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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 17 July 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE  
EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS Strengthening the Rule of Law within the  
Union – A blueprint for action

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Delegations will find attached document COM(2019) 343 final.

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Brussels, 17.7.2019  
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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN  
ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE  
REGIONS**

**Strengthening the rule of law within the Union  
A blueprint for action**

## I. INTRODUCTION

The European Union is based on a set of shared values, including fundamental rights, democracy, and the rule of law.<sup>1</sup> These are the bedrock of our societies and common identity. No democracy can thrive without independent courts guaranteeing the protection of fundamental rights and civil liberties, nor without an active civil society and free media ensuring pluralism. The rule of law is a well-established principle, well-defined in its core meaning. This core meaning, in spite of the different national identities and legal systems and traditions that the Union is bound to respect, is the same in all Member States.<sup>2</sup>

Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. The rule of law has a direct impact on the life of every citizen: it is a precondition for ensuring equal treatment before the law and the defence of individual rights, for preventing abuse of power by public authorities and for decision-makers to be held accountable. Respect for the rule of law is also essential for citizens to trust public institutions. Without such trust, democratic societies cannot function. The rule of law covers how accountably laws are set, how fairly they are applied, and how effectively they work. As recognised by the European Court of Justice and the European Court of Human Rights, it also covers institutional issues such as independent and impartial courts,<sup>3</sup> and the separation of powers.<sup>4</sup> Recent rulings of the European Court of Justice have continued to underline that the rule of law is central to the EU legal order.<sup>5</sup>

The European project relies on permanent respect of the rule of law in all Member States. It is a prerequisite for the effective application of EU law and for mutual trust between Member States. It is also central to making the European Union work well as an area of freedom, security and justice and an internal market, where laws apply effectively and uniformly and budgets are spent in accordance with the applicable rules. Threats to the rule of law therefore challenge the legal, political and economic basis of how the EU works. This is why promoting and upholding the rule of law is a central imperative of the European Commission's work as guardian of the Treaties. Deficiencies as regards respect for the rule of law in one Member State impact other Member States and the EU as a whole, and the Union has a shared stake in resolving rule of law issues wherever they appear.

While, in principle, all Member States are considered to respect the rule of law at all times, recent challenges to the rule of law in some Member States have shown that this cannot be taken for granted. Such challenges have triggered concern about the ability of the Union to address such situations. Many recent cases with resonance at EU level have centred on the independence of the judicial process. Other examples have concerned weakened constitutional courts, an increasing use of executive ordinances, or repeated attacks from one

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<sup>1</sup> Article 2 of the Treaty on European Union.

<sup>2</sup> The rule of law is enshrined in Article 2 of the Treaty on European Union as one of the founding values of the Union, common to the Member States.

<sup>3</sup> Article 19 of the Treaty on European Union establishes an obligation for Member States to ensure effective judicial protection. As set out by the Court of Justice, the very existence of effective judicial protection 'is of the essence of the rule of law', *Case C-72/15 Rosneft*.

<sup>4</sup> Annex to the Communication from the Commission to the European Parliament and the Council 'A new EU Framework to strengthen the Rule of Law' of 11.3.2014, COM (2014) 158 final, and recent case law of the European Court of Justice, *Case C-64/16, Associação Sindical dos Juizes Portugueses v. Tribunal de Contas*; *case C- 216/18 PPU, LM*, *case C-619/18, Commission v. Poland* (order of 17 December 2018).

<sup>5</sup> Judgment of 24 June 2019 in *Case C-619/18 Commission v. Poland*.

branch of the state on another. More widely, high-level corruption and abuse of office are linked with situations where political power is seeking to override the rule of law, while attempts to diminish pluralism and weaken essential watchdogs such as civil society and independent media are warning signs for threats to the rule of law.<sup>6</sup>

In its Communication of 3 April 2019,<sup>7</sup> the European Commission presented an overview of the current toolbox to address challenges to the rule of law within the Union and opened a debate on how to strengthen it. EU institutions and bodies, Member States, international organisations, judicial networks, civil society and academia have taken part in this debate and provided valuable contributions. The importance of the rule of law and the need for a stronger EU rule of law toolbox clearly emerged from this debate. This echoes a growing concern for rule of law issues in the EU institutions.

In Sibiu in May 2019, European leaders unanimously committed to ‘continue to protect our way of life, democracy and the rule of law’.<sup>8</sup> The European Council has confirmed the Sibiu commitment in its Strategic Agenda adopted on 21 June 2019.<sup>9</sup> This calls for rule of law matters to have a higher priority in the European Council and the Council. Respect of the rule of law has figured prominently in the debates in the European Parliament 2014-2019 term,<sup>10</sup> as well as in the programmes of Council presidencies.<sup>11</sup> It has also been an important theme of the 2019 European elections campaign. European political parties have started to consider whether parties which challenge the rule of law and common EU values should be excluded from the parties.

While this debate will need to continue,<sup>12</sup> this Communication sets out concrete actions for the short and medium term. Some actions can be set in motion immediately. Others will have to be developed further as a key work strand for the incoming Commission, the European Parliament and the Council. Strengthening the rule of law in the Union is, and must remain, a key objective for all.

## II. THE RULE OF LAW: A SHARED VALUE FOR EUROPEANS

Since the April Communication, the debate on the rule of law has intensified. The Commission has benefited from a wide variety of contributions and reflections. The Commission received 60 written contributions<sup>13</sup> from national, EU and international institutional actors, as well as from civil society and academia. The Commission also

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<sup>6</sup> More generally, and in addition to political developments, technological or societal developments may also create new challenges to the rule of law in the years to come, for example in relation to artificial intelligence and its use in sensitive areas, such as justice systems.

<sup>7</sup> Communication from the Commission to the European Parliament, the European Council and the Council Further strengthening the rule of law within the Union – State of play and possible next steps (COM(2019)163 final).

<sup>8</sup> Ibid.

<sup>9</sup> <https://www.consilium.europa.eu/en/press/press-releases/2019/06/20/a-new-strategic-agenda-2019-2024/>

<sup>10</sup> In October 2016, the European Parliament adopted a resolution calling for a Union-wide monitoring mechanism regarding democracy, rule of law and fundamental rights.

<sup>11</sup> See for example the programme for the trio Council Presidency for the period 1 January 2019 - 30 June 2020: <http://data.consilium.europa.eu/doc/document/ST-14518-2018-INIT/en/pdf>

<sup>12</sup> For example, the Council has planned a review of its own rule of law dialogue under the Finnish Presidency in autumn 2019.

<sup>13</sup> A summary of the contributions is available here: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/initiative-strengthen-rule-law-eu\\_en#stakeholder-contributions](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/initiative-strengthen-rule-law-eu_en#stakeholder-contributions)

participated in conferences and debates at European level and in the capitals. Contributions emphasised the importance of the rule of law and the imperative of respecting it across the EU. They also confirmed the relevance and complementarity of the three pillars of promotion, prevention and response, set out in the April Communication. Some considered the development of the toolbox as a priority, whilst others considered that better enforcement of existing tools would already make a difference. A small number of contributions questioned the EU dimension of the matter. This reflects the reality that the significance of the rule of law in the working of the EU, to its citizens and to business, cannot be taken for granted and should be further promoted and explained. It also underlines the importance of showing that EU action is objective, proportionate and non-discriminatory, and that a formal EU response should only come into play when national checks and balances are not working.

In addition, in April 2019 the Commission undertook a Eurobarometer survey in all Member States. The results show overwhelming support for the rule of law, with limited differences between Member States.<sup>14</sup> The importance of the key principles of the rule of law were recognised by over 80% of citizens in all Member States.<sup>15</sup> Other key conclusions were the strong support for the importance of media and civil society in keeping those in power accountable, with over 85% of Europeans considering important that media, journalists and civil society can operate freely and make criticisms without risk of intimidation.

The Eurobarometer also underlined that Europeans consider it important that the rule of law applies throughout the EU, with 89% supporting the need for the rule of law to be respected in all other EU Member States.

Europeans also called for respect for the rule of law to be improved, with again a consistent figure of over 80% support for some improvements in the key rule of law principles. The need for improvement was particularly strong in terms of effective judicial protection, legality and avoiding arbitrary decisions – as well as for media freedom and civil society.

The consultation following the April Communication also reflected the importance of the rule of law for citizens in the willingness of many civil society organisations and academia to engage further in the promotion and prevention of the rule of law and to act as whistle-blowers when problems emerge. Some examples of actions which appeared particularly interesting are the organisation of EU-wide citizen dialogues, the development of rule of law ‘literacy’ with accessible and user-friendly sources, and open platforms to share information and alerts.

### **III. A SHARED RESPONSIBILITY FOR ALL MEMBER STATES AND EU INSTITUTIONS**

The responsibility to ensure the respect of the rule of law as a common value lies primarily on each Member State. To ensure a proper functioning of their state is an internal constitutional responsibility, but also a responsibility with regard to the Union and to other Member States. The principle of sincere cooperation (Article 4(3) TEU) emphasises the duty

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<sup>14</sup> Special Eurobarometer 489 – rule of law:  
<http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2235>

<sup>15</sup> Legality, legal certainty, equality before the law, separation of powers, prohibition of arbitrariness, penalties for corruption, and effective judicial protection by independent courts.

of the Member States to facilitate the achievement of the Union's tasks and refrain from measures which could jeopardise the Union's objectives. It also underlines the duty of the Union and the Member States to assist each other, which means there is a responsibility on all EU institutions to provide proportionate assistance to Member States in ensuring the respect of the rule of law.

The April Communication noted that the rule of law is also one of the principles guiding the EU's external action and has become progressively more central to the EU accession process and to neighbourhood policy. The European Council's Strategic Agenda confirms that upholding the EU's values should be at the heart of EU external relations. The Commission is already actively supporting rule of law reforms in third countries.

Another core obligation of Member States is to guarantee to citizens the exercise of their rights, notably through access to justice and fair trial. Article 19 TEU entrusts the responsibility for ensuring the full application of EU law in all Member States and judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court of Justice. Indeed, the role of national courts and tribunals in the application of EU law is crucial as they are responsible in the first place for the application of EU Law and for initiating the preliminary ruling procedure provided for in Article 267 TFEU, in order to secure the consistency and uniformity in the interpretation of EU law. In this regard, and as confirmed by the European Court of Justice's recent case law, the guarantee for judicial independence is a legal obligation at the core of the rule of law.

Effective judicial protection by independent courts is required by Art 19(1) TEU as a concrete expression of the value of the rule of law. That provision lies at the heart of a number of preliminary references from national courts and of infringement procedures launched by the Commission before the Court. Already in 2006, the Court ruled that the notion of 'judicial independence' is an autonomous concept of EU law and that this implies that judges must be protected against any external intervention that could jeopardise their independent judgment.<sup>16</sup> This was followed in 2018 and 2019 by a number of important judgements. The Court held that Member States are required by Union law to ensure that their courts meet the requirements of effective judicial protection, a concrete expression of the rule of law, and that the independence of national courts is essential to ensure such judicial protection.<sup>17</sup>

In other judgements, the Court has defined in further detail the requirements of the guarantees of independence and impartiality, noting their pivotal importance for both the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU and for secondary law instruments based on the principle of mutual trust.<sup>18</sup> The Court also issued interim measures to suspend national reforms that would affect judicial independence.<sup>19</sup> More recently, the Court has established that although the organisation of justice in the Member States falls within national competence, Member States must comply with EU law obligations when exercising that competence, and therefore this may be subject to review by the Court of Justice<sup>20</sup>. Other

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<sup>16</sup> Case C-506/04, *Wilson*.

<sup>17</sup> Case C-64/16, *Associação Sindical dos Juizes Portugueses*; Case C-49/18, *Escribano Vindel*.

<sup>18</sup> In terms of the composition of a judicial body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members as well as of the disciplinary regime governing judges, Case C-216/18 PPU, *LM* and Case C-8/19 PPU, *RH*.

<sup>19</sup> Case C-619/18 R, *Commission v. Poland*, order of 17 December 2018.

<sup>20</sup> Case C-619/18, *Commission v. Poland*.

cases brought by national courts and the Commission are pending before the Court, and could lead to further important developments in the case law.

There is also an evolving jurisprudence of the Court highlighting how systematic problems related to the rule of law may have a specific impact in the area of Union finances.<sup>21</sup>

#### **IV. ACTIONS TO STRENGTHEN THE RULE OF LAW**

The April Communication set out the existing toolbox to encourage and enforce the rule of law in the EU. Assessing the experience so far, the Commission identified avenues to reinforce this toolbox resting on three pillars: promoting a rule of law culture, preventing rule of law problems from emerging or deepening, and how best to mount an effective common response when a significant problem has been identified.

It is important to recall here the core principles underlying EU action on the rule of law. First, there is a legitimate interest from both the EU and other Member States in the proper functioning of the rule of law at national level. Second, the primary responsibility to ensure the rule of law rests with each Member State, and the first recourse should always be to national redress mechanisms. Third, the EU's role in this area must be objective and treat all Member States alike, and all its institutions need to contribute in accordance with their respective institutional role. Finally, the objective must not be to impose a sanction but to find a solution that protects the rule of law, with cooperation and mutual support at the core – without ruling out an effective, proportionate and dissuasive response as a last resort.

##### ***Promotion: Building knowledge and a common rule of law culture***

The best guarantee for the respect of our common values is the existence of a robust political and legal culture supporting the rule of law in every Member State. However, it cannot be assumed that this is always the case. Political developments in several Member States have led to cases where principles such as the separation of powers, loyal cooperation amongst institutions, and respect for the opposition or judicial independence seem to have been undermined – sometimes as the result of deliberate policy choices. A lack of information and limited general public knowledge about challenges to the rule of law provide a breeding ground for such developments. The Eurobarometer survey has revealed that over half of Europeans do not feel sufficiently informed about the EU's fundamental values.

These gaps need to be filled with proactive actions to promote the rule of law within the EU, both at professional level and in the general public at large. Such actions would seek to embed the rule of law in national and European political discourse, both through disseminating knowledge about, EU law requirements and standards and the importance of the rule of law for citizens and business, and by empowering stakeholders with an interest in promoting rule of law themes. For citizens and businesses to appreciate the role and importance of justice systems, these need to be modern and accessible. Of key importance is also the mutual trust in each other's judicial systems, which is a pre-condition for a truly functioning Single Market.

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<sup>21</sup> This includes preliminary rulings on the need for effective investigation of tax fraud or fraud with Union funds (see cases C-617/10, *Åkerberg Fransson*; C-105/14, *Taricco*; C-42/17 *M.A.S.*; and C-612/15 *Kolev*).

The Council's intention to discuss its own approach on the rule of law under the Finnish Presidency in autumn 2019 could bring useful improvements to the promotion of the rule of law amongst Member States.<sup>22</sup>

**Civil society, media, academia and Member States' education systems** can all play a part by ensuring a place for the rule of law in public debate and educational curricula. A key challenge in this regard is to foster a rule of law culture in the general public, as recognised in the Council Recommendation on promoting common values.<sup>23</sup> The Commission has received contributions from civil society organisations showing a willingness to deepen this work.<sup>24</sup> The Commission will follow up on the idea of a yearly event on rule of law for dialogue with, and between, civil society organisations and policy-makers at EU level. The Commission will also continue to pay a special attention to attempts to pressurise civil society and independent media and further support their work. Under the new Multi-Annual Financial Framework, even though these programmes are not specific to the rule of law, the Commission has proposed a stronger, more coherent funding framework for such work under the future Rights and Values programme<sup>25</sup> and the Creative Europe programme.<sup>26</sup> The Commission calls on the European Parliament and the Council to swiftly adopt these programmes so that they can start on time. Furthermore, EU-funded research on the rule of law should continue to be encouraged, and the results of ongoing projects duly disseminated.

**Transparency and access to information** are crucial tools for civil society and media in the national checks and balances. Laws on transparency and access to information need to be effectively applied in all Member States and at EU level.<sup>27</sup> In order to make the rule of law more visible, the Commission intends to develop a dedicated communication strategy on rule of law, including to make related information accessible in all official languages and to clearly explain its significance for the Union as a whole and for individual citizens and businesses.

**European networks** already play an important role in promoting and exchanging ideas and best practices.<sup>28</sup> Within the judiciary, networks such as the European Network of the Presidents of Supreme Courts of the EU, the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU, the European Network of Councils for the Judiciary, and the European Training Network for Judges should be supported to further promote the rule of law. Commission support to all these networks should prioritise projects promoting the rule of law, with a particular focus on Member States facing rule of law challenges.<sup>29</sup> Further cooperation between institutions in charge of constitutional oversight

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<sup>22</sup> See introduction and next section on prevention.

<sup>23</sup> Council Recommendation of 22 May 2018, on promoting common values, inclusive education, and the European dimension of teaching, 2018/C 195/0, O.J. 7.6.2018.

<sup>24</sup> See above – Section II.

<sup>25</sup> The Commission proposed €641 million for the implementation of the Rights and Values programme for 2021-2027.

<sup>26</sup> The Commission proposed €1.85 billion for the implementation of the Creative Europe Programme for 2021-2027, including up to €160 million for the cross sectoral strands. Its four priorities include the promotion of activities 'enhancing a free, diverse and pluralistic media environment, quality journalism and media literacy'. One of the objectives is to provide stable funding to projects on media freedom and media pluralism.

<sup>27</sup> These include Regulation (EC) No 1049/2001 and sectoral access to information under EU law. General national obligations also stem from the European Convention of Human Rights.

<sup>28</sup> These also include judicial networks advisory bodies to the Council of Europe such as the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE).

<sup>29</sup> Under the Justice Programme, the Commission gives operating grants to certain European networks in the justice area, which have framework partnership agreements with the Commission. Other networks receive funding from a variety of EU programmes and projects.



should also be encouraged and supported, including as regards the activities of the Conference of European Constitutional Courts. The European Network of Ombudsmen could also further its exchange of experience and best practices in promoting good administration and contribute to the collection and dissemination of relevant data.

More generally, national judiciaries have also an important role to play in promoting rule of law standards. The participation of national judicial councils, judges and prosecutors in national debates on judicial reforms is in itself an important part of national checks and balances.

**National parliaments** also play a key role in ensuring the rule of law in Member States, both as lawmakers and in holding the executive accountable. The European Parliament, the Conference of Parliamentary Committees for Union Affairs of Parliaments of the EU and the Conference of Speakers of the EU Parliaments could prioritise inter-parliamentary dialogue on rule of law issues, for example through an annual event. This could also be made a theme in national parliamentary debates on EU issues. The Commission stands ready to contribute to stimulating such dialogue. Bilateral parliamentary exchanges and support, for example on best practices from the angle of better regulation (such as evidence-based law-making or the transparency of procedures) or cross-party parliamentary groups on the rule of law, would also bring benefits.

The April Communication highlighted the contribution that could come from stepping up cooperation with the work of the **Council of Europe**. The Memorandum of Understanding between the Council of Europe and the European Union from 2007 gives the Council of Europe a specific role as the ‘benchmark for human rights, the rule of law and democracy in Europe’ and the EU committed to take its work into account. In full respect of the institutional and political responsibilities of both institutions, the Commission intends to build on this cooperation and increase EU participation in the Council of Europe bodies, making cooperation at service level stronger and more systematic. The EU is already an active participant in the Council of Europe at many levels, including with the Commission as observer in the Venice Commission.<sup>30</sup> An important additional step is for the EU to have observer status in the Council of Europe group of states against corruption (GRECO). In agreement with the Council, the Commission has taken the necessary steps to request observer status,<sup>31</sup> which was granted in July 2019.<sup>32</sup> The EU provides significant funding for the Council of Europe’s activities.<sup>33</sup>

The European Union’s accession to the European Convention on Human Rights<sup>34</sup> will be a strong political signal of the Union’s commitment to the rule of law and of its support for the Convention and its, notably judicial, enforcement system. The Commission has stepped up work towards restarting the accession negotiations.<sup>35</sup>

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<sup>30</sup> The European Commission for Democracy through Law, or Venice Commission, is an advisory body under the Council of Europe composed of independent experts in the field of constitutional law.

<sup>31</sup> Council Decision (EU) 2019/1086 of 18 June 2019, OJ L 171, 26.6.2019, p. 115–116.

<sup>32</sup> <https://www.coe.int/en/web/portal/-/eu-becomes-observer-to-anti-corruption-body-greco>

<sup>33</sup> Funding from a variety of EU programmes amounted to €27.5 million in commitments in 2018.

<sup>34</sup> Which is provided for in Article 6(2) TEU.

<sup>35</sup> In its Opinion A-2/13 of 18 December 2014 the Court of Justice ruled that a first draft Agreement was, on certain points, some of which are legally and politically complex, not compatible with the Treaties. These objections will require the Union to negotiate amendments to the draft Accession Agreement in order to allow the Union to conclude the Agreement and accede to the European Convention on Human Rights. After a reflection period, the Commission has consulted with the Council Working Group on possible

The Commission will also make cooperation with **other international institutions** working on rule of law issues deeper with stronger and more systematic cooperation at service level. This includes the Organisation for Security and Cooperation in Europe (OSCE), which works on the rule of law as part of its work on democratisation, and the Organisation for Economic Cooperation and Development (OECD), where cooperation could explore the socio-economic benefits of the rule of law.

The work of the United Nations Special Rapporteur on the Independence of Judges and Lawyers and the United Nations Office for Organised Crimes and Drugs, ensuring the secretariat of the Convention against Corruption, as well as the World Bank, has also contributed to the debate in the international community on the rule of law and its implications.

International organisations such as the Organisation for Economic Cooperation and Development are working on the issue from the angle of economic development and of the importance of the rule of law to the overall business and investment climate. The European Economic and Social Committee has likewise underlined the need to give more consideration to economic aspects of the rule of law. The European Semester for economic policy coordination has taken account of the relevance of the rule of law to the business environment in its work to promote growth-enhancing structural reforms in areas such as effective justice systems and the fight against corruption – a link also recognised by the European Central Bank and European social partners, stressing the importance of the rule of law as a guarantee for European citizens, employers and workers.

The Commission intends to build on the willingness of all these actors to engage in promoting the rule of law.<sup>36</sup>

The Commission will:

- Make full use of funding possibilities for civil society and academia supporting the strengthening of a rule of law culture, in particular among the general public and follow up on the idea of an annual rule of law event open to national stakeholders and civil society organisations.
- Strengthen cooperation with the Council of Europe, including the Venice Commission and GRECO, and explore further support to it in relation to EU priorities on the rule of law.
- Reinforce cooperation with other international organisations such as the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.
- Build on the cooperation with European judicial and other networks to promote rule of law standards, including any support that may be requested in relation to cooperation between constitutional courts.
- Develop a dedicated public communication strategy on the rule of law, including by upgrading the dedicated rule of law website to become a reference point for all relevant information.

The Commission calls on:

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solutions for the issues raised in the Opinion of the Court. These consultations have progressed well, and the Commission hopes that the conditions for a resumption of the negotiations will be met soon.

<sup>36</sup> See for example the European Social Partners' statement on the rule of law of 8 May 2019.

- The European Parliament and national parliaments to develop specific inter-parliamentary cooperation on rule of law issues, to which the Commission could contribute.
- The Council and the Member States to consider ways of promoting rule of law standards, including in the context of ongoing or upcoming Rule of Law discussions.
- Member States to strengthen promotion of the rule of law at national, regional and local level, including through education and civil society.
- Civil society organisations and social partners to continue their monitoring and their contribution to the discussion on the impact and concrete consequences of rule of law deficiencies in their respective area of responsibility.

### ***Prevention: Cooperation and support to strengthen the rule of law at national level***

The primary responsibility to ensure respect for the rule of law at national level lies with the Member States. The national judiciary, together with other national checks and balances such as constitutional courts and ombudspersons, are the first key lines of defence against attacks to the rule of law from any branch of the state. Nonetheless, the EU has a legitimate role to play in supporting national authorities and ensuring that negative developments are addressed at an early stage. The role of the EU institutions should be to facilitate cooperation and dialogue in order to prevent problems from reaching the point where a formal response is required under the Rule of Law Framework, by infringement procedures or by actions under Article 7 of the Treaty on European Union.

For the EU to play fully its role in this respect, EU institutions need to develop a stronger awareness and understanding of developments in the individual Member States, through dedicated monitoring, to be able to identify risks to the rule of law, develop possible solutions, and target support early on. Such monitoring should cover rule of law-related developments and reforms in Member States and help to control the sustainability and irreversibility of reforms which have been adopted as a result of EU intervention, such as infringement proceedings or the Cooperation and Verification Mechanism.

To strengthen the EU's capacity, **the Commission therefore intends to deepen its monitoring of rule of law related developments in the Member States.** In cooperation with Member States and the other EU institutions as necessary, it will take the form of a ***Rule of Law Review Cycle***, which will have the following characteristics:

(i) *Scope*

The review cycle would cover all the different components of the rule of law, including for example systemic problems with the process for enacting laws, lack of effective judicial protection by independent and impartial courts, or non-respect for the separation of powers.<sup>37</sup> The review would also examine the capacity of Member States to fight corruption and, where there is a connection with the application of EU law, look at issues in relation to media pluralism and elections. There is also a link to monitoring of the effective enforcement of EU law, notably the capacity of all actors playing a role in the enforcement of EU law to perform their duties: courts, prosecution services, law enforcement authorities,

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<sup>37</sup> For example, actions and public statements attacking individual judges or the judiciary as a whole would fall under this category.

independent authorities, public administrations with a supervisory role, ombudsmen and human rights institutions and defenders.<sup>38</sup>

While the monitoring would cover all Member States, it would need to be more intense in Member States where risks of regression, or particular weaknesses, have been identified.<sup>39</sup>

*(ii) Sources of information*

The review cycle would rely on a coherent use of existing sources of information. This would bring an increased focus on a range of areas with relevance for the rule of law. There is a need for all actors – institutional as well as from civil society – to share information and have their position heard. Many sources of information exist, including the bodies of the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development, as well as EU bodies such as the Fundamental Rights Agency.<sup>40</sup> This Agency, whose remit covers rule of law-relevant rights such as that to effective judicial remedy, has developed the EU Fundamental Rights Information System (EFRIS) to facilitate access to relevant existing information and reports concerning the situation in the Member States. This variety of sources of information could be better used, brought together and complemented more effectively than it is the case today. The specific forms such an enhanced monitoring could take will have to be developed, including in cooperation with national authorities and the other EU institutions, and should involve a process of continuous information gathering and dialogue with national authorities and stakeholders.

*(iii) Involvement of Member States and stakeholders*

In addition to relying on relevant sources, the Commission will **invite all Member States to engage further in a mutual exchange of information and a dialogue on rule of law related topics** such as judicial reform, the fight against corruption, and the law-making process, or on measures supporting civil society and independent media as actors of the rule of law. A number of these issues are already discussed as part of the European Semester, when they are linked to key enabling factors for growth. This dialogue will be complemented by a more targeted rule of law approach, encompassing additional rule of law aspects. The regularity and intensity of the cooperation would have to be stepped up in Member States where rule of law challenges are more apparent, again with the objective of finding cooperative solutions to problems before they escalate.

On this basis, a **network of national contact points in Member States** should be set up for dialogue on rule of law issues. This network would build on, and could integrate, already existing contacts in the rule of law relevant areas such as networks of national contact points in the justice and anti-corruption area.<sup>41</sup> It would serve as a forum for discussion of

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<sup>38</sup> The effective enforcement capacity of Member States administrations and authorities depends on key components, in particular: (i) enforcement and remedies powers, (ii) capacity/resource requirements, (iii) independence requirements, where necessary, (iv) enforcement procedures and (v) cooperation amongst authorities of different Member States.

<sup>39</sup> The Rule of Law Checklist from the Venice Commission is particularly relevant in identifying specific risks and weaknesses.

<sup>40</sup> In this respect, the full legitimacy and relevance of data provided by international public law organizations such as the Council of Europe and its bodies has been inter alia recognised by the Court of Justice.

<sup>41</sup> It would be for the Member States to designate the contact points, which could for example be located in the public administration or judiciary. Similar structures already exist to support Commission gathering of

horizontal issues, including as appropriate on possible developments of the EU rule of law toolbox instruments, and for sharing information and best practices. Contact persons will be focal points for bilateral dialogue with each Member State and would help to prepare and collect relevant information for the Rule of Law Report (see below). The network of national contact points could constitute a forum for early warning on rule of law related-reforms and for discussion amongst Member States.

Relevant bodies of the Council of Europe, as well as the OSCE and the OECD, and judicial networks could also be invited to share their expertise and present their views, including the European networks of the Presidents of Supreme Courts of the EU, the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU and the European Network of Councils for the Judiciary.

This process of dialogue is particularly relevant for detecting potential rule of law issues early, as an established and regular setting helps to improve understanding and minimise the risk of confrontation. The dialogue can also provide an opportunity for Member States to discuss rule of law-sensitive reforms in the preparation phase, including in light of the case law of the European Court of Justice. The standards developed by the Court can serve as a compass to flag where reforms would have to be addressed with caution (for example reforms that can have a negative – and maybe unintended – effect on the independence of magistrates or regulatory authorities). The dialogue will help to identify the possible need for requesting external support or expertise concerning specific national developments.

*(iv) Annual Rule of Law Report*

In order to ensure the necessary transparency and awareness, and to keep the rule of law on the political agenda of the EU, the Commission intends to publish an annual Rule of Law Report summarising the situation in the Member States. Based on the variety of the sources described above, it would provide a **synthesis of significant developments** in the Member States and at EU level, including the case law of the European Court of Justice, and other relevant information, such as relevant parts of the EU Justice Scoreboard and of the European Semester country reports. It would be an opportunity to report on the state of play in formal rule of law processes, as well as on the work of the EU institutions in the promotion of rule of law standards and the development of a rule of law culture. It could highlight best practices and identify recurrent problems. The review would be ring-fenced to matters of direct relevance to the rule of law in the EU.

The **EU Justice Scoreboard**, which provides comparative data on independence, quality and efficiency of national justice systems could itself be further developed and improved, including to better cover relevant rule of law related areas, such as in criminal and administrative justice.

The Rule of Law Report could furthermore serve to inform the dialogue with – and within – the European Parliament and the Council.

*(v) Inter-institutional dialogues on the rule of law*

The review cycle could help to maintain a dynamic debate and to continue improving the tools to strengthen the rule of law. It could constitute an important contribution to the work

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information for the EU justice scoreboard and for dialogue with Member States on anti-corruption policies.

of the **European Parliament** and the **Council**, ideally in the context of a regular and coherent calendar of inter-institutional cooperation.

The European Parliament and the Council could draw on the Commission's Annual Rule of Law Report in their own discussions and debates. As regards the Council, the review could for example inform Council discussions dedicated to the rule of law or be followed up in Council conclusions. In this context, the Commission welcomes the upcoming discussions on the Council's approach to rule of law expected to take place under the Finnish Presidency in the second half of 2019 which, together with the ongoing discussions on a peer review mechanism, could work on relevant synergies. The Annual Rule of Law Report could also form the basis of debates in the European Parliament and in Council. The work of the institutions will be most effective if it is a joined-up process, which could also be followed up with different work by the different institutions. Other EU institutions, such as the Economic and Social Committee and the Committee of the Regions, could also contribute.

The Commission looks forward to deepening work with the European Parliament, the Council and the Member States in the coming months and does not exclude any possibility provided in by the Treaties to increase the mutual knowledge of national systems. However, the Commission, as guardian of the Treaties, also needs to maintain its autonomy in terms of both the content and timing of its own assessments. A recurring idea that came in the context of the rule of law debate has been to have a panel of independent experts set up outside the Commission or EU institutions, with the goal of providing expert and objective assessments on rule of law challenges, while other proposals relate to the creation of a dedicated new agency. However, such approaches raise a number of problems in terms of legitimacy, the balance of inputs and the accountability for the results. Whilst the Commission already draws on all legitimate sources of information and expertise and cross-checks the different sources of information – and will continue to do so –, external expertise cannot take the place of an assessment made by the Commission itself, particularly when the Commission's conclusions could be the basis for acts that come with legal and financial consequences and which could be challenged at the Court of Justice. Nor can the European Parliament or the Council delegate decision-making to outside bodies. The authority and accountability of the institutions, as set in the institutional balance established by the Treaties, need to be maintained.

Finally, the Commission also calls on the **European political parties** to ensure that their national members pay due regard to the respect of the rule of law and follow up on the emphasis on the rule of law in their pan-European programmes. Regulation No 1141/2014 on the statute and funding of European political parties and European political foundations<sup>42</sup> requires that they observe, in particular in their programme and in their activities, the values on which the Union is founded, as expressed in Article 2 TEU.<sup>43</sup> In cases where the Commission has reasons to believe that respect for these values might be in doubt, it could ask the Authority for European political parties and European political foundations to verify compliance with the conditions set out in the Regulation.<sup>44</sup> A decision to de-register a political party or foundation could be taken, if the Authority determines that there has been a manifest and serious breach of those conditions.

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<sup>42</sup> Regulation No 2019/493 of the European Parliament and of the Council of 25 March 2019 amending Regulation No 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament.

<sup>43</sup> Article 3(c) establishing the conditions for registration of political parties.

<sup>44</sup> See Article 10(3) establishing the mechanism for verification of compliance with registration conditions and requirements.

The Commission will:

- Establish a Rule of Law Review Cycle to monitor the situation of the rule of law in the Member States. To support this process, the Commission will prepare an annual Rule of Law Report, further develop the EU Justice Scoreboard, and strengthen the dialogue with other EU institutions, Member States and stakeholders.
- Set up a dedicated dialogue with all Member States on rule of law relevant topics including through a network of contact persons.

The Commission calls on:

- Member States to designate their national contact points for the dialogue and exchange of information on rule of law related issues.
- The European Parliament and the Council to organise a dedicated follow-up on the Commission's Annual Rule of Law Report and work together with the Commission on an integrated approach to bring together in a coherent manner the work of the institutions on early detection and tackling of rule of law issues.
- European political parties to ensure that their national members effectively respect the rule of law.

### ***Response: Enforcement at EU level when national mechanisms falter***

The development of the promotion and the prevention approach should make the EU much more robust and help guard against serious and persistent challenges to the rule of law in the future. The aim is that the need for response at EU level would be significantly reduced. Nevertheless, when national rule of law safeguards do not seem capable of addressing threats to the rule of law in a Member State, it is a common responsibility of the EU institutions and the Member States to take action to remedy the situation. This has been confirmed by the European Court of Justice.

In recent judgments in the context of infringement proceedings and preliminary rulings, the **Court of Justice** has further clarified the requirements stemming from EU law regarding the rule of law and, in particular, judicial independence.<sup>45</sup> The Court has re-affirmed the importance of the independence of the judiciary and the respect of the rule of law for the effective functioning of the EU: it ordered the suspension of national laws which, according to the Commission's assessment, affect the independence of the judiciary and established that the organisation of justice by Member States is subject to compliance with EU law obligations. These decisions have added an important dimension to the rule of law processes under way at EU level, and play an important part in resolving these issues. There is also an evolving jurisprudence of the Court highlighting how systematic problems related to the rule of law may have a specific impact in the area of Union finances.<sup>46</sup>

The Commission will further build on this case law: it is determined to bring to the Court of Justice rule of law problems affecting the application of EU law, when these problems could not be solved through the national checks and balances. Building on its existing approach to

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<sup>45</sup> See section III above. To be noted that, in its opinion in [Case C-619/18 \*Commission v. Poland\*](#), the Advocate General stated that judicial proceedings can run in parallel with the 2014 Rule of Law Framework or Article 7 TEU proceedings even if addressing the same matters.

<sup>46</sup> This includes preliminary rulings, including regarding article 325 TFEU, on the need for effective investigation of tax fraud or fraud with Union funds (see e.g. cases C-617/10, [Åkerberg Fransson](#); C-105/14, [Taricco](#); C-42/17 [M.A.S.](#); and C-612/15 [Kolev](#)).

enforcement<sup>47</sup> and on the developing case law of the European Court of Justice, the Commission will pursue a strategic approach to infringement proceedings related to the rule of law, requesting expedited proceedings and interim measures whenever necessary. The Commission will also actively promote the standards developed in the Court of Justice case law, including by compiling the relevant findings of the Court.

As highlighted in the April Communication and in the contributions that followed, time is of the essence when addressing a potential rule of law crisis. Many rule of law challenges are time-sensitive and the longer they take to resolve, the greater risk of entrenchment and the more difficult for both the Member State and the EU to reverse the negative impact. It is thus important that the EU institutions act swiftly and have a more coherent and concerted approach and that, in particular, the formal processes of the Rule of Law Framework<sup>48</sup> and under Article 7 TEU come with clearer procedures and timelines.

On **Article 7 TEU**, the institutions should work together to intensify the collective nature of decision-making between them. The Commission welcomes the intention of the Council to agree on new procedures in respect of Article 7 hearings. This is an important step in the direction of more efficient proceedings. It would be particularly beneficial for the Council to reflect on whether the discussions in the General Affairs Council could be improved through their preparation at technical level in a Council working group. It could also be helpful to improve the decision-making process in terms of the institutional steps, with clear procedural rules. To ensure the institutional balance, the European Parliament should be given the possibility to present its case in procedures it has initiated. External ad-hoc participation of Council of Europe bodies or other external expertise could also be looked at.

The Commission will also reflect on how to further involve other institutions at an early stage of the process on the **2014 Rule of Law Framework**, whilst respecting the need for confidential dialogue with the Member State concerned at the start of the procedure.<sup>49</sup> The main objective should always be to find solutions as early as possible. However, when this does not succeed, ensuring that the European Parliament and the Council are fully updated and can express informed views before a critical stage is reached can help find a settlement. This will be coherent with a more collective approach to the rule of law among the institutions.

A critical issue is the continued objective assessment of the situation, based on solid expertise and relevant information. The process must continue to be based on public and recognised rule of law standards. The assessment and dialogue should draw on all available sources of **relevant expertise**, with the Commission retaining its autonomy and independence of assessment, in line with its role as guardian of the Treaties.<sup>50</sup> The expertise of Council of Europe bodies or other independent bodies may be called upon by a Member State facing a rule of law procedure, not only as a means of resolving the issue, but also to

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<sup>47</sup> This is in line with the more strategic approach to the Commission's enforcement actions set out in the Communication from the Commission of 2016 'EU law: Better results through better application', OJ C 18, 19.1.2017, p. 10–20.

<sup>48</sup> Which has been recently acknowledged by the Court of Justice in its case-law as an instrument forming full part of the EU's legal order and producing legal effects Order of the Court of 17 December 2018 in Case C-619/18 R.

<sup>49</sup> The first stages of the dialogue under the rule of law framework are not public.

<sup>50</sup> Notably the Council of Europe bodies issue a range of technical evaluations based on the case law of the European Court of Human Rights and the standards it has developed. However, there is no limitation on the expertise the Commission may draw on in its assessment.



demonstrate good faith and facilitate constructive dialogue.<sup>51</sup> The opinion of such bodies may also be requested in the absence of clearly defined parameters on a specific question.

Central to an effective EU approach on the rule of law and to the spirit of sincere cooperation is to ensure a swift **de-escalation or exit perspective from the formal rule of law process**, as soon as the Member State concerned has taken the steps required to restore respect for the rule of law. The EU and the other Member States need to have sufficient reassurances that the rule of law has been restored in a sustainable way. To this end, the announcement of the intention to close a procedure could be linked with support from the Commission to the Member State concerned, to ensure that commitments are effectively implemented and sustained, including through a specific follow-up monitoring. The same follow-up monitoring could also be used after the end of specific processes such as the Cooperation and Verification Mechanism.<sup>52</sup>

Alongside the formal rule of law related procedures, there may also be a need for action in specific areas of EU activity potentially affected by rule of law deficiencies in the Member States. Recent judgements of the Court of Justice have for example highlighted the impact of generalised deficiencies relating to judicial independence on the mutual trust on which instruments in the area of freedom, security and justice are based.<sup>53</sup>

This protective approach for the functioning of the EU is also the basis of the Regulation proposed by the Commission in 2018 to ensure the protection of the EU budget in case of generalised deficiencies as regards the rule of law in Member States.<sup>54</sup> Such an approach could be needed in EU policies other than the protection of EU financial interests in order to avoid or remedy specific risks to the implementation of EU law or policies. The Commission will explore the need for further measures to address the possible impact of persistent rule of law problems on other EU policies.

The protection of EU financial interests could already benefit from operational improvements. Building on actions planned in the new Commission Anti-Fraud Strategy (CAFS),<sup>55</sup> the Commission will consider options to establish a data analysis function that pools data from different sources concerning the systems in place in the Member States for the protection of the EU financial interests. This could allow for the identification of problems in managing risks related to the EU financial interests and potentially be used to issue warnings when problematic patterns start to emerge, such as slow and limited follow-up to European Anti-Fraud Office (OLAF) reports and, in the future, cooperation with the European Public Prosecutor's Office (EPPO), or insufficient control structures at the national level. The idea would be to intervene at a very early stage and establish whether the problem is limited or reflects a pattern. This system could support the mechanism of the Commission proposal concerning general deficiencies of the rule of law system, or other procedures linked to the protection of the EU financial interests.

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<sup>51</sup> The question of whether the Commission should also directly call on the Council of Europe and its bodies to assess specific issues in Member States could also need further reflection.

<sup>52</sup> The Cooperation and Verification Mechanism was set up as a transitional measure for the monitoring of judicial reform and the fight against corruption in Bulgaria and Romania at the time of their accession to the Union in 2007. Once this special mechanism ends, monitoring should continue under horizontal instruments.

<sup>53</sup> Case C-216/18 PPU *LM*.

<sup>54</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States; COM/2018/324 final.

<sup>55</sup> COM (2019) 196 final.

The Commission will:

- Make full use of its powers as guardian of the Treaties to ensure the respect of EU law requirements relating to the rule of law.
- Pursue a strategic approach to infringement proceedings, building on the developing case law of the European Court of Justice and promote the standards developed in the Court of Justice case law, including by compiling the relevant findings of the Court.
- Consider how to involve other EU institutions more regularly when implementing the 2014 Rule of Law Framework.
- Support Member States in de-escalation or exit perspective from the formal rule of law process, including with a follow-up monitoring.
- Explore by the end of 2020 whether the impact of persistent rule of law problems on the implementation of EU policies requires new mechanisms in addition to the proposed Regulation on the protection of the Union's budget.
- Explore the possibility, building on the Commission Anti-Fraud Strategy, of a data analysis function to help identify problems in managing risks related to the protection of EU's financial interests. The possibility to issue warnings if necessary, when problematic patterns start to emerge, will also be explored.

The Commission calls on:

- The European Parliament and the Council to reflect on intensifying a collective approach between the institutions on Article 7 TEU procedures.
- The Council to take forward its welcomed intention to provide the Article 7 process with clearer and more stable procedural rules.
- The European Parliament and the Council to adopt rapidly the Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.

## V. CONCLUSION AND NEXT STEPS

Upholding the rule of law is a shared responsibility of all EU institutions as well as of all Member States. All parties must assume that responsibility and play their part. In addition to the actions to be taken under this Communication, the Commission is committed to continuing the debate and taking additional action as appropriate within its own remit. The common objective must be to develop a coordinated and coherent strategic approach for the Union involving all relevant actors. Key elements of such a strategic approach include the promotion of a shared rule of law culture across the EU, an effective capacity to address problems early on through preventive measures, and a commitment for effective joint action wherever needed to contain problems when preventive measures fall short.

This Communication sets out a number of commitments and paths for reflection as part of the Commission's proposed blueprint for action. There will be a need for a continued follow-up in cooperation with the other EU institutions, Member States and stakeholders over the coming months. The debate has revealed a wide range of positive ideas that deserve further assessment and which feed into concrete steps in the future, in addition to those taken under this Communication. The Commission invites all stakeholders to join this debate and looks forward to the dialogue with the newly elected Parliament and with the Council on a coordinated approach.

In the meantime, the Commission will continue to play its full part as guardian of the Treaties, taking appropriate and proportionate measures to uphold EU law, and will invest in strengthening the capacity of the EU in this regard. The result should be to strengthen the rule of law in the EU and to fully reflect the crucial importance of the rule of law for all EU citizens and for the EU as a whole.