
EU'S RULE-OF-LAW BLUEPRINT: TWO OUT OF THREE IS NOT ENOUGH

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There is plenty to welcome in the European Commission's blueprint for action on the rule of law, published this month in response to consultation.

Of its three sections □ promoting a rule of law culture, prevention and enforcement □ the first is hard to fault.

However, the other two both have significant gaps.

In particular, the document fails to even discuss the most pressing problem facing the EU: how to force national governments who have violated the rule of law to change tack, when any decision requires unanimity amongst member states.

There's plenty about developing a process for de-escalation when states make significant rule of law improvements as a result of the Article 7 procedure.

There's also an acknowledgement of the need to designate clearer procedures and timeframes within the context of the procedure, a willingness to involve the other EU institutions earlier in the process and involve non-EU institutions once a procedure has been initiated.

But the blueprint does not look at concrete measures to be taken when a member state makes little or no progress, as is currently the case with Poland.

Poland has been subject to the Article 7 procedure since December 2017 and has yet to effectively respond to the commission's recommendations.

As the commission makes clear early on in the blueprint, its ultimate goal is to avoid dire consequences and to prevent rule of law problems at the outset.

All well and good. But history is already showing us that there are times when sanctions will need to be imposed.

The commission needs to face reality and come up with suggestions as to how this can be done in the absence of the requisite unanimity in the EU Council.

The enforcement section is not the only part of the blueprint where cracks are already visible □ its ideas on prevention also have a serious flaw.

The commission is correct to have taken on board the suggestion to create a dedicated rule of law

monitoring process, but sadly the mechanism they're suggesting will leave it hostage once again to backsliding member states.

The monitoring - named the Rule of Law Review Cycle - will involve regular reviews of the rule of law situation in each EU country, examining issues such as the processes for enacting laws and the independence of the national courts.

'We pick who'

The cycle would make use of the work done by organisations already monitoring the rule of law, but would also include an element of new information gathering.

One of the ways it will do this is through the creation of a network of national contact points and this network will also share information, exchange best practice and develop EU rule of law tools.

However, the network will only be as good as its members and under the commission's blueprint, the national contact points will be designated by member states.

If just one rule of law-deficient member state designates a contact point that has been politically captured, this could render the entire network ineffectual.

To combat this risk, the commission should at least vet potential contact points.

But there is a better solution, put forward by several stakeholders during the consultation (including my own Bingham Centre for the Rule of Law), then unfortunately rejected by the commission.

We maintained that an independent body of experts, appointed on merit, should undertake the rule of law review of member states.

The commission's response is that having an external body make such an important assessment in light of potentially grave consequences would impinge on the "authority and accountability of the institutions".

But this fails to acknowledge the benefits of such a set-up, not least in terms of the independence it would bring to the assessment process.

It also seems not to understand that ultimately, the expert panel would be there to assist the commission in its decision-making, not replace it.

Happily, there is little to criticise in the third section of the blueprint, which focuses on promoting a rule of law culture in Europe.

Increasing public awareness of the rule of law and its crucial role in Europe, particularly in relation to the internal market's ethos of mutual trust, can be no bad thing.

Coordination between EU institutions and with non-EU institutions involved in upholding and assessing the rule of law in Europe, such as the Council of Europe and the OSCE, providing assistance to European civil society, judicial networks and national parliaments, and even ensuring that European political parties respect the rule of law can only have positive impacts in the short,

medium and long-term.

But sadly, those all-important flaws remain.

If the commission is to achieve its goal to preserve and protect the rule of law in the EU, it has to confront the situation realistically and honestly □ including how to deal with states who aren't willing to play by the rules.

Kaynak/Source: