

European Commission's

Rule of Law Report

2024

Gap Analysis

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EXECUTIVE SUMMARY

This Gap Analysis is the second consecutive evaluation of the Commission's annual Rule of Law Report and its reporting process. The assessment is based on the Liberties Rule of Law Report 2024 and relies on the valuable input provided by Liberties' member organisations and experts, as well as the opinion of other European CSOs and institutional actors.

Liberties welcomes the EU Commission's continued commitment to prioritizing the rule of law. The annual Rule of Law Report has been an essential tool in addressing challenges and promoting reforms. We particularly appreciate the inclusion of specific recommendations in 2022 and country chapters for enlargement countries in the 2024 Report. However, the Rule of Law Report and its reporting cycle still have significant deficiencies, despite the triumphant rhetoric of the Commission.

We identified three areas of the Annual Rule of Law Cycle where significant improvement is needed urgently:

1. More transparency and precision when measuring progress

The Commission's 2024 Horizontal Communication claims that 68% of the 2023 Rule of Law Report recommendations were followed up by Member States. However, this figure includes cases with only partial progress. The problem with this assessment is that the Commission tends to focus on announced or ongoing reforms without fully evaluating their effectiveness, pace, and impact, attributing progress where there is little to none. As a result, this paints a rosier outlook than the reality. A more accurate representation would show that only 19% of the 2023 recommendations were significantly progressed or fully implemented.

2. Ensure effective enforcement of the Commission's recommendations

Different Member States have varying approaches when it comes to carrying out the recommendations made by the Commission, which presents a challenge. In countries where a continued decrease in the overall rule of law has been observed, like Bulgaria, Greece, Hungary, Malta, Poland, Romania, and Slovakia, the Commission's recommendations were either completely disregarded or only partially implemented in 2023. Regrettably, the behaviour of these countries may be supported by other Member States, such as Austria, France and Germany, that do not experience a decline in the overall rule of law but still refuse or make only minimal efforts to comply with the Commission's recommendations. This highlights the need for effective enforcement of the Commission's recommendations.

3. Integrate the Annual Rule of Law Report Cycle with the EU's rule of law toolkit

It is true that the Commission's rule of law report has been instrumental in identifying systemic rule of law issues in Member States and encouraging reforms. However, it should be acknowledged that this is a monitoring mechanism, not an enforcement tool. The Annual Rule of Law Report is not at all effective against countries whose governments deliberately and systematically undermine the rule of law. To enhance its effectiveness and make it consequential, the Commission must integrate the Annual Rule of Law Report into the broader EU rule of law toolkit, including the Article 7 procedure, infringement procedures, and budgetary conditionality. Non-compliance with or insufficient implementation of the Commission's recommendations should trigger these enforcement actions.

The Commission is showing promising signs that it is listening to criticism. According to the 2024 Horizontal Communication and the Mission Letter of the new Justice Commissioner, the Commission plans to consolidate the Rule of Law Report, build a more systemic relationship with civil society actors, and establish closer links between the Rule of Law Report and enforcement mechanisms. These are very commendable goals. However, with the rapid deterioration of the rule of law in several Member States, it is imperative that the Commission takes swift and decisive action to address the deficiencies in the rule of law report and ensure that enforcement mechanisms are effectively utilised to uphold the rule of law in the European Union.

INTRODUCTION

Liberties commends Commission President von der Leyen for prioritizing the rule of law when the Commission was established in 2019 and for introducing the Annual Rule of Law Cycle as a fundamental political guideline for her previous mandate. Over the past five years, the Commission has made significant strides in developing an increasingly complex rule of law framework to address the challenges posed by the rule of law decline in individual Member States and the EU as a whole.

The rule of law report has emerged as a vital tool in the EU's rule of law arsenal, providing a common understanding of developments in each Member State, identifying risks, and proposing solutions to support early intervention. We appreciate that in 2022, the Commission decided to include specific recommendations in the report to assist Member States in advancing reforms and addressing areas requiring improvement.

We also applaud the 2024 Report's inclusion of country chapters on enlargement countries, namely Albania, Montenegro, North Macedonia, and Serbia, as this will hopefully bolster their reform efforts and promote lasting progress in democracy and the rule of law.

The political guidelines for the 2024-2029 European Commission further underscore the centrality of the rule of law to a prosperous European Union. We welcome the Commission's commitment to expanding the rule of law report's scope to encompass critical

issues, such as the Single Market dimension and establishing a closer connection between the report's recommendations and EU budget funding.

Notwithstanding the commendable efforts of the Commission, it is important to highlight the essential role that Civil Society Organisations (CSOs) have played in upholding the rule of law in the EU and its Member States. CSOs were already aware of the threats posed by illiberal actions in Hungary at a time when most EU institutional actors were still reluctant to recognise them. It is largely because of the persistent work of CSOs over many years that European stakeholders eventually acknowledged the dangers of the illiberal measures implemented by autocratic governments in the Member States.

The introduction of the Commission's rule of law reporting cycle in 2019 was a late but significant development in this awakening process. Liberties has, since the very beginning, applauded the European Commission's initiative and mobilised its members to actively engage and usefully contribute to this exercise. Liberties' rule of law report, published for the fifth time in 2024, is the result of an intense joint reporting exercise which Liberties coordinated with its member organisations and experts across the EU.

Over the years, Liberties and other CSOs have provided constructive critical feedback to the European Commission on the reporting

exercise, focusing on both the approach and content of the reports, as well as the reporting process and the involvement of civil society organisations and experts, especially at the national level. We are pleased to note that some of these criticisms have motivated the Commission to enhance the rule of law reporting process.

Nevertheless, there is still potential for further improvement, and the entry into office of the new Commission presents an excellent opportunity to reassess the functioning of the rule of law reporting cycle. As part of ongoing conversations on enhancing and broadening the annual rule of law dialogue, Liberties and its members have conducted a gap analysis to guide the reflections of EU policymakers.

The first three sections of the analysis will focus on the Commission's 2024 Rule of Law Report and the Rule of Law Reporting Cycle in general. This part will be followed by an in-depth gap analysis concentrating on media pluralism and media freedom, an area in which Liberties has special expertise. The key findings and recommendations will be presented in the last section of this study.

REPORTING CYCLE WITH A PARTICULAR FOCUS ON THE INCLUSION OF CSOS

Collection of input and stakeholder consultation

We welcome the Commission's efforts to facilitate the involvement of CSOs in the reporting process. Nevertheless, the Commission's engagement with CSOs throughout the monitoring and reporting process still has certain shortcomings. In general, we can say that Member States continue to enjoy a privileged position throughout the rule of law cycle that should be counterbalanced by making the reporting exercise more transparent and participatory for non-state actors.

In particular, we see room for improvement in the following areas:

The opportunity for CSOs to submit written contributions is definitely a positive feature of the reporting process. However, many of our contributors complain that the time available for CSOs to provide contributions remains insufficient. If they want to cover the entire year and submit their report before the beginning of the Commission's country visits in February, they need to write up their contributions in the

second half of December or early January at the latest. This is already a very busy period for CSOs because of their numerous reporting obligations, all due at the end of the year.

The Commission's methodology guidelines¹ note that country visits include meetings with a balanced range of stakeholders representing a wide range of views on the topics at stake. We are pleased to report that most of the organisations that contributed to the Liberties 2024 Rule of Law Report had virtual meetings with the Commission during its country visits in February and March. However, we are puzzled that some of our contributors from Estonia, Greece, France, Latvia, and Romania were not consulted despite their excellent reports and significant efforts to assist the Commission. This experience confirms the legitimacy of CSOs' request for the Commission to ensure greater transparency in the selection of civil society actors to be consulted during country visits and to pay particular attention to targeting the most affected sectors of society and constituencies, including youth and minority groups.

¹ [European Rule of Law mechanism: Methodology for the preparation of the Annual Rule of Law Report](#)

Table 1

The Commission services held virtual meetings in February and March 2024 with the following contributors to the Liberties Rule of Law Report 2024:²

Belgium – Ligue des Droits Humains
Bulgaria – Bulgarian Helsinki Committee
Czechia - League of Human Rights
Germany - Gesellschaft für Freiheitsrechte, LobbyControl Germany
Estonia – No virtual meeting with Estonian Human Rights Center
Ireland – Irish Council for Civil Liberties, National Union of Journalists
Greece – No virtual meeting with national expert, Eleni Takou
France – No virtual meeting with VoxPublic
Croatia – Centre for Peace Studies, Croatian Platform for International Citizen Solidarity CROSOL (not consulted, but mentioned in footnotes)
Italy – Italian Coalition for Civil Liberties and Rights (CILD), Osservatorio Balcani Caucaso Transeuropa (not consulted but mentioned in footnotes)
Latvia – No virtual meeting with Latvian Centre for Human Rights
Lithuania – Human Rights Monitoring Institute
Hungary – Hungarian Civil Liberties Union
Netherlands – Nederlands Juristencomité voor de Mensenrechten, Netherlands Helsinki Committee, Free Press Unlimited, Transparency International Nederland

² Based on Annex II to the Commission's country chapters

Table 1

The Commission services held virtual meetings in February and March 2024 with the following contributors to the Liberties Rule of Law Report 2024:²

Poland – Helsinki Foundation for Human Rights
Romania – No virtual meeting with APADOR-CH
Slovenia – Peace Institute
Slovakia – Via Iuris
Sweden – Civil Rights Defenders, Swedish Section of the International Commission of Jurists

It is possible that some CSOs may miss the opportunity to meet with the Commission, despite it being available to them. To prevent such cases, the Commission should proactively and clearly communicate the details of all relevant consultations and country visits on its website in a timely manner. This will ensure that there is a high level of awareness regarding the various stages of the reporting process.

Civil society organisations and individual experts, including the contributors to the Liberties Rule of Law Report 2024, devoted significant effort to preparing high-quality reports to assist the Commission in its work. We are pleased to see that the Commission made good use of our work. The Liberties Rule of Law Report 2024 was mentioned by the Commission in the country chapters more than 100 times. Although the Liberties’ Rule of Law Report is not specifically mentioned for Hungary and Poland, separate contributions prepared entirely or partially by our contributors are referenced. However, we regret to note

that in the case of Bulgaria, Estonia, France, and Romania, there was no reference to either the Liberties’ Rule of Law Report or the work of our contributors.

Table 2
Mentions of Liberties Rule of Law Report 2024 in the Commission's 2024
Annual Rule of Law Report

Country	Number of mentions in footnotes
Belgium	4
Bulgaria	0
Czechia	9
Germany	11
Estonia	0
Ireland	6
Greece	9
France	0
Croatia	9
Italy	15
Latvia	2
Lithuania	3
Hungary	0
Netherlands	0
Poland	3
Romania	0
Slovenia	17
Slovakia	8
Sweden	5
TOTAL NUMBER of MENTIONS	101

We are particularly concerned that in the case of three countries, namely Estonia, France, and Romania, neither the Liberties Rule of Law Report was mentioned nor were our contributors (Estonian Human Rights Center, Vox Public, and APADOR-CH) consulted by the Commission. If the Commission disregards the efforts of well-known civil society organisations and omits them from the reporting process without providing any explanation, it will demotivate these organisations.

The stakes are high because without the contributions of CSOs, the Commission will not get an accurate picture of the state of the rule of law in the Member States. For example, in its 2024 Rule of Law Report, the Commission failed to follow up on the amendment to Romania's cybersecurity law adopted in 2022. The law allows for dealing with propaganda or disinformation campaigns. Although the law was approved by the Constitutional Court, serious concerns remained about its broad interpretation. As APADOR-CH highlighted in the Romanian country chapter of this year's Liberties Rule of Law Report, in 2023,³ the head of the Romanian Intelligence Service stated in an interview that even political discourse during election campaigns could be considered a national security threat under the law.

In order to avoid such problems, the Commission needs to build a better structured relationship

with CSOs. We welcome the Mission Letter of the new Justice Commissioner that specifically mandates him to build a Civil Society Platform to support more systemic civil dialogue.⁴

We also consider that the lack of active involvement of the European Economic and Social Committee (EESC) is a missed opportunity. The EESC, which is an EU advisory body made up of representatives from workers' and employers' organisations as well as other interest groups, is well-positioned to assist the Commission in increasing civil society's participation in the rule of law reporting cycle. Its ad hoc group on Fundamental Rights and the Rule of Law (FRRL)⁵ is a horizontal body within the EESC tasked to provide a forum for European civil society organisations to meet and share their assessment on the state of fundamental rights, democracy and rule of law in the Member States. It can help facilitate organised discussions between EU institutions and citizens regarding the systematic challenges to fundamental rights, democracy, and the rule of law.

Dissemination and communication of the report

The current schedule for releasing the rule of law reports by the Commission just before

3 Civil Liberties Union for Europe (2024), *Romania, Liberties Rule of Law Report*, p. 12-13.

4 [Mission Letter, Commissioner-designate for Democracy, Justice and the Rule of Law](#)

5 [Ad hoc group on Fundamental Rights and the Rule of Law | EESC \(europa.eu\)](#)

the summer break has made them less visible. For example, our member organisation from Germany reported that the Commission's 2023 Rule of Law Report attracted minimal public attention and media coverage was largely confined to legal publications or concentrated on rule of law developments in Poland and Hungary.⁶ Our contributors from the Netherlands noted that the Commission's 2023 Rule of Law Report did not receive significant national coverage, with only a few news articles mentioning it. Human rights organisations and some national politicians interacted with the report, but it was not a major topic in national politics.⁷ In Slovakia, the Commission's 2023 report gained more attention than previously but did not lead to extensive public debate or inspire significant change. According to our member organisation, the Liberties' report received more media coverage in Slovakia than the Commission's official report. In Greece, the Commission's report was mentioned mainly in digital media.⁸ However, the Liberties' country report gained significantly more attention, partly because

its publication coincided with the adoption of European Parliament's resolution on the rule of law and media freedom in Greece (February 2024).⁹ The Commission's new work program offers an ideal opportunity to reconsider the annual cycle and change the publication date to increase the report's visibility and generate more interest.

Liberties Rule Of Law Report 2024 and press release was picked up by nearly 30 news outlets across the EU and beyond. Feature articles were published in [The Guardian](#), [EuroNews](#), [BalkanInsight](#), as well as country-specific reports from [Italy](#), [Ireland](#), [Poland](#) or [Germany](#).

We are concerned that CSOs and individual experts, including some of the contributors to the Liberties Rule of Law Report 2024, continue to be targeted by government-friendly media in their Member States. They suffer attacks just because they work hard to produce unbiased and well-research reports on the state of the rule of law in their country and thus help the work of the Commission.

6 Frankfurter Allegmine (2023), [Schlechtes Zeugnis für Polen](#), 5 July 2023; Deutsche Welle (2023), [Rechtsstaatliche Mängel in Polen und Ungarn](#), 5 July 2023; Legal Tribunal Online, [Keine Fortschritte bei der Richterbesoldung](#), 5 July 2023.

7 [The former Minister of Foreign Affairs responded to questions about the report, mainly focusing on the reports about other European countries and their cooperation with the Netherlands.](#)

8 in newspaper (2024), [European Commission: critical observations on the state of the Rule of Law in Greece](#), 1 October 2024; Proto Thema (2024), [Commission - Report on the Rule of Law: Greece among the 9 countries with the fewest recommendations](#), 24 July 2024; Naftemporiki (2024), [EU: Recommendations for strengthening the rule of law in Greece](#), 24 July 2024.

9 [New Euro-slap report on the "Rule of Law" Mitsotakis - Reference to Documento and Kostas Vaxevanis, Documento; Mitsotakis - Predator / And a new European slap for the wiretapping government, I Avgi; Civil Liberties Union for Europe "shell" report on Predatorgate, D news.](#)

Lastly, it is worth being mentioned that the language of the reports is often too technical and hard to understand. Therefore, the rule of law report should be supplemented with easy-to-understand fact sheets and other media content available in all EU languages. Moreover, the Commission should create online country-specific pages containing all the necessary information on reports, consultations, country missions, and the implementation of recommendations by Member States. This would help improve access to the process and enhance understanding of rule of law issues for both EU citizens and civil society.

COMMISSION'S EVALUATION METHODOLOGY

Scope

CSOs continuously remark that the interconnectedness between the rule of law and other values enshrined in Article 2 TEU, most importantly democracy and fundamental rights, is not reflected adequately in the Commission's rule of law reports. Therefore, they repeatedly ask the Commission to broaden the scope of the monitoring.

The European Parliament echoed these criticisms in its recent resolution that noted with regret the Commission's lack of willingness to include in the annual rule of law report the important missing elements of the Venice Commission's 2016 Rule of Law Checklist, such as prevention of the abuse of powers, equality before the law and non-discrimination, and reiterated its position that the rule of law report should cover the full scope of the values of Article 2 TEU due to their strong relationship.¹⁰ These critical remarks are consistent with the opinion of the EESC that previously explicitly advocated for the inclusion of democracy and fundamental rights in the definition of the rule of law.¹¹ The inclusion of systemic

fundamental rights violations is also supported by the European Network of National Human Rights Institutions (ENNHRI).¹²

Although some issues related to democracy and fundamental rights already appear in the annual reports, the Commission's reporting lacks a comprehensive and well-structured analysis of systemic non-compliance with international standards on democracy and human rights that has a significant negative impact on the rule of law. Indicators of systemic non-compliance could be, for example, the pilot judgments of the European Court of Human Rights, the previous fundamental rights-related infringement procedures initiated by the Commission, or the non-implementation of national or supranational judicial decisions concerning fundamental rights.

Due to the limited scope of the Commission's report many important rule of law issues in the Member States were ignored even though they were accurately documented in the Liberties Rule of Law Report 2024. For instance, in Bulgaria, prisoners and persons under guardianship are disenfranchised, and dual citizens

10 European Parliament resolution of 28 February 2024 report on the Commission's 2023 Rule of Law report (2023/2113(INI)), paras. 81-82

11 EESC Opinion on The Union's budget and the rule of law, 2018

12 ENNHRI (2023), *State of the Rule of Law in Europe*, August 2023.

can only vote after residing in the country for at least 18 months. In the Czech Republic people with reduced legal capacity has restricted voting rights, while Estonia has prepared legislation aimed at depriving Russian citizens of the right to vote. Greece also deprives people with limited mental capacity of suffrage rights.

Furthermore, concerning trends regarding children's rights have been observed in countries such as Ireland, Lithuania, Croatia, Slovenia, Italy, and the Czech Republic. These issues include gaps in legal safeguards for unaccompanied minors during the migration process and legislation undermining the rights of children from minority groups.

Additionally, several countries have shown concerning trends indicating the violation of rights of minority groups such as racial and ethnic minorities, migrants, and LGBTQIA+ persons. France and Hungary have faced issues in adequately protecting these groups, with France's highest administrative court failing to take action despite a landmark decision regarding racial profiling, and the Commissioner for Fundamental Rights in Hungary regularly failing to defend fundamental rights against government attacks.

The Commission's methodological guidelines rightly emphasise the importance of avoiding duplication of existing reporting mechanisms and adding to the administrative burden on Member States in its monitoring process. However, this consideration does not preclude the possibility of cooperating with other monitoring mechanisms and integrating their findings into the Annual Rule of Law Report.

For instance, the Commission already relies on the materials of the EU Fundamental Rights Agency, which is specifically mandated to scrutinize Member States' compliance with EU fundamental rights standards. What is more, the Commission publishes annual reports on the application of the EU Charter. Therefore, it should not be difficult for the Commission to include systemic fundamental rights violations in the rule of law report.

In his Mission Letter received from Ursula von der Leyen, the new Commissioner for Democracy, Justice, and the Rule of Law, Michael McGrath, was mandated to lead the work on consolidating the rule of law report. We hope that this consolidation process will open up an opportunity to reconsider the structure of the rule of law report and to lay its thematic scope on much more solid methodological grounds.

Objectivity of analysis and its sensitivity to context

According to the criticisms voiced by CSOs, the European Parliament, and the European Court of Auditors, the methodology of the annual rule of law reporting is flawed to the extent that the Commission fails to identify all relevant rule of law issues in a given Member State based on methodologically solid and transparent criteria, and refrains from paying due attention to the context of the analysed developments.

Identification of issues

In its methodological guidelines, the Commission states that the rule of law reports offer a qualitative assessment of both positive and negative developments regarding the rule of law in the Member States, using the 2020 Report as a starting point. However, the Commission's selection process for the rule of law issues included in the report is not transparent. The methodological guidelines simply mention that "significant developments" are included, but what constitutes a "significant development" is not defined.

There were several developments in the Member States that Liberties considered significant but were not mentioned in the Commission's report. For example, the German country chapter of the Commission's report observes that the level of digitalisation of the justice system is overall very good. However, it does not address the lack of centralized database of judgments, the inadequate practice of (not) publishing court decisions or the recent developments that threaten the operation of the only free case law database "OpenJur".¹³

The Commission also fails to address recent legislation passed by the Swedish government that infringe upon fundamental rights, in particular harsher criminal measures including stop-and-search zones, stay-away orders, and

the expanded use of secret surveillance measures.¹⁴ These developments bring a serious risk of an increase in discriminatory profiling.

The European Court of Auditors recently pointed out that the Commission does not clearly demonstrate how it chooses the issues to report on from all the inputs gathered from the Member States and other stakeholders, and how it evaluates their seriousness.¹⁵ The methodological guidelines published by the Commission, which is available to the public, was found to offer limited information on the selection and evaluation of issues included in the rule of law reports. As a result, the European Court of Auditors suggested that the Commission should increase the amount of publicly available information about the reporting methodology and clarify the criteria used to assess the severity of the issues analysed.

Context-sensitive analysis

CSOs repeatedly criticize the Commission for its lack of willingness to analyse rule of law developments in their political context that would reveal the deliberate efforts of certain national governments to undermine the rule of law. The limited contextual analysis has an impact on the way the Commission reports about reforms, insofar as announced or ongoing reforms are overrepresented and assessed

13 Civil Liberties Union for Europe, *Liberties Rule of Law Report 2024*, p. 249; [Fremder Fehler könnte das Aus bedeuten](#), *Frankfurter Allgemeine*.

14 Civil Liberties Union for Europe, *Liberties Rule of Law Report 2024*, p. 595-596.

15 European Court of Auditors, *Review on The Commission's rule of law reporting 2024*, para. 57.

positively without any evidence-based information regarding their pertinence, implementation, and impact.

For example, in the Greek country chapter, the Commission noted some progress in adopting non-legislative safeguards to improve the protection of journalists, as well as significant progress in the legislative process. However, this evaluation is mostly based on plans and recently adopted legislative measures without information on their actual impact, and these measures have also been criticized by professional organizations. Additionally, SLAPPs (Strategic Lawsuits Against Public Participation) remain a very significant concern for journalists working in Greece, according to the Media Freedom Rapid Response Mission Report and the National Commission for Human Rights, as it is mentioned in the rule of law report itself. Therefore, the reasons behind the Commission's optimism about the Greek measures remain unclear.

The European Parliament also expressed concerns about the Commission's approach to identifying rule of law issues in Member States. The Parliament believes that the Commission's use of diplomatic and imprecise language conceals the differences between Member States and fails to differentiate between individual and systemic breaches of the rule of law.¹⁶ To address these problems, the Parliament has

recommended that the Commission make its rule of law assessment more precise and context-sensitive. This could involve including an independent panel of experts in the drafting of the report, as they would be less bound by diplomatic considerations. Additionally, the Parliament suggests that on-site country visits be conducted to gain a fuller and more contextual understanding of the local situation.¹⁷

We hope the consolidation of the rule of law report, as one of the tasks received by the new Justice Commissioner from the President of the Commission, will offer an opportunity to elaborate the Commission's reporting methodology.

16 European Parliament resolution of 28 February 2024 report on the Commission's 2023 Rule of Law report (2023/2113(INI)), para. 83.

17 European Parliament resolution of 28 February 2024 report on the Commission's 2023 Rule of Law report (2023/2113(INI)), paras. 84-85.

RECOMMENDATIONS AND THE ASSESSMENT OF THEIR IMPLEMENTATION

The Commission's inclusion of country-specific recommendations and its commitment to reporting on their implementation are undoubtedly positive developments that greatly increased the report's usefulness. However, certain shortcomings persist regarding the formulation of recommendations and the assessment of their implementation.

Formulation of recommendations

CSOs repeatedly emphasise that the Commission's recommendations are often not sufficiently well-articulated and detailed, and thus do not seem targeted enough to the concerns identified in the relevant national context. This shortcoming casts doubts on the suitability of the recommendations to serve as genuine accountability tools.

For example, in this year's report the Commission recommended that Belgium "continue efforts to address the structural resource deficiencies in the justice system, taking into account European standards on resources for the justice system." This recommendation had been made by the Commission in previous years but the Belgian state has not shown significant progress. And yet, the

recommendation remains quite general and does not specify which state actor should take what action and when. The lack of precision is particularly surprising given the relatively detailed analysis of the Commission in the report's main text. Therefore, it should not be difficult for the Commission to provide a more precise recommendation, something along these lines:

The Commission recommends that Belgium continues its efforts to address the structural resource deficiencies in the justice system. Specifically,

- the government and the parliament should adopt legislative measures within one year to increase the number of professional judges and the budget spent on the justice system to the level of the EU average,
- the government should always ensure the timely publication of all vacancies for magistrates and court clerk positions,
- the government and the parliament, in consultation with relevant stakeholders, particularly bar associations, the highest courts, and the judicial self-governing bodies, should develop a plan within one year to enhance the attractiveness of a career in the magistracy.

The Commission's recommendations can be properly evaluated only if they assign specific tasks to particular actors and set time limits. Therefore, CSOs recommend the Commission formulating more specific and measurable recommendations that can serve as benchmarks for national legislative and policy reforms. Similarly, the ENNHRI urged the regional rule of law mechanisms, including the Commission, to make their recommendations more concrete and actionable, including an envisaged timeline for implementation by state authorities.¹⁸

Link between the seriousness of the concerns and the recommendations

The Commission's methodological guidelines say that "recommendations will be proportionate to the challenges identified". In practice, however, it is difficult to establish a clear link between the seriousness of the Commission's concerns noticed in the Member States and the list of county-specific recommendations.

For example, the Greek country chapter of the Commission's report highlighted that independent authorities face challenges that could undermine their effectiveness. The report mentions that in September 2023, the Conference of Presidents of Parliament replaced members of the National Council

for Radio and Television and the Authority for Communication Security and Privacy. The legality of these appointments have been questioned, and legal experts have raised concerns about undue interference. The report also observes that Greek independent authorities are concerned about operating under pressure and have reported problems of understaffing and limited resources. They argue for a review of the appointment procedure and the establishment of a procedure for the selection of their own staff members to reduce delays in recruitment. It is surprising that despite these very serious rule of law problems, none of the Commission's four recommendations to Greece mention that the political branches should refrain from any interference with the operation of independent authorities.

Let us consider the non-implementation of court judgments which is a widespread problem in the Member States. The Commission recommended that Belgium take measures to ensure public authorities' compliance with the final rulings of the European Court of Human Rights (ECtHR). This recommendation seems reasonable because, according to the Commission's report, Belgium had 21 leading judgments of the ECtHR pending implementation. However, the Commission's report also reveals that the non-implementation of court decisions is arguably a more significant problem in other countries. Last year, for instance, Hungary had 45, Poland had 46, Italy had 66, and Romania had 115 unimplemented ECtHR judgments, and none of these countries were

18 ENNHRI (2023), *State of the Rule of Law in Europe*, August 2023.

recommended by the Commission to ensure compliance with court decisions. If there is a logic here, the Commission hides it very well.

In previous years, the European Parliament expressed concerns about the lack of consistency between the horizontal report (the Communication) and the recommendations. In particular, the EP noted that the country-specific concerns outlined in the horizontal report do not fully align with the country-specific recommendations. Therefore, the EP requested a clear link to be established between the expressed concerns and the recommendations put forward.¹⁹ More recently, the European Court of Auditors found a lack of clear relationship between the seriousness of the concerns voiced by the Commission and the recommendations,²⁰ and suggested that the Commission take the opportunity to develop its guidance on the assessment of the recommendations further.

According to the Commission's methodological guidelines: "All Member States will be subject to country-specific recommendations, in full respect of the principles of equal treatment and proportionality." This rule should be understood to mean that Member States may receive recommendations based on similar considerations, and that more serious breaches of the rule of law require a greater number of stricter recommendations. However, this should not be interpreted under any circumstances to mean that the Commission must

give an approximately equal number of recommendations per Member State based primarily on diplomatic considerations regardless of the seriousness of the identified rule of law issues.

Assessment of the implementation of recommendations

The Commission reported that after the first year of following up on the recommendations from the 2022 Report, there had been no progress on 34% of the recommendations, some progress on 42%, and significant progress on 13%, while 11% had been fully implemented. In this year's report, the Commission states that 68% of the 2023 recommendations were followed up. There was significant progress or full implementation on almost 20% of the recommendations, and some progress on 50% of the recommendations.

It is positive that the Commission monitors the implementation of its earlier recommendations. However, the Commission's assessment of these implementations lacks sufficient detail. Although the Commission uses a four-point rating scale (no progress, some progress, significant progress, and full implementation), it is unclear how progress is defined and what criteria are used to categorize rule of law developments into these groups.

19 European Parliament resolution of 19 May 2022 on the Commission's 2021 Rule of Law Report, para. 8.

20 European Court of Auditors, Review on The Commission's rule of law reporting 2024.

It is important to note that even if the Commission's assessment is accurate, the level of progress in implementing specific recommendations does not necessarily reflect a Member State's overall compliance with the rule of law in a particular area. Therefore, while the progress of the implementation of country-specific recommendations can be used to assess a Member State's willingness to cooperate with the Commission, it cannot be used

to measure general compliance with the rule of law. The Commission's approach to focus on the implementation of recommendations as the primary example of the report's usefulness is misleading. If the Commission wants to provide a quantitative and accurate indication of the state of the rule of law in the Member States, it needs to establish a separate measurement system.

Table 3
 (Non)implementation of Commission recommendations Based on the Commission's
 2024 Annual Rule of Law Report

	No. of recommendations in 2023	No (further) progress	Some (further) progress	Significant progress	Full implementation
Belgium	4	1	3	0	0
Bulgaria	6	2	3	0	1
Czechia	6	0	3	3	0
Denmark	4	1	1	1	1
Germany	5	2	3	0	0
Estonia	2	0	2	0	0
Ireland	5	0	2	2	1
Greece	5	0	4	0	1
Spain	6	3	2	1	0
France	4	1	2	1	0
Croatia	6	1	3	2	0
Italy	5	3	2	0	0

Table 3
 (Non)implementation of Commission recommendations Based on the Commission's
 2024 Annual Rule of Law Report

	No. of recommendations in 2023	No (further) progress	Some (further) progress	Significant progress	Full implementation
Cyprus	6	1	4	1	0
Latvia	2	1	1	0	0
Lithuania	4	0	2	2	0
Luxembourg	4	0	2	1	1
Hungary	7	7	0	0	0
Malta	7	2	5	0	0
Netherlands	4	0	4	0	0
Austria	6	4	1	0	1
Poland	7	1	4	1	1
Portugal	5	0	4	1	0
Romania	7	3	4	0	0
Slovenia	5	0	4	1	0
Slovakia	7	6	1	0	0
Finland	4	2	1	1	0
Sweden	4	1	2	0	1
Total number	137	42 (c. 31%)	69 (c. 50%)	18 (c. 13%)	8 (c. 6%)
According to Commission		No follow-up c. 31%	Follow-up c. 68%		
According to Liberties		No follow-up c. 81%		Follow-up c. 19%	

The Commission's 2024 Horizontal Communication claims that 68% of the 2023 recommendations were followed up by the Member States. However, this percentage includes not only those cases where there was full implementation, but also those where there was only significant progress and some progress. The problem lies in the fact that the Commission tends to focus on announced or ongoing reforms without thoroughly evaluating their effectiveness, pace, and impact. This leads to the Commission often perceiving progress where there is little to none. Therefore, a more accurate representation of the success rate of the Commission's recommendations would be to consider only the recommendations that have shown significant progress or have been fully implemented.

Table 3 clearly shows that Member States have very different attitudes towards implementing the Commission's recommendations, which poses a problem. Countries where a systemic decline in the rule of law has been detected, such as Bulgaria, Greece, Hungary, Malta, Poland, Romania, and Slovakia, either completely ignore the Commission's recommendations or only take minor steps to implement them. Unfortunately, their behaviour can be encouraged by Member States, such as Austria, France and Germany, that do not suffer from systemic rule of law decline but refuse to follow the Commission's recommendations.

The Commission is right in pointing out in its Horizontal Communication that, "depending

on their nature and subject matter, some recommendations can take longer to be addressed than the annual cycle of these reports". The European Court of Auditors noted that "given the role that the member states play in implementing the recommendations, and that some recommendations may concern issues that require sustained action over several years, increasing the implementation rate and thus ensuring the desired impact of the Report may be a challenge for the Commission in the future".²¹ This is why the Commission needs to pay particular attention to changes over time and focus on trends that gradually become apparent, such as the refusal of certain Member States in certain areas to achieve any significant progress. By the fifth Annual Report on the Rule of Law, we should be able to clearly distinguish between resolved issues and those that are persistently ignored or getting worse. CSOs, together with the European Court of Auditors and the European Parliament, are adamant that the report should showcase both positive and negative trends and pinpoint systemic weaknesses across the EU. While the Commission has made a distinction between new and ongoing issues, it has not yet presented trends over multiple years.

21 European Court of Auditors, Review on The Commission's rule of law reporting 2024.

LINK OF THE AROLR TO OTHER RULE OF LAW MECHANISMS

The Commission notes in its Horizontal Communication that “five years [after the beginning of the Commission rule of law reporting activity,] the preparedness of Member States, and of the EU as a whole, to detect, prevent and address emerging challenges has greatly improved.” It is true that the Annual Rule of Law Report has become a valuable instrument in detecting some systemic rule of law issues in the Member States.

However, the Annual Rule of Law Report is designed for monitoring purposes and should not be presented as a stand-alone tool for enforcing the rule of law. It can prove effective as an exercise based on dialogue with Member States that are committed to upholding constitutional democracy, even if they have a different opinion on what the rule of law requires in specific instances. However, the rule of law reports do not yield results when dealing with national governments acting in bad faith, such as the Orbán-government in Hungary that was already declared by the European Parliament an “electoral autocracy”.²²

Table 3 in the previous section clearly demonstrated that countries like Bulgaria, Greece, Hungary, Malta, Poland, Romania, and Slovakia, where a decrease in systemic adherence to the rule of law has been identified, either outright disregard the Commission’s suggestions or only make minimal efforts to put them into practice. In such cases, the non-implementation or insufficient implementation of the Commission’s recommendations should be treated as triggering factors leading to the initiation of enforcement action, such as infringement procedures, budgetary conditionality mechanisms, or the Article 7 procedure.

To increase its effectiveness, the Commission’s rule of law report needs to be integrated into the wider EU rule of law toolkit. The European Union already possesses sufficient measures to deal with declines in the rule of law, including, most importantly, the Article 7 procedure, the infringement procedures, and the various budgetary conditionality mechanisms. However, the main issue is the inconsistent and unprincipled application of these mechanisms. This was evident when funds were unfrozen due to pressure from Hungary

22 [MEPs: Hungary can no longer be considered a full democracy | News | European Parliament \(europa.eu\)](#)

in December 2023, despite not meeting the required milestones.²³

The establishment of a clear link between the Annual Rule of Law Report and other mechanisms is strongly supported by CSOs and institutional actors as well. The European Parliament emphasised the use of various instruments to address threats or breaches of the rule of law at the national level. These instruments include the Rule of Law Conditionality Regulation, infringement procedures, applications for interim measures before the Court of Justice of the European Union (CJEU), and other instruments under EU financial legislation. The Parliament also urged the Commission to establish a direct link between the annual rule of law reports and the Rule of Law Conditionality Mechanism. It called for specific enforcement action on identified shortcomings and the use of the complete rule of law toolkit in cases of continuous breaches in certain Member States.²⁴

It is important to note that the ENNHRI also suggests that regional actors, including the Commission, consider initiating enforcement actions to support effective and timely

follow-up of the Commission's recommendations. They should consider the lack of implementation of recommendations as evidence for triggering such enforcement actions.²⁵

In a recent review, the European Court of Auditors found that the development and diversification of the rule of law toolbox present challenges in ensuring complementarity and synergies among the tools. The Court of Auditors recommended that the Commission address this challenge by better explaining the interdependencies and overlaps between the tools, as well as the Commission's choices of which tool to use and when. The Court of Auditors also suggested including in the report a comprehensive list of previously activated rule of law measures.

In the 2024 Horizontal Communication, the Commission took the advice of the Court of Auditors and explained in much more detail the place of the Annual Rule of Law Report within the EU's Rule of Law toolbox and provided several examples of their use. The Commission also promised to build a closer link between the rule of law report and its recommendations and funding under the

23 Hegedus, Dora (2021): Same, Same but Different?: The Pitfalls in Unfreezing EU Funds, *VerfBlog*, 21 December 2023; Kovács, Ágnes (2023): Taking Revenge for Dissent: Hungary's Chief Justice to Fully Eliminate Judicial Autonomy, *VerfBlog*, 13 December 2023; Farkas, Erika, Kádár, András (2023), Restoring the Rule of Law By Breaching It: Hungary's Judicial Reform and the Principle of Legality, *VerfBlog*, 10 July 2023; Farkas, Erika; Kádár, András (2023), Trick and Treat?: Hungary's Game of Non-Compliance, *VerfBlog*, 12 December 2023.

24 European Parliament resolution of 30 March 2023 on the 2022 Rule of Law Report, paragraph 28.; European Parliament resolution of 28 February 2024 report on the Commission's 2023 Rule of Law report (2023/2113(INI)), para. 90.

25 ENNHRI (2023), State of the Rule of Law in Europe, August 2023.

EU budget. What is more, the new Justice Commission was specifically mandated by the President of the Commission to ensure the effective enforcement of the Article 7 procedure and to build a closer link between the Commission's recommendations and the financial support under the EU budget.²⁶

The Commission is showing promising signs that it is listening to criticism. However, with the rapid deterioration of the rule of law in certain Member States, the Commission needs to act on this promise quickly and be more creative in linking the rule of law reports to other enforcement mechanisms.

26 von der Leyen, Ursula (2003), Mission Letter: Commissioner-designate for Democracy, Justice and the Rule of Law, 17 September 2024.

IN DEPTH GAP ANALYSIS IN THE FIELD OF MEDIA PLURALISM AND MEDIA FREEDOM

As the Commission notes in its 2024 Rule of Law Report, media freedom and pluralism form an essential prerequisite for the rule of law, and independent media serve as vital “watchdogs of democracy [...] holding power to account.”²⁷ In all Member States where significant rule of law backsliding has been or is currently observed, an erosion of media freedom and pluralism is also evident – presently in Hungary and Slovakia, and very recently in Poland and Slovenia, among other examples. Interference with the independence of public service media and media authorities has a direct impact on access to information, the formulation of public opinion and the outcome of the elections.

The EU has taken action to address media freedom and pluralism deficits across the bloc with the European Media Freedom Act (EMFA). Member States must take certain steps to enhance media freedom and pluralism, further amending existing legal measures by the EU. The enforcement of EMFA will be critical, and national-level CSOs will be vital to keeping the Commission informed on the

true state of the process and in the identification of serious issues or shortcomings to that end. This law includes a number of provisions to help address issues such as media ownership transparency, the protection of journalists, and the fair allocation of state advertising funds, to name a few. We urge the Commission to use the EMFA as a guide in future rule of law reporting cycles on media freedom and pluralism, as it creates a new legal foundation to hold Member State governments accountable, if necessary, through infringement proceedings.

EU legislators passed the Anti-SLAPP Directive to combat strategic lawsuits against public participation, which causes serious problems in many Member States, as reflected in the 2024 Rule of Law Report. The Commission should follow up and request inputs from CSOs regarding the implementation process until April 2026. Changing laws, decreasing costs, decriminalising defamation and raising awareness should be items closely monitored by the Commission during its next reporting cycle.

²⁷ European Commission, Rule of Law Report 2024, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, p. 25.

Recommendations on media freedom and pluralism, when repeatedly ignored, must be followed up with substantive action. For example, the Commission's 2022 Rule of Law Report, the first edition to feature recommendations to Member States, included the recommendation that Hungary "[i]ntroduce mechanisms to enhance the functional independence of the media regulatory authority taking into account European standards on the independence of media regulators";²⁸ the 2023 and 2024 editions of the report included essentially the same recommendation for the Budapest government.²⁹

A similar case is that of Greece, which has been recommended to "[e]stablish legislative and other safeguards to improve the physical safety and working environment of journalists, in line with the recently adopted Memorandum of Understanding and taking into account European standards on the protection of journalists" in each of the last three annual reports (with only minor language changes),³⁰ and Italy, which has for three successive years been urged to make progress introducing "legislative and other safeguards to reform the regime on defamation, the protection of professional

secrecy and journalistic sources, taking into account the European standards on the protection of journalists" – with the caveat that the Commission observed "some progress" on this issue in 2022 but then "no further progress" in 2023.³¹

We cannot commend the Commission's patience. Repeating the same recommendations without taking action encourages Member States to disregard the rule of law reports because they have no reason to fear serious consequences. Infringement proceedings should be brought against Member States that refuse to make necessary changes to restore media freedom and pluralism, as they are essential tenets of democracy and the rule of law. Hungarian people enjoy essentially no plurality across their national media landscape, and public service media are merely cogs in the government's propaganda machine. But threats to the media environment in Italy, Greece and Slovakia, among others, must also be closely monitored and acted upon, as merely recommending a country do something year after year evidently does not bring change.

28 European Commission Rule of Law Report 2022, Country chapter on the rule of law situation in Hungary, p. 2.

29 European Commission Rule of Law Report 2022, Country chapter on the rule of law situation in Hungary, p. 2; European Commission Rule of Law Report 2023, Country chapter on the rule of law situation in Hungary, p. 2; European Commission Rule of Law Report 2024, Country chapter on the rule of law situation in Hungary, p. 2.

30 European Commission, Rule of Law Report 2024, Country Chapter on the rule of law situation in Greece, p. 2; European Commission, Rule of Law Report 2023, Country Chapter on the rule of law situation in Greece, p. 2; European Commission, Rule of Law Report 2022, Country Chapter on the rule of law situation in Greece, p. 2.

31 European Commission, Rule of Law Report 2024, Country Chapter on the rule of law situation in Italy, p. 2; European Commission, Rule of Law Report 2023, Country Chapter on the rule of law situation in Italy, p. 2; European Commission, Rule of Law Report 2022, Country Chapter on the rule of law situation in Italy, p. 2.

The Commission's rule of law reports should also more concretely link the ongoing, unlawful use of surveillance spyware against journalists as a direct threat to media freedom and pluralism, as well as to the safety of journalists. There have been multiple instances of national authorities using spyware against journalists, with cases unresolved to this day, such as in Hungary and Greece. However, the Commission makes no mention of this in its recommendations to either country, and where the issue does arise, it is most often filed under a different topic, such as 'Other institutional issues related to checks and balances'.³² Tying this issue directly to media freedom and pluralism in the annual rule of law reports is of paramount importance now because, as Liberties and other CSOs have recently noted, the EMFA fails to fully protect journalists from spyware and lacks essential safeguards against their surveillance – creating sweeping legal grounds for its continued use.³³

Liberties is also of the opinion that the Commission should take action to improve media literacy and the identification of disinformation as a means of bolstering media freedom and pluralism. It should work with CSOs to develop and fund programs to improve citizens' understanding of the media, the importance of media ownership transparency,

and how to identify disinformation, among other issues. Taking this step can undermine authoritarian-minded governments that seek the capture or capitulation of independent and public service media as a key part of their anti-democratic agenda.

Democracy and the rule of law cannot exist without a free and pluralistic media. While the Commission's Annual Rule of Law Reporting Cycle has the potential to be an invaluable tool to help insulate each facet of the rule of law, at present it lacks the force necessary to compel reforms towards this aim, especially in the area of media freedom and pluralism. Now, with the EMFA providing yet another tool to safeguard media in the EU, the Commission should actively engage with CSOs to monitor its enforcement and, where necessary, bring action in cases of non-compliance.

32 European Commission, Rule of Law Report 2024, Country Chapter on the rule of law situation in Hungary, p. 34.

33 The Civil Liberties Union for Europe et. al. 'Civil Society Joint Statement on the Use of Surveillance Spyware in the EU and Beyond'. Open letter, September 2024. https://dq4n3btxmr8c9.cloudfront.net/files/8w_ttg/Civil-society-joint-statement-on-the-use-of-surveillance-spyware-English-.pdf

KEY FINDINGS AND RECOMMENDATIONS

Reporting cycle with a particular focus on the inclusion of CSOs

While the reporting process has certain very positive aspects, such as the opportunity for CSOs to submit written contributions and the Commission's acknowledgment of some reports, there are concerns regarding its lack of transparency and inclusivity.

Many CSOs faced challenges in meeting the tight deadline for submissions at the end of the year.

There were instances where Liberties' member organisations and experts, despite their valuable contribution, were ignored by the Commission. We are particularly concerned that in the case of three countries, namely Estonia, France, and Romania, neither the Liberties Rule of Law Report 2024 was mentioned nor were our contributors (Estonian Human Rights Center, Vox Public, and APADOR-CH) consulted by the Commission. If the Commission disregards the efforts of well-known civil society organisations and omits them from the reporting process without providing any explanation, it will demotivate these organisations and have a negative impact on the accuracy of the reports.

Additionally, we consider that the lack of active involvement of the European Economic and Social Committee is a missed opportunity to enhance civil society participation.

The current schedule for releasing the rule of law reports by the Commission just before the summer break has made them less visible. The reports have attracted minimal public attention and media coverage, and the visibility and impact of the reports vary significantly across different member states.

CSOs and individual experts, including some of the contributors to the Liberties Rule of Law Report 2024, continue to be targeted by government-friendly media in their Member States.

Liberties' recommendations to the Commission:

1. **Increase Transparency:** The Commission should make sure that the selection of civil society actors to be consulted during country visits is more inclusive and transparent in order to guarantee CSOs' trust in the process.
2. **Extended Time for Contributions:** The Commission should provide CSOs with a more reasonable timeframe to submit their contributions, taking into account the busy

period at the end of the year due to their various reporting obligations.

3. **Proactive Communication:** The Commission should proactively and clearly communicate the details of all relevant consultations and country visits on its website in a timely manner to ensure high awareness of the reporting process stages.
4. **Recognition of CSO Efforts:** It should be ensured that the Commission duly acknowledges and references the work of civil society organisations in its reports, providing explanations when certain organisations are not included.
5. **Involvement of the European Economic and Social Committee:** The Commission should actively involve the European Economic and Social Committee, particularly its ad hoc group on Fundamental Rights and the Rule of Law, to facilitate organised discussions between EU institutions and citizens regarding fundamental rights, democracy, and the rule of law.
6. **Revision of Publication Schedule:** The Commission should reconsider the annual cycle and change the publication date of the rule of law reports to increase their visibility and generate more interest.
7. **Enhanced Communication and Accessibility:** The reports should be supplemented with easy-to-understand fact sheets and other media content available in all EU languages. Additionally, the Commission should create online country-specific pages

containing comprehensive information on reports, consultations, country missions, and the implementation of recommendations by Member States.

8. **Support and Protection for Contributors:** The Commission should provide support and protection for authors and contributors to CSO reports, especially in cases where they face personal attacks or smear campaigns due to their work. Mechanisms should be in place to address and counter any attempts to undermine the integrity of the reports and their authors.

Commission's evaluation methodology

The Commission's reports still do not reflect adequately the interconnectedness between the rule of law, democracy, and fundamental rights. While some issues related to democracy and fundamental rights are included in the annual reports, there is a lack of comprehensive and clearly structured analysis of systemic non-compliance with relevant international standards.

The methodology of the annual rule of law reporting by the European Commission can still be strongly criticised for its lack of sensitivity to the context in which rule of law developments take place. What is more, the selection process for rule of law issues included in the report is not transparent, and there is limited information on the criteria used by the Commission to assess the severity of the issues analysed. Due to these methodological

problems, the Commission's report overlooked significant rule of law issues in several Member States. These gaps raise serious concerns about the comprehensiveness of the analysis.

Liberties' recommendations to the Commission:

1. **Broaden the Scope:** The Commission should extend the scope of its annual report to cover rule of law, democracy, and fundamental rights, providing a comprehensive and better-structured analysis of systemic non-compliance with the relevant international standards.
2. **Cooperate with Other Monitoring Mechanisms:** The Commission should consider strengthening its cooperation with other monitoring mechanisms, such as the EU Fundamental Rights Agency, and integrating their findings into the Annual Rule of Law Report to ensure a more comprehensive assessment.
3. **Transparency and Clarity:** The Commission should enhance the transparency of its methodology for selecting and evaluating rule of law issues included in the report. Clear criteria should be defined for the identification of significant developments.
4. **Inclusion of Experts and In-site Country Visits:** The Commission should seriously consider involving an independent panel of experts in the drafting of the report to prevent any further criticism regarding its lack of objectivity due to political biases. In addition, the Commission should conduct

on-site country visits to gain a fuller and more contextual understanding of the local situation.

Recommendations and the assessment of their implementation

The Commission's efforts to include country-specific recommendations and report on their implementation are positive steps. However, there are still some shortcomings in the formulation of recommendations and the assessment of their implementation.

Key concerns include the lack of specificity and measurability of recommendations, as well as the need for a clearer link between the seriousness of concerns detected in a Member State and the Commission's resulting country-specific recommendations.

The Commission's 2024 Annual Rule of Law Report highlighted that 68% of the 2023 recommendations were followed up by the Member States. However, there remains a lack of sufficient detail in the assessment of these implementations, and the current rating scale used by the Commission needs clarification. The Commission tends to concentrate on announced or ongoing reforms without thoroughly evaluating their effectiveness, pace, and impact, leading to perceived progress where there is little to none. The success rate of the Commission's recommendations would be more accurately represented by considering only the recommendations that have shown significant progress or have been fully implemented. (See Table 3)

It is also important to note that the level of progress in implementing country-specific recommendations does not necessarily reflect a Member State's overall compliance with the rule of law. The Commission's approach to focus on the follow-up of a handful of recommendations per country as the primary example of the report's usefulness is misleading.

Different Member States have varying approaches when it comes to carrying out the recommendations made by the Commission, which presents a challenge. In countries where a continued decrease in the overall rule of law has been observed, like Bulgaria, Greece, Hungary, Malta, Poland, Romania, and Slovakia, the Commission's recommendations were either completely disregarded or only partially implemented in 2023. Regrettably, the behaviour of these countries may be supported by other Member States, such as Austria, France and Germany, that do not experience a decline in the overall rule of law but still refuse or make only minimal efforts to comply with the Commission's recommendations. (See Table 3)

Liberties' recommendations to the Commission:

1. Formulate Specific and Measurable Recommendations: The Commission should work on formulating more specific and measurable recommendations that are targeted to the concerns identified in each country. This will enhance the recommendations' usefulness as accountability tools.
2. Establish Clear Link between Concerns and Recommendations: The Commission needs to ensure that there is a clear link between the seriousness of the concerns identified in the Member States and the country-specific recommendations.
3. Avoid Diplomatic Considerations in Recommendations: The wording and the number of recommendations should not be based, even partially, on diplomatic considerations, and more serious breaches of the rule of law should receive a greater number of stricter recommendations.
4. Enhance Assessment Criteria: The Commission should define clear criteria for categorizing rule of law developments into the four-point rating scale – no progress, some (further) progress, significant (further) progress, full implementation – to provide more transparency and accuracy in the assessment of implementations.
5. Improve Reporting Accuracy: The Commission should provide a more accurate representation of the success rate of recommendations by considering only those showing significant progress or full implementation, rather than including cases with some progress.
6. Focus on Effectiveness: The Commission should shift its focus from announced or ongoing reforms to thoroughly evaluating the effectiveness, pace, and impact of implemented recommendations to ensure meaningful progress.

7. Consider Long-Term Impact: The Commission needs to make more effort to monitor changes over time in order to identify both positive and negative trends in the Member States.

8. Engage Non-Compliant Member States: The Commission needs to develop strategies to force non-compliant Member States to implement its recommendations, primarily by linking the Rule of Law Report to enforcement mechanisms, such as the infringement procedure and the budgetary conditionality measures.

Link of the Annual Rule of Law Report to other rule of law mechanisms

The European Commission's Annual Rule of Law Report has been instrumental in identifying systemic rule of law issues in Member States. However, it should not be relied upon as the sole or even the primary tool for enforcing the rule of law. The report's effectiveness is significantly limited when dealing with national governments acting in bad faith. Countries like Bulgaria, Greece, Hungary, Malta, Poland, Romania, and Slovakia, where a decrease in systemic adherence to the rule of law has been identified in previous years, either outright disregarded the Commission's suggestions or only made minimal efforts to put them into practice in 2023. (See Table 3)

To enhance its effectiveness, the Commission should integrate the Annual Rule of Law Report into the broader EU rule of law toolkit, including mechanisms such as the Article

7 procedure, infringement procedures, and budgetary conditionality. The inconsistent application of these mechanisms has been a significant issue, as evidenced by funds being unfrozen despite a lack of compliance.

Recommendations:

1. Integration of the Annual Rule of Law Report: The Commission needs to act quickly on its promise to build a closer link between the Rule of Law Report and EU rule of law enforcement mechanisms in light of the rapid deterioration of the rule of law in certain Member States and the difficulty repairing breaches once they become systemic. It would be particularly important to establish a direct link between the Commission's country-specific recommendations, on the one hand, and the initiation of infringement procedures and the budgetary conditionality mechanisms, on the other.

2. Strengthening Enforcement Actions: Specific enforcement actions should be taken in cases of continuous breaches in the Member States. Lack of implementation of country-specific recommendations should be considered evidence for triggering such actions.

About

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting and protecting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of national civil liberties NGOs from across the EU. Unless otherwise indicated, the opinions expressed by Liberties do not necessarily constitute the views of our member organisations.

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