



# Rule of Law within the Union

Invitation to send your comments and answers

European **Political**  
**Strategy** Centre

The European Commission published a **Communication**<sup>1</sup> 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:

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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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<sup>1</sup> <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)

As proposed in multiple recommendations on other pillars of this consultation, inclusion of civil society as one of the key players in assessing rule of law threats needs to be formally set. This inclusion can materialise in several ways:

- Enhancing stakeholder cooperation and civil society participation in any assessment framework: To support the enhanced assessment of the rule of law (described further in following pillars) in terms of media freedom, corruption, also including the establishment of indicators and monitoring of country-specific conditions, should include non-governmental sources.
- EC should seek possibilities to partner with civil society to raise awareness of the effects and identification of rule of law deterioration.
- Creation of, and maintaining existing networks to identify rule of law risks should be built with a multi-stakeholder approach, which includes non-governmental actors from academia, independent media, international organisations and civil society.

In addition, the EU needs to increase awareness raising on the management of funds and setting up administrative models for scenarios in which rule of law or conditionality elements of EU funds are violated. This includes building up capacity and continuing to raise awareness in different areas, including municipal and local governments, judiciary system and other supporting actors or beneficiaries, such as citizen 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)

Transparency International EU (TI EU) has looked into the possibilities to promote Rule of Law in Europe in its report [Can EU funds promote the rule of law in Europe?](#) The report includes multiple recommendations on Rule of Law, which are supported by other work of Transparency International EU.

**Assessment of Rule of Law:**

- The Copenhagen criteria could also be used after accession to monitor continued compliance with Article 2 TEU by Member States, thus extending them to all Member States, not just new members. The Commission should identify indicators for the current Member States based on the latest interpretation of the Copenhagen criteria. This would be in line with the spirit of EU treaties, as they urge Member States to promote EU values.
- The EU should establish a regular rule of law assessment mechanism for all Member States. There are a number of different scenarios that could be considered. For instance, the EU's Fundamental Rights Agency could be well-suited to carrying out the assessment, as it already collects and analyses data on respect for rights in the EU. This would require a formal extension to its mandate since it is currently not allowed to report on individual Member States. This assessment of all Member States could also be carried out by of a panel of independent experts to assess generalised deficiencies, as envisioned in the Parliament's first reading of the Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States. We would also support and encourage the inclusion of anti-corruption organisations as observer members of such a panel, as corruption risks are often linked to the deterioration of the rule of law.

**Enhanced monitoring:**

New methods of monitoring, perhaps a combination of quantitative indicators and qualitative assessments, would need to be developed in order to capture the complexities of the situation in different member-states.

- Annual monitoring: The European Commission, the Fundamental Rights Agency, or a panel of independent experts, would prepare and publish the periodic threat assessments and the annual monitoring exercises of all Member States. They could solicit input from a range of sources, and make the reports public. This work should be done in close cooperation with third-party experts, including academics, legal advisors and/or civil society organisations working in the appropriate fields.
- Monitoring of conditionalities: Monitoring conditionalities as a whole (not just in relation to rule of law) could be improved by replacing the current system in which Member States report on their own performance with a more comprehensive monitoring model that includes a greater number of stakeholders. To encourage continual monitoring, interim and ex-post conditionalities or benchmarks should be introduced in addition to ex-ante conditionalities.
- Information collection: Article 337 TFEU provides for the Commission to be able to "collect any information and carry out any checks required for the performance of the tasks entrusted to it", subject to a simple majority in the Council. Thus, there is scope in the treaties for the Commission to take firmer action to ensure that Member States comply with the Article 2 values, as long as the Commission has the political will to act and has the political support of the Member States.
- European Semester Reports: Following development of the rule of law situation can be included as part of the European Semester reports.

### **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)

#### **Alternative mechanisms**

- The Commission could freeze funds going to a Member State until it implemented adequate policy reforms in line with the recommendations agreed by the Council and the Commission. The freeze could be complete in case of serious rule of law problems, or partial in cases of limited breaches. In the latter case, the funding streams suspended would be those most affected by poor rule of law standards, such as big infrastructure projects where lack of rule of law might lead to inadequate contract enforcement.
- Any new (or existing) mechanism should ensure that the 'semblance of change', such as amended national laws, is matched by change in practice, embedded in societal expectations. There is little value in cosmetic changes designed only to avoid sanctions and ensure that funds continue to flow.

#### **Strengthening conditionality elements:**

- Strengthen the ex-ante conditionalities related to the rule of law: Responding to the rule of law threats in Member States can be enhanced by introducing regular assessments and conditionalities related to the suspension of EU funds, while preventing the impact on local and regional authorities or civil society when the conditionalities relate to the responsibility of the national government.
- TI EU supports the position on conditionality elements adopted by the European Parliament (2018/0136(COD)), particularly on introducing a new article to define generalised deficiencies as regard to rule of law, the protection of Union's financial interest from financial losses caused by generalised deficiencies regards the rule of, and involving the European Parliament on adopting and lifting measures.
- If the periodic assessment on rule of law raised some concerns, but not major ones, then the Commission could recommend that ex-ante, interim and ex-post conditionalities relating to compliance with the rule of law be included in the Partnership Agreement with the country concerned. Conditions might be applied in particular to any project which could be threatened by poor rule of law standards. This would mean that some of the funds for the country in question would not be disbursed until the country drew up a plan demonstrating how it would meet its EU rule of law obligations.