-98 million)³²⁴. Furthermore, recent studies have found evidence of the effects of limitations on access to justice, ranging from 0.5-3% of GDP in most countries, imposing costs on individuals, families and societies, as well as on the benefits of access to justice interventions that accrue to individuals, families and societies³²⁵. At aggregate level, economic impacts of DRF violations can affect GDP, budgetary expenditures, tax revenue and societal welfare. (see section 4 for a detailed review of available literature). While these results are not directly comparable to the results of the study (as they have different often narrower, focus, and a different coverage of countries and timespan), they still provide some context. The

³²² The share of GDP is calculated as the change brought by each scenario compared to the average EU GDP (in EUR million) across the timespan and countries included in the exercise (i.e. EU-27 over the 2013-2018 period).

³²³ van Ballegooij and Moxom, 2018.

³²⁴ *Ibid.*

³²⁵ OECD and World Justice Project, *ibid.*

economic estimations of other studies (with the exception of the CoNE on Corruption one) are smaller, which can be explained by their more specific focus on only some of the DRF aspects covered by this study, and the different methodological approach adopted (they usually estimated the impact on one individual and then assess the overall number of individuals affected by the situation examined, e.g. number of individuals experiencing restricted access to scholarships due to age discrimination). When looking at individual Member States, EU13 Member States seem to be losing more from the current status of DRF violations than EU-15 countries in both simulations (using the WJP and the WBI indexes). For instance, EU13 countries such as Bulgaria or Hungary are estimated to be losing between 24.7% and 27.3%, and 24% and 21% of GDP respectively. EU 15 countries such as Germany or Austria are estimated to lose between 2.6% and 2.9%, and 2.5% and 3.3% of GDP respectively. Furthermore, countries classified in groups 3 and 4 are estimated to be losing far more than group 1 and group 2 countries in terms of economic performance due to DRF violations, as their distance from the average of best performers is bigger. On the contrary, the size of the Member State, in terms of both population and GDP, does not seem to be a determining factor.

The magnitude of the loss in economic performance for each country is relatively similar under the two simulations (using the WJP and the WBI indexes) for those Member States that are classified in the same group, as their relative distance from the average of the best performing countries is comparable. For instance, in the case of Belgium (classified under group 2 in both settings), the estimated GDP loss due to DRF violations is estimated at EUR 8,760 million (or 2.5% of the country GDP) under the WJP setting, and at EUR 11,569 million (or 3.3% of the country GDP) under the WBI setting. However, the differences in magnitude are slightly bigger when a country is classified in different group in the two simulations, as the relative distance from the average of the best performing countries is broader. As the log(GDP) coefficients of the two models are very similar (0.331 using the WJP index and 0.304 using the WBI index), the differences across the models are not very large. For instance, in the first simulation (using the WJP index), where it is classified in group 3, Italy is estimated to be losing EUR 316,186 million (or 18.8% of GDP) due to DRF violations. In the second simulation (using the WBI index), where it is classified in group 4, Italy is estimated to be losing EUR 358,275 million (or 21.3% of GDP), a larger share.

This result can be considered quite pessimistic, as it assumes that many Member States are far below their potential in respect of DRF. On the other hand, it implies that much can be achieved in the medium or long-term.

Scenario 2

The **second scenario** focuses on the rule of law within the EU. Within the framework of the Rule of Law Review Cycle, dialogues with Member States are expected to strengthen the rule of law by building knowledge and a common rule of law culture. More comprehensive information might lead to an increased likelihood of utilising the procedures under Article 7 TEU. However, with no obligation to rely on information other than that provided by the Member States and the European Commission, coupled with high thresholds to trigger the sanctioning mechanism under Article 7 TEU, it is likely that the impact on addressing violations of rule of law will be minimal.

Under this scenario, it is expected that the mechanism will provide a (limited) incentive for Member States to improve their performance on DRF. The exercise focuses on the estimation of a 'stylised' version of this scenario, rather than of some of its specific characteristics, which is translated into a slightly more ambitious framework for EU actions in the area of DRF monitoring and enforcement compared to scenario 1.

In order to estimate the EU added value of scenario 2, the benchmark is the mean performer of each group, i.e., in each group, all Member States below the group average will achieve the average performance, while the others will not change. The expected increased in GDP is calculated as the product of the regression score and the cluster score (the difference between the country normalised score and the target score for the scenario). Table 21 in Annex II details the countries normalised scores, their cluster groups and the 'target' scores set for each scenario, under both the WJP and WBI simulations.

While this can be considered a quite conservative (if not pessimistic) view of the effectiveness of the Rule of Law Review Cycle, the very limited changes it brings to the existing mechanisms (described in section 6 above) and its narrow focus (on rule of law only) necessitate a cautious approach.

Table 14 below reports the results of the estimations for scenario 2.

Table 14: Average annual reduction in GDP under scenario 2 (EUR million) – Random effect

	WJP Score		WBI Score	
	Effect on overall GDP (EUR mill)	% GDP	Effect on overall GDP (EUR mill)	% GDP
AT	8,760	2.5%	11,684	3.3%
BE	0	0.0%	0	0.0%
BG	908	1.9%	1,468	3.1%
HR	61	0.1%	0	0.0%
CY	0	0.0%	0	0.0%
CZ	13,287	7.5%	0	0.0%
DK	0	0.0%	0	0.0%
EE	0	0.0%	0	0.0%
FI	0	0.0%	0	0.0%
FR	48,338	2.2%	29,280	1.3%
DE	88,094	2.9%	79,912	2.6%

	WJP Score		WBI Score	
	Effect on overall GDP (EUR mill)	% GDP	Effect on overall GDP (EUR mill)	% GDP
EL	0	0.0%	3,725	2.1%
HU	1,384	1.2%	0	0.0%
IE	0	0.0%	0	0.0%
IT	57,074	3.4%	0	0.0%
LV	0	0.0%	289	1.1%
LT	0	0.0%	0	0.0%
LU	0	0.0%	0	0.0%
MT	0	0.0%	190	1.9%
NL	0	0.0%	0	0.0%
PL	0	0.0%	5,750	1.3%
PT	0	0.0%	5,211	2.8%
RO	0	0.0%	4,630	2.7%
SK	0	0.0%	2,031	2.5%
SI	547	1.4%	0	0.0%
ES	0	0.0%	6,853	0.6%
SE	0	0.0%	0	0.0%
TOT	218,452	1.4%	151,024	1.2%

The estimations point to a rather limited EU added value, as the gains from EU action under this scenario are estimated between EUR 151 and 218 billion per year, corresponding to 1.22% and 1.4% of the EU GDP, for the WBI and the WJPI score indexes respectively. Both scenarios represent an improvement in the economic performance compared to the status quo (scenario 1), of 20% and 13% respectively. This means that, if fully implemented, this scenario would allow recovering about 19.6% and 13% of the GDP 'lost' in the status quo as an effect of the current DRF violations. Overall, for this and the other scenarios (with the exception of the Status Quo), results are slightly higher (i.e. a larger estimated positive impact from enhanced EU action) when using the WJP score. This can be attributed to the slightly higher coefficient between the log of GDP per capita and the index estimated in the regression exercise (0.331 when using the WPI index vs 0.304 when using the WJP index, see also Table 11). While the figures provided are estimates, subject to several simplifications and assumptions made necessary to overcome the inherent uncertainties of the Study, they provide an indication that, even limited further EU action on the area of DRF monitoring and enforcement.

Overall, a limited number of Member States are expected to benefit directly from scenario 2, and the individual benefits will be marginal, more so in the WJP than the WGI simulation. This is due to the fact that the scenario only provides limited incentive for Member States to improve their performance on DRF, which are modelled using the average performer in each group as a benchmark. As a consequence, the countries performing under the average of their group are

expected to improve their DRF (and economic) performance under this scenario (e.g. Bulgaria, France, Italy among others), while the other are not expected to benefit much from such EU action. Many of the countries expected to benefit from the scenario are different among the two simulations, as the cluster composition, and the relative position compared to the other countries in the same group is highly depending on the normalised WJP and WBI indexes scores.

Scenario 3

The **third scenario** has a broader scope, as it encompasses the whole DRF area. It is characterised by both a new monitoring mechanism, compared to scenario 1, and a stronger enforcement mechanism, compared to scenario 2. It also features enhanced enforcement mechanisms, with the possibility of linking DRF violations to budgetary conditionalities, for example the suspension of Union funding. Although this scenario could help to curb DRF violations, the impact is still considered moderate, as the enforcement mechanisms are not far-reaching.

Under scenario 3, it is expected that the mechanism would provide a strong incentive for Member States to improve their performance on DRF. The exercise focuses on the estimation of a 'stylised' version of this scenario, rather than of some of its specific characteristics, which is translated into a more ambitious framework for EU actions in the area of DRF monitoring and enforcement compared to scenario 1 (status quo) and to the EU action described in scenario 2.

In order to estimate the EU added value of scenario 3, the benchmark is the best performer of each group, i.e. in each group, all Member States will achieve the level of the best performer of the group. The expected increased in GDP is calculated as the product of the regression score and the cluster score (the difference between the country normalised score and the target score for the scenario). Table 21 in Annex II details the countries normalised scores, their cluster groups and the 'target' scores set for each scenario, under both the WJP and WBI simulations.

While the improvements brought by this scenario might not manifest immediately, it is likely that they will become evident within a short-medium time, especially if the enforcement mechanisms are used.

Table 15 below presents the results of the estimations for scenario 3.

Table 15: Average annual reduction in GDP under scenario 3 (EUR million) –Random effect

	WJP Score		WBI Score	
	Effect on overall GDP (EUR mill)	% GDP	Effect on overall GDP (EUR mill)	% GDP
AT	19,377	5.5%	18,997	5.4%
BE	3,702	0.9%	13,320	3.1%
BG	2,355	4.9%	3,003	6.3%
HR	1,460	3.1%	636	1.4%
CY	567	3.0%	75	0.4%
CZ	2,934	1.7%	0	0.0%
DK	0	0.0%	3,365	1.2%
EE	0	0.0%	980	4.5%
FI	4,075	1.9%	0	0.0%

	WJP Score		WBI Score	
	Effect on overall GDP (EUR mill)	% GDP	Effect on overall GDP (EUR mill)	% GDP
FR	82,162	3.7%	130,359	5.9%
DE	181,053	5.9%	143,941	4.7%
EL	5,046	2.8%	9,468	5.3%
HU	4,870	4.2%	0	0.0%
IE	3,865	1.5%	0	0.0%
IT	85,028	5.1%	5,964	0.4%
LT	603	1.5%	193	0.5%
LU	803	1.5%	613	1.1%
MT	163	1.6%	637	6.4%
NL	22,337	3.2%	11,137	1.6%
PL	0	0.0%	13,417	3.1%
PT	349	0.2%	13,663	7.4%
RO	0	0.0%	10,046	5.9%
SK	1,347	1.7%	3,465	4.3%
SI	1,218	3.0%	245	0.6%
ES	551	0.0%	26,385	2.4%
SE	7,684	1.7%	2,421	0.5%
TOT	431,938	3.5%	413,071	3.3%

The estimations point to some gains from EU action in the area of DRF monitoring and enforcement, between EUR 413 and 432 billion per year, corresponding to 3.3% and 3.5% of the EU GDP, for the WBI and the WJP score indexes respectively. This translates into an improvement of 35-39% in GDP terms compared to the baseline scenario; i.e., if implemented entirely and effectively, they would allow recovering respectively about 39% and 35% of the GDP 'lost' in the status quo as an effect of the current DRF violations for the WJP and the WBI score indexes respectively. While the figures provided are estimates, subject to several simplifications and assumptions made necessary to overcome the inherent uncertainties of the Study, they provide an indication that, further EU action on the area of DRF monitoring and enforcement can lead to non-negligible benefits.

Overall, EU-13 Member States seem to gain more from EU action under scenario 3, which is consistent with the situation described under scenario 1, where EU-13 Member States seem to lose more from the current status of DRF violations than EU-15 countries in both simulations. Even in this scenario, the size of the Member State, in terms of both population and GDP, does not seem to be a determining factor.

Overall, most EU countries seem to have positive benefits from EU action in the area of DRF monitoring and enforcement, in both simulations (using the WJP and the WBI scores simulations), even if the magnitude of such improvement is different under the two simulations. This can be related to the higher incentives for tackling DRF violations under this scenario, which are modelled using the best performer in each group as a benchmark. As a consequence, the countries performing lower in each group are the ones expected to have the most improvements in both DRF and economic performance under this scenario (e.g. Germany under the WJP score simulation, and Malta under the WBI score simulation). This result may be optimistic, as it is likely that such improvements will take some time to manifest. On the other hand, it is illustrative of what can be achieved when EU action incorporates enhanced enforcement mechanisms in the area of DRF violations.

Scenario 4

The **fourth scenario** envisages potential Treaty changes under Article 7 TEU and Article 354 TFEU, which would reduce the threshold to trigger the procedure and determine the existence of a violation under both paragraphs 1 and 2 of Article 7. This would be a possible means of overcoming the current obstacles in triggering infringement procedures (see section 6 above). The change would concern the possibility to suspend budgetary rights in addition to voting rights.

Under this scenario, the mechanism is expected to provide a much stronger incentive for Member States to improve their performance on DRF compared to both the baseline and the other scenarios. The exercise focuses on the estimation of a 'stylised' version of this scenario, rather than of some of its specific characteristics, which is translated into a more ambitious framework for EU actions in the area of DRF monitoring and enforcement compared to scenario 1 (status quo) and to the EU action described in scenarios 2 and 3.

In order to estimate the EU added value of scenario 4, the benchmark is the average performer of the above group, i.e. in each group, all Member States will achieve the level of average performer of the group above. In other words, all Member States in group 4 will reach the level of the average performer of group 3, and all Member States in group 3 will reach the level of the average performer of group 2, and so on, while all Member States in group 1 will achieve the level of the best performer within the group. The expected increase in GDP is calculated as the product of the regression score and the cluster score (the difference between the country normalised score and the target score for the scenario). Table 21 in Annex II details the countries normalised scores, their cluster groups and the 'target' scores set for each scenario, under both the WJP and WBI simulations.

This can be considered an overly optimistic assessment of the possible effectiveness of the mechanism included in scenario 4, which would take time to reach the magnitude of change described here. While these considerations have their reasonable foundations, this optimistic assessment is thus an illustrative indication of what might be achievable in the in the medium to long-term, provided that the enforcement mechanisms are far-reaching.

Table 16 below presents the results of the estimations for scenario 4.

Table 16: Average annual reduction in GDP under scenario 4 (EUR million) – Random effect

	WJP Score		WBI Score	
	Effect on overall GDP (EUR mill)	% GDP	Effect on overall GDP (EUR mill)	% GDP
AT	19,377	5.5%	18,997	5.4%
BE	30,757	7.2%	31,185	7.3%
BG	4,429	9.2%	5,946	12.4%
HR	3,465	7.5%	3,482	7.5%
CY	1,379	7.3%	932	4.9%
CZ	13,287	7.5%	8,008	4.5%
DK	0	0.0%	3,365	1.2%
EE	1,396	6.4%	1,902	8.7%
FI	4,075	1.9%	728	0.3%

	WJP Score		WBI Score	
	Effect on overall GDP (EUR mill)	% GDP	Effect on overall GDP (EUR mill)	% GDP
FR	223,279	10.0%	223,538	10.0%
DE	181,053	5.9%	143,941	4.7%
EL	12,804	7.1%	20,481	11.4%
HU	9,866	8.5%	7,091	6.1%
IE	19,988	7.8%	10,647	4.2%
IT	183,652	10.9%	108,625	6.5%
LV	2,011	7.9%	1,898	7.5%
LT	3,118	8.0%	1,988	5.1%
LU	4,151	7.8%	613	1.1%
MT	738	7.4%	1,048	10.5%
NL	22,337	3.2%	11,137	1.6%
PL	25,411	5.8%	33,075	7.6%
PT	11,235	6.1%	21,455	11.6%
RO	7,317	4.3%	20,432	12.1%
SK	6,098	7.5%	7,141	8.8%
SI	3,586	8.9%	2,077	5.1%
ES	65,280	5.9%	76,458	6.9%
SE	7,684	1.7%	2,421	0.5%
TOT	867,772	7.0%	767,155	6.2%

The estimations point to major gains from such EU action in the area of DRF monitoring and enforcement, between EUR 767 and 868 billion per year, corresponding to 6.2% and 7% of the EU GDP, for the WBI and the WJP score indexes respectively. While the figures provided are estimates, subject to several simplifications and assumptions made necessary to overcome the inherent uncertainties of the Study, they provide an indication that, decisive EU action on the area of DRF monitoring and enforcement, could lead to major economic benefits. This translates into an improvement of 65-78% in GDP terms compared to the baseline scenario; i.e., if implemented entirely and effectively, they would allow recovering respectively about 78% and 65% of the GDP 'lost' in the status quo as an effect of the current DRF violations for the WJP and the WBI score indexes respectively. Under scenario 4, all Member States (with the exception of the overall best performer) are expected to realise gains, as the lower threshold for triggering infringement mechanisms and the suspension of budgetary and voting rights are likely to force Member States to take major steps to address and prevent DRF violations. Once again, the magnitude of such expected gains differs for the same countries among the two simulations (being overall lower under the WBI score simulation), but it is non-negligible in both models. This can be related to the very

strong incentives for tackling DRF violations under this scenario, which are modelled using the average performer of the above group as a benchmark. Therefore, even the best performing countries (i.e. those classified in group 1) are expected to achieve major benefits (e.g. Austria is estimated to gain 8.5% and 10.6% under this scenario in the WJP and WBI score indexes simulations).

Under this scenario, too, EU-13 Member States seem to gain more from EU action, which is consistent with the situation described under scenario 1, where EU-13 Member States seem to lose more from the current status of DRF violations than EU-15 countries in both simulations. Even in this scenario, the size of the Member State, in terms of both population and GDP, does not seem to be a determining factor. This result may be optimistic, as it is likely that such improvements would take some time to realise, to this magnitude at least. In addition, the basic assumption of this scenario is the enhanced enforcement mechanisms within the Treaties, which can be considered difficult to put in place. While these considerations have sensible grounds, this scenario is best viewed as an illustrative indication of what might be achievable in the medium or long-term, if the enforcement mechanisms were far-reaching.

Overview of scenarios 2-4

Table 17 below summarises the key results of this section, presenting for scenarios 2-4 the key characteristics, the expected impact in terms of helping to tackle DRF violations, and the related quantitative estimations. The table focuses on scenarios 2-4 as these are conceptually different from scenario 1 (Status Quo).

Scenario 1 represents the Status Quo of EU action on DRF monitoring and enforcements, and thus the estimations provided represent the impacts of the current gaps and barriers on economic performance, measured as share of GDP. On the other hand, scenarios 2-4 represent possible EU actions in the area of DRF monitoring and enforcement, and the estimates show possible reductions of such negative economic performance (measured as share of GDP) as an effect of EU action. While scenario 4 seems to be the one bringing most benefits, it is also the most far-reaching and challenging to implement, as it requires changes to the Treaties. Scenario 3 could then be considered more feasible, at least in the short to medium-term, while still bringing noticeable benefits.

Table 17: Summary of scenarios 2-4

Scenario	Qualitative description	Expected DRF impact	Quantitative estimations
Scenario 2 (Rule of law-based monitoring)	<ul style="list-style-type: none"> Introduces measures focusing on the Rule of Law; Dialogues with Member States expected to strengthen the rule of law by building knowledge and a common rule of law culture; Monitoring information provided by Member States, international organisations, civil society and individuals, based on a targeted stakeholders consultation; Likely to have only minimal impact on addressing DRF violations. 	+	<ul style="list-style-type: none"> Limited EU added value; Gains between EUR 151 and 218 billion, i.e. to 1.2% and 1.4% of the EU GDP; Estimated 13%-20% improvements in GDP terms compared to the baseline scenario (Status Quo).
Scenario 3 (DRF monitoring and budget conditionality)	<ul style="list-style-type: none"> Focus on wider DRF area; New monitoring and mechanism, involving independent experts, compilation of information and data from Member States, the European Commission, FRA, UN, Council of Europe, and country visits; Stronger enforcement mechanism (with the possibility of linking DRF violations to budgetary conditionalities); Impact still moderate, as the enforcement mechanisms are not far-reaching. 	++	<ul style="list-style-type: none"> Non-negligible gains from EU action in the area of DRF monitoring and enforcement; Gains between EUR 413 and 432 billion, i.e. between 3.3% and 3.5% of the EU GDP; Estimated 35%-39% improvements in GDP terms compared to the baseline scenario (Status Quo).
Scenario 4 (Treaty change)	<ul style="list-style-type: none"> Most far-reaching scenario; Envisages potential Treaty changes under Article 7 TEU and Article 354 TFEU, reducing threshold to trigger the procedure and determine the existence of a violation under both paragraphs 1 and 2 of Article 7; Includes the possibility to suspend budgetary rights in addition to voting rights; Possibility for the EP to prompt the procedure; Impact potentially bigger, as enforcement mechanisms are quite far-reaching. 	+++	<ul style="list-style-type: none"> Major gains from EU action in the area of DRF monitoring and enforcement, Gains between EUR 767 and 868 billion, i.e. between 6% and 7% of the EU GDP, Estimated 65-78% improvement in GDP terms compared to the baseline scenario (Status Quo).

Annex I – List of sources

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Annex II – Statistical Annex

Table 18: Comparison of three rule of law and governance indices: Freedom House, World Bank World Governance Indicators and World Justice Project³²⁶

Characteristics	Freedom in the World (FH)	WGI (World Bank)	Rule of Law Index (WJP)
Stated goal	Global comparative evaluation of political rights and civil liberties	Aggregate and individual governance indicators	Measurement of <i>de facto</i> rule of law, based on citizens' experiences rather than legal rules
Scope and coverage	Since 1972, covers all European countries	Since 1996, covers all European countries	Since 2014. Coverage lacking for some European countries ³²⁷
Structure	Two main sub-categories (Civil Liberties and Political Rights) used to derive index score. Sub-components of these are based on the UDHR ³²⁸	Six different governance indicators ³²⁹	Eight categories with 3-8 sub-categories produce final index score ³³⁰
Data selection	Expert opinions	Several hundred indicators from 32 different sources	General Population Polls, Qualified Respondents' Questionnaires. Experts selected through random sampling of expert list, and from WJP expert network of academics and practitioners
Transparency	List of experts not public; data transparency progressing, but sub-indices on some aspects (including rule of law) still inaccessible	Elaborate calculations, but inherit the transparency of the sources (as well as their shortcomings)	High
Aggregation method	Arithmetic mean	Three-step process: (1) each question of original source is assigned to one of six indicators; (2) original source questions are rescaled between 0 and 1; (3) a weighted average is constructed using an Unobserved Components Model	Five-step process: (1) translating questionnaires into numbers; (2) country scores aggregated from individual responses; (3) normalising raw data; (4) aggregating normalised data into factors and sub-factors using simple average; (5) final ranking of the countries

³²⁶ Adapted from Jakab, and Lőrincz, 2019, pp. 16-23.

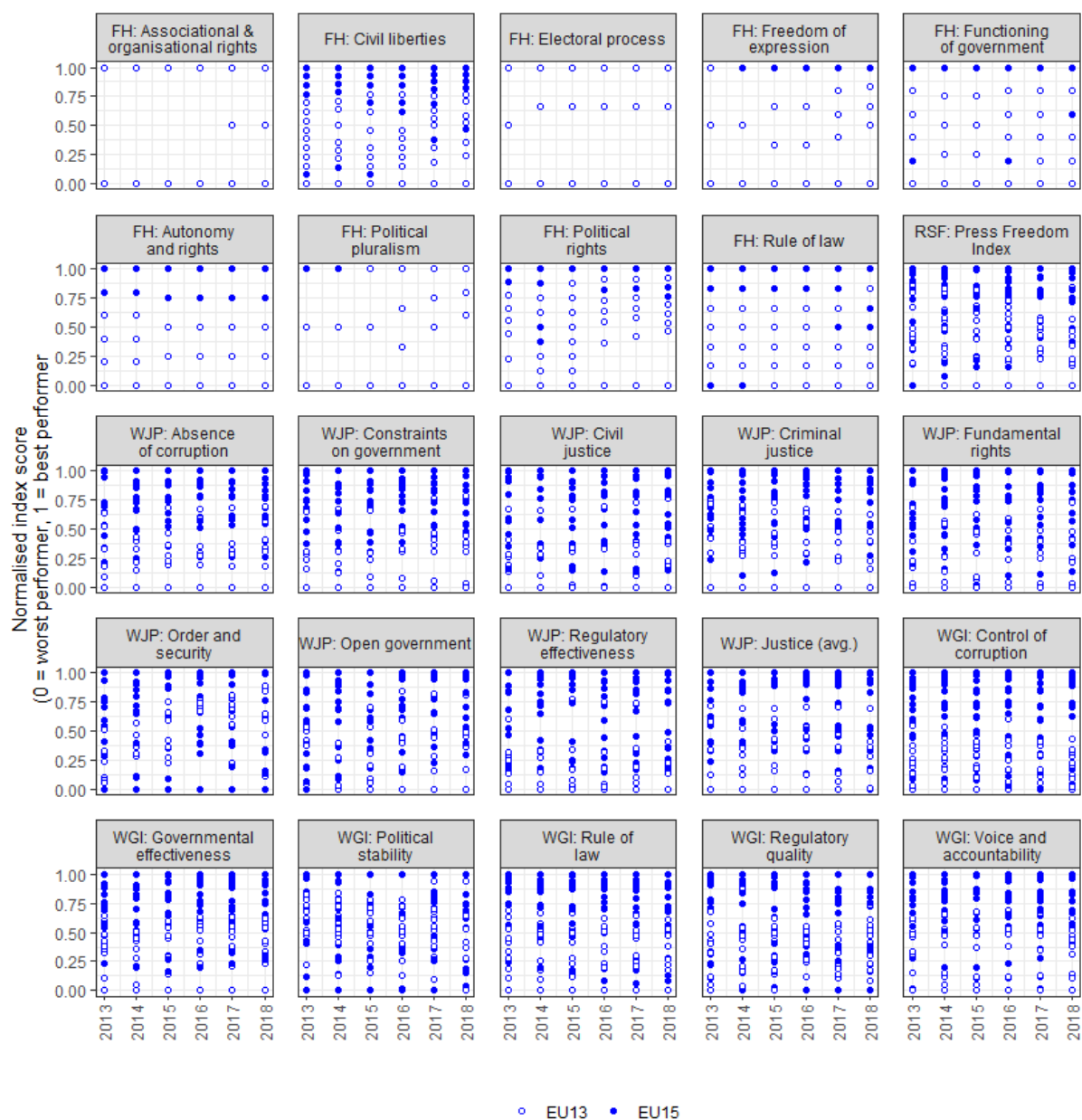
³²⁷ Data missing for Ireland, Latvia, Lithuania, Malta and Slovakia in the EU-28, Iceland and Switzerland in EFTA, and additionally for Montenegro.

³²⁸ Freedom House, 2020.

³²⁹ Kaufmann, D., Kraay, A. and Mastruzzi, M., 2010, pp. 4-5.

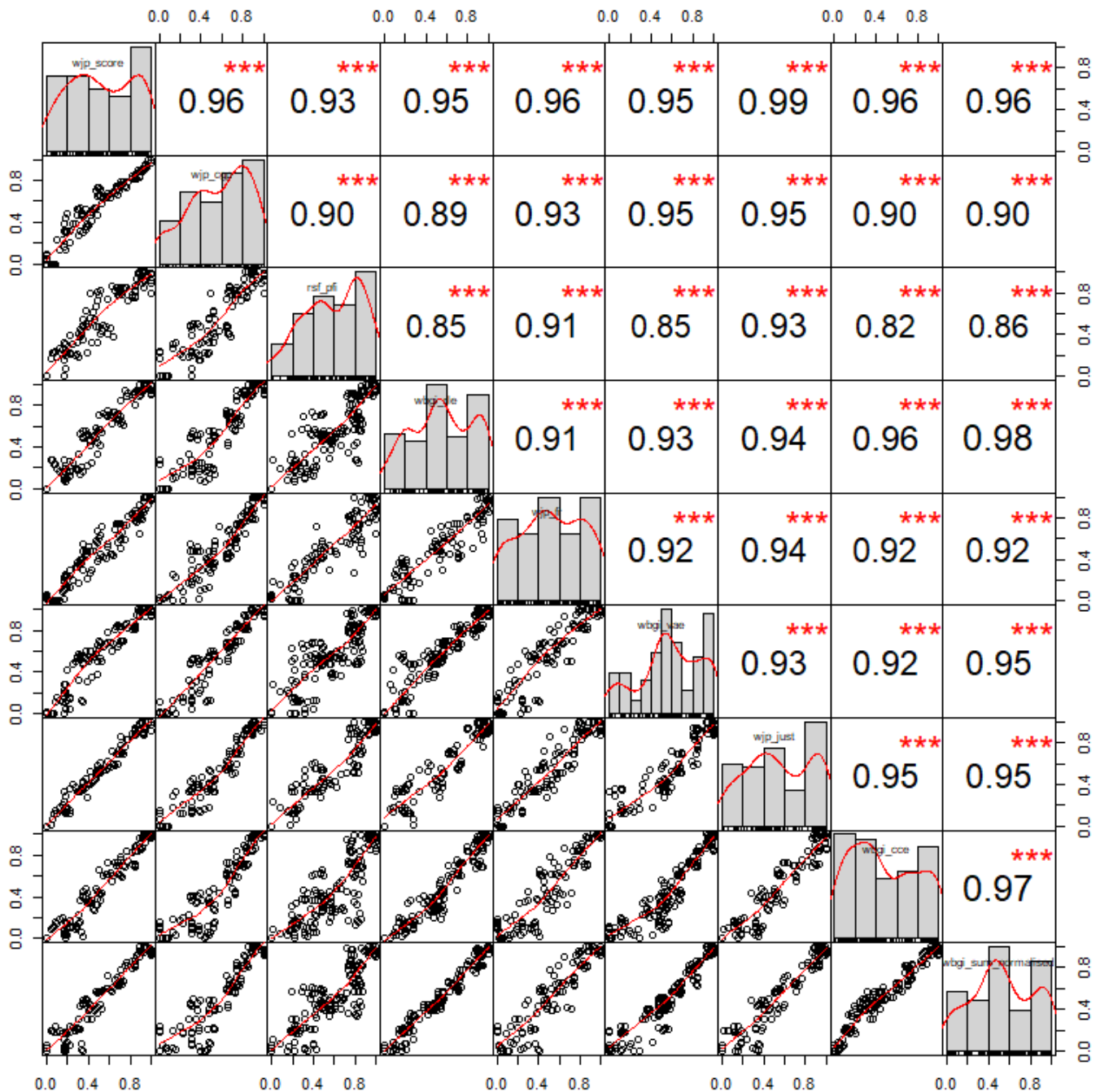
³³⁰ World Justice Project, 2020, pp. 11-13.

Figure 12. Spread of normalised values for indicators in the Freedom House (FH), World Justice Project (WJP) and World Governance Indicators (WGI) rule of law indices, 2013-2019



NB: Data have been normalised around the EU-27 mean (0) and standardised to values between 0 (worst performer) and 1 (best performer) to provide clearer comparison, given the indices' different scales. The WJP indicator for 'Justice (avg.)' is an average score of Criminal and Civil Justice. 2017 values for WJP produced by taking an average of 2016 and 2018 values, as 2017 is missing in the data set. Note that EU-13 and EU-15 values for some FH indicators overlap and therefore obscure each other, due to country scores occupying a very narrow part of the index scale.

Figure 13. Multicollinearity test of seven DRF variables, displaying linear relationship, distribution of variable, level of correlation and the significance of the relationship, EU-27, 2013-2018



NB: Data have been normalised around the EU-27 mean (0) and standardised to values between 0 (worst performer) and 1 (best performer) to provide clearer comparison, given the indices' different scales. Key: wjp_score = Overall World Justice Project Rule of Law Index score; wjp_cgp = World Justice Project, Constraints on Government Powers; rsf_pfi = Reporteurs Sans Frontières, Press Freedom Index; wbgi_rle = WGI, Rule of Law; wjp_fr = World Justice Project, Fundamental Rights; wbgi_vae = WGI, Voice and Accountability; wjp_just = World Justice Project, average value of Criminal Justice and Civil Justice; and wbgi_cce = WGI, Control of Corruption.

In the figure above, the histograms on the central diagonal show the distribution of values within each indicator. The figures in the upper right half show the level of correlation (between 0 and 1) for all combinations of indicators. This is read by identifying the relevant two indicators, and navigating first horizontally to the right from the first one, and thereafter vertically downwards to the second indicator. *** indicates a significant correlation at $p < 0.05$.

The graphs in the lower left half show the quantile-quantile plots for each pair of distributions.

Table 19: Fixed effect regression results of overall WJP score (normalised, 0 to 1) against log of GDP per capita, EU-27, 2013-2018

Logarithm of GDP per capita					
	I	II	III	IV	V
WJP Overall Index (normalised)	0.394*** (0.085)	0.405*** (0.084)	0.439*** (0.082)	0.440*** (0.083)	0.431*** (0.082)
Working age (15-64) employment	0.048*** (0.004)	0.048*** (0.004)	0.045*** (0.004)	0.045*** (0.005)	0.043*** (0.005)
Population with higher education (ISCED 5-8)	0.008*** (0.003)	0.006** (0.003)	0.004 (0.003)	0.004 (0.003)	0.002 (0.003)
Private sector R&D investment		0.080** (0.036)	0.088** (0.035)	0.088** (0.035)	0.088** (0.035)
Social spending as % of GDP			-0.022** (0.009)	-0.022** (0.009)	-0.024*** (0.009)
Economic inequality (Gini)				0.001 (0.004)	-0.0003 (0.004)
3-year lagged GDP per capita					0.00001* (0.00000)
Observations	114	114	114	114	114
R²	0.751	0.764	0.781	0.781	0.789
Adjusted R²	0.695	0.707	0.725	0.722	0.729
F Statistic	92.678*** (df = 3; 92)	73.672*** (df = 4; 91)	64.081*** (df = 5; 90)	52.833*** (df = 6; 89)	47.017*** (df = 7; 88)
Note: *p<0.1; **p<0.05; ***p<0.01. Standard errors in brackets. All DRF indicators normalised between 0 and 1.					

Table 20: Fixed effect regression results of WGI score (calculated as sum of WGI sub-indices, normalised, 0 to 1) against log of GDP per capita, EU-27, 2013-2018

Logarithm of GDP per capita					
	I	II	III	IV	V
WGI: Sum of WGI sub-index scores, (normalised)	0.143 (0.154)	0.145 (0.161)	0.122 (0.137)	0.195 (0.142)	0.170 (0.136)
Working age (15-64) employment	0.042*** (0.005)	0.042*** (0.005)	0.034*** (0.004)	0.034*** (0.004)	0.033*** (0.004)
Population with higher education (ISCED 5-8)	0.015*** (0.004)	0.015*** (0.004)	0.009*** (0.003)	0.008** (0.003)	0.006** (0.003)
Private sector R&D investment		0.002 (0.050)	0.069 (0.044)	0.074* (0.043)	0.078* (0.041)
Social spending as % of GDP			-0.049*** (0.007)	-0.049*** (0.007)	-0.042*** (0.007)
Economic inequality (Gini)				-0.007* (0.004)	-0.009** (0.004)
3-year lagged GDP per capita					0.00001*** (0.00000)
Observations	162	162	162	162	162
R²	0.651	0.651	0.751	0.757	0.780
Adjusted R²	0.574	0.571	0.692	0.697	0.724
F Statistic	81.958*** (df = 3; 132)	61.005*** (df = 4; 131)	78.547*** (df = 5; 130)	66.978*** (df = 6; 129)	65.002*** (df = 7; 128)
Note: *p<0.1; **p<0.05; ***p<0.01. Standard errors in brackets. All DRF indicators normalised between 0 and 1.					

The following table provides the detailed information used for the calculations of the costs and benefits of enhanced EU action in the area of DRF monitoring and enforcement. Per each country included in the exercise, the table provides the normalised WJP and WBI scores, the cluster group to which they belong, and the 'target' score used for the modelling of each scenario.

Table 21: Normalised and target scores for countries under WJP and WBI simulations

Countries	Normalised WJP score	Cluster group	Target score - using WJP index				Normalised WBI score	Cluster group	Target score - using WBI index			
			Status quo	Scenario 2	Scenario 3	Scenario 4			Status quo	Scenario 2	Scenario 3	Scenario 4
AT	0.817096	1	0.897357	0.897357	0.994634	0.994634	0.810875	1	0.920394	0.920394	0.98894	0.98894
BE	0.664583	2	0.897357	0.643524	0.692602	0.897357	0.678949	2	0.920394	0.632042	0.78208	0.920394
BG	0.105245	4	0.897357	0.165918	0.26258	0.401099	0.017858	4	0.920394	0.11821	0.223107	0.424253
HR	0.161729	4	0.897357	0.165918	0.26258	0.401099	0.178168	4	0.920394	0.11821	0.223107	0.424253
CY	0.165918	4	0.897357	0.165918	0.26258	0.401099	0.46947	3	0.920394	0.424253	0.48256	0.632042
CZ	0.401099	2	0.897357	0.643524	0.454638	0.643524	0.48256	3	0.920394	0.424253	0.48256	0.632042
DK	0.994634	1	0.897357	0.897357	0.994634	0.994634	0.949046	1	0.920394	0.920394	0.98894	0.98894
EE	0.692602	2	0.897357	0.643524	0.692602	0.897357	0.635003	2	0.920394	0.632042	0.78208	0.920394
FI	0.934085	1	0.897357	0.897357	0.994634	0.994634	1	1	0.920394	0.920394	0.98894	0.98894
FR	0.573387	2	0.897357	0.643524	0.692602	0.897357	0.588579	2	0.920394	0.632042	0.78208	0.920394
DE	0.805171	1	0.897357	0.897357	0.994634	0.994634	0.834845	1	0.920394	0.920394	0.98894	0.98894
EL	0.172489	4	0.897357	0.165918	0.26258	0.401099	0.050167	4	0.920394	0.11821	0.223107	0.424253
HU	0.127545	4	0.897357	0.165918	0.26258	0.401099	0.223107	4	0.920394	0.11821	0.223107	0.424253
IE	0.643524	2	0.897357	0.643524	0.692602	0.897357	0.78208	2	0.920394	0.632042	0.78208	0.920394
IT	0.291791	3	0.897357	0.401099	0.454638	0.643524	0.211422	4	0.920394	0.11821	0.223107	0.424253

Countries	Normalised WJP score	Cluster group	Target score - using WJP index				Normalised WBI score	Cluster group	Target score - using WBI index			
			Status quo	Scenario 2	Scenario 3	Scenario 4			Status quo	Scenario 2	Scenario 3	Scenario 4
LV	0.643524	2	0.897357	0.643524	0.692602	0.897357	0.387002	3	0.920394	0.424253	0.48256	0.632042
LT	0.643524	2	0.897357	0.643524	0.692602	0.897357	0.466473	3	0.920394	0.424253	0.48256	0.632042
LU	0.643524	2	0.897357	0.643524	0.692602	0.897357	0.950611	1	0.920394	0.920394	0.98894	0.98894
MT	0.401099	3	0.897357	0.401099	0.454638	0.643524	0.568099	2	0.920394	0.632042	0.78208	0.920394
NL	0.892764	1	0.897357	0.643524	0.994634	0.994634	0.936982	1	0.920394	0.920394	0.98894	0.98894
PL	0.454638	3	0.897357	0.401099	0.454638	0.643524	0.380527	3	0.920394	0.424253	0.48256	0.632042
PT	0.448576	3	0.897357	0.401099	0.454638	0.643524	0.53954	3	0.920394	0.632042	0.78208	0.920394
RO	0.26258	4	0.897357	0.165918	0.26258	0.401099	0.028539	4	0.920394	0.11821	0.223107	0.424253
SK	0.401099	3	0.897357	0.401099	0.454638	0.643524	0.341643	3	0.920394	0.424253	0.48256	0.632042
SI	0.357458	3	0.897357	0.401099	0.454638	0.643524	0.462559	3	0.920394	0.424253	0.48256	0.632042
ES	0.453032	3	0.897357	0.401099	0.454638	0.643524	0.403795	3	0.920394	0.424253	0.48256	0.632042
SE	0.940391	1	0.897357	0.897357	0.994634	0.994634	0.971456	1	0.920394	0.920394	0.98894	0.98894

The following tables (from Table 22 to Table 25) provide the detail of the elasticity coefficients calculated using the random effect model to estimate the economic impact of the 4 scenarios per each Member State, under both simulations (using the WJP and the WBI indexes). For each simulation, the table provides the coefficient from the cluster as modelled for the scenario, the coefficient from the regression (log of GDP) and the combined coefficient effectively used to estimate the impacts of DRF violations in the scenario per each Member State.

Table 22: Random effect results for economic impact coefficients for Scenario 1

	WJP Score			WBI Score		
	Clustering coefficient	Log (GDP)	Combined coefficient	Clustering coefficient	Log (GDP)	Combined coefficient
AT	0.080261	0.311	0.024961	0.109518	0.301	0.032965
BE	0.232774	0.311	0.072393	0.241444	0.301	0.072675
BG	0.792112	0.311	0.246347	0.902535	0.301	0.271663
HR	0.735628	0.311	0.22878	0.742225	0.301	0.22341
CY	0.731439	0.311	0.227478	0.450923	0.301	0.135728
CZ	0.496258	0.311	0.154336	0.437834	0.301	0.131788
DK	0	0.311	0	0	0.301	0
EE	0.204755	0.311	0.063679	0.285391	0.301	0.085903
FI	0	0.311	0	0	0.301	0
FR	0.323969	0.311	0.100754	0.331815	0.301	0.099876
DE	0.092186	0.311	0.02867	0.085549	0.301	0.02575
EL	0.724867	0.311	0.225434	0.870226	0.301	0.261938
HU	0.769812	0.311	0.239411	0.697287	0.301	0.209883
IE	0.253833	0.311	0.078942	0.138313	0.301	0.041632
IT	0.605566	0.311	0.188331	0.708972	0.301	0.2134
LV	0.253833	0.311	0.078942	0.533392	0.301	0.160551
LT	0.253833	0.311	0.078942	0.453921	0.301	0.13663
LU	0.253833	0.311	0.078942	0.030218	0.301	0.009096
MT	0.496258	0.311	0.154336	0.352295	0.301	0.106041
NL	0.004593	0.311	0.001428	0	0.301	0
PL	0.442718	0.311	0.137685	0.539866	0.301	0.1625
PT	0.448781	0.311	0.139571	0.380854	0.301	0.114637
RO	0.634776	0.311	0.197415	0.891854	0.301	0.268448
SK	0.496258	0.311	0.154336	0.578751	0.301	0.174204
SI	0.539899	0.311	0.167908	0.457835	0.301	0.137808
ES	0.444325	0.311	0.138185	0.516599	0.301	0.155496
SE	0	0.311	0	0	0.301	0

Table 23: Random effect results for economic impact coefficients for Scenario 2

	WJP Score			WBI Score		
	Clustering coefficient	Log (GDP)	Combined coefficient	Clustering coefficient	Log (GDP)	Combined coefficient
AT	0.080261	0.311	0.024961	0.109518	0.304	0.033293
BE	0	0.311	0	0	0.304	0
BG	0.060673	0.311	0.018869	0.100352	0.304	0.030507
HR	0.004189	0.311	0.001303	0	0.304	0
CY	0	0.311	0	0	0.304	0
CZ	0.242425	0.311	0.075394	0	0.304	0
DK	0	0.311	0	0	0.304	0
EE	0	0.311	0	0	0.304	0
FI	0	0.311	0	0	0.304	0
FR	0.070137	0.311	0.021813	0.043463	0.304	0.013213
DE	0.092186	0.311	0.02867	0.085549	0.304	0.026007
EL	0	0.311	0	0.068043	0.304	0.020685
HU	0.038373	0.311	0.011934	0	0.304	0
IE	0	0.311	0	0	0.304	0
IT	0.109308	0.311	0.033995	0	0.304	0
LV	0	0.311	0	0.037251	0.304	0.011324
LT	0	0.311	0	0	0.304	0
LU	0	0.311	0	0	0.304	0
MT	0	0.311	0	0.063943	0.304	0.019439
NL	0	0.311	0	0	0.304	0
PL	0	0.311	0	0.043726	0.304	0.013293
PT	0	0.311	0	0.092502	0.304	0.028121
RO	0	0.311	0	0.089671	0.304	0.02726
SK	0	0.311	0	0.082611	0.304	0.025114
SI	0.043641	0.311	0.013572	0	0.304	0
ES	0	0.311	0	0.020459	0.304	0.00622
SE	0	0.311	0	0	0.304	0

Table 24: Random effect results for economic impact coefficients for Scenario 3

	WJP Score			WBI Score		
	Clustering coefficient	Log (GDP)	Combined coefficient	Clustering coefficient	Log (GDP)	Combined coefficient
AT	0.177538	0.311	0.055214	0.178065	0.304	0.054132
BE	0.028019	0.311	0.008714	0.103131	0.304	0.031352
BG	0.157335	0.311	0.048931	0.205248	0.304	0.062395
HR	0.100851	0.311	0.031365	0.044939	0.304	0.013661
CY	0.096663	0.311	0.030062	0.01309	0.304	0.003979
CZ	0.05354	0.311	0.016651	0	0.304	0
DK	0	0.311	0	0.039894	0.304	0.012128
EE	0	0.311	0	0.147077	0.304	0.044711
FI	0.060549	0.311	0.018831	0	0.304	0
FR	0.119214	0.311	0.037076	0.193501	0.304	0.058824
DE	0.189463	0.311	0.058923	0.154095	0.304	0.046845
EL	0.090091	0.311	0.028018	0.172939	0.304	0.052574
HU	0.135035	0.311	0.041996	0	0.304	0
IE	0.049078	0.311	0.015263	0	0.304	0
IT	0.162848	0.311	0.050646	0.011685	0.304	0.003552
LV	0.049078	0.311	0.015263	0.095558	0.304	0.02905
LT	0.049078	0.311	0.015263	0.016087	0.304	0.004891
LU	0.049078	0.311	0.015263	0.038329	0.304	0.011652
MT	0.05354	0.311	0.016651	0.213981	0.304	0.06505
NL	0.10187	0.311	0.031682	0.051958	0.304	0.015795
PL	0	0.311	0	0.102033	0.304	0.031018
PT	0.006063	0.311	0.001886	0.242541	0.304	0.073732
RO	0	0.311	0	0.194568	0.304	0.059149
SK	0.05354	0.311	0.016651	0.140917	0.304	0.042839
SI	0.09718	0.311	0.030223	0.020001	0.304	0.00608
ES	0.001607	0.311	0.0005	0.078765	0.304	0.023945
SE	0.054243	0.311	0.01687	0.017484	0.304	0.005315

Table 25: Random effect results for economic impact coefficients for Scenario 4

	WJP Score			WBI Score		
	Clustering coefficient	Log (GDP)	Combined coefficient	Clustering coefficient	Log (GDP)	Combined coefficient
AT	0.177538	0.311	0.055214	0.178065	0.304	0.054132
BE	0.232774	0.311	0.072393	0.241444	0.304	0.073399
BG	0.295854	0.311	0.092011	0.406395	0.304	0.123544
HR	0.23937	0.311	0.074444	0.246085	0.304	0.07481
CY	0.235181	0.311	0.073141	0.162572	0.304	0.049422
CZ	0.242425	0.311	0.075394	0.149482	0.304	0.045442
DK	0	0.311	0	0.039894	0.304	0.012128
EE	0.204755	0.311	0.063679	0.285391	0.304	0.086759
FI	0.060549	0.311	0.018831	0.01106	0.304	0.003362
FR	0.323969	0.311	0.100754	0.331815	0.304	0.100872
DE	0.189463	0.311	0.058923	0.154095	0.304	0.046845
EL	0.22861	0.311	0.071098	0.374086	0.304	0.113722
HU	0.273554	0.311	0.085075	0.201147	0.304	0.061149
IE	0.253833	0.311	0.078942	0.138313	0.304	0.042047
IT	0.351733	0.311	0.109389	0.212832	0.304	0.064701
LV	0.253833	0.311	0.078942	0.24504	0.304	0.074492
LT	0.253833	0.311	0.078942	0.165569	0.304	0.050333
LU	0.253833	0.311	0.078942	0.038329	0.304	0.011652
MT	0.242425	0.311	0.075394	0.352295	0.304	0.107098
NL	0.10187	0.311	0.031682	0.051958	0.304	0.015795
PL	0.188886	0.311	0.058743	0.251514	0.304	0.07646
PT	0.194948	0.311	0.060629	0.380854	0.304	0.11578
RO	0.138519	0.311	0.043079	0.395714	0.304	0.120297
SK	0.242425	0.311	0.075394	0.290399	0.304	0.088281
SI	0.286066	0.311	0.088967	0.169483	0.304	0.051523
ES	0.190492	0.311	0.059243	0.228247	0.304	0.069387
SE	0.054243	0.311	0.01687	0.017484	0.304	0.005315

The following tables (from Table 26 to Table 29) provide the detail of the elasticity coefficients calculated using the fixed effect model to estimate the economic impact of the 4 scenarios per each Member State, using the WJP indexes. For each simulation, the table provides the coefficient from the cluster as modelled for the scenario, the coefficient from the regression (log of GDP) and the combined coefficient effectively used to estimate the impacts of DRF violations in the scenario per each Member State. It also provides the results of the estimations of the economic impacts of enhanced EU action in the area of DRF monitoring and enforcement for this model.

Table 26: Fixed effect results for economic impact coefficients for Scenario 1 (WJP index)

	Clustering coefficient	Log(GDP)	Combined coefficient	Effect on overall GDP (EUR mill)	% GDP
AT	0.080261	0.431	0.034592	12,140	3.4%
BE	0.232774	0.431	0.100325	42,625	10.0%
BG	0.792112	0.431	0.3414	16,432	34.3%
HR	0.735628	0.431	0.317056	14,757	31.7%
CY	0.731439	0.431	0.31525	5,944	31.5%
CZ	0.496258	0.431	0.213887	37,693	21.4%
DK	0	0.431	0	0	0.0%
EE	0.204755	0.431	0.088249	1,935	8.8%
FI	0	0.431	0	0	0.0%
FR	0.323969	0.431	0.139631	309,431	13.9%
DE	0.092186	0.431	0.039732	122,085	4.0%
EL	0.724867	0.431	0.312418	56,265	31.3%
HU	0.769812	0.431	0.331789	38,476	33.2%
IE	0.253833	0.431	0.109402	27,701	10.9%
IT	0.605566	0.431	0.260999	438,188	26.0%
LV	0.253833	0.431	0.109402	2,787	11.0%
LT	0.253833	0.431	0.109402	4,321	11.0%
LU	0.253833	0.431	0.109402	5,752	10.8%
MT	0.496258	0.431	0.213887	2,094	21.0%
NL	0.004593	0.431	0.001979	1,396	0.2%
PL	0.442718	0.431	0.190812	82,540	18.9%
PT	0.448781	0.431	0.193425	35,844	19.4%
RO	0.634776	0.431	0.273589	46,468	27.5%
SK	0.496258	0.431	0.213887	17,300	21.4%
SI	0.539899	0.431	0.232696	9,380	23.3%
ES	0.444325	0.431	0.191504	211,019	19.2%
SE	0	0.431	0	0	0.0%
EU TOT				1,542,570	12.4%

Table 27: Fixed effect results for economic impact coefficients for Scenario 2 (WJP index)

	Clustering coefficient	Log(GDP)	Combined coefficient	Effect on overall GDP (EUR mill)	% GDP
AT	0.080261	0.431	0.034592	12,140	3.4%
BE	0	0.431	0	0	0.0%
BG	0.060673	0.431	0.02615	1,259	2.6%
HR	0.004189	0.431	0.001805	84	0.2%
CY	0	0.431	0	0	0.0%
CZ	0	0.431	0	0	0.0%
DK	0	0.431	0	0	0.0%
EE	0	0.431	0	0	0.0%
FI	0	0.431	0	0	0.0%
FR	0.070137	0.431	0.030229	66,989	3.0%
DE	0.092186	0.431	0.039732	122,085	4.0%
EL	0	0.431	0	0	0.0%
HU	0.038373	0.431	0.016539	1,918	1.7%
IE	0	0.431	0	0	0.0%
IT	0.109308	0.431	0.047112	79,095	4.7%
LV	0	0.431	0	0	0.0%
LT	0	0.431	0	0	0.0%
LU	0	0.431	0	0	0.0%
MT	0	0.431	0	0	0.0%
NL	0	0.431	0	0	0.0%
PL	0	0.431	0	0	0.0%
PT	0	0.431	0	0	0.0%
RO	0	0.431	0	0	0.0%
SK	0	0.431	0	0	0.0%
SI	0.043641	0.431	0.018809	758	1.9%
ES	0	0.431	0	0	0.0%
SE	0	0.431	0	0	0.0%
EU TOT				284,328	1.8%

Table 28: Fixed effect results for economic impact coefficients for Scenario 3 (WJP index)

	Clustering coefficient	Log(GDP)	Combined coefficient	Effect on overall GDP (EUR mill)	% GDP
AT	0.177538	0.431	0.076519	26,854	7.6%
BE	0.028019	0.431	0.012076	5,131	1.2%
BG	0.157335	0.431	0.067811	3,264	6.8%
HR	0.100851	0.431	0.043467	2,023	4.4%
CY	0.096663	0.431	0.041662	786	4.2%
CZ	0.05354	0.431	0.023076	4,067	2.3%
DK	0	0.431	0	0	0.0%
EE	0	0.431	0	0	0.0%
FI	0.060549	0.431	0.026097	5,647	2.6%
FR	0.119214	0.431	0.051381	113,865	5.1%
DE	0.189463	0.431	0.081658	250,913	8.1%
EL	0.090091	0.431	0.038829	6,993	3.9%
HU	0.135035	0.431	0.0582	6,749	5.8%
IE	0.049078	0.431	0.021153	5,356	2.1%
IT	0.162848	0.431	0.070187	117,837	7.0%
LV	0.049078	0.431	0.021153	539	2.1%
LT	0.049078	0.431	0.021153	835	2.1%
LU	0.049078	0.431	0.021153	1,112	2.1%
MT	0.05354	0.431	0.023076	226	2.3%
NL	0.10187	0.431	0.043906	30,956	4.4%
PL	0	0.431	0	0	0.0%
PT	0.006063	0.431	0.002613	484	0.3%
RO	0	0.431	0	0	0.0%
SK	0.05354	0.431	0.023076	1,866	2.3%
SI	0.09718	0.431	0.041885	1,688	4.2%
ES	0.001607	0.431	0.000692	763	0.1%
SE	0.054243	0.431	0.023379	10,649	2.3%
EU TOT				598,602	4.8%

Table 29: Fixed effect results for economic impact coefficients for Scenario 4 (WJP index)

	Clustering coefficient	Log(GDP)	Combined coefficient	Effect on overall GDP (EUR mill)	% GDP
AT	0.177538	0.431	0.076519	26,854	7.6%
BE	0.232774	0.431	0.100325	42,625	10.0%
BG	0.295854	0.431	0.127513	6,137	12.8%
HR	0.23937	0.431	0.103169	4,802	10.3%
CY	0.235181	0.431	0.101363	1,911	10.1%
CZ	0.242425	0.431	0.104485	18,413	10.4%
DK	0	0.431	0	0	0.0%
EE	0.204755	0.431	0.088249	1,935	8.8%
FI	0.060549	0.431	0.026097	5,647	2.6%
FR	0.323969	0.431	0.139631	309,431	13.9%
DE	0.189463	0.431	0.081658	250,913	8.1%
EL	0.22861	0.431	0.098531	17,745	9.9%
HU	0.273554	0.431	0.117902	13,672	11.8%
IE	0.253833	0.431	0.109402	27,701	10.9%
IT	0.351733	0.431	0.151597	254,514	15.1%
LV	0.253833	0.431	0.109402	2,787	11.0%
LT	0.253833	0.431	0.109402	4,321	11.0%
LU	0.253833	0.431	0.109402	5,752	10.8%
MT	0.242425	0.431	0.104485	1,023	10.3%
NL	0.10187	0.431	0.043906	30,956	4.4%
PL	0.188886	0.431	0.08141	35,216	8.0%
PT	0.194948	0.431	0.084023	15,570	8.4%
RO	0.138519	0.431	0.059702	10,140	6.0%
SK	0.242425	0.431	0.104485	8,451	10.4%
SI	0.286066	0.431	0.123294	4,970	12.3%
ES	0.190492	0.431	0.082102	90,469	8.2%
SE	0.054243	0.431	0.023379	10,649	2.3%
EU TOT				1,202,604	9.7%

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