



**International Association of Judges (IAJ)**  
**European Association of Judges (EAJ)**

## **SUBMISSION to the European Political Strategy Center**

### **Rule of Law within the Union**

The European Association of Judges (EAJ) has very recently had drawn to its attention the Communication from the Commission to the European Parliament and the Council, dated 11.03.2014 and entitled “*A new EU Framework to strengthen the Rule of Law*” COM (2014) 158, as well as the Communication from the Commission to the European Parliament, the European Council and the Council, dated 03.04.2019 and entitled “*Further strengthening the Rule of Law within the Union : State of play and possible next steps*” COM (2019) 163.

In that context we have been apprised of the Commission’s invitation to the European Parliament, the European Council, the Council, the Member States, as well as relevant stakeholders, including judicial networks and civil society, and the public at large to reflect on the series of questions raised in the Communication of 03.04 2019 and to submit comments and/or answers to the European Political Strategy Centre (EPSC).

The EAJ is a regional sub-group of the International Association of Judges (IAJ) and its members comprise national associations of judges and prosecutors from forty-four countries stretching from Azerbaijan in the east to Iceland in the west and including all current member states of the European Union.

It is a core value of both the EAJ and the IAJ that its member associations should exhibit, and promote at every opportunity, respect for and adherence to the Rule of Law in their respective countries.

Moreover, both the EAJ and the IAJ see it as part of their remit to actively promote and support judicial independence as a key component of the Rule of Law. The crucial role of judicial independence within the Rule of Law matrix is manifest from the Commission’s Factsheet, dated April 2019 and entitled “*The EU’s Rule of Law Toolbox*”, in which it succinctly defines its understanding of the Rule of Law as meaning that “all members of a society – governments and parliaments included- are equally subject to the law, under the control of **independent courts** irrespective of political majorities” (emphasis added).

In illustration of the EAJ’s work in support of the Rule of Law, and in support of judicial independence in particular as an aspect of that, we attach a copy of a

resolution passed at the most recent general assembly of the EAJ held in Copenhagen on the 9th/10th of May 2019 concerning the situation of the judiciary in Poland.

The EAJ very much supports this present initiative by the Commission. Accordingly, it is our wish, and hope, to be able to participate in the discourse now being initiated by the Commission, and moderated by the EPSC, on an ongoing basis.

However, in circumstances where the EAJ has only recently learned of this project, and in circumstances where there is less than a week remaining before the closing date for submissions, it will not be possible on this occasion for us to provide detailed and reflective answers to the many questions that have been posed. The best we can do in the time available is to offer some brief observations that hopefully may be of some assistance.

The questions posed have been grouped under three principal headings, namely:

1. Promotion:  
Building knowledge and a common Rule of Law culture;
2. Prevention:  
Cooperation and support to strengthen the Rule of Law at national level.
3. Response:  
Enforcement at Union level when national mechanisms falter.

In circumstances where we are unable due to time constraints to offer other than a brief response, it is not proposed to offer some brief and general observations bearing principally on the subject matters of the first and second items.

In many instances in recent years where the Rule of Law has been threatened, this has coincided with an increase in populism, and populist influence.

Populism in turn is the exploitation of public disaffection with the establishment, with government and with perceived elite groups, by cynically appealing, often in simplistic terms, directly to those who are disaffected and who consider that their concerns have been disregarded. Regrettably, it is frequently dishonestly superficial and manipulative in its presentation of causes, effect and proposed solutions. Moreover, globalisation has increased the spread of populist influence through a contagion effect.

The rise of populist influence is a red flag for the Rule of Law. If the Rule of Law is not effectively addressing the concerns of the disaffected in society then it is hardly surprising that respect for it has been declining. Accordingly, in order to promote the Rule of Law the key requirements are to identify the areas in which the needs of the disaffected are not being served, to engage with them to see where improvement is possible and to take meaningful steps to ensure that concerns which hitherto have been unmet will be met within a reasonable timeframe.

It is necessary to talk to the disaffected and engage with the causes of their disaffection, rather than simply talking at them or about them.

We also consider it essential that dishonest and untrue information presented by populist leaders pursuing their own agendas, which is directly threatening to the Rule of Law, should be called out, confronted and challenged by a suitable agency given a specific remit in that regard, on each and every occasion that it is promulgated. The effective use of social media should be key in that regard, particularly in circumstances where social media is frequently the primary tool by means of which dishonest and untrue information is disseminated by populist influencers.

The specific concern of the EAJ is with the role of independent courts in the Rule of Law matrix. While as judges we readily appreciate what is meant by “The Rule of Law”, we believe that the notion of “The Rule of Law” should be made more tangible for the citizens. Civil society has to feel concerned about it. It is necessary to use concrete examples linked to daily life. For example, it needs to be readily understandable to non-lawyers how the impartiality and independence of judges directly benefits them, and how it might adversely affect how decisions are taken if these attributes were absent. Consideration should perhaps be given to using short explanatory video or radio broadcasts and using various social media platforms to promulgate our message as widely as possible.

We draw attention to the fact that the website of the EU Commission is not completely translated into French, rendering it harder to promote the actions of the Commission amongst Francophone EU citizens.

People have to have confidence in the ability of the courts both to enforce the law in the public interest and to vindicate their rights as individuals. Rightly or wrongly, many of the disaffected feel that our legal systems, for all the fine words that are spoken about affording the widest possible access to justice, do not in practice offer an effective means for them to secure vindication of their rights, which is often a significant part of the reason for their disaffection.

Some feel that *égalité des armes* is lacking in our legal systems, with the enforcement role of the courts only capable of being availed in practice by the establishment, by government and by elite interests, and that it tends to be used against them rather than for them. In that regard, there is a perception in some countries that the judiciary is not truly independent of the other arms of government. Others point to corruption, whether real or perceived, and to systemic barriers to the obtaining of justice. Accordingly, from the perspective of the judiciary and the courts, measures to promote respect for the Rule of Law, and to prevent increasing threats to the Rule of Law must include increasing access to justice in a meaningful way.

Clearly corruption must be relentlessly rooted out and eradicated wherever it exists.

The EAJ seeks to support such initiatives in every way it can. In countries where there is a legitimate concern about the level of influence exerted, or capable of being exerted, by the executive and the legislature over the judiciary efforts must be made to strengthen the independency of the judiciary. The EAJ has been tireless in its advocacy on this front. However, at a more mundane level, we feel the legal systems of the member states must be made to work better for individual litigants. Access to justice is critical.

The prohibitive costs associated with accessing courts, and the disincentive to seeking vindication of one’s rights associated with the fear of being saddled with a ruinous bill

of costs in the event of being unsuccessful, is a long standing and on-going difficulty that requires to be further addressed. If the citizen can't have access to court because of procedural restrictions or of the cost of justice, it will be hard to interest them in the need to defend and uphold the Rule of Law. Harmonization of the rules on legal costs at a European level could be helpful.

Delays in the system are a further barrier to accessing justice. While initiatives such as the EU Justice Scoreboard are welcome and go some distance towards addressing this problem, a great deal more could be done. Above all meaningful engagement is required with potential court users to identify perhaps hitherto unidentified further barriers to accessing justice so that they might be addressed, and a public information campaign to highlight precisely how the courts can be availed of by, and assist, individuals who have a need to vindicate their rights. There is concern, however, that the messages in that regard that need to be conveyed to those presently disillusioned about, and/or disaffected with, our courts systems will not reach their target audience unless there is a dedicated agency tasked with getting that message across.

Where concern exists concerning the adequacy of true separation of the powers of government reforms should be promoted to address this. In particular, the role of a prosecutor should be truly independent both of the executive and of the court. See the very interesting 1<sup>st</sup> recommendation of CCPE opinion n°13 (2018) <https://www.coe.int/en/web/ccpe/opinions/adopted-opinions>

In addition, we suggest that the Venice Commission Rule of Law checklist could be added to the Copenhagen criteria for membership to the EU. This checklist could also provide terms of reference with which to evaluate the degree to which the Rule of Law is in fact respected by individual Member States.

Consideration might also be given to establishing a European public database on how well member states are complying with key indicia of true respect for the Rule of Law. Such a tool would assist in promoting mutual trust and confidence. However, it is critical in the EAJ's view that any such evaluation is conducted by the EU Institutions. Peer to peer evaluation of respect of the Rule of Law criteria would carry too many risks.

It would be helpful to publish rulings of the CJEU to a wider audience. At present they are primarily aimed at professionals, particularly lawyers and specialized journalists. We believe that increased use should be made of social media, using a range of platforms, to disseminate easily accessible and simple information on the content of key decisions.

We offer these general observations in the hope that they may be of some assistance, but also in demonstration of the EAJ's interest in and willingness to become further involved with this important, and indeed, vital initiative by the Commission.

Finally, we would like to stress that we regard it as very important that Judges' associations are centrally involved in assisting the promotion of respect for the Rule of Law.

In our particular and unique case, the European Association of Judges represents the most important associations of judges in 43 countries; our commitment to Rule of Law, in a very apolitical basis, is undisputable and stands for several decades now.

Please rest assured of our total commitment to, and willingness to co-operate in, your project in any way we can.

The “Ways to Brussels” Working Group  
On behalf of The European Association of Judges

4 June 2019