

OPINIONS

COMMITTEE OF THE REGIONS

138TH COR PLENARY SESSION, 11.2.2020–12.2.2020

Opinion of the European Committee of the Regions — Strengthening the rule of law within the Union — A blueprint for action

(2020/C 141/04)

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Reference document:	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 — COM(2019) 343 final

POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

General comments

1. welcomes the Commission's proposal, which recognises and attaches great importance to the rule of law as a precondition for the European integration process and as a fundamental value of the EU, enshrined in the Treaties and common to the constitutional traditions of the Member States; points out that the initiatives set out by the Commission for promoting the principles of the rule of law, for preventing possible breaches of these principles and for responding proportionately in the event of non-compliance with these principles, constitute a positive addition to the current system;
2. agrees that, although it is primarily the responsibility of each Member State, monitoring compliance with the rule of law is a responsibility shared between the Member States and the EU; Article 2 of the Treaty on European Union (TEU) provides a clear legal basis for the EU institutions to carry out this monitoring role;
3. also points out that civil society and local and regional authorities (LRAs) have an important role to play in strengthening the rule of law: LRAs constitute a fundamental level of democratic legitimacy and should continuously promote a rule of law culture and monitor compliance with the principles associated with it. LRAs can contribute to the knowledge-building activities proposed by the Commission and can also act as sources of information for the monitoring it intends to carry out; for its part, the CoR can facilitate and coordinate the efforts of LRAs to strengthen the rule of law, for example by encouraging them to build cross-party agreements on aspects of local democracy which are considered non-negotiable and will be defended jointly if attacked;
4. stresses that respect for the rule of law must be guaranteed in the interests of everyone, since this itself is a precondition for the exercise of the fundamental rights and freedoms that the EU's legal order confers on individuals; strengthening the rule of law in the Member States means strengthening the rights granted to each individual;
5. firmly believes that a comprehensive system of rule of law protection requires both monitoring of Member States and monitoring of the EU institutions; considers, therefore, that the EU's system of monitoring respect for the rule of law should be supplemented by mechanisms external to the EU itself. While aware of the legal difficulties to be overcome, the CoR therefore welcomes the Commission's intention to restart the process of the EU's accession to the ECHR, as required by Article 6(2) TEU;

6. welcomes the fact that the communication spells out the key features of the rule of law, such as independence of the judiciary, protection of fundamental rights, the presence of an active civil society and media pluralism. These are essential elements for securing mutual trust between the Member States, the proper functioning of the EU, sincere cooperation between the EU and the Member States and, above all, the full respect of the rights that citizens derive from the EU's legal system;

7. stresses that respect for the rule of law, safeguarding fundamental rights and upholding the principles of democracy are closely linked and go hand in hand and must be respected, protected and strengthened at all levels of government: the CoR therefore calls on the Commission to ensure that the mechanisms to protect the rule of law, in particular the annual monitoring system, give due consideration to the risk of fundamental rights violations and of moves away from democratic principles in the Member States at all levels of government;

8. reminds the Commission of the need to take into account the particular features and legal traditions of the national legal systems when assessing Member States' adherence to the principles of the rule of law;

9. points out that EU citizens are entitled to have recourse to the courts, which must be, and must be seen to be, independent. Notwithstanding the fact that regulating how the judiciary is structured and operates is within the remit of the Member States, there must be equivalent efficiency standards across the national legal systems as well as equivalent guarantees of the independence of judges applying EU law; the CoR calls on the Commission to continue its ongoing monitoring of possible breaches of the independence of the judiciary;

10. highlights the need to ensure that all EU Member States are subject to the same level of scrutiny, without any differentiation based on additional criteria;

11. points out that media freedom and pluralism are essential components of the rule of law; calls, therefore, on the Commission to carry out ongoing monitoring of possible media interference by public authorities and to intervene using the tools with which it has been equipped by the Treaties for dealing with violations of freedom of information;

12. notes that independent and professional journalism is under threat from the unpaid appropriation of journalistic content by digital platforms, as well as from the tendency to turn to social media for information and news which has not, however, been verified and is in many cases unconfirmed, if not completely unfounded and manipulated;

13. points, therefore, to the need to prevent the de-professionalisation of journalism, to financially support quality independent media, to encourage investigative journalism and to protect those engaged in it, and to promote systems for confirming the validity of news disseminated through online platforms. The CoR suggests building on and reinforcing the monitoring initiatives previously launched by the Commission;

14. stresses that serious threats to the rule of law may derive not only from State authorities but also from large private economic operators active in the media and the digital economy. The Commission cannot ignore threats to media pluralism, to the right to correct and verified information, and to the free exercise of the right to vote, which the digital economy can bring about. A special section of the annual report proposed by the Commission could be dedicated to the risks of violations by non-State actors.

Call for consideration of the CoR resolution of 22–23 March 2017

15. calls on the Commission, when implementing its proposals, to take full account of the criteria set out by the CoR in its resolution of 22 and 23 March 2017 on the *Rule of law in the EU from a local and regional perspective*;

16. stresses that respect for the principles of the rule of law requires effective efforts to combat corruption, and the proper and transparent use of EU funds; fraud in the management of these funds needs to be swiftly reported to the judicial authorities and pursued rigorously at all levels;

17. welcomes the fact that it is possible to strengthen rule of law principles by means of procedures that make the disbursement of EU funds conditional on full compliance with these principles;

18. stresses the importance of preventing a situation whereby the mechanisms for monitoring compliance with the rule of law may be perceived as a penalty imposed on communities at national, regional and local level and may undermine such communities' sense of belonging to our common European home;

19. notes, in this regard, that a reduction in EU funding for LRAs could constitute a sanction imposed at levels of governance that are not responsible for breaches of rule of law principles alleged by the Commission. Furthermore, such a reduction in funding could be perceived by the beneficiaries and, more generally, by the citizens of the communities concerned as an unjustified penalty, insofar as it is not linked to specific infringements in the implementation of funded projects. These measures could therefore fuel a sense of hostility towards the EU institutions;

20. considers, therefore, that funding conditionality should be a solution to be used only in the event of serious and systemic breaches; in cases where such a measure were to be adopted, the serious failings of the authorities leading to the cut in funding should be made clear to the people of the communities concerned;

21. sees as a priority, nevertheless, the mechanisms for political dialogue and monitoring, which place the Member States on an equal footing and enable rule of law violations to be prevented.

Assessments regarding the annual system for monitoring compliance with the rule of law

22. points out that the principle of equal treatment of all Member States is a precondition for the whole process of European integration; with this in mind, the CoR welcomes the proposal to create an annual monitoring system covering all Member States;

23. highlights the fact that a monitoring system covering all Member States shows clearly that the EU's objective is to defend common values, and not to challenge the way state institutions are structured by the individual Member States in the exercise of their powers; in addition, a cross-check shows that greater or lesser deviations from the principles of the rule of law may occur in every Member State;

24. underlines the importance of ensuring adequate participation of the Member States in the set-up of the system of monitoring of rule of law and in the monitoring process itself;

25. stresses that implementation of the annual monitoring system should be made a priority by the new Commission. The CoR therefore calls on the Commission to take immediate action and to deploy the necessary resources in terms of funding and staffing; the Member States should move just as quickly to nominate their contact points, who should also involve LRAs and civil society in their work;

26. stresses the importance of objective and transparent parameters for proper monitoring; the case law of the Court of Justice has a key role to play in developing these parameters. The CoR suggests developing the models used for the Justice Scoreboard, using and refining the Venice Commission's Rule of Law Checklist and, more generally, building on the experience gained by the bodies of the Council of Europe;

27. in line with the European Parliament resolution of 25 October 2016, the CoR stresses the need for the EU's existing tools for assessing the rule of law, democracy and fundamental rights to be coordinated and, where possible, integrated into a single monitoring mechanism;

28. considers it very important that the monitoring should be based on a system for reporting potential breaches that is open to contributions from as many relevant sources as possible, including LRAs, the academic world, but also from private individuals and organised civil society;

29. agrees that the coordination of the monitoring system should be carried out by the Commission; raises the question, however, of the role that could and should be played by the EU's Fundamental Rights Agency in the annual monitoring. The CoR calls on the Commission to assess whether the Agency's mandate should be amended to fully tap its potential.

Specific proposals for greater involvement of the CoR and local and regional authorities in strengthening the rule of law in the EU

30. proposes that involvement of the CoR, LRAs and civil society in promoting a culture of respect for the rule of law should be stepped up;

31. considers that the annual event for promoting the rule of law, proposed by the Commission, should be the culmination of a series of meetings held at regional and national level, building towards the overarching event at EU level; the CoR therefore calls on the Commission to organise, in cooperation with LRAs and the Member States, regional meetings on the rule of law in advance of and in preparation for the annual event;

32. feels that the annual event should not necessarily take place in Brussels: it could be hosted by a different European city or region each year. The CoR therefore suggests that the Commission could nominate a 'rule of law city' every year, and that the annual event would be held there;

33. considers that the funds currently allocated for civil society and independent media in the multiannual financial framework should be significantly increased. Part of this funding should be earmarked for local media;

34. points out that, in addition to European judicial networks, the Commission's proposed promotion and monitoring activities should also involve lawyers' associations and bar associations. At local level, lawyers are perceived as the first line of defence against possible abuses and violations of the rule of law and fundamental rights; moreover, lawyers' associations can be found across the EU and at all levels of European governance (local, regional, national and EU);

35. stresses that the promotion and monitoring activities proposed by the Commission should also involve ombudsmen, of which there are many at local and regional level. These safeguarding bodies should be involved in the gathering of information, as well as in regional meetings and events to promote the principles of the rule of law;

36. welcomes the Commission's intention to support universities and research centres in studying issues relating to the rule of law; considers that significant contributions should be directed to researchers operating in Member States where the principles of the rule of law are, on the basis of established parameters, more at risk. Part of the funded activity should cover the dissemination of these principles to regional and local communities, including with the involvement of organised civil society;

37. stresses that through the management of EU funds, thousands of local administrators and practitioners are involved in familiarising themselves with the rules and strategies of the EU; the CoR considers that LRAs that manage Union funds should include rule of law issues in the training of their officials;

38. building on its experience in disseminating EU policies and in coordination with its existing initiatives, points out that the CoR could organise — with the support of the European Commission and in cooperation with the EESC — training events for local officials and practitioners;

39. in particular, the CoR would suggest assessing the usefulness of a pilot project whereby a selected group of LRAs would apply a list of criteria for assessing the rule of law (based on the criteria developed by the Venice Commission). Within the limits of the institution's available resources, the initiative could follow one of the network models already supported by the CoR, such as the Subsidiarity Monitoring Network or the regional hubs; a small number of cities and regions could, on a voluntary basis, verify compliance with rule of law principles by their own authorities and offices; the CoR could draw up a list of parameters to be applied and coordinate the LRA's self-auditing activities, with the LRA undertaking to involve local partners such as universities, ombudsmen, bar associations and organised civil society.

Conclusions

40. In the light of the above considerations, the CoR:

- calls on the Commission to ensure that the mechanisms to protect the rule of law, in particular the annual monitoring system, give due consideration to the risk of fundamental rights violations and of moves away from democratic principles in the Member States, including at local and regional level,
- calls on the Commission to continue its ongoing monitoring of possible breaches of the independence of the judiciary and possible media interference by public authorities,
- suggests building on and reinforcing the media monitoring initiatives previously launched by the Commission,
- calls for the funds currently allocated for civil society and independent media in the multiannual financial framework to be significantly increased and suggests that part of the funding be allocated to local independent media,
- suggests that a special section of the annual report on the rule of law be dedicated to the risks of violations by non-State actors, and in particular large private economic operators active in the digital economy,
- calls for the intention to restart the process of EU accession to the ECHR to be followed through,
- calls for funding conditionality to be seen as a solution only in cases of serious and systemic breaches, and calls for measures to ensure that LRAs are not unfairly hit by the sanctions,

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- calls on the Commission to prioritise the activation of the system for monitoring the Member States and to allocate sufficient financial and human resources to setting up this tool,
 - calls for the implementation of the proposals set out in this opinion, aimed at stepping up the involvement of the CoR, LRAs and civil society in promoting a culture of respect for the rule of law.

Brussels, 12 February 2020.

*The President
of the European Committee of the Regions*
Apostolos TZITZIKOSTAS
