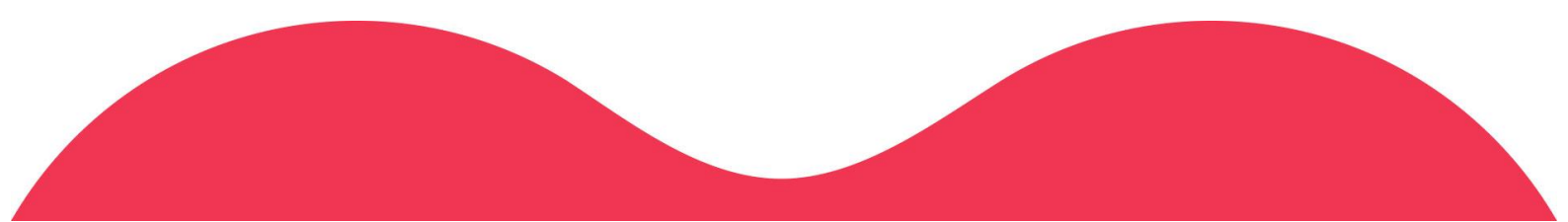


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# **Philanthropy and wider civil society's role within the EU rule of law mechanism**



## What is rule of law and how does it relate to civil society, including the philanthropic space?

Rule of law is a system of checks and balances which ensures that all persons and authorities in the state are bound by law. Rule of law is part of the European Union's founding values, alongside respect for human dignity, freedom, democracy and equality. There is a strong connection between rule of law and civil society space, as democratic societies with a strong rule of law contribute to a favourable enabling environment for philanthropy and wider civil society, and vice versa.

Philanthropy and other civil society organisations are often among the first to inform public opinion, advocate and take action in the respect of the rule of law at all levels – national, European and international. Civil society organisations also play an essential role in improving and protecting a free and pluralist media environment through education, training and watchdog functions. Crucially, they also have deep expertise in dealing with vulnerable groups. Civil society plays an essential role in the system of checks and balances supporting democratic systems based on the rule of law. It is instrumental in promoting and safeguarding the rule of law at European, national and local levels.

Civil society's watchdog role makes it potentially one of the first targets of those who aim to undermine rule of law. Therefore, limitations to the rule of law often go hand in hand with restrictions on civic space, erosion of fundamental rights and democratic backsliding. We observe that closing civil society space is often a first indicator of rule of law concerns. Rule of law is however in danger not only when a government directly undermines judicial independence, or when corruption directly impacts decision-making, but also when it makes it impossible for civil society to scrutinise a government's actions. Closing civic space can be done through various means with smear campaigns, foreign funding restrictions or overly burdensome reporting requirements as a few examples of how policies can be instrumentalised to clamp down on civil society organisations in an effort to destabilise the rule of law.

## The European Union recognises civil society's role

The EU institutions increasingly recognise the role civil society organisations (hereinafter CSOs) play in the promotion and protection of the values and rights enshrined in article 2 TEU and in the Fundamental Rights Charter, including the rule of law, as demonstrated by the following instruments:

- The European Council Conclusions of 14 March 2023 "[\*The role of the civic space in protecting and promoting fundamental rights in the EU\*](#)" for instance underline that CSOs are "an indispensable element in the system of checks and balances in



a healthy democracy; unjustified restrictions to their operating space can present a threat to the rule of law.”.

- The European Commission has further recognised this role in its [“2022 Annual report on the application of the EU Charter of Fundamental Rights: A thriving civic space for upholding fundamental rights in the EU”](#), where it stresses the role of CSOs to “provide their expertise to the policymaking and legislative work of national authorities and EU institutions and help ensure that these bodies are held accountable for respecting fundamental rights and the rule of law.”.
- Previously, the EU Fundamental Rights Agency notes in its 2022 report [“Protecting civic space in the EU”](#) that “As part of their action to strengthen the application of the EU Charter of Fundamental Rights and the rule of law, EU institutions should regularly monitor civil society space, closely involving civil society actors and other human rights defenders.”.

## What is the European Union’s rule of law mechanism?

The European Union has developed a comprehensive toolbox to promote the rule of law. The EU toolbox also includes preventive measures and means to respond to negative developments in this field. The EU’s core mechanisms are the annual rule of law report; the rule of law conditionality mechanism; Article 7 legal procedures; and infringement procedures. Broader EU efforts to promote and defend its values include the European Democracy Action Plan, the renewed Strategy for the Implementation of the Charter of Fundamental Rights and the ongoing monitoring of the application of EU law and the protection of fundamental rights under the Charter.

## Annual rule of law report

The [annual rule of law report](#) was introduced in 2020 to present a synthesis of both the rule of law situation in the EU and an assessment of the situation in each Member State.<sup>1</sup> The report presents an occasion for ongoing dialogue between the Commission, Member States and key stakeholders on both positive and negative developments relating to the rule of law. The report is continuously being improved based on input provided by stakeholders, including civil society organisations, through the consultation process. As a result, since 2022, the report includes useful country-specific recommendations to each Member State, and additional chapters have been introduced, such as a separate thematic focus section on the “enabling framework for civil society” in the 2023 consultation. Besides written procedures, the European

<sup>1</sup> [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2020-rule-law-report\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2020-rule-law-report_en)



Commission also engages in country visits and organises roundtables with a variety of stakeholders, including civil society organisations. Civil society organisations have engaged around the annual cycle to ensure that civil society space is part of the analysis.

A shrinking and threatened civic space with legal or practical restrictions on freedom of assembly, association and expression and the right to participation is an important indicator of a weak rule of law environment. The annual rule of law report consultation is therefore a key transparency instrument contributing to an enabling framework for civil society. Given the important role of civil society, more can be done to stipulate country-specific recommendations related to the enabling framework for civil society. These recommendations are to be informed by civil dialogue and should consider input provided by civil society organisations operating in EU Member States. Public benefit organisations play an important role in informing country specific recommendations and should hence be consulted actively.<sup>2</sup>

## Rule of law conditionality

When the European Commission introduced the new Multi-annual Financial Framework (MFF) for 2021-2027, alongside the Recovery and Resilience Facility (RRF) for the economic recovery of the Covid-19 pandemic 2021-2024, the Commission linked the release of the funds to the Member States with a new conditionality mechanism tied with the rule of law – the so-called “[rule of law conditionality](#)”. This mechanism ties the release of EU funds to Member States to the respect of specific rule of law principles: specifically, such mechanism can be activated when the Commission considers that a Member State breaches of the rule of law principles that directly affect or seriously risk affecting the sound financial management of the Union budget or of the financial interests of the Union in a sufficiently direct way.<sup>3</sup> The Commission will then propose “appropriate and proportionate measures” against the Member State and the Council of the EU will make a final decision on their adoption. Such measures can include, e.g., suspension of release of EU funds, suspension of existing commitments, or a prohibition to enter new legal commitments with that State.

Philea together with wider civil society has published a [report on the involvement of civil society organisations](#) in the consultation processes, monitoring and implementation of the National Recovery and Resilience Plans. Civil society organisations note the importance of civil dialogue in the process of crafting and monitoring the Plans, and stress that final beneficiaries of the funds should not be penalised if the conditionality

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<sup>2</sup> <https://civilsocietyeurope.eu/wp-content/uploads/2023/12/Joint-Civil-Society-Contribution-to-the-2023-Annual-Rule-of-Law-Report.pdf>

<sup>3</sup> See Guidelines on the application of the conditionality Regulation: [https://commission.europa.eu/system/files/2022-03/c\\_2022\\_1382\\_3\\_en\\_act\\_part1\\_v7.pdf](https://commission.europa.eu/system/files/2022-03/c_2022_1382_3_en_act_part1_v7.pdf)

mechanism is triggered. The conditionality mechanism has been triggered in the context of the democratic erosion in Hungary.

## Article 7 procedure and infringement proceedings

Finally, the procedure under Article 7 of the Treaty on European Union, which was introduced by the Amsterdam Treaty in 1997 and hence constitutes the longest standing mechanism to protect rule of law and the EU values enshrined in Article 2 TEU more widely. It consists of both preventive measures in case of a clear risk of a breach of the EU values, and sanctions if such a breach has already occurred. A high threshold in the Council of four-fifths in case of preventive measures, and unanimity in case of sanctions is needed to activate the mechanism. The Member State concerned does not take part in the voting.<sup>4</sup>

The European Commission can also start infringement proceedings before the European Court of Justice in case it considers that a Member State is violating EU law. These proceedings may lead to financial sanctions against the country. For instance, the European Court of Justice concluded in June 2023 that Poland's judicial reform of 2019 violates European law, since it constitutes an unlawful interference with the independence of the judiciary.

## Philanthropic organisations are engaging on rule of law

Philanthropy engages in different ways around rule of law. Some foundations run their own programmes to promote and strengthen the rule of law. Other foundations support initiatives from partner organisations on the rule of law.

Philea raises awareness and spreads information on the rule of law mechanism, recently for instance by updating the Philea & ECNL [Handbook on how to use EU law to defend civic space](#), and by [convening the wider philanthropy ecosystem](#) on the annual rule of law report in collaboration with Ariadne and Civitates. Philea also [engages directly in the annual rule of law report](#), together with wider civil society, through the Civil Society Europe working group. We also disseminate work done by our partners, such as the Civil Society Europe guidance note for civil society organisations at the national level<sup>5</sup>.

## Conclusions

The European Union has worked tirelessly to strengthen the culture of the rule of law across its Member States. It has expanded its toolbox to protect and promote the rule of

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<sup>4</sup> <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180222STO98434/breaches-of-eu-values-how-the-eu-can-act-infographic>

<sup>5</sup> <https://civilsocietyeurope.eu/wp-content/uploads/2023/12/CSE-guidance-note-on-RoL-report-18.12.2023.pdf>

law across the Union notably in the last few years. The different measures have however been introduced separately, and a comprehensive approach is lacking. The European Parliament reaffirmed in its recently adopted [report on the European Commission's rule of law report for 2023](#) its offer to enter into an interinstitutional agreement on democracy, the rule of law and fundamental rights, an offer so far rejected by the Commission and the Council.

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