

The European Commission published a **Communication**¹ on 3 April 2019, taking stock of the available tools to monitor, assess, and protect the Rule of Law within the Union, and looking back at experiences and challenges of the past years.

It outlines **three pillars** that could contribute to making the enforcement of the Rule of Law in the Union more effective – namely: better **promotion**, early **prevention** and tailored **responses**. The Commission invites the European Parliament, the European Council, the Council and Member States, as well as relevant stakeholders, including judicial networks and civil society, and the public at large, to reflect on a series of questions around each of these areas.

The EPSC has been tasked with reaching out to experts, academics, think tanks, and decision-makers to feed into this reflection, which will be crucial for the next policy cycle. In this context, we believe that you/your institution can make a highly valuable contribution to the debate and **we would like to invite you to send your comments and answers** to the questions raised in the Communication, in any of the EU languages, to the following two email addresses:

EU-RULE-OF-LAW-DEBATE@ec.europa.eu

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by Tuesday, 4 June 2019 (closure of business) at the latest.

This will enable us to incorporate feedback received in a **second Communication**, due in June 2019, containing conclusions and concrete proposals for strengthening of the Rule of Law in the Union, within the framework of the current Treaties.

Please, provide your comments and answers in the relevant boxes below (limit of 4000 characters per text box). **We would very much appreciate your contributions.**

Should you have any **questions or remarks**, please do not hesitate to contact the Head of the EPSC's Institutional Team:

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<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0163&from=EN>.

1. Promotion: Building knowledge and a common Rule of Law culture



Possible questions for further reflection

- How can the EU better promote the existing EU legal requirements and European standards relating to the rule of law, in particular at national level?
- How can the EU best encourage key networks and civil society, as well as the private sector, to develop grassroots discussions on rule of law issues, including its economic dimension, and promote the standards underpinning the rule of law?
- Can Member States do more to promote the discussions on the rule of law at national level, including for example through debates in national parliaments, professional fora and awareness raising activities addressed to the general public?
- How should the EU and its Member States step up cooperation with the work of the Council of Europe and other international organisations that uphold the rule of law, including by supporting the work of the Council of Europe and with regard to evaluations and recommendations of the Council of Europe?
- How can the EU build on the work of the Council of Europe and promote common EU approaches? Can peer review between Member States help in this process?
- How can the existing steps taken by the European Parliament and the Council be improved and further developed? Can political groups and national parliaments be more engaged?

Promotion: Building knowledge and a common Rule of Law culture
(limit of 4000 characters)

Undoubtedly, educational initiatives are the key issue in protecting the rule of law in the EU member states. Knowledge about the constitutionalism, liberal democracy and human rights should be included in curricula all over EU, as a separate subject or- and this is even a more preferable option- as a part of different subjects during the entire learning process. There is no doubts that only educated Europeans, who understand the importance of their rights and civic engagement will be willing to protect the fundamentals of their democracy. Therefore, also critical thinking should be promoted in the education process (formal and non-formal).

Equally important will be support for NGOs across Europe, especially those that promote the rule of law, human rights or civic education and monitor reforms within the judicial system and secure the independence thereof. Direct funding (grant system) for such organizations- bypassing state grant operators in member states- could have a major impact in countries where the rule of law is under threat. Providing budgets for NGOs' rule of law projects (especially small grass-roots projects and less for scholars) that do not require co-funding, are easy to fill in (see examples from the American big donors – e.g. German Marshall Fund, Black Sea Trust etc), and are provided directly from the EU, not through the national authorities

Also, a series of tv, radio, social media and outdoor promotion campaigns advocating for safeguarding the rule of law localized specifically to address the issues that respective member states face might be one of the most successful tools in this regard.

Networks, civil society, and private sector may be incentivized to develop a grassroots discussion on the rule of law by providing funds for hosting events that would raise awareness and encourage participation of these agents. The real change in mentalities and awareness regarding democratic values and rule of law starts at local level, in small and active communities that are agents for sustainable change. NGOs, civic grassroots start-ups should be encouraged and legally and financially supported to promote public discussions on the rule of law. Respective member states might further reinforce the debate on the issue on all levels by the same means – organizing open public events/festivals that would help celebrate the accomplishments in the field of rule of law, but also emphasize the need for safeguarding it in light of recent developments (eg. in Poland, Hungary).

The EU bodies should be stricter in following the launched Article 7 procedures, more harshly forcing the “unruly” member states to obey the set rules in regards to the European standards of the rule of law. If Article 7 procedure definitively proved to be insufficient, the EU should establish a new effective mechanism outside the framework of Article 7 of the TEU to monitor violations of fundamental rights, civil liberties and the rule of law in the member states of the European Union on a regular basis.

National parliaments should be involved in the process, but only to such an extent so as to enable an effective cooperation without the need to allow for a greater leeway. The rule of law should be respected no matter the current political situation or ideological inclinations of the ruling parties. This is why the EU bodies should firmly defend the rule of law, even if the member states may feel the actions of the former may be infringing on their national sovereignty – all member states have entered the EU willingly, which is why now they should respect the set rules and guidelines.

Political groups in the European Parliament must better define and enforce rule of law criteria for new or existing members (national political parties within the EP Groups).

2. Prevention: Cooperation and support to strengthen the Rule of Law at national level

Possible questions for further reflection

- How can the EU enhance its capacity to build a deeper and comparative knowledge base on the rule of law situation in Member States, to make dialogue more productive, and to allow potential problems be acknowledged at an early stage?
- How can existing tools be further developed to assess the rule of law situation?
- How could exchanges between the Commission and Member States on rule of law issues be most productively organised?
- How can EU expertise and support be most effectively channelled to Member States?
- Can preventive steps be given weight through a more inter-institutional approach?

Prevention: Cooperation and support to strengthen the Rule of Law at national level
(limit of 4000 characters)

Creation of a common mechanism, with common benchmarks, for cooperation and verification for all Member States. The CVMs for Bulgaria and Romania proved that such mechanisms, despite shortages in the EC concrete reaction tools when crises occurred, helped the national relevant actors in protecting and enforcing rule of law standards.

The current tools of the EC have reached their limits and realistically cannot successfully be further developed. Therefore, there must be a reform of the level of the EU Treaty, allowing:

- A) quick and decisive reactions of the EC when rule of law standards are broken by the Member States (extraordinary procedures should be put in place);*
- B) the EU Court of Justice be notified by national actors under extraordinary circumstances that require quick answers and decisions from the Court regarding the compliance of the Member States with rule of law standards;*
- C) strengthening the cooperation with the Venice Commission.*

Involving independent NGOs and civil society organizations in the process of better informing the EU about the situation in respective member states seems to have the most potential and capacity to signal that “something is going awry”. As such, they often lack knowledge or institutional capacity to be an adequate partner in such a process. Therefore, supporting such organizations (both financially and by emphasizing the importance of their work) is of utmost importance.

A network of trusted flaggers could be built. Trusted flaggers would be organizations already working in particular member states, are independent and stand out with knowledge about the judicial system.

Building a EU-wide network of key independent organizations that focus on the rule of law would benefit them all, but also the entire EU. Such network could facilitate mutual learning and exchange of best practices, including those as regarding relations between national organizations and the EU institutions. Such knowledge about the experience in other member states is often not available for organizations operating in one member state only.

Launching a simple procedure for submitting “complaints” about the state of the rule of law in respective member states directly to the EU bodies might prove an efficient

tool. This should be paired with a wide-scale promotion of such a tool, which would result in raising awareness of the existence of such an option.

The evaluation of the state of the rule of law should be done on a permanent basis with support of the NGOs and academia. Peer review done by organizations from different EU member states could play an important role in such system.

3. Response: Enforcement at Union level when national

mechanisms falter

Possible questions for further reflection

- How can the relevant case law of the Court of Justice be effectively disseminated and its potential fully used?
- How can the Commission, the European Parliament and the Council coordinate more effectively and ensure a timely and appropriate response in case of a rule of law crisis in a Member State?
- In what ways could the Rule of Law Framework be further strengthened? Should this include more engagement with other institutions and international partners (e.g. Council of Europe/Venice Commission, Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights)?
- Are there other areas, in addition to the EU's financial interests, where the EU should develop specific mechanisms (including rule of law-related conditionalities) to avoid or remedy specific risks to the implementation of EU law or policies?

Response: Enforcement at Union level when national mechanisms falter
(limit of 4000 characters)

Case law can be effectively disseminated by participation (funded by the EU) of judges, prosecutors and members of the national Constitutional Courts to intensive trainings and cooperation seminars at the EU Court of Justice.

The EC, EP and the Council can act more effectively:

- *By modifying the EU Treaty and introducing intermediary reaction steps prior to the triggering of article 7;*
- *By introducing clear, coordinated reaction procedures and enforcement tools at the level of the EC and the EP.*

The response procedures of the EU bodies should have a set deadline to ensure a timely reaction. For instance, the response to the rule of law crisis in Poland was delayed and not as strict as it should have been. As a result, the Polish government pretty much dismissed it. Moreover, any such decisions to “intervene” shall be communicated in a manner that would be positive, instead of “threatening”, as national governments that already infringe on the rule of law may utilize it for their own benefit, thus portraying the EU as the outside agent that wishes to interfere in the national affairs. The EU shall always present itself and its actions as for the benefit of member states, not as a policing entity.

It is needed to find a way to stop intra-EU alliances that make Article 7 of the TEU unlikely to ever be successful, as long as individual Member States value relationships with each other more highly than the coherence of the Union. Also, new mechanisms should be found to make impossible protection of a government that is threatening the rule of law by its political group in the EP.

Other institutions and international partners should play bigger role in the process of protection of the rule of law, especially in the phase of monitoring, flagging threats and debating them with the member states.

Also, the position of European Union Agency for Fundamental Rights should be strengthened to make it possible to detect fundamental rights anomalies or situations where there might be breaches or the risk of breaches of. Comparative analysis is needed, but also individual evaluations of all member states would be crucial to flag problems. The Agency could be tasked with carrying out, for example, a review of the “Copenhagen criteria”.

On long term, after the setting up and operationalization of the EU Public Prosecutors’ Office, with the competence to investigate, prosecute and bring to judgment crimes against the EU budget, these competences should be expanded also to other national or transborder crimes regarding corruption, corruption related offenses and other serious crimes that undermine the European project and its core values. Judicial integration within the EU is a must that will solve many current

problems that originate in the tendency of some governments to solve their legal problems by weakening the independence of the judicial systems or of their capacity to combat corruption.