



**European
Movement**
International

Policy Position The Rule of Law

At a time when the European Union is confronted with breaches of the rule of law from within, its toolbox to address such challenges is being put to the test. This policy position puts forward several proposals for a more effective framework to protect the rule of law in EU Member States.

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”

Article 2 TEU

Ever since the initiation of the European project, the rule of law has formed a cornerstone of the European construction and is one of the founding principles of our Union. Having been awarded the Nobel Peace Prize in 2012, the European Union prides itself on a successful struggle for peace, democracy and human rights.

Following the European Council in Copenhagen in 1993, membership of the Union was made conditional inter alia upon adherence to the values enshrined in Article 2 TEU, thus ensuring that only sound democracies are able to accede to the EU. Furthermore, in the external dimension, the promotion of democracy is an underlying element of the EU's policies towards third countries.

“Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.”

Article 4(3) TEU

Internally, the rule of law, which is embedded in the Treaties, determines the way the EU pursues its objectives and how the EU institutions exercise their competences. As an objective of the Union, respecting its values also imposes certain obligations upon EU Member States.

On several occasions, however, Member State governments have undermined and continue to undermine the rule of law in their own jurisdictions. As such, a gap often emerges between the hyperbolic pre-accession rhetoric on the rule of law and its de facto expression post-accession.

The European Movement International believes compliance with the rule of law is essential to protecting and fostering democracy in the European Union. Maintaining the coherence and consistency of the internal practice and external promotion of democracy, the rule of law and fundamental rights are key to the credibility of the Union. Therefore, existing mechanisms should be enforced, evaluated and complemented in the framework of a fully-fledged rule of law mechanism.



An independent authority monitoring compliance with the EU's fundamental values is needed

The integration and incorporation of existing monitoring tools into one integrated and independent authority that regularly monitors institutional compliance with the Union's fundamental values is desirable. Coherence in compliance will provide more clarity for Union citizens in their rights as well as certainty for Member States in terms of implementation.

To this end, the European Movement supports calls for a 'democracy watchdog' with a mandate to routinely monitor the situation of the rule of law in all of the EU's Member States¹. Such an authority could contribute to a yearly cycle of policy coordination integrated in the European Semester, with a view to fostering democracy in the Member States.

Objectivity and transparency are key. The monitoring authority should not be subject to outside influence, especially political influence. Instead, monitoring needs to be carried out independently, in a transparent manner and clearly abstain from unfairly

¹ Such as the call for a "Copenhagen Commission" by Jan-Werner Müller (2013), "Safeguarding Democracy Inside the EU", available at: http://www.transatlanticacademy.org/sites/default/files/publications/Muller_SafeguardingDemocracy_Feb13_web.pdf.

targeting certain countries. Given the vagueness of the concept of the rule of law, it is particularly important to ensure that indicators or benchmarks free of any political bias are included from the beginning.

Duplication of instruments needs to be avoided. The Council of Europe has an expert body on constitutional matters known as the European Commission for Democracy through Law or 'Venice Commission'. Any new au-



thority should take into account the opinions of the Venice Commission as well as incorporate EU agencies such as the European Union Agency for Fundamental Rights (FRA), rather than duplicating existing mechanisms.

Civil society organisations play a fundamental role in the protection of the rule of law principles. They provide expertise, offer checks and balances to government and promote good governance, transparency, effectiveness, openness, responsiveness and accountability. The EU should raise awareness of its values by supporting

civil society in its work and capacity to promote a functioning rule of law. Any monitoring authority feeding into an annual cycle on democracy, the rule of law and fundamental rights, should draw on the expertise provided by civil society organisations.

Better enforcement of existing rule of law mechanisms is necessary

The values enshrined in Article 2 TEU are protected by the current rule of law mechanism established in **Article 7 TEU** which enables the EU to suspend certain membership rights if it can be established that there has been "a serious and persistent breach" or "clear risk" of a breach of the values by a Member State. In 2014, the Commission adopted a **new Framework to address systemic threats to the rule of law** to allow for a dialogue between the Commission and the Member State concerned. The objective of the framework is to prevent an emerging threat to the rule of law from escalating into a situation where the Commission would need to trigger Article 7 TEU.

While the Framework in theory can lead to penalties under Article 7 TEU,

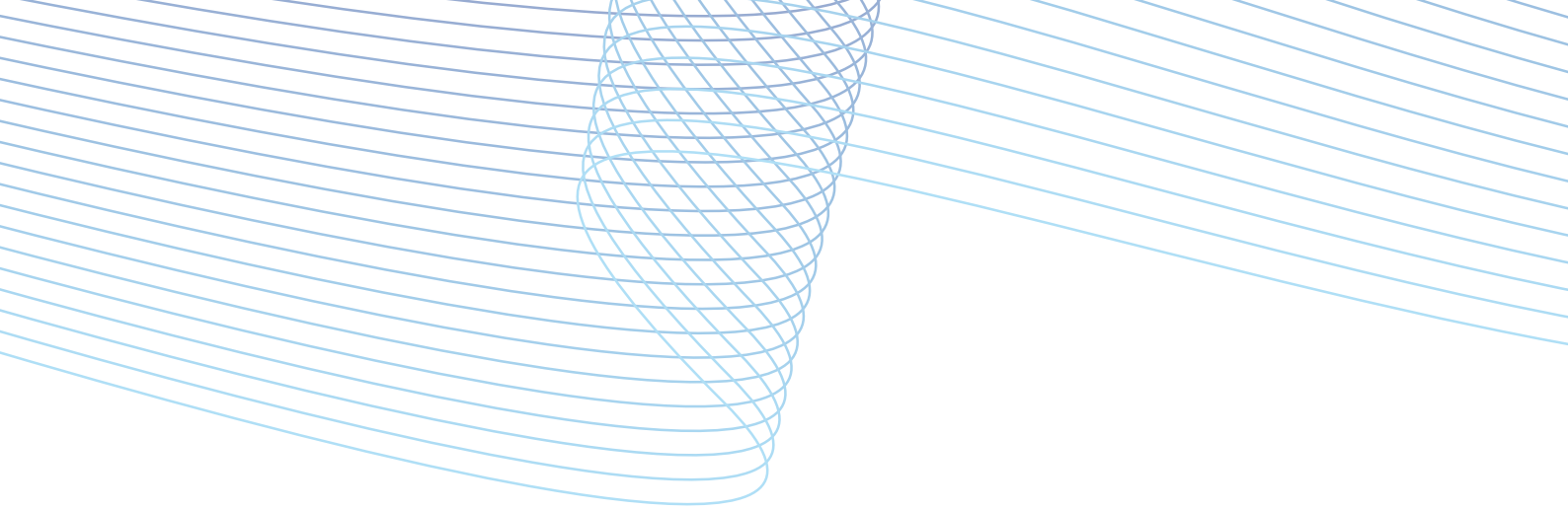
the mechanism requires unanimity in the Council which due to the position of some Member States is currently unattainable. The high implementation threshold thus renders the mechanism ineffective and undermines the Union's ability to respond to rule of law breaches. **In the event of further Treaty change** reviewing Article 7 TEU to lower the thresholds for decisions would therefore be preferable.

The EU Charter of Fundamental Rights should be revised by abolishing Article 51

which states that the provisions of the Charter are applicable to the Member States "only when they are implementing Union law". This, albeit legally and politically challenging process, will ensure the full application of fundamental rights in the Member States.

Alternatively, and without necessitating Treaty change, the extension of the infringement action to a 'systemic infringement action' is desirable.

The infringement procedure under Article 258 TFEU allows for the Commission to bring individual breaches of EU



law in front of the European Court of Justice which in turn can impose upon the Member State in question a lump sum or penalty payment. The thematic grouping of infringement actions concerning violations against specific provisions of EU law, would enable the Commission to communicate that the series of individual infringements add up to something larger².

While an EU acquis on values does not exist for the time being, the Court could begin to confirm individual breaches of a systemic infringement action along with a breach of Article 2 TEU, thereby developing an Article 2 TEU jurisprudence. Systemic infringement proceedings could also be grouped under Article 4(3) TEU by providing evidence that a Member State government is hindering the achievement of the EU objectives.

If the Court were to confirm a systemic breach, corrective measures would have to be put in place to address the

systemic threat to EU values. If continued systemic infringement occurred, sanctions in the form of withholding EU funds would be appropriate. Such an extension of sanctions beyond the current provisions would call for additional legal authority which could be provided through secondary legislation.

Background

The European Commission has taken unprecedented steps in reacting to rule of law breaches. In early 2016 it initiated for the first time, an assessment under the 2014 [new EU Framework to strengthen the Rule of Law](#) with regard to two Polish laws. Since then, the Commission has been in an [open dialogue](#) with the Polish Government and has adopted a [Rule of Law Opinion](#), [Recommendation](#) and [complementary Recommendation](#) in order to ensure the full respect of the rule of law. Moreover, the Commission recently reaffirmed its approach to resort to infringement actions to counter

rule of law breaches in Hungary. In the meantime, the European Parliament has adopted an own initiative report [“EU mechanism on democracy, the rule of law and fundamental rights”](#).

In December 2016, the European Movement International sent an [open letter](#) to Commissioner Timmermans expressing full support for the report. The European Commission has however decided not to follow up with a legislative proposal.

The European Movement

seeks to provide a platform to encourage and facilitate the active participation of citizens and stakeholders in the development of European solutions to our common challenges. We offer thought leadership on the issues that affect Europe and we give the opportunity to representatives from European associations, political parties, enterprises, trade unions, NGOs and other stakeholders, through our 39 National Councils and 34 International Associations, to work together, towards improving the way that Europe works.

² Kim Lane Scheppele (2013), “What can the European Commission Do When Member States Violate Basic Principles of the European Union? The Case for Systemic Infringement Actions”, available at: http://ec.europa.eu/justice/events/assises-justice-2013/files/contributions/45-princetonuniversityscheppelesystemicinfringementactionbrusselsversion_en.pdf

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