

Rule of Law Report. A Notable Tool That Needs Fine-Tuning for Better Impact on Rule of Law in Europe

Recommendations from Civil Society Organisations

The European Commission's Rule of Law Report (hereinafter referred to as the Report or RoLR) is a much-needed mechanism for monitoring the measures taken by Member State governments in this area. The process of preparing the Report provides an opportunity to address the pillars of the rule of law in their complexity and within each Member State.

As part of the Report's preparation, the European Commission invites stakeholders to provide contributions through a targeted consultation. The Commission encourages the involvement of civil society organizations (CSOs) in this process. Indeed, many CSOs invest significant capacity, resources, collective intelligence, and expectations into it. Thus, the Report could create an important space for dialogue on the rule of law, both at the EU and national levels. However, this potential is not fully exploited or developed. Ultimately, the Report is only a tool to capture important developments; it lacks measures to act and to assess how it contributes to improving the rule of law in Europe.

This paper aims to enhance the effectiveness of the processes involved in creating, publishing, promoting, and monitoring the Report's recommendations. Developed with inputs from organizations hailing mostly from the Central and Eastern European region and involved in the day-to-day work around the Reports in their countries and at the EU-wide level, the paper reflects discussions from a workshop held in Brussels in April 2024. The recommendations herein emerge from a practical assessment of the entire process.

Compiled with a genuine interest in supporting the Report's preparation and engaging CSOs from CEE countries, this paper seeks to improve honest dialogue on the rule of law. Consequently, it may come across as critical, focusing deliberately on procedural weaknesses without diminishing the Report's importance as a tool—a point well acknowledged by the authors.

The ensuing introduction outlines challenges that CSOs experience in their work on the Report, followed by recommendations to the European Commission and civil society organisations.

CRITICAL POINTS THAT REQUIRE IMPROVEMENT

Workshop participants discussed and presented several issues related to Report development and promotion of its findings and recommendations. These issues included the Report timetable, the process of developing the Report and its recommendations, and the involvement of the European Commission or its local representation in the advocacy process.

Timing of the EU Rule of Law Cycle

The calendar for the entire cycle significantly affects the quality of inputs and evidence, and thus the entire Report. The targeted stakeholder consultation usually opens shortly before the Christmas holiday season, with the submission deadline at the beginning of the new year. Due to the ongoing holiday period and unavailability of final statistics for the previous year, organisations find themselves expending a lot of time and energy while they remain unable to provide comprehensive information on the state of the rule of law in their countries.

Report publication in the middle of the summer holiday is also unfavourable. Such timing results in a loss of necessary public, media, and decision-makers' attention and lacks any connection to key political moments at the country or EU levels. It seems to be a waste of opportunities and resources.

The rule of law cycle, including the Report publication dates, should not be adjusted for political convenience. Postponing the discussion on rule of law challenges may negatively affect the Report's legitimacy.

Diverse Stakeholder Engagement

Many actors monitor the state of the rule of law, especially regarding effective human rights protection measures. The Fundamental Rights Agency, for example, plays a crucial role. However, the potential of National Dialogues, which synchronise the work of many stakeholders at the Member State level, remains underutilised. Organisations feel that in producing the Reports and working with their recommendations, these other institutions do not fully leverage their potential, resulting in a loss of potential synergy among various activities.

The Commission's Working Process

The Report preparation process lacks publicly available information about the organisations and individuals who submit their opinions. These opinions are only published just before the Report is issued, and the opinions sent by national governments remain unknown. This situation prevents civil society organisations from responding to potentially false or inaccurate statements made by governments during the process. Meanwhile, national governments can comment on the Report's content before its publication.

The calendar of meetings on the Commission's website fails to specify with whom these meetings take place in each country or who has been invited. Increasing transparency in the RoLR process will enable better involvement and preparation for relevant stakeholders.

Overly General Recommendations

The report's drafting methodology claims "the recommendations will be sufficiently specific to allow Member States to give a concrete and actionable follow-up." However, organisations point out that

the recommendations are too general and leave much room for interpretation. This ambiguity makes it difficult for organisations to monitor the implementation of recommendations and to determine whether governments have genuinely resolved the issues highlighted by the Commission. It also grants Member States excessive discretion, often resulting in only the apparent implementation of recommendations.

Report Publication and Promotion

The European Commission and its Representation offices in Member States play a crucial role in promoting the Report's findings and recommendations, as well as facilitating the national dialogue. This requires active engagement with local media, diverse stakeholders, and the public. However, in many Member States, the EC Representations have not been sufficiently active. There are no designated representatives responsible for presenting the Reports, answering journalists' questions, or explaining various issues related to the Report to the public. Additionally, there are not enough meetings between the Commission and all stakeholders in the Member States to discuss possible implementation scenarios for the recommendations.

The Report format (i.e., the Commission Staff Working Document) is not visually or communicatively attractive for launch and presentation among a wider audience and stakeholders. Civil society organisations are keen to increase the Report's publicity and profile. They call on the EC Representations to take a proactive approach and collaborate to activate the national dialogue on the rule of law in the Member States.

Limited Support for Contributors

The Commission receives a lot of valuable information from CSOs, who often promote Report findings as the only actors monitoring implementation of the recommendations. Aggregating and analysing these collective inputs requires robust mechanisms of data and evidence collection, analysis, verification, and the engagement of many individual experts and organisations. This process also involves communication with different actors at the government and parliamentary levels. CSOs often undertake this work without systemic funding and with limited capacities.

Furthermore, contributors lack support in learning about the entire process, the changes in the Report's evolution, and the specific issues covered by the targeted consultation. They often develop the necessary competences and skills on the go to effectively engage in the process and implement the recommendations. There have been no competence-building training sessions for potential contributors or campaigns to actively inform CSOs about opportunities to contribute to the process.

Format for Submitting Contributions

Many organisations pointed out the limitations of the format adopted for submitting comments. The Commission's online form does not allow for hyperlinks or footnotes, making it impossible to reference many useful sources. This limitation further hinders the Commission from verifying information as it lacks source references.

RECOMMENDATIONS

Based on the diagnosis above, organisations present several recommendations aimed at improving the impact of the Report.

Recommendations for EU Institutions

GENERAL

- Effect consequences for lack of progress in implementing recommendations
- Increase European Commission engagement. The EC (preferably relevant Commissioners) could become the face of the Report and recommendations
- Drive engagement by EU representations in organising the process of promoting Report outcomes

Failure to implement Rule of Law Report recommendations should have clear consequences, with non-compliance explicitly leading to the application of other tools in the EU's rule of law toolbox.

The Commission and the EU Representations should play a more active role in explaining the objectives of the Report and presenting the recommendations. They should take primary responsibility for preparing events and press conferences, mainly but not solely around the launch of the Report, addressed to national stakeholders, including the media. Both institutions should also actively participate in monitoring the implementation of the recommendations, in collaboration with other stakeholders.

CONTENT

- Break down recommendations into more operative activities and present such via action plans
- Include indicators and scorecards on the key principles

The Recommendations are a key element of the Report. They inform governments about necessary changes and guide organisations and other stakeholders on what progress to monitor. To this end, Recommendations need to be as precise as possible and include an action plan explicitly detailing, for example, specific legislation that needs to be changed. Civil society would welcome clear recommendations phrased less diplomatically.

Report preparation is complex, and the number of recommendations can vary from country to country. However, national recommendations are crucial. Both the recommendations and the main text should indicate when rule of law deficiencies in a Member State are structural and systemic in nature.

The European Commission should consider accompanying the Recommendations with best practice examples from other countries to illustrate what a target model for a specific solution could look like.

The action plan could be complemented by indicators to assess the next steps for authorities to take. This would help create standardised progress assessments, showing the extent to which the recommendation is being implemented and how advanced the work on its implementation is.

PROCESS AND CONTACT WITH CONTRIBUTORS

- Strengthen and formalise the role of the Fundamental Rights Agency (FRA) in the Rule of Law Report (RoLR) mechanism

Since 2016, the FRA has prepared annual updates on civic space and related issues. Therefore, the European Commission should consider increasing the Agency's involvement, especially given that one of the RoLR sections focuses on the conditions for civil society. The FRA should be directly invited and consulted to provide contextual comments on the Report from its perspective.

- Establish the Rule of Law Report as a continuous cycle, open for **continuous contribution**. It should support multi-stakeholder interactions before publication and enhance feedback about the process.

Although the Commission declares that it is open to receiving information from organisations on an ongoing basis, that process remains unclear. Therefore, the Commission needs to publish a clear notice on this subject and conduct a communication campaign to encourage local organisations to send information on the state of the rule of law in their respective countries. Additionally, organisations must have the opportunity to comment on the inputs provided by governments prior to Report publication.

- Reconsider Report timing

The timetable for the targeted stakeholder consultations should avoid overlapping with holidays and provide sufficient time for thorough evidence collection and preparation of contributions by stakeholders. The collection of contributions should continue until at least early March, and announcement of the Report publication should be postponed until after the summer holidays.

- Increase **transparency** regarding who is invited for country visits and who provides feedback after these visits

The European Commission should also make targeted efforts to raise awareness and interest in contributing to the Rule of Law Report among professional groups, such as judicial associations, journalist organisations, bar associations, and others.

- Amend the submission template to include space for additional information, hyperlinks, and footnotes

To enhance the transparency of the report and incorporate input from local organisations, the submission template must be revised to allow for the inclusion of additional information, links, and footnotes.

- Reinforce contributor funding to cover working hours, proofreading, extra research costs, etc.

The process requires greater transparency regarding which specific organisations and institutions are invited to meetings during country visits, how these visits are conducted, and what the main findings are.

The quality of the Report depends on the quality of the inputs. To address the timetable issues, the European Commission needs to support organisations that monitor the state of the rule of law and dedicate time beyond their usual operations to provide the best possible knowledge. Current EU funding does not meet these needs. The Commission should provide grants to organisations that regularly supply information, promote the Report, and monitor the implementation of recommendations. It is challenging to incentivise

civil society to collect data, write inputs, and coordinate a consultative process with minimal support from the European Commission.

PROMOTION

- Develop attractive formats, visuals and statistics to present the Report
- Organise multistakeholder dialogues in member states - including DG Justice, EU Representation, Fundamental Rights Agency (FRA), civil society organisations, Member State governments, judges, etc.

The content is important, but so is the packaging. The Report launch needs effective communication to address the needs and expectations of different audiences. To achieve this, the Commission and its Representations can use a variety of media, including infographics and promotional material on social media.

Showing data that indicates changes (trends) over the years at the EU level and in relation to country-specific recommendations would be useful.

To better disseminate Report information, the European Commission and its Representations should regularly involve different stakeholder groups. They can organise National Dialogues and maintain regular communication with contributors. These efforts will increase the sense of ownership over the entire initiative.

Recommendations for CSOs

Our discussions and demands are not only directed at the EU institutions. We also see great scope for improving our actions and increased CSO efficiency in influencing the condition of the rule of law in the Member States. Therefore, we address the following recommendations to civil society organisations.

GENERAL

- Build a community of contributors while ensuring openness and engagement of stakeholders who face capacity and other challenges. Provide resources for contributors and proactively invite those who are not yet involved.

We should actively encourage other organisations, especially those representing national, ethnic, religious, or sexual minorities, to engage with the Report and ensure that women's voices are heard. The role of organisations working at the regional and municipal levels is also important. We should share our experiences and involve other organisations in promoting the Report and monitoring its recommendations.

- Adopt a pro-partnership approach with the European Commission, not just a critical stance

The European Commission is a key partner for CSOs. We should strive to build a relationship based on trust while ensuring that legitimate criticism remains constructive.

REPORT PROMOTION AND USE

- CSOs and networks should consider organising simultaneous cross-border events

There is strength in unity. While we mainly monitor the rule of law in our own countries, this issue is crucial for the entire EU and its regions. Therefore, we should be more active in systematically evaluating the rule of law in Europe and seeking best practices from other countries. By organising cross-country events and campaigns, we can also show solidarity with organisations operating in politically challenging circumstances. The goal is to send a clear signal that the rule of law is a fundamental framework we strongly support. Civil society values the Report as a powerful tool to address shortcomings and risks. We aim to convey that similar issues are identified in most Member States, perhaps to varying degrees, and we are committed to actively addressing them.

- CSOs should regularly use the Report in their advocacy work, including quoting it in other reports and advocacy efforts.

We need to keep the Report in mind not only when making contributions or promoting it after publication. CSOs should incorporate its findings into other activities, remind decision-makers of its importance on various occasions, and develop more initiatives to strengthen our competencies and increase pressure on governments and decision-makers to implement the recommendations.

PROCESS AND CONTACT WITH THE EC AND OTHER CONTRIBUTORS

- Share joint submissions and promote them among other CSO networks

CSOs should regularly engage with the Commission and other EU institutions, form coalitions to strengthen collective voices, and remain actively open to involving other organisations.

ANNEX I – Good Practice. National Dialogues on the Rule of Law in Croatia

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- **Invitees:** Supreme Court judges, the president and vice-president of the State Judicial Council (the body that elects judges), representatives of the Ministry of Justice, representatives of rule of law and human rights CSOs, judicial union members, an MP from the Judiciary Committee, the ombudswoman, the state attorney, the secretary general of the Croatian Journalists Association, and law professors.
- **Format:** A classic world café with two questions and three rotations per question. The first question focused on identifying problems, and the second on possible solutions. There were no speeches or presentations, just a brief introduction by the DG Justice representative who spoke in Croatian, followed by an introduction by the moderators explaining the methodology. Participants were informed in advance that the format would be interactive.
- **Moderators:** One was an Art of Hosting professional, and the other was trained in the method and also leads a community-oriented CSO, providing relevant context. The event was well planned and moderated.
- **Venue:** The invitations came from the Commission Representation in Zagreb, where the Dialogue was held, perceived as “neutral terrain” for all involved.
- **Outcome:** The Dialogue was successful due to active cooperation between DG Justice, the Fundamental Rights Agency, the Commission Representation in Zagreb, and local civil society.

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