



Strengthening the Rule of Law in the Union

Stakeholder contributions

IN SUMMARY

July 2019

Following the reflection launched by the *Communication on Further strengthening the Rule of Law within the Union* in April 2019, the Commission received more than 60 contributions from a broad diversity of contributors, including Member States, EU institutions, international organisations and political actors, the judiciary and judicial networks, civil society organisations, academia and associations. The vast majority of contributions acknowledged the importance of strengthening the rule of law for the future of democracy in Europe and the need to reinforce action at all stages – promotion, prevention and response. Only a small number of contributions were critical of a role for the EU in strengthening the rule of law in the Union, seeing it as encroaching on national sovereignty.

As regards promotion, a large majority of contributions underline that more awareness needs to be raised among the general public on the existing rule of law standards. To this end, the different contributors suggest a variety of possibilities, including reinforced cooperation with international institutions such as the Council of Europe and the development of an inter-parliamentary cooperation and dialogue on the rule of law. Many contributions highlight the important role the civil society, academia and judicial networks play in this context and point out the need for adequate EU-level funding and support for them. Contributions also highlight the important role of media and the importance of media pluralism and independence. The need to embed EU fundamental values through education is also stressed in several replies.

As regards prevention, a large number of contributors agree on the need to develop a regular stand-alone EU review mechanism on the rule of law that applies to all Member States. While ideas on the concrete set-up of such a mechanism can vary, many contributors suggest a role for the Commission and the Member States and propose linking it to existing tools such as the EU Justice Scoreboard and the European Semester, or suggest building on the Council rule of law dialogue or the proposal for a Peer Review Mechanism, while most of them favour setting up the review mechanism within the framework of the Treaties. Contributions also repeat the approach taken in the Communication on the importance of an inclusive and positive process, based on objective assessments and avoiding duplication. Various contributors also make suggestions as to how stakeholders from civil society, academia and the judiciary can best be involved in such a monitoring process.

As regards response, most contributors favour the use of existing tools, but see room for improvement in their application. Many support a more frequent use of rule of law related infringement proceedings and the dissemination of the case law of the Court of Justice in this context. There is also broad support for the proposal for a regulation on protecting the Union's budget in case of generalized deficiencies as regards the rule of law, with hopes for a swift adoption of the proposal. Finally, many contributors see a need for improving and clarifying the Article 7 TEU procedure, including regarding the role of the different institutions in the process.

Concrete suggestions for each of the three pillars are as follows:

1. Avenues identified to better promote a common rule of law culture:

- “rule of law literacy”: better education on rule of law and democratic values to be promoted from a very early stage on, in particular in countries with recent non-democratic past; knowledge on democracy and human rights to be included in all curricula all over EU;
- better training of civil servants, judges and prosecutors on EU values and case-law of the European Court of Justice and the European Court of Human Rights; exchanges of judges, academics, civil society actors and journalists;
- better specific communication and pedagogy on these issues to the general public and dissemination of knowledge of standards and relevant case law; television, radio, social media and outdoor promotion campaigns; all rule of law mechanisms should be publicised and discussed;
- publication of principles and requirements of rule of law in a manual;
- further developing the cooperation with Council of Europe dedicated bodies; appropriate to establish a permanent exchange;
- underlining the vital role of civil society, national parliaments and the Conference of Parliamentary Committees for Union Affairs (COSAC), local authorities, in the promotion of rule of law and values; building capacity of those who promote rule of law standards at all levels, involving civil society organisations in trainings to judicial and public administration, annual events and providing them with adequate funding, notably using the expertise of existing networks of judges and law experts;
- better involving national parliaments in the promotion of the rule of law, including by organising an inter-parliamentary dialogue on the subject of the rule of law; promoting a broader utilisation and transfer knowledge of tools like the EU Justice Scoreboard;
- relaunching the accession negotiations to the European Convention on Human Rights;
- designing the future information system of the Fundamental Rights Agency (EFRIS) so that it provides knowledge on all the legal requirements, standards and rule of law case law developing a dedicated rule of law chapter on the Commission's website;
- implementing the Charter of Fundamental Rights of the EU in all areas of action of European institutions;
- creating a new EU fund geared to promotion of European values;
- developing guidelines on application of EU law in domains with new challenges, giving an overview of the most important requirements and norms developed in the case law of the European Court of Justice;

- increasing research and data collection on the rule of law, including by undertaking a series of studies to analyse the cost of gaps in the rule of law, ineffective justice systems and unmet legal needs for people and companies and developing a comprehensive research and evaluation agenda to identify practices which work to close existing justice and rule of law gaps;
- strengthening awareness, including in the business community, about the importance of the rule of law for an investment-friendly environment and the Single Market;
- supporting a comparative measurement agenda on the state of legal literacy and empowerment across EU Member States; documenting evidence-based good practices, and promoting regional and national policy dialogue; undertaking a comparative analysis of capability of public agencies;
- making significant investments in rule of law as part of EU critical infrastructure; increasing funding within and beyond EU institutions; the Commission itself should have expanded capacity to address and investigate the phenomena given the deepening of the threats to the rule of law;
- nomination of a single special Commissioner for rule of law; organising special rule of law visits to each Member State by the responsible Commissioner, with reports to the General Affairs Council and the Justice and Home Affairs Council;
- establishing an EU yearly rule of law event.

2. Suggestions of ways of improving prevention:

From first steps...

- strengthening the dialogue between the Commission and Member States on rule of law related topics to recognise early warning signs;
- using the Council of Europe standards, recommendations, reports and procedures (Venice Commission rule of law checklist notably), including case law of European Court of Human Rights, standards of the Venice Commission and intensifying the use of expertise and tools from the Council of Europe;
- reinforcing the relevance and efficiency of the EU Justice Scoreboard by developing and stabilising its indicators linked to the rule of law;
- undertaking a comparative study of EU Member States which could help orient future reforms; promoting justice sector innovation; promoting multi-stakeholder and cross-sectoral policy dialogue;
- strengthening the involvement of the judiciary, academia and civil society in gathering information on the situation on ground;
- using Copenhagen criteria also after accession and extend them to all Member States and identify indicators on basis of these criteria;
- involving the Fundamental Rights Agency (FRA) in rule of law monitoring as a source of country-specific information; a few contributions suggest giving a stronger role to the FRA with a possibility to draft country reports, ensure permanent follow-up;
- appointment of an EU coordinator on the rule of law or creation of a rule of law one-stop-shop to be used by natural and legal persons to report evidence of rule of law backsliding;

- strengthening the European Anti-Fraud Office and share its findings publicly in situations of deliberate inaction;
- responsibility of the Authority of European Political Parties and European Political Foundations to ensure the EU political parties' commitment to Article 2 TEU values; introduction of a rule whereby if only one of the constituent national parties of European political parties is engaged in a systematic undermining of Article 2 TEU, then funding for the whole European party may be suspended;
- introducing rule of law stress tests, and rule of law impact assessments at decision-making level;
- use information provided by the European Network of Ombudsmen.

...to the creation of a comprehensive monitoring mechanism:

- unifying some of existing instruments and eliminating mechanisms specific to some Member States, and addressing potential overlaps between instruments;
- creating an institutionalised review mechanism on the rule of law carried out by the Commission, which covers all Member States and builds on existing tools such as the EU Justice Scoreboard and the European Semester;
- upgrading the existing annual rule of law dialog in the general Affairs Council from a thematic discussion to a discussion on the actual rule of law situation in the Member States;
- establishing a periodic review of the respect of the rule of law in the EU, which could be a peer review of all Member States, based on experts views and with regular discussions in the General Affairs Council;
- any rule of law review should include checking on the fight against corruption;
- expanding the scope of such a mechanism to democracy and fundamental rights (e. g. freedom of speech, impartial and independent courts, free universities);
- pairing the monitoring of the quality of institutions with the macroeconomic imbalance procedure, with clear annual targets for improving the quality of institutional governance;
- putting in place the mechanism as proposed by the European Parliament in its own initiative report on the Mechanism on Democracy, Rule of Law and Fundamental Rights (DRF Pact) from 2016, covering all values and fundamental rights, with an assessment being made by a panel of independent experts in an annual policy cycle covering all Member States, an annual report and conclusions debated in Council and an inter-parliamentary conference; opening negotiations with the European Parliament and the Council on the conclusion of an interinstitutional agreement on the DRF Pact;
- establishing an independent, specialised agency or committee with the mission to research and review compliance with rule of law standards across the EU;
- creating a network of independent experts to be attached to the Fundamental Rights Agency or the Commission to prepare annual reports and deliver opinions.

3. As regards the questions guiding further reflection on the response, the replies confirm a wide support for a swifter reaction and firmer sanctions, in particular:

- many contributions focus on improving/codifying the Article 7 TEU procedure in the Council, with clearer deadlines (rapid response system), systematic exchange of information and practical cooperation between the EU institutions as well as overall transparency, without changing the Treaty, a Member State already subjected to Article 7(1) TEU being excluded from the participation to another such procedure involving another Member State and Article 7(2) TEU being directly activated when democratic and rule of law backsliding has moved beyond a mere threat;
- increasing the role of the European Court of Justice and the European Court of Human Rights and accelerating/strengthening the execution of their judgments;
- support to linking EU funding to the respect of the rule of law (the proposal for a Regulation on the protection of the Union's budget in case of generalized deficiencies as regards the Rule of Law); local and regional authorities should not be held hostage to policies pursued by national governments;
- reviewing the possibility to extend the use of a rule of law conditionality into other areas such as e.g. judicial cooperation;
- making better/more frequent use of infringement procedures and prioritise them; consider the launch of “systemic infringement” actions, including with a “rapid response” system to support actors targeted by breaches of the rule of law while the proceedings are ongoing. Some contributions also point to the clear EU competences with regard to independent national authorities set up by EU Treaties and EU law, whose independence can also come under threat in case of systemic challenges to the rule of law.
- expanding the competence of the European Public Prosecutor's Office to include fight against corruption, and implement judicial integration; oversight of the European Public Prosecutor's Office should be a prerequisite for access to certain EU funds; all countries that want to receive EU funding should accept close monitoring and sign up to the European Public Prosecutor's Office;
- considering possibilities to include other institutions or stakeholders more systematically in the context of the Rule of Law Framework;
- Treaty reform allowing quick and decisive reactions to violations of the rule of law and solving the fundamental problems linked to the highly political nature of the Article 7 TEU proceedings; to be noted that some contributors warn against reform proposals requiring Treaty amendment that could more pre-empt immediate action than fill gaps in the EU's rule of law enforcement toolbox.