

**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

Remarks and observations of the Slovak Republic

The Slovak Republic considers the Commission initiative as a good basis for further discussions on possible improvements of the rule of law protection within the EU. Such transparent and constructive approach has the potentials to path the way towards proper setting of the new mechanism on the rule of law protection taking into consideration the scene setting as well as observations submitted in this paper.

General remarks and observations

- The concept of the rule of law has broad legal and socio-political relevance. At the same time, it is a key pillar of the functioning of a democratic society. *Proper enforcement of the rule of law is crucial for a democracy.* It helps to keep it thriving and healthy.
- However, many challenges to the rule of law have arisen in recent years. That is why reflections are needed how to move ahead. *Launching the broad discussion by the Commission is perceived as a good step towards finding the best ways to improve the situation in the area of rule of law in Member States while respecting the institutional and legal framework as provided by the Treaties.*
- The *debate should involve* not only political institutions and its representatives, but also the *civil society*. The *contribution of EU citizens* to the common discussion *is important*. Active civil society is not just a complement to political representation at regional, national and European level, but it also contributes to building a common European identity. The future of Europe concerns us all, and therefore all of us should be part of it. In addition, the critical view, if constructive, has its value as well. *The EU institutions should therefore support dialogues with citizens.*

Existing tools have to be used more effectively

- The proper and thorough *rule of law protection is not a new task. We already have the whole toolbox* aimed at promotion, strengthening and protection of the rule of law on both European as well as international level. *While some of them are preventive in its nature, others allow imposing sanctions if it proves necessary.*
- At the EU level, we have a number of mechanisms such as *justice scoreboard, country specific recommendations or European semester, which are focused on prevention. Article 7 TEU and infringement procedures have both preventive as well as sanction part.* OLAF's recommendations, on the other hand, allow national authorities to initiate administrative or judicial proceedings, so basically it might be considered as a combination of prevention with a possibility of a sanction as well (although sanctions, if imposed, concern the decisions of national bodies not EU institutions).
- In addition, numerous instruments can be found outside EU (such as those of Council of Europe or United Nations). The cooperation with other international organisations is therefore necessary. For this purpose, the analysis should *focus on possibility of interconnection of existing mechanisms at international level with rule of law protection in the EU and its Member States.* Such approach would ensure avoiding the burdensome

and duplicated efforts and at the same time making use of existing work carried out with deep expertise in other fora.

- ***The binding nature of these mechanisms is also an important distinguishing factor.*** Some of them have binding force and have to be strictly respected (e.g. decisions of the Court of Justice concerning the infringement cases or Council decision on suspension of certain rights deriving from the application of the Treaties to the Member State in question in accordance with Article 7(3) TEU). However, ***the prevalent output in most mechanisms is a non-binding recommendation,*** which should help the concerned State to determine what measures should be adopted. ***Even though these recommendations are not obligatory, they often have an impact on national legal systems and help to make a change to domestic laws and regulations.*** Moreover, it cannot be forgotten, that ***despite their non-binding character, they still carry certain political message.*** Among such instruments belong Venice Commission legal opinions, GRECO recommendations, United Nations Resolutions and others.
- Regarding the above mentioned, several conclusions can be made:
 - a) We do not need another mechanism with no added value, that would represent the duplication with already existing tools, on the contrary, this could lead to undermining of already applied ones. That is why we ***have to explore existing tools and mechanisms more deeply*** and bring the answer to the question ***whether they provide adequate protection for the rule of law principles.*** Such analysis has to go “hand in hand” with ***examining how existing tools aiming at the rule of law protection are implemented and applied.***
 - b) On a basis of the analysis, we have to ***identify gaps in implementation and application of current tools*** and ***strive for their elimination.***
 - c) Only if thorough analysis shows that ***existing toolbox is not sufficient*** we should ***establish new mechanisms aimed at protection of rule of law.*** Possible new mechanism has to ***respect the current framework set by the Treaties.*** Treaty ***change is not necessary.***

Prevention is essential

- The Slovak Republic is of the opinion that the prevention is of utmost importance. We believe that ***the most efficient way of the rule of law protection is to avoid situations where it is threatened.*** In order to prevent situations that could result in weakening of the rule of law in one of the Member States, ***it is important to focus primarily on prevention, i.e. to take such measures that will help to prevent their emergence.***
- Preventive mechanisms ***have to be in line with the Treaties.*** Only ***legally sound mechanism can be effective*** and acceptable to all of the Member States. Therefore, ***we can support only mechanism fully compatible with the Treaties.***
- Concerning the new instruments, such as Periodic Peer Review, we agree that it might help to enhance the prevention. However, regarding the establishment of the ***Periodic Peer Review Mechanism, the adequate attention should be paid to its preparation.*** It is important that Member States have the opportunity to express their views within the preparation process and that they are not confronted with a done deal. There is no need to hurry. Quality is important and prevails over speed.
- The mechanism as such needs to meet a number of requirements to which it has to be adhered. ***It must be based on the principles of impartiality, transparency, objectivity and inclusiveness.*** Periodic Peer Review Mechanism at the same time ***has to avoid the duplicity with existing instruments aimed at the rule of law protection at the European and international level.*** The mechanism needs to have a clear scope of application and it is also

necessary to further discuss how the outcome of the Periodic Peer Review of the Rule of Law will be implemented.

- ***Sound legal basis for Periodic Peer Review Mechanism*** is necessary. ***It should be based on international agreement*** in order to include EU institutions.

Conditionality as an instrument for rule of law protection

- ***In general, the Slovak Republic supports initiatives*** aimed at the rule of law protection. Therefore, ***we do not oppose that the proposed conditionality*** aimed at the rule of law protection via budgetary measures ***might be of use***. However, any conditionality has to fulfil these criteria:
 - a) The rules have to be clearly set and strictly respected;
 - b) Such rules have to be applied equally to everyone with no exception;
 - c) At the same time, the assessment has to be impartial and objective.
- Regarding the Draft regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, several things must be borne in mind.
 - a) The concerns about the legal basis need to be clarified.
 - b) It is essential to provide the exact scope of the deficiencies.
 - c) Full compliance with the Treaties has to be ensured.
 - d) We cannot accept reversed QMV as a part of a decision-making procedure.