

INFOCUS

2023 EU Rule of Law Report

C4EP analysis on the subject – *2023 EU Rule of Law Report by the European Commission: toothless lion or a nicely framed picture of a toothless lion?*

“As the core objective of this mechanism is to stimulate inter-institutional cooperation and encourage all EU institutions to contribute in accordance with their respective institutional roles, the report serves as expression of the position of the Commission. It also sets an annual dialogue between EU institutions, EU member states and domestic parliaments and other stakeholders on the rule of law. And most importantly, they serve as indicators of possible actions of the Commission – with the existence of the conditionality procedure, this is not about pointing to a toothless lion any more...”

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European Commission: 2023 Rule of law report - Communication and country chapters

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European Commission: Rule of law framework

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European Parliament: Rule of law in Hungary and Poland: plenary debate and resolution

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Deutsche Welle: Rule of law: EU reprimands Poland and Hungary

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Rule of law-related ‘super milestones’ in the recovery and resilience plans of Hungary and Poland

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C4REPORT

EPC: Towards a transatlantic cybersecurity agenda to counter emerging threats – 12 July 2023

Cybercrime – as highlighted by the panel – is a grave threat to both the EU and the US. Yet, this modern battle is chronically overlooked and sidelined by other contemporaneous challenges faced by both interlocutors. By 2025, it is estimated to cost both economies to the tune of \$10 trillion.

As noted by the panel, the establishment of the US-EU Transatlantic Cybersecurity Dialogue was a bold and interesting step forward by both parties. It was established to foster cooperation, information sharing, and coordination between the United States and the European Union on matters related to cybersecurity; promoting a secure and resilient cyberspace while safeguarding critical infrastructure, protecting citizens, and countering cyber threats...

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C4EPOSITION

Petra Bárd, professor, Radboud University:

The European Union (EU) is currently grappling with a significant challenge known as "rule of law backsliding," where certain Member States adopt policies aimed at systematically weakening or capturing internal checks on power, ultimately dismantling the foundation of liberal democracy, and consolidating de facto one-party states. This alarming trend not only reflects the global de-democratization and rule of law backsliding seen in various parts of the world but also presents an existential threat to the EU itself, as it endangers the very premise on which the EU's interconnected legal order is built. The President of the European Court of Justice went as far as publicly warning about the "[extremely serious situation](#)" that leaves the Union at constitutional crossroads, with its foundations as a rule-of-law-based Union now under threat. Since the EU is primarily a law-based endeavor, i.e. law serves as the primary tool for achieving integration, any

compromise on the rule of law including a toleration of judicial capture could potentially jeopardize the entire European project.

In response to this growing crisis, it is imperative for the EU to safeguard its core values enshrined in Article 2 of the Treaty on European Union (TEU), rather than relying solely on monitoring, benchmarking, and dialoguing. And this is the prime issue with the Annual Rule of Law Report (ARoLR): even though improvements can be traced over time, it remains primarily a cyclical ex post facto reporting exercise, rather than a genuine enforcement mechanism. Its current approach is insufficient to prevent deliberate or systemic violations of the rule of law, even if there are attempts to oversell it as a hard-core rule of law enforcement mechanism. Stating for instance that the starting point for the Commission is “[to ensure there is no backsliding](#)” is problematic, since the reality is of course that in some EU countries, severe backsliding has been happening for years.

The ARoLR not only creates false expectations, but also uses overly euphemistic language. It places too strong an emphasis on dialogue with all Member States, including those that do not uphold the values of constitutional democracies. This approach, driven by a misinterpretation of the principle of equality among Member States, leads to category errors by denying the autocratic reality present in some parts of the EU. Let's consider for instance the principle of judges' irremovability, financing of media authorities, and the digitalization of judgments. In a democracy, these aspects are considered essential. However, in autocracies or hybrid regimes, adherence to these principles may manifest as the irremovability of non-judges appointed through illegal procedures or state support granted to government propaganda. Similarly, digitalization and swift judgment delivery by kangaroo courts cannot be regarded as a virtue. While the Commission might have felt the political need to respond to claims of a "double standard" raised by political figures like Orbán and Kaczyński, the treatment of different cases cannot be equated to a double standard. It is essential to address each situation individually, considering the specific context and circumstances rather than applying a one-size-fits-all approach.

To strengthen the EU's response to rule of law backsliding, there is a need for a broader and more effective mechanism, as proposed by the European Parliament. Such a mechanism should go beyond the rule of law and also encompass democracy and fundamental rights, acknowledging their interconnected nature; it should involve various EU institutions beyond the Commission; along the formal participation of external independent experts. But most importantly, aligning the ARoLR with other rule of law tools and procedures, such as infringement procedures and the Rule of Law Conditionality Regulation 2020/2092 – and there are signs in the latest edition that the Commission is willing to take that path – could enhance its effectiveness and ensure a more robust response to value decline in a Member State. This alignment ensures a more cohesive and coordinated response when dealing with situations where national authorities neglect or violate the country-specific recommendations – another commendable novelty in the 2023 reports.

Addressing rule of law backsliding is crucial for the EU's survival and integrity. Strengthening enforcement mechanisms, enhancing monitoring tools, and aligning various procedures can collectively contribute to safeguarding the EU's values and principles, ensuring that it remains a bastion of democracy, rule of law, and fundamental rights in the global arena.