

Slovenia's response to the Communication on Further Strengthening the Rule of Law

Slovenia welcomes the Commission's Communication with proposals for strengthening the rule of law (RoL) in the Union. We underline the importance of safeguarding the rule of law, common values and fundamental rights, which are challenged in Europe and beyond. Only a formal concept is not enough; the rule of law, which includes human rights and fundamental freedoms, is the only guarantee of a democratic society in which all are equal before the law. Slovenia believes in the power of law and democratic values.

A Friend of the Rule of Law, Slovenia supports efforts and initiatives to ensure respect for the rule of law. This will also be *one of the priorities during our Presidency in 2021*. It is a shared responsibility of EU institutions and Member States to ensure compliance with this principle. Article 7 of the Treaty on the European Union (TEU) is of key importance in ensuring respect for the values deriving from Article 2 TEU connecting EU Member States. Slovenia has expressed concern about the regression on the rule of law principle, which threatens the entire EU. Respect for the *rule of law, common values and court decisions* cannot be a matter of compromise. It is the duty of EU Member States, institutions and their representatives to stand firm on this.

The EU must remain committed to the rule of law both within the Union and in the international environment. Rule of law is inextricably linked to the values of peace, security, development, respect for human rights and enforcing criminal liability. The EU and its Member States must set a global model example and remain staunch promoters of the rule of law, human rights and fundamental freedoms in order to pave the way for sustainable development, peace and security, and strengthen resilience against undemocratic processes.

The key issue is how to guarantee that the rule of law is upheld while a growing number of EU Member States violate this principle. The EU as a whole (institutions and Member States) must strive better to find a way out of the impasse and provide political impetus to prevent further deterioration of the situation. Wide set of EU's tools and mechanisms related to the rule of law should be *further strengthened and optimised, better integrated, and more effectively used*. Aiming to strengthen respect for the rule of law, some mechanisms could be upgraded (e.g. the annual rule of law dialogue with a periodic peer review), others made operational (Article 7 TEU procedure). More balance could be achieved between preventive and responsive mechanisms in order for the common EU approach to cover the entire spectrum of measures.

Promotion

Slovenia supports stronger promotion of the rule of law and closer cooperation between stakeholders at the national and EU level. Member States can contribute more by ***building knowledge and understanding of the fundamental values, raising awareness of the rule of law***, promoting legal culture (e.g. political dialogue in national parliaments and in the European Parliament), holding public debates (civil society, expert groups) and underlining the importance of the rule of law for the economies (stable investment environment). In such efforts, the Commission can play a prominent role (preparing a review of the measures, requirements and standards, European Court of Justice case law) and institutional bodies, such as the EU Agency for Fundamental Rights (FRA), which can facilitate education on the rule of law in Member States and institutions. Moreover, rule of law should be mainstreamed as a structural element of debates and policies. Its importance must be underlined in the context of respecting and implementing the rule of international law, including all court decisions.

Enhanced efforts for a common EU approach to promote and protect the rule of law is a joint responsibility requiring ***closer cooperation*** between institutions and Member States. There is a need for ***better inter-institutional coordination***, as each institution has its own set of competencies, specific instruments and measures. Hence, Slovenia welcomes a review of the rule of law tools in order for them to be strengthened and complemented, and thus more effectively used, while maintaining the inter-institutional balance. Underpinned by political will, this will grant the EU greater political weight and legitimacy.

Slovenia promotes effective use of ***expert support, reliable information and data sources by including also the institutional bodies and agencies*** (e.g. role of the FRA in promoting the rule of law) in the process of designing a comprehensive approach to the implementation of the rule of law in the EU. Just as important are

external dialogue, cooperation and **exchange of expertise** in support of the rule of law **with other international organisations and their bodies** (Council of Europe/Venice Commission; GRECO; OSCE/ODIHR; UN/UNHRC) through joint meetings of competent bodies, political and expert debates, and exchange of best practices. The Commission could prepare a comprehensive review for the EU. Dialogue with Member States and monitoring the rule of law situation from various aspects in line with particular missions of the institutional bodies would constitute added-value and promote synergies in strengthening the prevention pillar.

As for international legal norms and mechanisms, Slovenia supports the *Universal Periodic Review* in the framework of the UNHRC and contributing to the transposition of international human rights norms into the internal regulations of all UN Member States, while allowing international insights into human rights situations in particular countries. Slovenia encourages the development of international human rights legal norms and regularly transposes them into its legal system. Furthermore, Slovenia is implementing some good practices, which can be presented to the Commission and interested Member States (e.g. regular dialogue of the Ministry of Foreign Affairs with NGOs and civil society in the context of human rights and development cooperation; promotion of commitment to business and human rights; and integration of human rights and environment).

In Slovenia's view, useful tools for promoting the rule of law in Member States include various **financing programmes** and organisational platforms, such as the Justice Programme within the European Commission. Slovenia therefore proposes that the rule of law, in the framework of specific justice programmes, be promoted also by accessible and effective financing from the Commission funds intended for the organisation of events, conferences, etc. dealing with the rule of law.

Prevention

In Slovenia's view, it has become obvious that a **common understanding of the fundamental values** should be achieved and the existing European human rights standards upheld (EU Charter of Fundamental Rights, European Convention on Human Rights, vast jurisprudence of the European Court of Human Rights and the European Court of Justice) in cooperation with related international organisations (Council of Europe). This is important for enforcing the rule of law, ensuring equality between Member States and building mutual trust.

Slovenia supports the **Belgian-German initiative for a periodic peer review** of the rule of law between Member States, capitalising on the experience gained in the implementation of the existing Universal Periodic Review within the UNHRC. It is also important that the mechanism complement other procedures and instruments without overlapping with the existing procedures and mechanisms or imposing additional administrative burdens.

Slovenia underlines the importance of **Article 7 TEU stipulating preventive measures and sanctions** in the case of breaching the EU's fundamental values. The triggering of Article 7 TEU must thus be treated as a serious signal, particularly when a Member State is likely to face sanctions. Article 7 TEU is vital for ensuring respect for the EU's values as it enables the Council with tools to take political measures deterring Member States from breaches (prevention) and to impose sanctions on Member States where breaches are determined (response). Invoking Article 7 TEU should not be the first response measure; all possibilities of dialogue as a preventive aspect should first be exhausted.

Respect for the values listed in Article 2 TEU is also vital in the EU **enlargement context** as candidate countries are expected to meet the requirements and criteria (principles and values). The EU has played an important role in the transformation of candidate countries by the use of conditionality with the Copenhagen criteria at the cornerstone, and can promote the respect for fundamental values and the rule of law in Member States as well. Beyond the legal perspective, 'softer' components should also be considered by strengthening the integrity and culture of the (international) rule of law.

The unity of the EU is at the core of its common foreign and security policy, and this is why the EU and its Member States must **respect international legal norms and arrangements as part of the international rule of law** reflected in the EU's unified external action. It would seem sensible to involve the EU special human rights representative, who runs the dialogue with third countries, in the EU's external efforts for strengthening the rule of law.

Response

In order to ensure effective response and enforcement of the rule of law, sound planning and steering of the **procedure under Article 7 TEU** is paramount. The dialogue under Article 7(1) TEU should focus on a smaller number of thematic debates on the rule of law, also within Justice and Home Affairs (JHA) Council, with an active role of the Commission, while in the Council new procedures put in place should be made more operational. It would also be worth to set up an inter-institutional agreement on the modalities, which would determine the institutional role more clearly in this case. Namely, the Council should assume a proactive role by adopting guidelines for conducting the procedure and for the role of the Presidency and the EP, determining who conducts hearings and how to act if the majority of 4/5 of Member States is not achieved despite obvious breaches of values, and imposing measures in case of non-compliance with the recommendations. Failing the above, negative implications are possible both for the integrity of the procedure and the credibility of the EU. The recommendations must be fulfilled by a breaching Member State, and clear evaluation criteria should be set. To exit the procedure under Article 7 TEU, an 'end state' should be determined (e.g. a list of criteria or recommendations fulfilled; timelines), to be discussed by the JHA or General Affairs Council.

The emerging **legal practice of the European Court of Justice** (ECJ) significantly contributes to the strengthening and enforcing of the rule of law. The Court's decisions are important drivers in developing the legal practice related to the rule of law, whereby the support of Member States is very important. Furthermore, the Commission's approach to ensuring the rule of law through **infringement procedures** is an effective indicator of the EU's capability to protect the fundamental values. Member States' support to the Commission in enforcing the rule of law and the Commission's recommendations to breaching Member States in subsequent infringement procedures would ensure greater efficiency. It is important to demonstrate that protecting the integrity of the rule of law is an EU priority. The Commission also requires support in bringing separate action against (potential) breaches by a particular Member State with the ECJ regarding the contested legislation to exert pressure which might result in the withdrawal of disputable legal provisions even before the final rulings. Failure to respond with the proven legal remedies could prove costly to the breaching Member State and the entire EU as it can jeopardise the existence of the judicial protection and predictability.

Slovenia is in favour of **protecting EU's financial resources** within the multinational financial framework in case of generalised deficiencies and supports the proposed **Regulation** in this field as regards the rule of law in the Member States stipulating financial consequences for Member States breaching the values under Article 2 TEU. Slovenia underlines that the criteria and procedures for activating this mechanism must be clear, unambiguous and equal for all.

Slovenia would strive for the *complementary use of preventive and responsive instruments* within a comprehensive approach in the form of e.g. **specific annual Member State profiles** prepared by the Commission. For instance, a rule of law dimension or a judicial system review could be added to the EU Justice Scoreboard and to European Semester Country Reports as combined preventive analyses, which could lead to recommendations or even action plans.

In the past, the role of the fundamental values in the EU has not been sufficiently adapted to the changes within the EU. Promoting the values, including the rule of law, is a responsibility of Member States and institutions deriving from the Treaties. The EU must **restore respect for its founding values** in order to maintain its internal and external credibility as a value-based community. Breaches undermine the Union's foundations, trust between Member States and citizens' trust in the EU and public institutions. This negatively affects the functioning of the EU as a whole and thus also the internal market and business environment. The legitimacy of decision-making in the EU could be threatened. This is why a consensus is needed on the measures to enforce the rule of law based on the common understanding and recognition of values.

Future challenges related to the rule of law in the EU

In line with the Lisbon Treaty and Article 59 of the **European Convention on Human Rights** (ECHR), the EU will accede to the Convention in the future. In this context, it is vital for the EU to promote the respect for the

rights arising from the Convention and the implementation of its provisions, and decisions adopted by the European Court of Human Rights. The commitment of all EU Member States to the principles and rights enshrined in the Convention is one of the pillars of protecting individuals against violations by the states themselves, which guarantees stability and civilisational progress on the continent. Slovenia supports all efforts invested in achieving the EU's accession to the ECHR.

Furthermore, Slovenia supports the Commission's activities in the area of effective **judicial protection** and welcomes the development of the case law of the ECJ in this field. Slovenia agrees that the judiciary is a central pillar of the rule of law and advocates a comprehensive approach to protecting the judiciary, which must also extend to the outcome of court proceedings, i.e. court decisions. Court decisions must be implemented and respected, or else the rule of law is seriously undermined.

Artificial intelligence tools bring obvious advantages to users, but their use may entail the risk of abuse as well as violations of fundamental rights and certain basic elements of the rule of law. Slovenia supports the debate on the ethical and regulatory aspects of the use of artificial intelligence which must be based on the respect for democracy, the rule of law and fundamental rights. The EU should not limit itself only to the 'soft' approach to regulating artificial intelligence. Slovenia is in favour of more tangible methods, e.g. establishing mechanisms for the verification and certification of artificial intelligence systems.