

EPD Statement on the Commission's 2022 Rule of Law Report

The European Union continued to face significant challenges to the rule of law in 2021. As a network organisation with 18 members based in Europe and engaged in democracy support, the rule of law crisis has been of fundamental importance to the European Partnership for Democracy (EPD). EPD member organisations have been working hard to monitor the developments on the rule of law across the EU, as well as to provide input to the European Commission's consultative process.

The following statement sets out our top-level concerns across the EU on the rule of law, urging the Commission to include these in the 2022 Rule of Law Report.

1. Recognise the connection between rule of law, democracy, and human rights

In the upcoming report, the Commission needs to continue to explicitly recognise the connection between the rule of law, democracy, and human rights. They are inherently intertwined and dependent upon each other as the core values of the EU under Article 2 of the Treaty on European Union (TEU). The rule of law means that laws are introduced following a democratic process and in respect of human rights.¹ For it to be respected, it is important that people have equal access to public services and judicial systems and that they can trust these institutions. This trust requires the ability to participate in democratic and legislative processes. As a result, there is a need to strengthen democracy and participation as part of enhancing the rule of law.

2. Condemn the contestation of authority and non-implementation of European regional court decisions

A very alarming development during 2021 was the overt challenge of the authority of European Courts - the EU's Court of Justice (CJEU) and the European Court of Human Rights (ECtHR) - by the constitutional courts of certain EU Member states, namely Poland and Romania.² The contestation of the authority of the CJEU and the primacy of EU law represents a grave threat to the entire European legal order. Simultaneously, there has also been an increasing lack of implementation of leading ECtHR judgements across the EU, with over 47% of judgments handed down by the Court in the past 10 years still pending

¹ Democracy Reporting International, 2019: "Components of the rule of law in the European Union: A primer."

Available here:

<https://democracy-reporting.org/uploads/publication/15203/document/rule-of-law-a-primerpdf-609e786e48270.pdf>

² Democracy Reporting International, 2022: "Top recommendations for the 2022 EU Commission rule of law report." Available here:

<https://democracy-reporting.org/en/office/EU/publications/top-recommendations-for-the-2022-eu-commission-rule-of-law-report>

implementation,³ despite their legally binding nature for Member States. These trends must feature prominently in the 2022 Report. The non-implementation of ECtHR and CJEU decisions must be condemned by the EU and the Report should recognise the contestation of European courts as a systemic rule of law issue.

3. Address the issue of closing civic space in the EU

The closing of civic space has picked up pace in recent years across the EU. In 2021, a number of highly damaging actions against fundamental freedoms and civil society organisations (CSOs) were taken by several Member States. This ranged from additional barriers being placed upon CSOs' ability to function, such as the introduction of additional administrative burdens or unfavourable rulings on their status, to intimidation through the use of strategic lawsuits against public participation (SLAPPs).⁴ A vibrant and active civil society and pluralistic media is vital to the functioning of the rule of law and acts as a key safeguard against its deterioration.

The Commission must comprehensively include these attacks on civic space in its 2022 Report and continue to be a vital supporter of civil society by adopting a comprehensive strategy on civic space in the EU, which would provide a concrete framework for cooperation with CSOs while strengthening their role and shielding them from attack.

4. Put forward strong recommendations for Member States regarding SLAPPs

As part of a global trend, the use of SLAPPs to silence and intimidate public watchdogs is rising within the EU. SLAPPs are abusive lawsuits that are filed with the purpose of shutting down or impeding acts of public participation, including, advocacy, whistleblowing, peaceful protest and other vital acts of democratic engagement. They are a threat to democracy and the enjoyment of fundamental rights and are therefore a threat to the EU legal order and its values.

The Commission should [listen to civil society](#) and put forward strong recommendations calling on Member States to, as a minimum, ensure that the procedural and other safeguards included in the EU legislative interventions apply to all SLAPP cases. Member States should take steps to bring speech-related laws in line with international human rights standards, in particular, decriminalise defamation, libel and slander; and promote a discussion on legal ethics and professional standards. The Commission should also encourage Member States to promote and support awareness raising initiatives and training, as well as engage with and assist actors that provide support to targets of SLAPPs.

5. Analyse the rule of law aspects of the ongoing Covid-19 pandemic measures

³ See tracker from the European Implementation Network, Available here: <https://www.einnetwork.org/countries-overview>

⁴ European Union Agency for Fundamental Rights (FRA), 2021: "Protecting Civic Space in the EU." Available here: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-protecting-civic-space_en.pdf

Extraordinary measures enacted by Member States during the pandemic have been introduced across the EU in order to combat the spread of Covid-19 and to alleviate the burden placed upon health care systems. However, as acknowledged in the last Rule of Law Report, they have affected the rule of law across the EU as certain measures have been criticised for their extra-legal nature. Even in times of crisis, the rule of law must be robustly protected within Member States and all emergency measures must have a clear legal basis, abide by the principle of legal certainty, have a sunset clause, and must be subject to sufficient oversight and parliamentary approval.⁵

The Commission should track the impact of these emergency measures on the rule of law and human rights and assess how parliaments, courts, and national human rights institutions have been able to carry out oversight over executive action. Civil society and human rights institutions should be involved by Member States in the assessments of emergency measures.

6. Acknowledge that the decline in rule of law performance goes beyond Poland and Hungary

It is important that the discussions and reports on the Rule of Law do not just focus disproportionately on the “usual suspects”. While the gross violations of the rule of law by Member States such as Hungary and Poland need to be flagged and critiqued with an appreciation of their severity, the deterioration of rule of law in other Member States must not be overshadowed. As the [World Justice Project \(WJP\) Rule of Law Index](#) has indicated, the deterioration of rule of law in 2021 has been incredibly widespread. Member States such as Romania, Bulgaria and Slovakia have also seen a great decline in the state of the rule of law. It is important that these developments receive sufficient attention in public discourse and media coverage surrounding the Report.

7. Meaningfully include civil society in the Rule of Law Report process

For the Rule of Law Report to be successful and meaningful, it is imperative that it takes into account the opinions and concerns of a wide range of actors, in particular civil society actors who play a key role in the defence of the EU’s foundational values. To facilitate this engagement, the Commission must [take into account the concerns of civil society about how to make the process more accessible, transparent, and inclusive](#). Once again the short deadline of the public consultation made it very difficult for civil society and media organisations to input meaningful submissions. Nonetheless, civil society organisations have used significant time and resources to offer quality submissions to the public consultation which must be taken into consideration transparently and meaningfully in the 2022 Report. The Commission must make sure to engage civil society during the next steps of the process, particularly in the country visits and the drafting of country specific recommendations.

⁵ Democracy Reporting International, 2021: “Extraordinary or extralegal responses? Covid-19 and the rule of law in the EU.” Available here: <https://democracy-reporting.org/en/office/EU/publications/extraordinary-or-extralegal-responses-covid-19-and-the-rule-of-law-in-the-eu>