

Meeting report
Annual meeting of the Fundamental Rights Platform, 10 November 2022
Online

“How can civil society help strengthen the rule of law in the European Union? And how can the rule of law help strengthen civil society?”

The 2022 meeting of the Fundamental Rights Platform was devoted to the interrelations between civil society and the rule of law. It brought together around 200 civil society organisations from across the European Union (EU), some non-EU countries, as well as representatives from the European Commission, the Council of Europe, the United Nations (UN OHCHR, UN Women) and the European Network of National Human Rights Institutions. They were joined by the European Commissioner for Justice, Mr Didier Reynders, and by Oleksandra Matviichuk, Head of the Board of Ukraine’s Center for Civil Liberties, one of three co-recipients of the 2022 Nobel Peace Prize.

Background

Respect for the rule of law is one of the founding values of the European Union. Acknowledging the risk of erosion of this value, the European Commission established the [European Rule of Law Mechanism](#), a preventive tool, aiming to promote the rule of law and prevent challenges from emerging or it deteriorating.

The meeting coincided with the start of a two-month long [targeted stakeholder consultation](#) for the European Commission’s rule of law report 2023. The European Commission’s [annual report on the rule of law](#) acknowledges the important role that civil society organisations play in supporting institutional systems of checks and balances pertaining to the rule of law. The 2022 [report](#) on civic space in the EU, published by the EU Agency for Fundamental (FRA) in July 2022, provides an overview of the many ways in which civil society contributes to upholding and promoting the rule of law.

Drawing on these reports, the meeting focused on how civil society organisations can best contribute to strengthening the rule of law, on what can be done to support them in this endeavour. Participants concurred that civil society organisations across the EU need to work together to foster a strong rule of law culture in their countries, through sharing best practices, improving access to data and funding, as well as boosting their communications, advocacy, monitoring and networking.

Part One: State of Play of the rule of law in the EU

Welcome address by Michael O’Flaherty, Director of the EU Agency for Fundamental Rights

[Michael O’Flaherty](#) emphasised there is much to do and do better to embed a rule of law culture in society. “It has never been more urgently needed for us to engage with the issue of the health of the rule of law in all our societies to ensure that they are law-based, with strong, fair institutions, all of which have human rights at their heart.” He highlighted important recent developments, including the EU’s Rule of Law Mechanism and making the allocation of EU funds conditional on respecting fundamental rights. He welcomed the increasing visibility and impact of the European Commission’s annual rule of law report.

Mr O’Flaherty focused on two key issues in relation to civil society’s role in defending and upholding the rule of law. First, realising their full potential to play an integral part in building, maintaining and strengthening the rule of law. Second,

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- Michael O’Flaherty, FRA Director

protecting civil society organisations, which find themselves under worrying pressure in many parts of the EU and beyond. Many of them face threats to their safety, ranging from attacks on their property to threats of death and injury, on top of attacks of a verbal or legal nature.

The FRA has regularly reported on the regulatory and financial pressures that civil society organisations face. In addition, they are often not consulted by the State on issues pertaining to human rights or the rule of law, which makes it hard for them to provide formal feedback and report on issues on the ground.

It is important to recognise the diversity of civil society organisations, which range from non-governmental organisations to trade unions and employers’ organisations to faith-based organisations. These organisations can count on the Agency’s support in their vital and challenging work, at a time when the European Commission embarks on a programme of rule of law dialogues in Member States in cooperation with the Agency. The first such dialogues were held in Germany and Belgium.

Special address by Oleksandra Matviichuk, Head of the Board of Ukraine’s Center for Civil Liberties

[Oleksandra Matviichuk](#) highlighted that any country that systematically disregards human rights obligations and persecutes lawyers, journalists and human rights defenders poses a security threat to the entire region. She remarked that it was not enough to adopt laws and create institutions and then leave rule of law issues in the hands of diplomats, lawyers and experts. “We need to work with the society and its values,” she said. “We must involve people in human rights programmes, campaigns and initiatives. We need to build mass support for the rule of law and human rights. Otherwise, it will be difficult for us to move forward. Human rights education and awareness among the population should become a priority,” she said.

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- Oleksandra Matviichuk,
Head of Board at Center for Civil Liberties (UA)

Dialogue with Didier Reynders, European Commissioner for Justice

Commissioner [Didier Reynders](#) reminded the participants that the European Commission’s Rule of Law Mechanism is a preventative tool: “The goal is to install a rule of law culture in the EU Member States and to try to organise a dialogue with them to improve the situation. We are paying attention to the civic space and the role of civil society organisations.”

Approved 21/12/22

The European Commission intends to further enhance the role of civil society organisations in the mechanism as work begins on the 2023 edition of its annual report on the rule of law, notably through the planned national rule of law roundtable discussions. The Commission will follow up on the previous report, which focused on increasing the independence, quality and efficiency of national justice systems in the EU, fighting corruption, advancing media freedom and pluralism, as well as strengthening other institutional checks and balances. The [targeted consultation](#) for the fourth report will run until 20 January, with the report set to be published in July 2023. Civil society organisations are encouraged to participate in that consultation.

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*- Didier Reynders,
European Commissioner for Justice*

Commissioner Reynders emphasised the important role that the national dialogues can play in helping Member States follow up on the country specific recommendations and other issues that are identified in the

European Commission’s rule of law report. Such dialogue always comes first. But dialogue is not an end in itself, it should lead to results. Where necessary, the final option is recourse to the Court of Justice of the European Union.

Commissioner Reynders remarked that many Member States have undertaken reforms to improve their rule of law situation. In this respect, he emphasised the need for civil society organisations to involve themselves in national decision-making processes and, in some cases, push their Member States, in order to move forward and implement concrete reforms in support of the rule of law.

Panel Discussion

“How can civil society help strengthen the rule of law? And how can the rule of law help strengthen civil society?”

- [Sirpa Rautio](#), Director of the Finnish Human Rights Centre and Chairperson of the European Network of NHRIs;
- [Michael Meyer-Resende](#), Director of Democracy Reporting International;
- [Simona Constantinescu](#), Head of Development and Advocacy at Civil Society Development Foundation Romania and member of Council of Europe’s Expert Council on NGO law;
- <https://fra.europa.eu/en/about-fra/structure/director> [Michael O’Flaherty](#), Director of the EU Agency for Fundamental Rights.

The panellists echoed Mr Reynders’ call to widen and deepen the engagement with civil society when discussing rule of law issues at national, European and international level.

“Bringing the views of real people into discussions on the quality of justice and the rule of law requires that both civil society organisations and national human rights institutions play a role. (...) The whole system works well when there is trust, and trust comes from everyone working together.”

*- Sirpa Rautio,
Director of the Finnish Human Rights Centre and
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national human rights institutions play a role.” She explained that bringing people fully on board to provide a sharper focus, it is important to understand the different roles of the various players. She added that it also helps to prevent confusion over what civil society does and what a state-mandated body does. The whole system works well when there is trust, and trust comes from everyone working together.”

Michael Meyer-Resende stressed that civil society organisations have proved that they can be first movers who can speak truth to those holding the power, based on the realities observed on the ground. He recalled, for example, that when rule of law problems first emerged in Hungary, Democracy Reporting International was “more or less alone with the NGOs and a few journalists and academics in raising awareness of the situation”. In his opinion, the Agency’ annual update on civic space in the EU report captures well the current situation on the ground: a polarised environment in which civil society organisations are oftentimes branded as the enemy.

“Now is the time to assert that civil society organisations’ non-partisanship role and secure the fundamental building blocks of functioning democracies.”

*- Michael Meyer-Resende,
Director of Democracy Reporting International*

In the battle for public opinion about the rule of law and human rights issues more generally, civil society organisations can speak more openly and in simpler terms than institutions and legislators: “Now is the time to assert [civil society organisations’] non-partisanship role and secure the fundamental building blocks of functioning democracies.”

This calls for building stronger civil society networks, fellowships and partnerships. Yet

blind spots persist, such as a lack of engagement of civil society organisations with bar associations and difficulties accessing EU funding.

Simona Constantinescu added that the use of language in complicated rule of law policies can be a barrier for civil society organisations. She said she was worried about “varying levels of openness” sometimes demonstrated by public authorities and institutions towards civil society actors, and noted that it is not enough to just fund civil society activities. The non-profit sector’s capacity needs to be strengthened, which requires that grassroots organisations and their needs are fully understood by society to best support them.

“The challenge now is to bring all the right stakeholders together to convey their messages in a structured, easy-to-understand way.”

*- Simona Constantinescu,
Head of Development and Advocacy at Civil Society
Development Foundation Romania and member of
Council of Europe’s Expert Council on NGO law*

Ms Constantinescu insisted that all categories of civil society organisations should be invited to the table, in the same room and at the same time together with the key institutions. “This is of paramount

importance for engagement,” she said, echoing Mr Meyer-Resende’s sentiment that national authorities tend to perceive CSOs as hostile when they are simply expressing a critical voice. “The challenge now is to bring all the right stakeholders together to convey their messages in a structured, easy-to-understand way,” stating that this will be her organisation’s focus in the coming years.

Michael O’Flaherty concluded by noting that the dialogue with Commissioner Reynders and the panel debate underlined the need for the European Commission to finetune its consultation process and further consider the role of civil society. “Parts of civil society are under threat and civic space needs nourishing and protection,” he warned.

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*- Michael O’Flaherty,
FRA Director*

Taking note of the key take-aways from the panel debate, **Mr O’Flaherty outlined the following issues to tackle:**

- ✓ expand the rule of law discussion to reach beyond experts and engage more widely with civil society;
- ✓ respect CSOs’ autonomy by avoiding to limit their role to that of service provider;
- ✓ improve partnerships and avoid competing with one another;
- ✓ reinforce civil society solidarity across borders;
- ✓ keep exploring and engaging in the shared space between the rule of law, human rights and democracy.

Part Two: Breakout discussions

Civil society and the rule of law – practical tools

Representatives of civil society organisations hosted six breakout sessions to identify practical ways to foster the relationship between civil society and the rule of law, focusing on the following topics:

1. *Rule of law “from below” and the role of civil society. Led by [Prof. Dr. Antoine Buyse](#), Professor of Human Rights at Utrecht University and Director of the Netherlands Institute of Human Rights (SIM).*

2. *From problem to solution – how can digital tools strengthen the rule of law? Led by [Dr Paloma Krõõt Tupay](#), Lecturer in Constitutional Law at the University of Tartu, Estonia; Member of the Supervisory Council of the Estonian Human Rights Centre.*
3. *Communicating the rule of law – how to get the message across? Led by [Jakub Jaraczewski](#), Research Coordinator at Democracy Reporting International.*
4. *Towards an EU Civil Society Strategy. Led by [Carlotta Besozzi](#), Coordinator at Civil Society Europe, and [Giada Negri](#), Research and Advocacy coordinator at the European Civic Forum.*
5. *Rule of law conditionality and fundamental rights conditionality – new tools, old habits? Led by [Alessia Mora](#) of Open Society Foundations Europe and Central Asia.*
6. *Implementation of judgements – what are the problems and prospects? Led by [Dr Nino Tsereteli](#), Research Officer at Democracy Reporting International.*

In the breakout discussions, participants engaged in structured exchanges on the key challenges, desired actions from EU and national level actors, best practices, and on how to pool resources relevant to the issues discussed. The key action points identified during the discussions are provided below, with more details available [here](#).

1. Rule of Law “from below” and the role of civil society,

Rule of law talk tends to centre on states and international organisations as those responsible for its protection. This session examined the role of individuals, groups and organisations – in short civil society – in upholding and defending the rule of law.

Key action points:

- ✓ Contribute to raising public awareness of the rule of law, including in fields seemingly not directly related to human rights, to foster better understanding of the connection between human rights, rule of law and democracy;
- ✓ Civil society organisations should also examine their own capacity to promote rule of law, avoid operating in silos, find common shared values and engage in new partnerships such as with lawyers and law-focused NGOs and employers’ organisations;
- ✓ Identify ways to effectively use non-financial tools;
- ✓ Share best practices such as: how to help implement CJEU/ECtHR judgments, consider introducing an EU Fund for Equality similar to the Canadian Court Challenges Fund, encourage Member States to set up similar national funds to support strategic litigation.

2. From problem to solution – how can digital tools strengthen the rule of law?

Digital solutions have posed new challenges for both the rule of law and human rights. But how can this (indispensable) progress be used to protect democracy and fundamental rights? And what role can civil society play in this?

Key action points:

- ✓ Finding balance between privacy rights and better transparency is becoming increasingly important, and digital tools can be used to improve participation in the legislative process. For example, building better notification systems and sifting mechanisms for CSOs can enhance transparency and participation in the legislative process;
- ✓ Tackle lack of data, for example by creating a repository for data where public and private actors can contribute and the public can access (example: Bulgaria);
- ✓ Create possibilities and spaces for NGOs to obtain and share information about regulations and rights in the context of data processing in an impartial way - institutions like FRA are important actors here;

- ✓ Cooperation between CSOs and public authorities is crucial for success: knowledge-sharing about useful digital tools, cooperative development of digital tools to monitor rule of law questions, cross-sector cooperation (technology sector, lawyers etc).

3. Communicating the rule of law – how to get the message across?

The rule of law is a highly complex topic. Relaying its importance and explaining the various developments to the public is a challenge for civil society, policymakers and journalists. The difficulty in explaining what the rule of law is and why it matters is confounded by active disinformation coming from governments and actors seeking to erode the rule of law. This breakout session focused on exploring these challenges and looking at ways to improve messaging and explaining related topics to courts and judges.

Key action points:

- ✓ Show the everyday relevance of the rule of law and develop plain messages to make the issue clear, relatable and understandable to the public;
- ✓ Utilise and share the useful resources available, such as FRA's [10 Keys to effectively communicating human rights](#), the messaging guides by Liberties for talking about the [rule of law](#) and [civic space](#);
- ✓ Refer to the European Economic and Social Committee's resource ["Communicating fundamental rights and the rule of law"](#).
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4. Towards an EU Civil Society Strategy

CSOs are instrumental to effective democratic participation and resilience, both at European and national level. They play an important role in building public spaces, upscaling participatory democracy by channelling citizens' concerns and empowering those who would otherwise be excluded. However, evidence from the ground shows growing obstacles affecting the civil society's ability to act. A gap between EU engagement towards civil society within the EU as well as externally can be observed. This breakout discussion identified EU tools, including strategic partnerships, to respond to the challenges faced by civil society by developing policy recommendations for a European Civil Society Strategy in the context of preparations of the future Defence of Democracy Package within the review of the European Democracy Action Plan.

Key action points:

- ✓ Develop a coherent approach to empowering and protecting civil society;
- ✓ Provide a simpler, more accessible and structured system for civil society funding, and include advocacy work, including at grassroots level;
- ✓ Review mechanisms for participation in civil society, from consultation to adoption of policies and legislation.

5. Rule of law conditionality and fundamental rights conditionality

Since its entry into force, the [Rule of Law Conditionality Regulation](#) offered the possibility to suspend EU funding to EU countries due to rule of law concerns. This session explored the main challenges over the implementation of the conditionality mechanism and offered insights from civil society organisations engaged in this process to defend rule of law and fundamental rights. In

addition, the new [EU Common Provisions Regulation](#) introduced ‘horizontal enabling conditions on the effective application of the EU Charter of Fundamental Rights which apply to eight EU funds.

Key action points:

- ✓ Involve civil society actors in the process of making EU funding conditional on respect for fundamental rights;
- ✓ Set up a payment and protection system for civil society organisations involved in monitoring committees, to combat the risk of harassment that many face just by taking part;
- ✓ Increase transparency throughout the process and ensure accountability for decisions.

6. Implementation of judgements – what are the problems and prospects?

This session addressed the situation in terms of implementation of rulings of the two European supranational courts (CJEU and ECtHR), including challenges and gaps. The session looked at ways to measure state performance, data and methodology, assess the effectiveness of mechanisms meant to supervise and secure implementation, and explore the channels to be used to secure better implementation, including actors and procedures.

Key action points:

- ✓ Civil society organisations should join forces to push for better and quicker implementation of European court rulings;
- ✓ Networks of CSOs at national and regional levels should be mobilised to increase pressure for the implementation of European court judgements;
- ✓ EU institutions should increase the political, reputational and financial costs of non-compliance when Member States are clearly unwilling to implement judgements.

Closing address

Andreas Accardo, Head of Unit Institutional Cooperation and Networks at the EU Agency for Fundamental Rights

In closing the meeting, [Andreas Accardo](#), Head of Unit Institutional Cooperation and Networks at FRA, recalled Michael O’Flaherty’s opening remarks invoking the lessons from the night of the pogroms on 9 November 1938, and echoed the words of Oleksandra Matviichuk, reminding everyone of the impact of Russia’s war of aggression against Ukraine. While one cannot directly compare the two events, both are sad reminders of what can happen if human rights are treated as an afterthought. In the words of US President Dwight Eisenhower, “The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.”

In conclusion, Mr Accardo called upon the participants in the meeting to continue their important work, individually and through organisations, and strengthen the muscle of cooperation even further. In this spirit, the Agency will share the outcomes of the meeting with relevant EU institutions and networks, as well as they will inform the Agency’s ongoing work on civic space. This includes an annual consultation among the organisations in the Fundamental Rights Platform, the results of which will feature in the Agency next update on civic space in the EU, scheduled to be published in the second half of 2023. This update will inform the work of the EU and its Member States and feed into the European Commission’s next rule of law report. The Agency encourages all organisations in the Fundamental Rights Platform to participate in this consultation and share the invitation actively among their networks. The more organisations contribute, the more solid and convincing will be the results.