



Fundamental Rights and Rule of Law

Why are we discussing this?

The EU says: ["Rule of law allows us to guarantee fundamental rights and values and support an investment-friendly business environment. It is one of the core values on which the European Union is based. The EU ensures laws are respected and supports the equality of all citizens. This means we are actively protecting human rights, the rights of victims and children, and combatting racism and religious discrimination. It means promoting justice and gender equality, the rights of the LGBTIQ+ communities and those with disabilities. At the same time, we must help protect Europeans from acts of terrorism and crime."](#)

But what do you think?

What are they key issues?

Human Rights: The term 'fundamental rights' is used in a constitutional context in the European Union to express the concept of 'human rights' which is the term used in international law.

Respect for human rights and dignity is one of the EU's core values. Together with the principles of freedom, democracy, equality and the rule of law, it guides EU action both within and beyond its borders.

The Charter of Fundamental Rights brings together in a single document the fundamental rights protected in the EU. It applies to the EU institutions, subject to the principle of subsidiarity, and cannot extend the powers and tasks conferred upon them by the treaties. It also applies to EU countries when they implement EU law. Based on the Council of Europe Convention on Human Rights, and originally proclaimed in 2000, the Charter became legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

Rule of Law: According to Article 2 of the Treaty on European Union, the rule of law is one of the EU's fundamental values. It is the idea that both the EU itself and all EU countries are governed by a body of law (legal codes and processes) adopted by established procedures rather than discretionary or case-by-case decisions.

Along with having a functional democracy and respect for human rights, including the rights of persons belonging to minorities, the rule of law is one of the political criteria that countries wishing to join the EU have to meet.

Having concluded that a tool was required at EU level to deal with systemic threats to the rule of law in EU countries, the European Commission adopted a 'rule of law framework' in 2014. Where EU law has been breached, the procedure under Article 7 of the Treaty on European Union would come into play. At its most severe, an EU country's voting rights could be suspended in the event that its breach of EU values is 'serious and persistent'.

Democratic 'backsliding' generally involves the deterioration of three facets of democracy; free and fair elections, civil and political rights, and finally an independent judiciary.

Gender Equality refers to the equal rights of men and women. While the EU has helped promote gender equality, inequality between men and women persists. An imperative issue for gender equality in the EU, one which was exacerbated by COVID-19, is gender-based violence. Gender-based violence – from **domestic violence**, to **female genital mutilation**, to **cyber violence** is a catalyst of gender inequality and a consequence of gender inequality. A further gender equality obstacle relates to gaps in opportunity; the **gender pay gap** demonstrates inequality in pay, the **gender employment gap** demonstrates inequality in employment.

LGBTIQ equality refers to the equal rights and treatment of Lesbian, Gay, Bisexual, Trans, Intersex, Non-binary and Queer (LGBTIQ) people. A **report** by the **European Union Agency for Fundamental Rights (FRA)** found that fewer LGBTIQ people were victims of discrimination in 2012 than in 2019. For LGBTIQ people, discrimination in public and

private spaces, at work and home, persists. Therefore, the European Commission adopted in November 2020 the **LGBTIQ Equality Strategy 2020-2025**. It sets out a series of measures to step up action, to integrate LGBTIQ equality in all policy areas and to help lift the voices of LGBTIQ minorities. It aims at bringing together Member States and actors at all levels in a common endeavour to address LGBTIQ discrimination more effectively by 2025.

Discrimination and racism: While the EU has implemented initiatives intended to address discrimination - including the **Victims' Rights Directive**, the **Race Equality Directive** and the **Employment Equality Directive** - racism remains an issue. Victims of racism in the EU are often vulnerable people; **poverty** and employment are frequent issues for Europe's **minority populations**. COVID-19 has **exacerbated** existing inequalities related to race and ethnicity and has fuelled xenophobia and intolerance.

Social Rights: In the EU, gender equality, LGBTIQ equality and racial equality are integrated in the broader issue of social rights. Social rights include **social protection**, **secure employment**, **support for children**, and **support for education**. Future EU action will have to ensure that all EU citizens are included in the recovery from COVID-19 and that all EU citizens are included in the evolving environmental and technological transitions.

Digital Rights: **Protecting personal data** is a fundamental right enshrined in the **EU Charter for Fundamental Rights** and the **Treaty on the Functioning of the European Union**. Article 8 of the Charter provides the right for everyone to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. **The General Data Protection Regulation (GDPR)** has strengthened individuals' fundamental rights in the digital age and facilitated business by clarifying rules for companies and public bodies in the digital single market.

What has the EU been doing?

The **Treaty on European Union (TEU)** outlines the legal framework for **fundamental values** in the EU. **Article 2** of the TEU provides that the EU is founded on values including freedom, democracy, equality, human rights and the rule-of-law, these are the fundamental values of the EU. **Articles 3,6** and **21** of the TEU further cement the legal foundation of the fundamental values, while **Article 7** of the TEU provides the EU with a platform to seek compliance by Member States with the fundamental values.

Established primarily as an economic platform, the **European Economic Community (EEC)** was devoid of explicit rules related to fundamental rights including freedom, democracy, equality etc. Generally, it was held that these fundamental values were guaranteed by the **European Convention on Human Rights (ECHR)**, which was adopted by all EEC members. Evolving **European Community (EC) law**, however, prompted questions over the constitutional protection of fundamental rights. The **Court of Justice of the European Union (CJEU)** affirmed through the application of **case law** that fundamental rights were enshrined in European Community law.

Over time the Treaties were changed to accommodate the protection of EU fundamental rights. In 1993, the **Treaty of Maastricht** recognised the centrality of the ECHR to EU fundamental rights principles. In 1999, the **Treaty of Amsterdam** cemented the EU's commitment to fundamental rights, affirming that the identity of the EU was interwoven with the fundamental values.

The drafting of the Charter of Fundamental Rights and its entry into force together with the **Treaty of Lisbon** are the latest developments in this process of codification intended to ensure the protection of fundamental rights in the EU. The **Charter of Fundamental Rights of the European Union (CFR)** is a legal document intended to consolidate the fundamental rights and freedoms of **EU citizens**. Fundamental rights were further integrated in the EU framework in 2007, with the introduction of the **European Union Agency for Fundamental Rights (FRA)**. Intended to provide independent, evidence-based advice to the EU on fundamental rights issues, the **FRA** focuses on monitoring matters of discrimination and justice. It is also worth reflecting on individual instances in which fundamental rights were influenced by EU legislation. For example, on **gender equality**, EU legislation was fundamental in removing Ireland's **Marriage Bar** in 1977.

The **Amsterdam Treaty**, which entered into force in 1999, created a sanction mechanism (now Article 7 TEU) to ensure that fundamental rights along with other core EU values such as democracy, the rule of law, equality and the protection of minorities are respected and applied in Member States. This gave the EU the power to intervene in instances where there are “serious and persistent” breaches of these values. The **Nice Treaty** added a preventative mechanism.

However, these mechanisms, particularly the sanctions mechanism have proved difficult as the application of sanctions requires the unanimous agreement of the European Council, which can decide to suspend certain membership rights of the Member State in question. Hungary and Poland have said they would block any attempt to sanction the other Member State.

Concerns about the protection of fundamental rights, the state of democracy, the independence of judiciary and media systems and discrimination against minorities or groups in some Member States have led to renewed efforts to strengthen rule of law mechanisms. The 2014 **EU Framework to strengthen the Rule of Law** “was aimed at trying to ensure effective and coherent protection of the rule of law, as a prerequisite for ensuring respect of fundamental rights and democracy in situations of systemic threat to them”. This was followed in 2019 by **Strengthening the rule of law within the Union: A blueprint for action** which provided for annual monitoring in Member States and resulted in the first **Annual Report on the Rule of Law** across the EU in September 2020. Some of the concerns highlighted include:

- judicial independence remains an issue of concern in some Member States
- the effectiveness of criminal investigations, prosecution and adjudication of corruption cases, including high-level corruption, is still a challenge in several Member States
- Some country assessments have further identified cases where serious concerns have been raised regarding political pressure on media. Lastly, journalists and other media actors face threats and attacks in relation to their work in a number of Member States, although some countries have also developed practices and set up structures and measures to support and protect journalists.
- Examples of civil society facing serious challenges in some Member States as a result of legislation limiting access to foreign funding or smear campaigns.

The EU is also committed to defending and strengthening human rights and democracy **outside its own borders** through its relations with other countries and international organisations.

Looking to the future

At the heart of EU human rights policy is the **Charter of Fundamental Rights (CFR)**. In 2020, the Commission introduced a **Strategy to Strengthen the Application of the Charter of Fundamental Rights**. It is designed to ensure effective application of the Charter by EU Member States, to ensure compliance with the Charter by EU institutions, to promote public awareness of the Charter and to empower **civil society**. Proposed initiatives include an annual report on the application of the Charter and the monitoring of EU funds to ensure full compliance with the Charter.

A critical element of EU fundamental rights policy is the promotion of democracy. Introduced in 2020, the **European Democracy Action Plan** is designed to empower EU citizens and to reinforce European democratic architecture. Founded on three pillars, the **Plan** intends to promote **free and fair elections**, to maintain **media freedom and pluralism** and to **counter disinformation**. Initiatives in the **Plan** include revised rules on the **financing of European political parties** and a reinforced **Code of Practice on Disinformation**. The initiatives are complementary to the initiatives included in the **Digital Services Act (DSA)** and are designed to ensure that Europe’s digital transition reinforces European democracy.

In 2020, the EU agreed to **withhold budget payments** from countries in which established breaches of the rule of law compromise the management of the EU funds. This enables the EU to act in instances in which rule-of-law violations present a risk to the EU budget. However, it will not be implemented until the Court of Justice rules on its legality.

Introduced in 2020, the **Gender Equality Strategy** presents policy objectives designed to promote a gender-equal Europe. The primary objectives of the **Strategy** include ending **gender-based violence**, closing **gender employment**

gaps, closing **gender pay and pension gaps**, and promoting **gender balance in politics**. Initiatives incorporated in the **Strategy** include a **Victims Rights Strategy** intended to empower victims of gender-based violence and a **Task Force on Equality** intended to integrate equality in all EU policy areas. One of the first deliverables of the overall gender equality framework is in **pay transparency**. In 2021 the Commission introduced a **directive** designed to introduce binding pay transparency measures.

Launched in 2020, the **LGBTIQ Strategy** is designed to promote inclusivity and acceptance in the EU and to **enable** people to be open regarding sexual orientation, gender identity, gender expression and sex characteristics. It is focused on ensuring the safety of LGBTIQ people and on ensuring that European society is LGBTIQ inclusive. The framework includes an initiative intended to improve freedom of movement for **'rainbow families'** and an initiative designed to improve the recognition of **Trans and Intersex** people.

A further development in EU fundamental rights relates to racism and discrimination. In 2020 the Commission introduced the **Anti-Racism Action Plan**. The primary aims of the programme include the enforcement of **existing EU law**, the improvement of **protection in terms of discrimination** and reinforcing **anti-discrimination funding**.

Questions for Consideration

1. What are your thoughts on the state of fundamental rights and the rule of law in the EU?
2. How can the EU strengthen its mechanisms to protect the rule of law?
3. Should EU funding be linked to rule of law principles?
4. What more can be done to protect rights, values and the rule of law within the European Union?
5. Are there other areas not discussed in this paper which should be prioritised?

More Information

Listen:

1. "FLD Global Analysis 2020 - How did Covid-19 affect the work of HRDs?". Podcast from Front Line Defenders, an international human rights organization who are based in Ireland. Their podcast episode from January 2021 is available [here](#).
2. "Discrimination in Europe". The EU Agency for Fundamental Rights has its own podcast series available [here](#) and click [here](#) for its first podcast episode "Discrimination in Europe" from January 2021.
3. "Fundamental Rights in EU policy-making". The Berlin-based Hertie School's Centre for Fundamental Rights host this podcast [episode](#) with Professor Mark Dawson of European Law and Governance at the Hertie School, from May 2020.

Read:

1. "Human Rights Explained: Guide to Human Rights Law." From the Irish Human Rights and Equality Commissioner, written in 2015, available [here](#).
2. "Charter of Fundamental Rights." Citizens Information has a guide to the Charter, with additional information around EU government and law, available [here](#).
3. "Six Ways to Repair Declining Social Trust." From the Stanford Social and Innovation Review, written by Kristin M. Lord from 2019, available [here](#).

Watch:

1. "Democratic backsliding in the international environment". Webinar discussion from Science Magazine, from 2020, with Professor Susan D. Hyde of Political Science at the University of California, Berkeley, and is available [here](#).
2. "The Rule of Law: what is it and why is it important?". A short report from euronews from 2020, available [here](#).

3. "The EU's Rule of Law Approach Explained". This is a short report from EurActive from 2020 and is available [here](#).