



**European Economic and Social Committee**

**SOC/627**  
**Strengthening the Rule of Law**

## **OPINION**

European Economic and Social Committee

**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*

[COM(2019) 163 final]

Rapporteurs:

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Plenary Assembly decision

Section responsible Employment, Social Affairs and Citizenship  
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Outcome of vote  
(for/against/abstentions) 190/11/12

## 1. **Conclusions and recommendations**

- 1.1 The EESC welcomes the Communication of the Commission, and the efforts made by the Commission to use other instruments to strengthen the rule of law. It is important to strengthen the rule of law aspect as much as possible in these instruments, as many of them have different purposes, and in as far as possible involve civil society in the implementation of these instruments.
- 1.2 It believes that civil society, the media and political issues should have been dealt with more in depth in the Communication to understand the context, and to involve those directly affected more prominently.
- 1.3 The EESC believes that the reflection period should have been longer to allow for a deeper consultation and participation of civil society in national Member States and that in the longer term, the Commission should propose a more systematic mechanism for the consultation of civil society organisations (CSOs) concerning the situation of fundamental rights and respect for the rule of law in the Member States.
- 1.4 Ways of protecting CSOs performing watchdog functions, investigative journalists and independent media are necessary and proposals for their protection and active role in early warning must feature prominently in the proposals that the Commission will present at the end of the reflection period.
- 1.5 While the EESC welcomes the strengthened access to funds for CSOs in the new Multiannual Financial Framework, it finds the amount set aside in the Commission proposal concerning the rule of law and fundamental rights and the amount earmarked for CSOs insufficient<sup>1</sup>. Moreover, the EU should consider ways of enabling more core funding to CSOs performing watchdog, awareness-raising, advocacy and litigation activities as regards fundamental rights and the rule of law in all Member States
- 1.6 The EESC maintains its supports for the creation of an EU-level mechanism to monitor respect for the rule of law and fundamental rights. The EESC considers it vital to create a legally binding European mechanism, a framework actively involving the Commission, the Parliament and the Council and in which the EESC plays an important role representing civil society. This mechanism should encompass a preventive component allowing experts and civil society representatives to trigger an early warning on specific developments and debate proposals for solutions including all relevant stakeholders. Such a mechanism would also help in the burden-sharing between the institutions and increase joint ownership of EU actions.
- 1.7 Furthermore, the EESC proposes to recognise and reinforce existing civil society platforms and to establish an EU-level annual Forum on Fundamental Rights and the Rule of Law with the involvement of the EESC, firstly to allow EU decision-makers to receive early warning about emerging challenges to Article 2 TEU values directly from stakeholders, including grassroots organisations and, secondly, to facilitate mutual learning and national and transnational

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<sup>1</sup> [OJ C 367, 10.10.2018, p. 88](#)

collaboration between all relevant stakeholders (businesses, trade unions, civil society organisations, national human rights institutions, and public authorities).

- 1.8 The EESC believes that the multiplication of voices coming from existing platforms and grassroots organisations is necessary in the current circumstances. The EESC is a unique body which gives a possibility of real dialogue between all the CSO actors, including the social partners from all the Member States. This gives an added value in helping the diversity and vibrancy of civil society. Such a forum could allow CSOs to set off an early warning.
- 1.9 The threats against the rule of law risk undermining the mutual trust upon which the EU is built, as recent jurisprudence has shown. The independent national courts are the bulwark ensuring that the EU, including its internal market, functions smoothly.
- 1.10 Consideration should also be given to the economic aspects of the rule of law. Mutual trust is a value which is difficult to calculate in purely economic terms but it is clear that lack of trust linked with political influence in the judiciary or corruption has negative economic consequences. This is a subject that merits more emphasis and where more data and research is needed at EU level.
- 1.11 Education, both formal and non-formal, has a key role to play in building the democratic and rule of law culture. Democracy and the rule of law should be in the hearts and minds of every European citizen; the EESC calls on the European Commission to propose an ambitious communication, education and citizen-awareness strategy on fundamental rights, the rule of law and democracy.

## **2. Introduction and overview of the Communication**

- 2.1 The situation regarding respect for fundamental rights and the rule of law is very concerning throughout the EU, especially as it has had to trigger Article 7 TEU in some cases. Therefore, the present Commission Communication is launching a reflection on how the state of the rule of law in the EU could be improved.
- 2.2 The Communication recalls the importance of the rule of law as a founding value of the European Union, which is the basis of the democratic system and a prerequisite for the protection of fundamental rights. The rule of law includes, among other things, principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review, including respect for fundamental rights; separation of powers; and equality before the law.
- 2.3 The Commission sets out three pillars for an effective enforcement of the rule of law in the Union: Promotion: Building knowledge and a common Rule of Law culture; Prevention: Cooperation and support to strengthen the Rule of Law at national level; and Response: Enforcement at Union level when national mechanisms falter. More precisely, the Commission insists on the need to promote rule of law standards, to recognise warning signs, to deepen a

Member State's specific knowledge, to improve the common capacity to react in case of escalation, and to address shortcomings in the long term through structural reforms.

### 3. **General comments**

- 3.1 The EESC welcomes the consultation as it recognises the importance of the recent rule of law challenges in the EU. The number of such challenges has increased in recent years, indicating the risk of a possible full-blown crisis in the rule of law and democracy, especially in some Member States. This crisis should be fully acknowledged and an appropriate response put in place. This includes a bold restatement of the EU values and solid instruments to prevent and correct any further deterioration of the rule of law.
- 3.2 The EESC had already expressed its deep concern with regard to the situation of fundamental rights and respect for the rule of law, and has been calling for stronger action since 2016<sup>2</sup>.
- 3.3 It is important to recall that the European Union is not only a common market; it is a union based on common values, as stated in Article 2 of the Treaty. Furthermore, it recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the EU. These values, on which the European Union is founded, form the basis of integration and are part of the European identity. As well as being criteria for accession, they must be respected in practice by the Member States, thereafter.
- 3.4 The rule of law exists in an interdependent, inseparable, triangular relationship with fundamental rights and democracy. Only by guaranteeing these three values in conjunction with each other is it possible to prevent the abuse of State power. The protection of fundamental rights is a pillar that should be further developed, through the ratification of all relevant instruments (including UN conventions and the European Convention on Human Rights), more robust cooperation between EU institutions and the enhancement of support for grassroots and watchdog organisations across Europe.
- 3.5 The EESC regrets that the EU treaties do not expressly stipulate that all Member States should satisfy the Copenhagen Criteria<sup>3</sup>. The criteria should be equally and continuously respected by new and long-time members of the EU. The EESC notes that the EU institutions do not have sufficiently robust and well-tailored tools at their disposal capable of protecting against threats currently posed to the rule of law, fundamental rights and pluralist democracy in the Member States.
- 3.6 The current challenges are not met in due time and with efficient responses at national and EU level: the existing instruments had limited impact on the drivers of these challenges.
- 3.7 The most severe challenges are present in some Member States, where powerful political actors have turned against the independence of the judiciary, and against institutions and organisations

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<sup>2</sup> [OJ C 34, 2.2.2017, p. 8](#)

<sup>3</sup> Established by the Copenhagen European Council in 1993.

which compose and uphold the pluralist democratic system. The Communication does not consider sufficiently this essential aspect, preferring a perspective in which institutions - Parliaments, governments and ministries, constitutional courts, professional bodies - are separated from political and electoral competition. This "hands off" approach to party politics and elections prevents any explanation of why powerful actors work against the rule of law and democracy and why they seem at the same time popular and unstoppable. The political, cultural and sociological aspects of the rule of law challenges affecting democracies are an essential area which has been ignored in the EU's analysis and response so far. This partly explains the limitations of the current approach and tools – including the Article 7(1) procedure. Through its connection with civil society in its entirety, including the social partners, the EESC is particularly well placed to offer a space for a better analysis, debate and response to these political, sociological and cultural aspects of challenges to democracy and the rule of law.

- 3.8 The Commission has moved in the recent years towards building up complementary and cumulative mechanisms to fill the gap between no action and last-resort action. Yet, they seem insufficient for the current challenges - concerted actions for power-grabbing across institutions, including in the judiciary, which have, if not electoral constituencies, strong support within party organisations and party clienteles. Not even the consolidated democracies are safe from creeping authoritarianism and erosion of the rule of law. Security concerns are increasingly used to justify the questioning or suspension of democratic safeguards. Some governments make the work of several frontline CSOs more difficult instead of proposing an enabling space for their activities. It is therefore essential that the EU should take a more proactive and preventive approach.
- 3.9 The EESC agrees with the Commission that recent populist and autocratic developments require action by all EU bodies and EU civil society in its entirety to ensure that the values upon which the EU is built are preserved. The EESC stands firm against any form of illiberal democracy.
- 3.10 Therefore, the EESC also believes that the reflection period should have been longer, to allow for the deeper consultation and participation of CSOs in national Member States.
- 3.11 The EESC has been informed by many CSOs, that short consultation periods are often a problem linked to lack of transparency and meaningful consultation, which undermines the quality of legislation and the rule of law in Member States. With this in mind, the EESC believes that the Commission should have allowed for a more thorough consultation of civil society, which is directly affected.
- 3.12 Civil Society Organisations, human rights defenders, whistleblowers and journalists are in the front line when the rule of law deteriorates and in a very difficult situation when there is a breach of law in a given Member State. It is they who monitor the situation and report violations and it is at the grassroots level that they can send out early warning signals. Therefore, the EESC believes that their role is of primordial importance, as is that of the media and investigative journalism. Therefore, ways of protecting CSOs and the media are necessary for any tenable way forward. Proposals for their role must feature prominently in the proposals that the Commission will present after the reflection period.

- 3.13 In particular, the future MFF should increase support to CSOs, in particular to the ones working in defence of Article 2 values. Core funding should be provided to CSOs at all levels – local, national, European – to support capacity-building and activities in the area of awareness-raising, monitoring and documentation, advocacy and litigation. To reinforce EU support to the role of CSOs in Europe, the future MFF should ensure that all relevant EU funds, in particular in the areas of social, economic and cohesion policies, integrate a strong role for civil society in the design, implementation and monitoring of these policies. The EU should also increase financial support to the independence and plurality of the media in Europe and mainstream these concerns in all relevant EU policies, including competition policies. To ensure political prioritisation of these issues, the future vice-president of the European Commission in charge of fundamental rights should also be in charge of the supervision of the enabling environment for civil society, human rights defenders and journalists. The EESC also recalls its call for the establishment of an EU Ombudsman on civic space freedoms to whom these actors could report incidents related to harassment or restriction of their work<sup>4</sup>.
- 3.14 In accordance with the mandate the EESC has been given in the TFEU, as a representative of organised civil society, it must be associated closely with the future development of institutional initiatives in this area.
- 3.15 It has a special role to play and a duty to act, when activities of its own members and civil society at large are at risk within the EU. The EESC could and should play a crucial role in facilitating exchanges amongst all relevant stakeholders on the state of play on the rule of law in Member States seen from a civil society perspective and serve as a transmitter (early-warning network) before the appearance of the first symptoms of problems regarding FRRL.
- 3.16 Back in 2016, the EESC adopted an own-initiative opinion calling for reinforced action by the Union with regard to fundamental rights and the rule of law in the Member States, following up with a the creation of a specific group to examine how organised civil society can best contribute in April 2018.
- 3.17 Threats against the rule of law risk undermining the mutual trust upon which the EU is built. As a recent example this has been shown clearly when the EU Court of Justice ruled that a national judge does not necessarily have to respect a European Arrest Warrant (EAW) issued by a Member State of the EU, if there are systemic or generalised deficiencies with the rule of law in this Member State, and they are liable to affect the independence of the judiciary in the issuing Member State and the plaintiff's fundamental right to a fair trial<sup>5</sup>.
- 3.18 The independent national courts are the bulwark ensuring that citizens can count on their EU rights being enforced, that European business can do cross-border trade without the concern that legal contracts are not enforced in an impartial and independent manner, and that workers working in a neighbouring country can have their rights enforced, and that CSOs can operate freely across borders, without foreign solidarity funding being taxed discriminatorily. CSOs,

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<sup>4</sup> [OJ C 81/9, 2.3.2018](#)

<sup>5</sup> European Court of Justice, [Judgment of the Court \(Grand Chamber\) - Case C-216/18 PPU](#), 25 July 2018

social partners and foreign investor councils have all expressed concern to the EESC about the deterioration of the rule of law, and its serious economic impact.

3.19 Education, both formal and non-formal, has a key role in building the democratic and rule of law culture. The diversity of political cultures in Europe makes the task more difficult. However, there are successful historical examples in which democratic values are taught, spread and consolidated. In the long term, the best safeguard against democracy and rule of law backslides is an active, educated and involved citizenship. Liberal democracy as defined in a former EESC opinion<sup>6</sup> and the rule of law should be in the hearts and minds of every European citizen and the EU should lead the way forward towards this goal, for example by encouraging the mainstreaming of these topics in school and higher education curricula, and by promoting academic and professional exchanges between citizens and CSOs active in these areas. The EESC calls on the European Commission to propose an ambitious communication, education and citizen-awareness strategy on fundamental rights, the rule of law and democracy.

#### 4. **Comments on existing tools**

4.1 The EESC notes the shortcomings of current tools available to the EU institutions to protect Article 2 values. Infringement procedures tend to be too narrow in their focus to prevent or correct concerted attacks on the rule of law. Second, it has proven extremely difficult to marshal sufficient political will to activate the procedure in Article 7 of the TEU.

4.2 As regards the 2014 European Commission Communication "A new EU Framework to strengthen the Rule of Law"<sup>7</sup>, although it is easier to activate than Article 7, its effectiveness is questionable when faced with governments unwilling to cooperate. Furthermore, the thresholds required to activate it are too high and too late. The EESC recommends improving the rule of law framework including by defining clearer benchmarks, indicators and deadlines in order to better assess the concerned authorities' response and the EU's accompanying measures.

#### 4.3 **Infringement proceedings and preliminary rulings**

4.3.1 In the past few years, the Commission has opened several value-related infringement proceedings concerning the rule of law<sup>8</sup>. Such proceedings should be used whenever possible, but cannot stand alone, as not all violations pertain to EU law. However, some scholars are advocating that infringement proceedings might be brought pursuant to Article 258 TFEU directly for breach of Article 2 TEU<sup>9</sup>, which might be an avenue to explore.

4.3.2 The preliminary ruling can also be a useful tool. Nevertheless, various obstacles to get national courts to refer preliminary questions to the ECJ exist, and it is often a long procedure.

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<sup>6</sup> [SOC/605 – Resilient democracy through a strong and diverse civil society](#)

<sup>7</sup> European Commission, [Communication on A new EU Framework to strengthen the Rule of Law](#), 11 March 2014

<sup>8</sup> European Commission, [Press release: Rule of Law: European Commission launches infringement procedure to protect judges in Poland from political control](#), 3 April 2019

<sup>9</sup> Michel Waelbroeck and Peter Oliver, [Enforcing the Rule of Law in the EU: What can be done about Hungary and Poland?](#), 9 February 2018



#### 4.4 **European Semester**

- 4.4.1 The main aim of the European Semester is to provide a framework for the coordination of economic policies across the EU, but it also covers the fight against corruption, effective justice systems, and reform of public administration, which can lead to country-specific recommendations<sup>10</sup>. However, an effective follow-up is not necessarily ensured.
- 4.4.2 The European Semester has been criticised for not being inclusive enough of the social partners, both at EU and national level<sup>11</sup> and only 20% of country-specific recommendations are currently being implemented satisfactorily by Member States<sup>12</sup>.
- 4.4.3 The European Semester is mainly an economic and social policy tool, guiding and supporting reforms in Member States. However, its role in monitoring and promoting rule of law issues could be strengthened by incorporating rule of law indicators in a more visible way, including regarding issues like legal certainty and access to remedies for business and employees. The involvement of civil society should also be improved and a better follow-up should be ensured with a view to improving compliance.

#### 4.5 **EU Justice Scoreboard**

- 4.5.1 The EU Justice Scoreboard gives information on the justice system in all Member States and can result in country-specific recommendations in the European semester. The EU Scoreboard leans on surveys of citizens and companies to evaluate the independence of the Justice system<sup>13</sup>. However, the EESC recommends that CSO are included in this survey.

#### 4.6 **Cooperation and Verification Mechanism**

- 4.6.1 The Cooperation and Verification Mechanism (CVM)<sup>14</sup> was created as a transitional measure to assist Romania and Bulgaria, after their accession, in addressing several shortcomings on judicial reform, corruption and (for Bulgaria) organised crime. It established a set of criteria which the Commission assesses and yearly reports on progress.
- 4.6.2 This mechanism has proven to be an efficient tool. However, the last report on Romania indicated a setback in the progress, whereas it had been expected to be finalised very soon. This raises the concern as to whether the demand for progress is stringent enough and whether change must be more solidly rooted before the CVM is closed down.

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10 European Commission, [Communication on Further strengthening the Rule of Law within the Union - State of play and possible next steps](#), 3 April 2019

11 European Trade Union Confederation, [Press release: ETUC on European Semester Winter Package](#), 27 February 2019

12 Business Europe, [Newsletter N°2019-13: A renewed role for the European Semester](#), 11 April 2019

13 European Commission, [the 2019 EU Justice scoreboard](#), 2019, p.63 3.3.3 Summary on judicial independence

14 [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm_en)

4.6.3 The relevance of the CVM in addressing rule of law challenges in other Member States needs a more thorough evaluation. Despite the variation in commitment on the part of various governing parties in the two countries, the existence of the instrument allows for a structured and continuous dialogue between the EC and the member country.

#### 4.7 **Commission's Structural Reform Support Service**

4.7.1 The Structural Reform Support Service (SRSS) delivers direct support to national authorities (reviewing methods, training, analysis, expert advice) and covers governance and public administration, including transparency and anti-corruption but is essentially a macro-economic tool. Few projects have been substantially related to the rule of law<sup>15</sup>.

4.7.2 The EESC recommends increased use of special assignments when country-specific recommendations on the rule of law have been issued to a Member State and involvement of CSOs in reform programmes should be ensured.

#### 4.8 **European Structural and Investment Funds, and funds supporting Justice and Security policies**

4.8.1 One of the EU's biggest levers to enforce respect for the rule of law is financing. On 17 January 2019, the European Parliament voted for a mechanism (the European Values Instrument) to increase funding of the EU's Rights and Values Programme. The proposal by the Commission for a Justice, Rights and Values Fund does not fully meet this demand.

4.8.2 While the EESC welcomes the funds attached to strengthening access for CSOs to funds from the new Multiannual Financial Framework, it finds the amount set aside for the rule of law and fundamental rights and the amount earmarked for CSOs insufficient<sup>16</sup>.

#### 4.9 **A new mechanism to protect the Union's budget when generalised deficiencies regarding the rule of law in Member States affect or risk affecting the budget**

4.9.1 The EESC welcomed the proposal and recommended that the EESC be more closely involved<sup>17</sup>. Moreover, the EESC recommended that the proposal be amended to include a broader notion of the rule of law that encompasses the protection of fundamental rights and guarantees protection of pluralist democracy.

4.9.2 However, the EESC recommends extreme caution in this case to ensure that end-beneficiaries are not affected. It is important to remember and provide special means of support for independent organisations that are in an extremely delicate situation in their Member State.

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<sup>15</sup> Only 6 of the examples given by the SRSS are rule of law-focused: setting out an independent analysis of the Prosecutor's Office in Bulgaria; reforming the assessment of disability in the Czech Republic, Greece and Poland; strengthening the effectiveness of the judicial system in Croatia; improving coordination of internal audits in Romania; improving the handling of whistleblowing cases in Italy; and helping to integrate young migrants and refugees in Austria.

<sup>16</sup> [OJ C 62, 15.2.2019, p. 178](#)

<sup>17</sup> [OJ C 62, 15.2.2019, p. 173](#)

#### 4.10 **European Anti-Fraud Office (OLAF) with the EPPO**

4.10.1 Corruption is one of the challenges to the rule of law. Therefore, the EU must ensure that its funds are not misused or enabling corruption.

4.10.2 Currently OLAF investigations can only be prosecuted by Member State prosecutors<sup>18</sup> and only 45 percent of the investigations result in prosecution<sup>19</sup> Therefore, the EESC supports the new European Public Prosecutor's Office (EPPO)<sup>20</sup>, and urges all EU countries to participate<sup>21</sup>.

4.10.3 CSOs, human rights defenders, whistleblowers and journalists play an important role in revealing fraud, and therefore, the EESC reiterates the importance of structured dialogue with civil society and increased financial and political support to these actors.

#### 4.11 **EU accession process and neighbourhood policy**

4.11.1 In 2011, the EU introduced a new approach to the European Neighbourhood Instrument funds (ENP) in order to pressure partner countries to commit to the EU's values and political reforms<sup>22</sup>.

4.11.2 Political conditionality is a positive side of the ENP, which functions well with those countries interested in reform.

4.11.3 The EU must strongly uphold its commitment to political conditionality in the neighbourhood policy and in the EU accession process. To remain credible, it must apply the same criteria internally. For any country desiring to join the European Union, firm commitment to "European Values" is essential. Accession candidates must fulfill the Copenhagen criteria<sup>23</sup>. It is important that the EU enforces these demands very strictly. Strengthening the rule of law is not only an institutional issue, it requires societal transformation.

### 5. **Suggestion for the future**

5.1 The EESC has since 2016 supported the creation of an EU-level mechanism to monitor respect for the rule of law and fundamental rights<sup>24</sup>.

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18 [European Court of Auditors, Special Report 1/2019: Fighting fraud in EU spending: action needed](#)

19 Organized Crime and Corruption Reporting Project, [EC Adopts New Anti-Fraud Strategy](#), 1 May 2019

20 European Commission, [Communication on the Commission Anti-Fraud Strategy: enhanced action to protect the EU budget](#), 29 April 2019

21 European Public Prosecutor's Office, [web page on policy](#)

22 Momin Badarna, [The ENP and its Political Conditionality Instrument: is it ineffective?](#), [Young European Federalists](#), 15 September 2018

23 European Commission, [2018 Communication on EU Enlargement Policy](#), 17 April 2018

24 [OJ C 34, 2.2.2017, p. 8.](#)

- 5.2 The EESC considers it vital to create a legally binding European mechanism, a framework actively involving the Commission, the Parliament and the Council and in which the EESC plays an important role representing civil society. This mechanism will complement existing tools<sup>25</sup> and should entail a preventive component to allow stakeholders (businesses, trade unions, civil society organisations, national human rights institutions and public authorities) and experts to identify shortcomings as they emerge at national level and debate their resolution at an early stage. Such a mechanism would also help in the burden-sharing between the institutions and increase joint ownership of EU actions in this field.
- 5.3 The role of the EESC in this field should be seen against the backdrop of its unique composition and outreach between the EU and national level. As a focal representative of civil society, it covers organisations that are deeply committed to the rule of law and fundamental rights issues but also social partners and other key economic and social players with their national and EU affiliations. Hence, the EESC could give clear added value as a source of unique data and insights from the grassroots level without duplication with other relevant sources, with regard to promotion, prevention and response.
- 5.4 As a first step, the EESC has itself already started carrying out fact-finding missions to gather an overview on how civil society in individual Member States perceive the problems. The EESC has the intention to visit all 28 Member States<sup>26</sup>, but will issue a report over its findings in the autumn of the first 5 country visits. Although these visits do not consist of a monitoring mechanism, it is important contribution to hear the view of the national CSOs. Therefore, the EESC as a further measure proposes to recognise and reinforce existing civil society platforms and grassroots organisations. The multiplication of voices coming from them is necessary in the current circumstances.
- 5.5 Moreover, an annual stakeholder Forum on Fundamental Rights and the Rule of Law should be established at European level with the involvement of the EESC, firstly to allow EU decision-makers to receive early warning about emerging challenges to Article 2 TEU values directly from grassroots organisations and, secondly, to facilitate mutual learning, confidence-building and collaboration between national stakeholders such as businesses, trade unions, civil society organisations, national human rights institutions, and public authorities. The format and modalities of this stakeholder forum should be inspired by the existing models of the European Migration Forum and the European Circular Economy Stakeholder Platform. The EESC would provide the forum's secretariat and host meetings, which would be jointly organised with the European Commission.
- 5.6 The EESC believes that the multiplication of voices is necessary in the current circumstances and it could allow CSOs to set off an early warning. In contrast to the Annual Colloquium on Fundamental Rights, which involves a limited number of key stakeholders, the EESC Forum is intended as an open forum to encourage a public debate. The FRA mandate is regrettably limited by Article 51 of the Charter to intervene in the case of some violations of Article 2 TEU.

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<sup>25</sup> As proposed by the European Parliament in its Resolution of 27 January 2014 on the situation of fundamental rights in the EU (2012), [P7\\_TA\(2014\)1773](#), Rapporteur: Louis Michel, 22 November, paragraph 9

<sup>26</sup> 27 Member States, when the United Kingdom leaves the EU

Its forum is mainly attended by human rights organisations, whereas the EESC covers organisations beyond the field of human rights, including the social partners, and has experience in interacting with organisations on the European, national and grassroots level on a large variety of issues. This gives an added value in helping the diversity and vibrancy of civil society, and includes important economic actors.

- 5.7 Consideration should be given to the economic aspects of the rule of law. Mutual trust is a value which is difficult to calculate in purely economic terms but it is clear that lack of trust linked with political influence in the judiciary or corruption has negative economic consequences. The EESC calls on the European Commission to place more emphasis and gather more data and analysis on the consequences of the demise of the rule of law on all the stakeholders, including the business sector. Legal uncertainty, non-transparent law-making, unfair competition, discriminatory access to public markets, and the unavailability of genuine access to remedies are examples of consequences of the demise of the rule of law on the business sector which should be better considered in the EU's analysis and response, including in the European Semester.
- 5.8 An specific issue is the need for stronger support for civil society organisations (core funding for watchdog organisations): It is important that the EU consider ways of supporting CSOs and investigative journalism and the media that are monitoring and reporting emerging challenges to Article 2. The EESC considers that a funding instrument to support CSOs promoting Article 2 values in the Member States is necessary to build grassroots support for these values among the public. In this regard, the EESC refers to its related opinion concerning the proposals for a new Justice, Rights and Values Fund<sup>27</sup> and calls on the Council and the European Parliament in the framework of the decision on the Multiannual Financial Framework post-2020 to substantially increase resources for this fund.

Brussels, 19 June 2019

Luca JAHIER

The president of the European Economic and Social Committee

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N.B.: Appendix I overleaf

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<sup>27</sup> SOC/599 [OJ C 62, 15.2.2019, p. 178](#) on COM(2018) 383 final and COM(2018) 384

**APPENDIX**  
**to the Opinion**  
**of the**  
**European Economic and Social Committee**

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 59(3) of the Rules of Procedure):

**Point 3.7**

*The most severe challenges are present in some Member States, where powerful political actors have turned against the independence of the judiciary, and against institutions and organisations which compose and uphold the pluralist democratic system. The Communication does not consider sufficiently this essential aspect, preferring a perspective in which institutions — Parliaments, governments and ministries, constitutional courts, professional bodies — are separated from political and electoral competition. This "hands off" approach to party politics and elections prevents any explanation of why powerful actors work against the rule of law and democracy and why they seem at the same time popular and unstoppable. The political, cultural and sociological aspects of the rule of law challenges affecting democracies are an essential area which has been ignored in the EU's analysis and response so far. This partly explains the limitations of the current approach and tools – including the Article 7(1) procedure. Through its connection with civil society in its entirety, including the social partners, the EESC is particularly well placed to offer a space for a better analysis, debate and response to these political, sociological and cultural aspects of challenges to democracy and the rule of law.*

**Reason**

The authors of the opinion go too far in their assessment of Member States' institutions. The proposed text could be seen as disrespectful to institutions that are expected to maintain a pluralistic system. The remaining part of this point reflects the expectations in terms of the EU's analyses on the rule of law.

**Voting**

Votes in favour: 47  
Votes against: 141  
Abstentions: 19

**Point 5.2**

*The EESC considers it vital to create a legally binding European mechanism, a framework actively involving the Commission, the Parliament and the Council and in which the EESC plays an important role representing civil society. This mechanism will complement existing*

*tools<sup>28</sup> and should entail a preventive component to allow stakeholders (businesses, trade unions, civil society organisations, national human rights institutions and public authorities) and experts to identify shortcomings as they emerge at national level and debate their resolution at an early stage. Such a mechanism would also help in the burden-sharing between the institutions and increase joint ownership of EU actions in this field. This mechanism would need to be applied with caution so as to avoid implementing it for current policy objectives and causing cultural conflicts.*

### **Reason**

The proposed addition does not limit the support of the EESC for the mechanism. It contributes commentary on political neutrality and recognition of cultural diversity.

### **Voting**

Votes in favour: 42  
Votes against: 153  
Abstentions: 23

### **Point 1.6**

*The EESC maintains its support for the creation of an EU-level mechanism to monitor respect for the rule of law and fundamental rights. The EESC considers it vital to create a legally binding European mechanism, a framework actively involving the Commission, the Parliament and the Council and in which the EESC plays an important role representing civil society. This mechanism should encompass a preventive component allowing experts and civil society representatives to trigger an early warning on specific developments and debate proposals for solutions including all relevant stakeholders. Such a mechanism would also help in the burden-sharing between the institutions and increase joint ownership of EU actions. This mechanism would need to be applied with caution so as to avoid implementing it for current policy objectives and causing cultural conflicts.*

### **Reason**

The proposed addition does not limit the support of the EESC for the mechanism. It contributes commentary on political neutrality and recognises the cultural diversity we are proud of.

### **Voting**

Votes in favour: 42  
Votes against: 153  
Abstentions: 23

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<sup>28</sup> As the European Parliament proposed in its resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012), [P7\\_TA\(2014\)0173](#), rapporteur: Louis Michel, 22 November, para 9.

The following paragraphs of the section opinion were amended to reflect the amendment adopted by the assembly but received more than one quarter of the votes cast (Rule 59(4) of the Rules of Procedure):

### **Point 3.12**

*Civil Society Organisations, human rights defenders, whistleblowers and journalists are in the front line when the rule of law deteriorates and in a very difficult situation when there is a breach of law in a given Member State. It is they who uphold the observance of rights, monitor the situation and report violations and it is at the grassroots level that they can send out early warning signals. Therefore, the EESC believes that their role is of primordial importance, as is that of the media and investigative journalism. Therefore, ways of protecting CSOs and the media are necessary for any tenable way forward. Proposals for their role must feature prominently in the proposals that the Commission will present after the reflection period.*

### **Voting**

Votes in favour: 122  
Votes against: 73  
Abstentions: 20

### **Point 1.11**

*Education, both formal and non-formal, has a key role to play in building the democratic and rule of law culture. Liberal Democracy and the rule of law should be in the hearts and minds of every European citizen; The EESC calls on the European Commission to propose an ambitious communication, education and citizen-awareness strategy on fundamental rights, the rule of law and democracy.*

### **Voting**

Votes in favour: 119  
Votes against: 73  
Abstentions: 21

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