
Response to the EC Communication Further Strengthening the Rule of Law within the Union

Introduction

Civil Society Europe (CSE) welcomes the Commission's Communication on *Further Strengthening the Rule of Law within the Union State of Play and possible next steps*. In the current context where persistent and longstanding abuses to the rule of law and EU values have occurred, this Communication is much needed. CSE is concerned that the lack of action to address this trend has started to undermine the EU's own credibility.

CSE welcomes the recognition of the key role that civil society organisations play in promoting common standards and best practice in the respect of the rule of law, and more fundamentally as an essential watchdog in healthy democracies and in holding accountable those in power.

In our many reports and statements on civic space in Europe¹, we have highlighted evidence of shrinking space in several EU countries and that when rule of law is challenged or weakened, also those acting as watchdogs are consistently attacked. We therefore would welcome a strategy on strengthening the rule of law to be inextricably linked to the active promotion of civic space.

We also welcome the development of an action plan on strengthening the rule of law within the European Union based on three pillars: promotion, prevention and enforcement.

We would like to make the following remarks and suggestions in these three areas responding to the questions you have included in your communication. As a summary these are our main asks:

- Any future strategy to strengthen the rule of law must include measures to promote and enable civic space including through adequate funding.
- Civil society organisations should be part of a regular, meaningful and structured dialogue with the EU institutions on the rule of law, as well as considered a key partner to identify violations, promote democracy and fundamental rights and raise awareness to rights of redress and litigation.
- The Commission needs to include in its impact assessment on fundamental rights civic space in order also to prevent transposition problems of EU legislation at national level.
- The Commission should encourage more expert exchange at EU level among different actors such as the judiciary, Member States and civil society organisations, instead of compartmentalizing such dialogue.

¹ [Report on Civic Space in Europe 2016 and Report on Civic Space in Europe 2017](#)
[Statement on Shrinking Space in Europe \(February 2018\)](#)

- The creation of a a EU Coordinator on the rule of law and civic space is a stepping stone to ensure monitoring, verification and analysis on civic space
- The Commission should create a “rapid response system mechanisms” on violations to the rule of law, in cooperation with relevant national and European stakeholders.

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?

Civil Society Europe believes that the Commission should:

- Build the capacity of those who promote rule of law standards at national, regional and local level. This means involving civil society organisations in trainings to the judicial and public administration, encouraging peer to peer training and promote the exchange of good practices among civil society organisations.
- Provide the necessary funding. As key actor in this area, civil society needs to be adequately supported to be able to fulfill its role. While we welcome the proposal for a Rights and Values programme, the funding proposal is too low and does not provide the much needed lifeline for the necessary organisations
- Expand the accessibility of EU funding to Civil society. In particular, we would suggest to use technical assistance facilities within the structural funds for this purpose by giving access to civil society organisations, notably for the monitoring of structural funds and the implementation of the ex ante conditionalities. The Commission should give appropriate guidance to member States so that these facilities are not just used by public administration.
- Develop guidelines on the application of EU law in domains where new challenges are emerging, such as freedom of artistic expression. This requires the collaboration of European institutions, Universities and Civil Society.

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?

Civil Society Europe believes that the EU institutions should:

- Invite civil society organisations to a meaningful dialogue and ensure its contributions to rule of law assessment are taken on board as a recognised stakeholder that plays a

pivotal role in strengthening democracy, monitoring power of state, and promoting good governance, transparency, effectiveness, openness, responsiveness and accountability²

- 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, corruption and state (corporate) capture.
- Partner with civil society organisations to raise awareness on rule of law threats, enable EU citizens and residents to promote the rule of law, 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

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?

Civil Society Europe believes the EU should:

- Make better use of the existing review procedure, and seek to incorporate reports and observations from the Fundamental Rights Agency, the European Network of Councils of the Judiciary, and bodies outside the EU such as the Venice Commission, the European Convention of Human Rights, and the OSCE Office for democratic Institutions and Human Rights (ODIHR).
- Link any strategy to strengthen the rule of law to the development of an enabling civic space in Europe. This means that a review of the implementation of civic freedoms needs to be part of the review on the rule of law implementation. In particular, the civil society framework (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.
- Do an ex ante impact assessment on civic space, and 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 which has been at the origin of national legislation and administrative decisions contributing to shrinking civic space, far from the purpose of the legislation.

² as stated in European Parliaments resolution 2015/2254(INL)

- Exchange of positive practices would also be useful to address these issues, involving member States that have a positive record in the different aspects of the rule of law framework or that have solved some issues including in transposition of legislation.
- Encourage expert exchanges at EU level among different stakeholders such as the judiciary, member States and civil society, in light of practices existing in international institutions, instead of compartmentalizing dialogue.
- Include civil society participation in any inter-parliamentary debate on democracy, the rule of law and fundamental rights and recognise this position formally.

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?

For Civil Society Europe, the main areas where the rule of law could be strengthened are as follows:

- Introducing compulsory ex ante conditionality is useful when there is an effective system to monitor their implementation. 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 as well as and promotes dialogue with Member States would be a stepping stone to further strengthen the rule of law in its broadest sense in the Union³. Such a coordinator should ensure dialogue with international organisations working on this area.
- 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.

About us

Civil Society Europe (CSE) brings together 28 European networks of civil society organisations (CSO) working towards regenerating the European project around the shared values of Equality, Solidarity, Inclusiveness and Democracy.

³ See EESC Opinion SOC/563 Financing of CSOs by the EU adopted on 30 March 2017



The European Coordination for Civil Society Organisations

CSE is an independent voice promoting a space for structured civil dialogue and citizen participation at all levels. Our main objectives: to facilitate and enable horizontal and vertical dialogue between European civil society organisations and policy-makers and help strengthening CSOs in their activities and relations with the institutions.

