

# Strengthening the rule of law through increased awareness, an annual monitoring cycle and more effective enforcement

Building on the lessons learnt since 2014 and detailed consultations since April this year, the Commission has today decided on a series of measures to further strengthen the rule of law in Europe. Over the past five years, the European Commission has had to deal with a series of challenges to the rule of law in the European Union. The European project relies on constant respect of the rule of law. This is a prerequisite for citizens to enjoy their rights under EU law and for mutual trust among Member States. A Eurobarometer public opinion survey released today shows that more than 80% of citizens attach great importance to respect of the rule of law, and feel that it needs to be improved. 89% of citizens the need for the rule of law to be respected in all other EU Member States.

First Vice-President Frans **Timmermans** said today: *“The European Court of Justice has recently reaffirmed that the rule of law is essential for the functioning of the EU. Its importance is also recognised by an overwhelming majority of EU citizens. However, it has come under attack in several ways in the past five years. The European Commission has been fighting hard to resist these attacks with the tools available to us, and will continue to do so. Today we have decided to further strengthen our toolbox, to promote, protect and enforce the rule of law.”*

The Commission is today setting out **concrete initiatives grouped around 3 pillars: promoting a rule of law culture; preventing rule of law problems; and responding effectively to breaches of the rule of law.** *As guardian of the Treaties, the European Commission has a unique role. However, all Union institutions and Member States are responsible for guaranteeing the respect of the rule of law as a fundamental value of our Union. Beyond that, an effective response also requires the support of civil society. The Commission is also calling on all to act.*

**To promote a common rule of law culture across Europe,** the Commission will follow up on the idea of a dedicated annual event for dialogue with civil society. It will make full use of funding possibilities to empower stakeholders, including civil society, to promote the rule of law, and set up a dedicated communication strategy on the rule of law. The Commission will strengthen cooperation with the Council of Europe and other international organisations, as well as with judicial networks and national parliaments. The Commission calls on the European Parliament, the Council and Member States to engage fully in this process.

**To prevent rule of law problems from emerging,** the Commission has decided to set up a **Rule of Law Review Cycle, including an annual Rule of Law Report**

covering all EU Member States. This additional system will assist early detection of emerging rule of law problems wherever they appear. The Commission will deepen its monitoring of rule of law developments and invite all Member States to engage in a mutual exchange of information and dialogue, including through a network of national contact persons. There should be a dedicated follow-up on the annual report with the Parliament and the Council. The Commission will also further develop the EU Justice Scoreboard and strengthen the dialogue with other EU institutions, Member States, European political parties and stakeholders.

**For an effective common response to rule of law breaches**, the Commission **will continue to make full use of its enforcement powers**, if early detection and prevention measures are not effective. The Commission will adopt a strategic approach to infringement proceedings, bringing cases to the Court of Justice of the EU as necessary. In the light of the time sensitivity of such cases, the Commission will request interim measures and expedited procedures when needed. The Commission will also constructively support Member States in de-escalation and resolution of rule of law issues for the situation to be restored in a sustainable manner. In addition, the Commission calls on the European Parliament and the Council to reflect on a collective approach to managing Article 7 TEU cases with clear procedural rules.

The rule of law: a shared value for all Europeans

The results of a Eurobarometer public opinion survey released today show that citizens attach great importance to the respect of the rule of law:

- More than 8 in 10 citizens say that effective judicial protection by independent courts, equality before the law and proper investigation and prosecution of corruption, are important to them.
- More than 8 in 10 citizens say that the rule of law needs to be respected in all other Member States.
- Over 80% of citizens in the EU support improvements regarding key rule of law principles.
- A majority of citizens (56%) do not feel sufficiently informed about the rule of law situation.

The Eurobarometer also shows strong support for the role of media and civil society in holding those in power to account, with more than 8 in 10 citizens considering it important that media and civil society can operate freely and criticise the government without risk of intimidation.

## **Background**

In its Communication of 3 April 2019, the Commission presented an overview of the existing rule of law toolbox and launched a consultation on the necessary reforms. Over 60 written contributions were received and debates and discussion were held within the EU institutions, with Member States, international organisations, judicial networks, civil society and academia. Today's Communication takes into account this debate.

The European Union is based on a set of shared values, including fundamental

rights, democracy, and the rule of law. 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, or without an active civil society and free media ensuring pluralism.

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. The rule of law determines how accountably laws are set, how fairly they are applied, and how effectively they work. It also covers institutional issues such as independent and impartial courts, and the separation of powers.

### **For More Information**

[17 July Rule of Law Communication](#)

[Rule of law Eurobarometer including report, country factsheets and infographic](#)

[Contributions to the rule of law debate](#)

[3 April Rule of Law Communication](#)

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## **[Rule of Law: European Commission takes new step to protect judges in Poland against political control](#)**

**Today, the European Commission decided to take the next step in an ongoing infringement procedure against Poland, by sending a reasoned opinion regarding the new disciplinary regime for Polish judges.**

On [3 April 2019](#), the Commission launched this infringement procedure on the grounds that the new disciplinary regime undermines the judicial independence of Polish judges and does not ensure the necessary guarantees to protect judges from political control, as required by the Court of Justice of the EU.

Specifically, the Polish law allows ordinary court judges to be subjected to disciplinary investigations, procedures and sanctions on the basis of the content of their judicial decisions, including the exercise of their right under Article 267 of the Treaty on the Functioning of the European Union (TFEU) to request preliminary rulings from the European Court of Justice. Moreover, the new disciplinary regime does not guarantee the independence and impartiality of the Disciplinary Chamber of the Supreme Court, which is composed solely of judges selected by the National Council for the Judiciary,

which is itself appointed by the Polish Parliament (Sejm). Furthermore, the new disciplinary regime does not ensure that a court 'established by law' will decide in the first instance on disciplinary proceedings against ordinary court judges. Instead, it empowers the President of the Disciplinary Chamber to determine, on an *ad-hoc* basis and with an almost unfettered discretion, the disciplinary court of first instance to hear a given case. The new regime no longer guarantees that cases are processed within a reasonable timeframe, allowing judges to be permanently under the threat of pending cases, and it also affects judges' right of defence.

Poland had 2 months to respond to the arguments put forward by the Commission in its letter of formal notice. Following a thorough analysis of the response from the Polish authorities, the Commission concluded that the response does not alleviate the legal concerns. The Commission has, therefore, decided to move to the next stage of the infringement procedure.

The Polish authorities now have 2 months to take the necessary measures to comply with this reasoned opinion. If Poland does not take appropriate measures, the Commission may decide to refer the case to the Court of Justice of the EU.

## **Background**

The rule of law is one of the common values upon which the European Union is founded and common to all Member States. It is enshrined as such in Article 2 of the Treaty on European Union. The rule of law is essential for the functioning of the EU as a whole, for example with regard to the internal market, cooperation in the area of Justice and Home Affairs, and ensuring that national judges, who are also EU judges, can fulfil their role in ensuring the application of EU law and can properly interact with the Court of Justice of the EU in the context of preliminary ruling procedures. The Commission's Communications of [3 April](#) and [17 July 2019](#) on the rule of law explain the existing toolbox for enforcing the rule of law and the Commission's actions and proposals to further strengthen that toolbox.

The European Commission, together with other Union institutions and the Member States, is responsible under the Treaties for guaranteeing the rule of law as a fundamental value of our Union and making sure that EU law, values and principles are respected.

Events in Poland led the European Commission to open a dialogue with the Polish Government in [January 2016](#) under the Rule of Law Framework and then activate the Article 7(1) TEU procedure on [20 December 2017](#). The process is based on a continuous dialogue between the Commission and the Member State concerned. The Commission keeps the European Parliament and Council regularly informed.

In addition, on [2 July 2018](#), the Commission launched an infringement procedure on the Polish law on the Supreme Court, on the grounds of its retirement provisions and their impact on the independence of the Supreme Court. On [24 September 2018](#), the Commission decided to refer the case to the Court of Justice of the EU, which delivered its final judgement on [24 June](#)

[2019](#). The Court has found that lowering the retirement age of judges of the Supreme Court is contrary to EU law and breaches the principle of the irremovability of judges and thus that of judicial independence.

On [29 July 2017](#), the Commission launched an infringement procedure on the Polish Law on Ordinary Courts, on the grounds of its retirement provisions and their impact on the independence of the judiciary. The Commission decided to refer this case to the Court of Justice of the EU on [20 December 2017](#).

#### **For More Information**

[Press Release](#) – Rule of Law: European Commission launches infringement procedure to protect judges in Poland from political control

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## **[ESMA launches call for evidence on certain investor protection topics in the context of the reports to be submitted by the EC under Article 90 of MiFID II](#)**

Article 90 of MiFID II provides that the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on, inter alia, the impact of the inducements disclosure requirements under MiFID II. In line with the European Commission mandate to ESMA, the call for evidence also concerns the impact of the costs and charges disclosure requirements under MiFID II, including collecting information on whether and how the application of the above rules varies across Member States.

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## **[Call for evidence on Impact of the inducements and costs and charges disclosure requirements under MiFID II](#)**

Responding to this paper

ESMA invites comments on this paper and in particular on the specific questions summarised in Chapter 3.

ESMA will consider all comments received by 6 September 2019.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input – Consultations'.

#### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading Legal Notice.

#### Who should read this paper

All interested stakeholders are invited to respond to this call for evidence. This call for evidence is primarily of interest to (i) firms which are subject to Article 24(4) and (9) of MiFID III when providing investment services and/or ancillary services and (ii) consumer groups and investors. Item (i) of the above includes investment firms (as defined in Article 4(1)(1) of MiFID II), credit institutions when providing investment services and activities, external Alternative Investment Fund Managers (AIFMs) (as defined in Article 5(1)(a) of the AIFMD<sup>2</sup>) and UCITS management companies (as defined in Article 2(1)(b) of the UCITS Directive<sup>3</sup>) when providing investment services (in accordance with Article 6(4) of the AIFMD and Article 6(3) of the UCITS Directive, respectively).

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## [Large-scale money laundering detected with Eurojust's support](#)

The Hague, 10 July 2019



**A criminal network involved in transnational money laundering was targeted by the national authorities of the Netherlands, Belgium, Spain, Slovenia and Bosnia and Herzegovina, with Eurojust's and Europol's cooperation. A coordination centre was set up at Eurojust's premises in The Hague to coordinate the joint action day in all 5 countries involved, swiftly share**

**case-related information on the spot, and collect and exchange valuable evidence. 28 house and company searches were successfully carried out, criminal assets, worth several millions of euros, including luxury cars, were seized, and bank accounts and other proceeds were frozen.**

The Public Prosecutor's Office of Zeeland West-Brabant, the Netherlands, initiated its investigation into a large scale-money laundering in November 2018. The case was referred to Eurojust, the EU's Judicial Cooperation Unit, as soon as multiple links to the other countries were identified. The main suspects are allegedly involved in massive money laundering activities through real estate investment in all countries concerned. The illegal proceeds supposedly originate from extended drug trafficking and smuggling between Europe and the USA.

✘ Eurojust held one coordination meeting in April 2019 to agree on common operational strategies, after the operational meeting at Europol earlier this year, and decide on the course of the joint action day. The Dutch authorities issued several European Investigation Orders (EIOs) towards the Member State involved and 2 mutual legal assistance requests towards Bosnia and Herzegovina to allow for quick sharing of information and evidence, searches and other investigative measures. Eurojust helped the national authorities to issue and fully implement the EIOs.

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