



Rule of Law within the Union

Invitation to send your comments and answers

European **Political**
Strategy Centre

The European Commission published a **Communication**¹ 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:

EU-RULE-OF-LAW-DEBATE@ec.europa.eu

benjamin.hartmann@ec.europa.eu

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:

Benjamin Hartmann, ph. +32 2 298 69 84, m. +32 460 79 81 55,
benjamin.hartmann@ec.europa.eu

¹ <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?

Professor dr. Marlene Wind, University of Copenhagen

It is crucial for the legitimacy of the entire integration project that new rule of law mechanisms are put in place. The same goes for the fight against corruption. The EU as such is going to lose legitimacy also among strong supporters if it stays complacent.

How can promotion at the national level be enhanced? The EU has to create more general awareness of these issues at the national level. This also goes for citizens and media in member states that have fewer problems. This will make it easier to exert peer pressure via-a-vis those member states that are performing less well. All the EU rule of law mechanisms should be publicized and discussed. Involve academics in panels that evaluate and create a formal scoreboard with Red, Yellow and Green marker (more on this below).

Suggestions:

- 1) Further training of civil servants, judges and civil society actors (NGO's) in good governance. The European University institute in Florence is currently developing a new School of Transnational Governance (STG) where executive training is at the center. The EU could invest even more in this school than it already does in order to make it a hub for good governance training of judges, civil servants, NGO's and young politicians.
- 2) Newer member states with rule of law and corruption-problems should moreover team up with civil servants from older more experienced member states who have been good at fighting corruption and protect freedom of speech, free universities, a critical press and an impartial justice system. It is essential for the EU's long-term survival that this happens.
- 3) Drawing on the Council of Europe expertise could improve training seminars in the troubled countries themselves and in host countries that could be drawn much more into helping their fellow judges and civil servants in less developed democracies. Drawing also on the European association of judges would be an excellent way forward. They are already doing a great job in this field but are lacking time and resources.
- 4) A yearly peer review of all MS listing rule of law and corruption indicators drawing on independent international measurement instruments is crucial to raise the trust. It should be made sure that reports are made public and discussed with both governments, civil society and other stakeholders including the media. This yearly review should in those countries that score badly be accompanied by a well covered a press conference with external and internal (independent) national experts who should help create awareness and pressure.
- 5) A follow up mechanism should be established that measure progress listing specific indicators
- 6) All countries that want to receive EU funding should accept close external monitoring and sign up to the EU's common public prosecutor. This office should be generously funded with resources to truly investigate fraud and misuse of EU funds.
- 7) Rule of law/good governance projects across the EU for secondary school kids should be established. They should visit each other and learn about democracy and the rule of law.

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?

Professor dr. Marlene Wind

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

Again, it is essential that prevention is taken seriously and enhanced. Just like in the economic and financial area where member states are penalized for not living up to the convergence criteria, the EU will have to closely monitor member states and draw clearly specified consequences if a member state oversteps art. 2. This will require specific monitoring of the following sectors:

- 1) **Freedom of speech:** who owns the media in the member states? Criteria and requirements for media pluralism has to be developed to monitor that the freedom of speech is real and that media power is kept separate from the government and the majority in parliament. However, it also has to prevent that media outlets are not bought up by oligarchs and concentrated in a few private conglomerates own by foreign (Russian or Chinese) money. Media pluralism and a critical free press is essential for democracy and the EU should help make sure that this is not threatened in any European country.
- 2) **Impartial and independent courts:** As mentioned earlier it is crucial that courts, judges and public prosecutors are not under pressure to deliver specific results for an elected majority. It is a cornerstone of democracy that the legislative branch should have no influence what so ever on length of contracts, pension, promotion, appointments etc. This should be laid down in a rulebook that can be used for yearly monitoring. No one will trust MS that do not have truly independent judicial bodies.
- 3) **Free Universities:** the EU should monitor to what degree universities in the member states can operate freely without state interference. Research should not be directed by political interests.
- 4) **A legislative commission should monitor if/whether an elected majority misuses its power to change electoral districts, electoral rules or changes a country's constitution with the pure intention of concentrating power in the hand of a small elite or a majority in parliament.**
- 5) **NGO's should be able to act freely and acquire funding from democracies outside the country to support their activities. In order to protect European democracy and way of life, non-democracies should however not be allowed to buy up media or infiltrate NGO's with money or resources.**
- 6) **Governments should not interfere in freedom of assembly or organization.**
- 7) **The EU should develop a Red, Yellow and Green card in the previously mentioned yearly reports. These reports should be made public**
- 8) **The EU/Commission should obviously continue its infringement procedures and reporting on rule of law problems in the MS**
- 9) **The newly launched new rule of law mechanism that links structural funds to rule of law should be strongly supported. The Councils legal service should NOT be allowed to question it but help develop ways that makes it possible. The EU simply will not be able to legitimize that money coming from the common pot is allocated to regimes that either misuse funding by challenging them to friends and family and/or refuse to let an independent prosecutor investigate possible fraud.**

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)

It should be borne in mind that the EU is currently under severe pressure from Russia and China on the one side and an increasingly isolationist US on the other. According to the UN estimate, the Europe will only amount to 8% of the world's population in 2050. Our continent is in other words shrinking. What does this mean? It means among other things that our way of life in Europe will come under increasing pressure from non- democracies in the future. This also means that if we do not fight to preserve our mix of market economy with social protection and liberal democracy, it may cease to exist in 50-60 years time. There is no guarantee that we – if we do not explicitly protect and insist on liberal democracy as the best way of organizing society, will be able pass on a free Europe to our children and grandchildren.

This is why it is so essential to make sure that illiberalism and the undermining of democracy is not tolerated inside our own house. This is not only about the trust of citizens though this is important. It is also because we have to continue conducting a respected foreign policy where we act as we preach. If our aid policy and foreign policy builds on democratic conditionality, we simply cannot make ourselves vulnerable by allowing illiberal and corrupt regimes inside the Union. Who will respect us then? If this not recognized and acted on by the Heads- of state and governments now, we may fail to pass on democracy in its current liberal and pluralist version to future generations.

How then about enforcement?

- 1) Build on the current rule of law mechanisms combining close scrutiny by peers, Council of Europe experts, external judges, CJEU case law and infringement cases with the new mechanism withholding funds from countries that do not live up to common standards.
- 2) Speak up and show that we cannot tolerate illiberal rule in the EU. The Heads of State and governments and the Council really have to step up here. The Commission and the European Parliament cannot do this on its own.
- 3) Ultimately, it should still be possible to use art. 7 though it may not today be the easiest weapon on the shelf.
- 4) The recent Austrian Ibiza-gate however suggests what we are up against. If democratically elected politicians in also old democracies are willing to sell out of our values and interests to the Russians, we are up against forces that may appear insurmountable. The same can be said of the past years developments in Hungary, Romania, Poland and Czech Republic and even Italy. The changes that they face are pertinent and complacency is not the answer.