

Swedish input to the European Commission *Communication on Further strengthening of the Rule of Law within the Union* (COM(2019) 163 final)

Introduction

The rule of law is one of the founding values of the European Union. The European Union itself is based on the rule of law, and every action taken by the EU is founded on Treaties that have been approved by all Member States. Due to the essential status and importance of the rule of law, the safeguarding of it must also be of the highest priority, not only for some of the Member States, but for the entire Union and its institutions.

The rule of law is the basis of the democratic system in all Member States, necessary to ensure the protection of fundamental rights. But it is not only essential as a fundamental value. It is highly central to making the European Union work in practice for example in the area of freedom, security and justice as well as in the internal market. Mutual trust in each others' systems is a basic requirement for fruitful and efficient cooperation between Member States where laws apply effectively and uniformly and budgets are spent in accordance with the applicable rules. The rule of law ensures that Member States and their citizens can work together in a spirit of mutual trust; where there is trust in public institutions, including in the justice system. This is indeed crucial for the functioning of democratic societies.

During the past years the European cooperation has been put to the test. In parts of the Union we have seen fundamental values being questioned and the respect for decisions taken jointly in the EU has decreased. This reduces the EU's ability to handle common challenges and to act vigorously globally, which in the long run will result in reduced confidence and credibility in EU cooperation both within and outside the Union. Consequently, the more cohesive and united the Union is, the more attractive the EU will become for trade, investments and cooperation in the world.

The European Union should take a leading role in promoting democracy and in strengthening the respect for human rights and the rule of law in Europe as well as in the rest of the world. Given its importance for the confidence of citizens in the Union and the effective delivery of its policies, the rule of law is of central relevance to the future of Europe.

The Swedish Government welcomes the Commission's Communication on Further strengthening of the Rule of Law within the Union and the reflection process launched with the aim of exploring possible avenues for future action. It is a most welcome initiative in times where these principles are being questioned, even threatened. The Union must therefore optimize its current tools as well as reflect upon whether there are any other options that could be added to the toolbox. In the initiated reflection process, the following priorities are of key importance for the Swedish Government in the area of the rule of law.

Swedish priorities

As already highlighted in the Commission's Communication, there are already a number of tools at the Union's disposal with the aim of safeguarding the rule of law. These tools are both valuable and useful depending on the situation in the relevant Member States. It is of the highest importance for the Union to make use of these existing tools but it is equally important to be self-critical and to evaluate and improve the tools the EU has to optimize their efficiency. We must however also be open to introduce new tools if a gap is identified and provided that the new initiative would add real value.

Examples of existing tools that should be continued to be used with the aim of safeguarding the rule of law in Member States are the Rule of Law Framework from 2014, the article 7 TEU procedure as well as the regular infringement proceedings and preliminary rulings. **The Rule of Law Framework** has proven to be a useful preliminary stage to the article 7 where important information is gathered and analyzed by the Commission, the Guardian of the Treaties. This process is useful not only to the Member State in question but also to others as it highlights concrete actions and practices giving guidance to the compliance of the rule of law.

When the framework process does not result in sufficient improvements the next stage will naturally become **article 7**. In that process Member States have a important role to investigate the current situation via the dialogue with the Member State in question. It is of importance to the integrity of the article 7 procedure that Member States in the Council take their responsibility and fulfill their duty to investigate the situation and to take necessary action in response. The current stalemate in the ongoing article 7 procedures - partly due to the fact that a majority of four fifths is required to adopt recommendations and that a unanimous vote is required to impose sanctions - is not helpful. The effectiveness of the procedure should however not be underestimated even in times where things seem to have come to a dead lock. One of its advantages is still the fact that the process brings light to the actual situation, which creates a pressure to comply with the breached rules. It is therefore important to continue the political dialogue within the context of article 7. Further improvements to optimize the potential of the article 7 procedure are however welcome.

Infringement proceedings and preliminary rulings are also very useful and efficient procedures in guiding Member States in their strive to comply with the principles of rule of law. Depending of the concrete situation the Commission might chose this path when calling upon a Member State to comply with the rules in question. So far these procedures have shown to be relatively effective. Due to the overall importance of the area of rule of law the idea of treating these cases in expedited and urgent referral procedures could be explored.

The **European Semester** as well as the **Justice Scoreboard** are also examples of existing and useful tools whose existence could have enhanced potential in the concrete field of rule of law and the compliance of it. They contain highly useful and relevant information that could contribute to a greater extent to fulfilment of standards and progress in the area of the

rule of law. The indicators in the report could reflect the set of guarantees identified by the Court of Justice as essential for safeguarding the independence of the judiciary.

As regard the possible future instruments at hand, the Swedish Government attaches great importance to the proposal for using **conditionality tied to respect of the rule of law** to the future multiannual financial framework with the objective to protect the EU budget. Protection of the EU budget presupposes respect for the Rule of Law since sound financial management cannot be ensured unless governments act in accordance with the law and the judiciary can exert control over unlawful government action. Therefore, it is of great importance to have this instrument in force as soon as possible to protect the EU budget in cases of generalized rule of law deficiencies in the Member States. In the Commission's Communication questions are being posed as regard other areas, in addition to the EU's financial interests, where the EU could develop specific mechanisms including rule of law-related conditionality. The question is indeed interesting and most probably useful to analyze further. Accession to and participation in the **Schengen** cooperation could potentially be an area where this type of conditionality should be further explored.

Another potentially useful initiative for the future is the idea of creating a **periodic peer review mechanism** on the rule of law where all Member States are being subject to the same screening procedure. The aim would be to foster better understanding and unity amongst Member States as well as cohesion within the EU Member States' societies. Concretely, the rule of law discussion would allow a substantive exchange of views on the way the rule of law is implemented, monitored, guaranteed and enhanced within the respective legal and political systems of each of the Member States. The mechanism would take into account the views of experts and would be based on qualitative and impartial information from a predefined set of sources, including national, European and international organizations that are specialized in the rule of law. The Venice Commission check-list is a highly relevant tool when assessing potential breaches in the area of the rule of law. The work of the Council of Europe should overall become a greater part of the EU cooperation in this field as a useful asset to knowledge and insight as regard the area of rule of law.

The importance of the rule of law in the Member States gives reason to consider ways of further enhancing the capacity and function of the national authorities and institutions which have a role in ensuring progress and safeguards in the area of rule of law. Assistance for structural reform could be one option.

Civil society organizations are vital in a free and democratic society but their activities are often in need of support. The newly proposed **Rights and Values programme** will become an important element in supporting civil society in the Member States since the main aim of the programme is to protect and promote the rights and values in the EU treaties through supporting civil society organizations. The inclusion of the new programme area on the "Union's values" will in this context become even more important to the protection of the area of rule of law since its focus would be to support projects with the aim of strengthening democracy and the rule of law.

Conclusion

The area of rule of law has for the past years regrettably, due to negative developments in some Member States, become one of the most topical issues in the EU. Upholding the rule of law is a fundamental obligation which rests upon all Member States. A breach of adhering to the common value of respecting the rule of law must never be overlooked or accepted. There should be consequences for those Member States who do not live up to the Union's fundamental values.

Fortunately, the Union has a number of tools already at its disposal. We should continue to make use of them or improve them where necessary. In some cases it might be more relevant to change practice, instead of the instrument itself, to maximize the benefits.

As already mentioned, the rule of law framework, the article 7, as well as the infringement procedure, are at the core of the Union's work in safeguarding the compliance with the rule of law. These tools should continue to have that role. The developments over the past years show however that there is a need to step up and improve further. Budget conditionality in relation to the compliance with the rule of law would become a most welcome addition to the toolbox. This could also be the case as regard a peer review mechanism if designed for efficient and manageable work.

The Swedish Government will continue to attach the greatest importance to the fundamental values of the Union and the compliance of all Member States with these principles.