

Comments to European Commission rule of law conversation

Brussels, June 4th 2019

The Donors and Foundations Networks in Europe (DAFNE) and the European Foundation Centre (EFC) within their joint Philanthropy Advocacy initiative welcome the Commission's April 2019 Communication on Further Strengthening the Rule of Law within the Union State of Play and possible next steps (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0163&from=EN>) and would like to share the following input/comments:

1. Overall comments:

The consultation and reflection come at a time when, unfortunately, abuses to the rule of law and infringements of European values are occurring, which is of key concern to us. These are particularly worrying since they are happening inside the European Union in a space that we considered to forever be built on European core values such as democracy, rule of law and fundamental rights. However, something we took for granted is no longer a given and we are as a sector more and more often looking to the EU institutions as a guardian of these core principles. Philanthropy Advocacy (PA) is of the opinion that firm and stringent actions at the EU level are needed to defend and protect the rule of law principle throughout the EU. We hence clearly welcome the envisaged development of an action plan on strengthening the rule of law within the European Union based on the three stated pillars: **promotion, prevention and enforcement**.

We welcome the recognition of the key role that philanthropic organisations and other civil society organisations play in promoting the rule of law but would like to stress that these organisations need **an enabling operating environment** to do this. In this context we refer to a recent EESC opinion calling for the need for an enabling space for philanthropy (<https://www.philanthropyadvocacy.eu/news/eesc-calls-for-an-enabling-environment-for-philanthropy/>). We observe that shrinking space for civil society and civic rights in several cases go hand in hand with challenges to the rule of law. We therefore would welcome a strategy on strengthening the rule of law to be linked to the active promotion of civic space/fundamental rights.

The Commission should develop guidance on the freedom of association and how EU law can be used to protect civic space.

Several philanthropic and other civil society organisations have expertise to offer on rule of law questions (as well as on civic/fundamental rights and democracy). The sector should hence be part of a **regular, meaningful and structured dialogue with the EU institutions on the rule of law** (and, where appropriate, civic rights and democracy). The sector could also help identify where such principles are challenged. It already plays a crucial role in promoting the rule of law, democracy and fundamental rights and could further raise awareness around these core values and around the rights of redress and litigation.

In the next Multi-annual Financial Framework, the EU should ensure that **sufficient resources** are available to support civil society organisations to develop short, medium, and long term plans to defend European core values, including the rule of law. EU funding should be conditioned on the respect of these values by recipient organisations.

Overall we consider it important that the Commission consults and engages with various experts and stakeholder groups around rule of law questions. Various actors should be included in such a dialogue such as state attorneys, judges, lawyers and their respective networks, academia/researchers on the topic, Member States, other European or international policymakers and organisations, as well as other think tanks and civil society organisations.

The EU could consider **appointing an EU Coordinator on the rule of law** (and civic space/democracy questions), which could be a strong actor to ensure monitoring, analysis and action on civic space/rule of law issues. The Commission should create a “system of rapid response mechanisms” on violations to the rule of law, in cooperation with relevant national and European stakeholders.

The Commission should speak up and protect the rule of law, democracy, fundamental rights and civil society. The mechanisms to protect the rule of law should be reviewed, in particular whether infringement procedures and Article 7 procedures are appropriate tools to push back on rule of law issues inside the EU.

We consider that the rule of law initiative could be extended to also address infringements of civic space/fundamental rights violations and democracy deficits. Coordinated action between the Council, European Parliament and Commission to prevent and remedy violations of Article 2 should be envisaged (see also EP Resolution of November 14th on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights).

We would like to comment on some of the questions raised in your consultation more specifically as follows:

1. Promotion. Building knowledge and a common rule of law culture

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?

The EU could:

Develop guidelines and promotional material on the application of the rule of law and overall EU law/fundamental rights in domains where new challenges are emerging, such as freedom of artistic expression, freedom of association, access to public information, transparency of policymaking etc. involving academia/researchers/think tanks/civil society.

Offer training and education around rule of law questions and seek to engage with Member States (ministries of education)/academia/philanthropic and civil society actors at national/regional and very local level around promotion of rule of law questions.

Strengthen the capacity of those public and civil society actors who already promote rule of law standards at national, regional and local level.

Involving civil society organisations in trainings around the judicial and public administration; encouraging peer-to-peer training; and promoting the exchange of good practices among civil society organisations and others on rule of law questions, also across borders.

Provide the necessary funding for the stakeholders engaging around this. As key actor in this area, civil society organisations, need to be resourced to be able to fulfil this role more comprehensively. The envisaged Rights and Values programme could be a tool to provide support of this area of work, however its financial size may need to be increased. Technical assistance facilities within the structural funds should also be available for civil society for this purpose.

How can the EU 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?

The EU could:

- invite philanthropic organisations and other civil society organisations/private actors to a dialogue around rules of law questions and how to promote them also in cross-border exchange set ups.
- work with civil society organisations around rule of law questions in pre-accession countries and neighbourhood policies, as well as inside the EU.
- invite/encourage philanthropic actors and other civil society organisations to engage in grassroots discussions on rule of law questions, also in cross-border exchange set ups.
- support regular and continuous exchanges between civil society and academics in order to gather appropriate data on the economic, social, and cultural impact of lack of respect of the rule of law (also in the form of sector developed indexes/rankings).
- partner with civil society organisations/educational organisations to raise awareness on rule of law threats, enable EU citizens and residents to promote the rule of law.
- inform about the right to judicial redress and litigation in cases related to violation of democracy, and protection of fundamental rights.
- use the Justice programme consistently to encourage dialogue between judicial authorities and civil society organisations
- implement an effective, easy to access and well-funded European Rights and Values Programme that allows civil society to fully embrace Article 2 of the Treaty of the European

Union which states that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and the respect for human rights, including the rights of the persons belonging to minorities. These values are common to the Member States in a society where pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

2. Prevention: cooperation and support to strengthen and support the rule of law at national level

How can the EU enhance its capacity to build a deeper and comparative knowledge base of 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?

The EU could:

- Link the strategy to strengthen the rule of law to the development of an enabling civic space in Europe. Civil society/philanthropy frameworks (legislation, fiscal measures, etc) in the different Member States should be assessed in light of those principles and included in a review and alert mechanism.
- introduce a monitoring and alert/early warning system about rule of law and civic space concerns
- Make better use of the existing review procedures, and seek to incorporate reports and observations from the EU Fundamental Rights Agency (FRA), the European Network of Councils of the Judiciary, and bodies outside the EU such as the Council of Europe, Venice Commission, the INGO Conference, as well as the Communication of EP (Brussels, 3.4.2019 COM(2019) 163 final) and the OSCE Office for democratic Institutions and Human Rights (ODIHR).
- An EU coordinator who monitors the rule of law and civic space, and promotes dialogue with Member States would be a stepping stone to further strengthening the rule of law. Such a coordinator should ensure dialogue with international as well as national organisations/actors working on this area.
- Encourage more cooperation of respective national ombudsman with civil society organisations.
- Produce timely guidelines for transposition of EU legislation to Member States. This should be done so that unintended consequences are avoided, like in the case of the transposition of EU legislation tackling money laundering and financing of terrorism (see also stated here in the Philanthropy Manifesto https://www.philanthropyadvocacy.eu/wp-content/uploads/2019/03/20190321-Philanthropy-Manifesto_420x210_WEB.pdf)

3. Enforcement at Union level when national mechanisms falter

In what ways could the rule of law be further strengthened? Are there other areas, in addition to EU financial interests, where the EU should develop specific mechanisms (including the rule of law conditionalities) to avoid or remedy specific risks to the implementation of EU law and policies?

Main areas where the rule of law could be strengthened:

- The European Commission should play a more effective role in monitoring, involving also other non-government stakeholders.
- An EU coordinator who monitors the rule of law and civic space, and promotes dialogue with Member States would be a stepping stone to further strengthening the rule of law in its broadest sense in the Union.
- - A “rapid response system” should be put in place to detect civic space and rule of law breaches, including through legal advice. Currently the European Commission only intervenes when decisions are already made, which is far too late.
- The European Commission should continue to launch infringement procedures, where there is a breach with EU law violating EU freedoms and/or fundamental charter rights. Consideration should be given to expedited procedures/interim procedures where there is risk of irreparable harm.
- We would welcome the process around Infringement procedures becoming more transparent and allowing civil society organisations/other stakeholders to contribute to the different stages of the process more meaningfully.
- Other measures in addition to the Article 7 procedure, which is considered as the last resort, should be analysed and developed, where appropriate.
- Introducing compulsory ex ante conditionality for EU funding is useful when there is an effective system to monitor implementation. If the Commission finds in one of the Member States deficiencies as regards the rule of law, it should be able to resort to protective measures including the suspension or reduction of payments from the EU budget and a prohibition on entering into new legal commitments. Procedures would need to be developed, e.g. if the Council, as well as the European Parliament, would be able to veto the Commission's ruling by a qualified majority.

About Philanthropy Advocacy

The DAFNE and EFC joint advocacy project Philanthropy Advocacy acts as a monitoring, legal analysis and policy engagement hub for European philanthropy. Its main objective is to shape the national, European and international legislative environment by implementing the European advocacy roadmap for a Single Market for Philanthropy.

www.philanthropyadvocacy.eu

About Donors and Foundations Networks in Europe (DAFNE)



DAFNE is Europe's only network of donors and foundations associations. DAFNE is a leading voice of European donors and foundations with 27 member associations and a collective membership of more than 10,000 donors, foundations and grant-makers. DAFNE underpins individual activities of its members by encouraging dialogue and collaboration between the national associations. DAFNE is a member of WINGS, an associate partner of OECD netFWD and an active supporter of #NextPhilanthropy. DAFNE and the EFC jointly lead the Philanthropy Advocacy project.

www.dafne-online.eu

EU Transparency Register ID: 060243428664-85 www.dafne-online.eu

About the European Foundation Centre (EFC)



As a leading platform for philanthropy in Europe, the EFC works to strengthen the sector and make the case for institutional philanthropy as a formidable means of effecting change. We believe institutional philanthropy has a unique, crucial and timely role to play in meeting the critical challenges societies face. More people and causes benefit from institutional philanthropy than ever before, from eradicating deadly diseases and making the world's populations healthier to combating climate change and fighting for global human rights and equality. Working in close collaboration with our members, a dynamic network of strategically-minded philanthropic organisations from more than 30 countries, we:

- Foster peer-learning by surfacing expertise and experience embedded in the sector
- Enhance collaboration by connecting people for inspiration and joint action
- Represent philanthropy for favourable policy and regulatory environments
- Build a solid evidence base through knowledge and intelligence
- Raise the visibility of philanthropy's value and impact

The EFC and DAFNE jointly lead the Philanthropy Advocacy project.

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