

Communication of the European Commission of the 3rd of April 2019 « Further strengthening the Rule of Law within the Union – State of play and possible steps » - Belgian elements

We would like to welcome the Communication of the Commission « Further strengthening the Rule of Law within the Union – State of play and possible steps ». It is a pertinent and timely contribution, that rightly stresses the need to provide a collective response to the growing challenges regarding the Rule of Law in the European Union.

The Rule of Law is indeed a crucial pillar of the European Union. We recognize the challenges in this regard and the need to further ameliorate existing instruments, in order to be able to intervene at an early stage when the respect of the Rule of Law causes problems. The trust by the European citizens and economic actors in the European legal order, the internal market and the various policy domains of the European Union are all dependent on the respect of the Rule of Law by the EU Member States and institutions, as the whole of EU law is based on mutual trust. For example, in its Achmea ruling, the Court stated that “EU law is thus based on the fundamental premise that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. That premise implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the law of the EU that implements them will be respected”.

The Belgian citizens and the Belgian civil society have equally voiced their concerns on several Rule of Law questions (high number of parliamentary questions, debates in parliament, requests for meetings by NGOs, ...).

The Commission proposes a three-pillar approach : promotion – prevention – response. **Belgium wants to confirm its engagement to work on all three dimensions, in full respect of the Treaties and the institutional framework.**

Promotion: Building knowledge and a common Rule of Law culture

Specifically in relation to the promotion of Rule of Law standards, we support the **need to develop a Rule of Law culture in Europe, based on the work of the EU institutions and the Council of Europe.** Not only public authorities and civil society play a vital role, but national parliaments and local authorities can play a very active role as well, for example by holding national debates and organizing specific awareness events. This goes for all parliamentary assemblies, including the European Parliament and the Parliamentary Assembly of the Council of Europe.

The training of national judges and other experts in the case-law of both the European Court of Justice and the European Court of Human Rights is also key in this regard. A broader utilization and knowledge transfer of tools like the EU Justice Scoreboard should equally be promoted.

Belgium agrees that the **relationship of the EU with the Council of Europe is particularly relevant** in the promotion of the Rule of Law. The EU institutions and Member States could develop this further with a view to promoting a common Rule of Law culture within Europe. There is a need for:

- a greater visibility of the work of the Council of Europe. The Council of Europe provides very valuable analysis and information, for example the reports of the Venice Commission and of the GRECO group, which should be integrated in the work of the European Institutions.

- a more substantial dialogue and a **deeper and more structured cooperation between the European Union and the Council of Europe**, in order for the different strains of work to feed into each other's work. Council of Europe recommendations should be taken into account during these activities.
- to re-launch the negotiations on the accession of the European Union to the European Convention on Human Rights, as required by the EU Treaties.

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

In order to **promote, prevent and strengthen** the respect for the Rule of Law, we want to establish a **Periodic Peer Review of the Rule of Law in the EU**, as discussed with all Ministers for European Affairs during an informal breakfast on March 19th of this year. The mechanism should be set up as part of a positive and inclusive contribution to the respect of the Rule of Law in the EU and aim at fostering better understanding and unity amongst Member States as well as cohesion within the EU Member States' societies. The mechanism should allow for a constructive, structured and interactive **political discussion between all participating states. Each participating state will review and be reviewed by all other participating states.** It will be based on the core principles of objectivity, non-discrimination, equal treatment of all participating states, following an evidence-based and nonpartisan approach. 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 participating states, that are reviewed in a predetermined order. The scope of the mechanism should be on the Rule of Law, including judicial independence, effective judicial protection and legal certainty. During the exchange of views, where possible, best practices could emerge for consideration which will not have any binding legal consequences. The mechanism would take into account the views of experts as a starting point and would be based on qualitative and impartial information from a predefined set of sources, including national, European and international organisations that are specialized in elements of the Rule of Law. The regular interactive discussions could be held on expert and political level in (the margins of) the GAC and should be prepared accordingly.

This Periodic Peer Review mechanism is currently being developed by the Member States in an intergovernmental way. In this respect, Belgium would also be open to an **institutionalized review, within the framework of the EU Treaties.** A proposal by the Commission would be welcomed, taking into account valuable expertise by the European semester, the EU Justice Scoreboard and or other relevant tools. An in-depth dialogue between the Commission and the Member States, in order to recognize early warning signs, can be supported. This dialogue should be based on all relevant sources, in particular the work of the Council of Europe. The outcome of such a review could then be discussed at political level, as is the case for economic recommendations in other Council formats, and could thus provide the basis for a genuine Periodic Peer Review within the General Affairs Council, as described above.

Belgium also wishes to voice its support on **strengthening the dialogue that the Commission** maintains with specific Member States. Belgium believes that a constructive dialogue is at the basis of every cooperative interaction and is necessary to obtain real progress and consolidation in matters of the Rule of Law. This kind of dialogue should allow us to prevent problems before they arise.

Response: Enforcement at Union level when national mechanisms falter

Belgium fully supports the Commission in her role as guardian of the Treaties. Concerning the **relevant case-law of the Court of Justice**, we recognize the role that the Court of Justice holds in the jurisprudential development and the concrete enforcement of the Rule of law in the European Union. As mentioned above, more in-depth and widespread training of judges and experts is important in this regard. National judges might be stimulated to refer in their jurisprudence to both the EU Charter of Fundamental Rights and the European Convention on Human Rights and the additional protocols. Outreach activities can also play a significant role, including the organisation of specific Rule of Law related seminars, events, information campaigns.

On the question of how to **ensure a more effective, timely and appropriate response in case of a Rule of Law related crisis in a Member State**, Belgium recognises that, although each institution must proceed within its own institutional role and procedures in this regard, additional progress could be made on the systematic exchange of information and practical cooperation. Belgium emphasises that every EU institution has a role to play in this regard and that ensuring respect for the Rule of Law is an imperative responsibility for all EU institutions and all EU Member States.

As to **the engagement with other institutions and international partners**, pertinent analysis concerning elements of the Rule of Law should be included in the proceedings in the EU institutions, including when the Commission is holding a Rule of Law dialogue within the framework of the 2014 Communication or in the future or when the Council would decide to hold a Periodic Peer Review discussion. The Fundamental Rights Agency also has an important role to play in this regard, for instance through the EFRIS (from November 2019) and, which could be strengthened in the future (widening its scope and tasks, including possibility to draft country reports).

Belgium supports the Commission proposal for a Regulation on the **protection of the Union's budget in case of generalized deficiencies as regards the Rule of Law in the Member States**. We are also open to other suggestions in other domains, on condition that all EU Member States are treated on an equal footing.