



# From blueprint to footprint: Safeguarding media freedom and pluralism through the European Rule of Law Mechanism

Joint civil society organisation recommendations

April 2020

The launch of the European Rule of Law Mechanism<sup>1</sup> in July 2019 marks the renewed opportunity for the European Union (EU) to uphold democracy and overcome the limits of the Article 7 procedure. Among the proposed actions, the announcement by the European Commission Vice President for Values and Transparency Věra Jourová of a **dedicated chapter to media freedom and pluralism in the Annual Rule of Law Report** was strongly welcomed by press freedom and journalists' organisations. It is not only the acknowledgment that independent journalism and access to pluralistic information are one of the pillars of democracy, but also a key step in addressing the worrying state of media freedom and pluralism in the EU.

The killings of Daphne Caruana Galizia in Malta and Ján Kuciak in Slovakia shed light on the numerous threats faced by journalists within EU member states. Journalists are daily exposed to censorship, intimidation, online and offline harassment, abusive lawsuits<sup>2</sup> and physical violence for doing their work and exercising their fundamental right to freedom of expression. In parallel, media capture<sup>3</sup> by states and ownership concentration by private actors pose a huge threat to media pluralism, in a broader context where the media sector struggles for its financial sustainability. This has a chilling effect on press freedom and endangers citizens' right to information. As the COVID-19 crisis is being used by some governments to curtail rule of law principles<sup>4</sup>, access to information is

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<sup>1</sup> [Communication "Strengthening the rule of law within the Union - A blueprint for action"](#), European Commission, 17 July 2019

<sup>2</sup> Strategic Lawsuits against Public Participation (SLAPP)

<sup>3</sup> [Media capture in Europe](#), Marius Dragomir, Centre for Media, Data and Society, May 2019

<sup>4</sup> [Europe's leaders must protect free flow of information to tackle COVID-19](#), Joint call to EU decision-makers, 25 March 2020

essential for the public's right to know. This crisis also illustrates the crucial **need for safe working conditions for journalists and an independent, pluralistic and sustainable media sector.**

It is crucial that EU decision-makers aim for an ambitious European Rule of Law Mechanism, effectively upholding press freedom and media pluralism and leading to concrete improvements for journalists and the media sector. The following recommendations outline how to make the Mechanism **strong, timely, inclusive and representative of the challenges faced by journalists and the media sector.**

## Recommendation 1

### Assessing the timeliness of the Annual Rule of Law Report

The July 2019 Communication was followed by the firm political commitment of the new College of EU Commissioners to implement the Mechanism in a comprehensive way<sup>5</sup>. The European Commission Work Programme foresees the Annual Rule of Law Report as one of its 2020 deliverables. This is welcome, given the challenges faced by journalists and the media sector.

We understand and support the urge to move forward on the release of the report, in spite of the disruption brought by the COVID-19 crisis. However, the press freedom community is united in its shared vision that the issuing of the Annual Rule of Law Report should be durable, critical and permanent.

For these reasons, the Annual Rule of Law should only be released when it:

- Provides **high-quality content** and added value to existing evidence (see recommendation 4);
- Paves the way for tailor-made recommendations and **leads to concrete changes** in EU member states (see recommendation 2);
- Takes into account and analyses the **emergency measures taken in 2020** in the context of the COVID-19 crisis and their impact on press freedom and the rule of law.

## Recommendation 2

### Strengthening the Mechanism with country-specific recommendations, developing effective responses and establishing a sanction system

Monitoring the state of press freedom and media pluralism in all EU member states is strongly welcome and needed. However, for the Mechanism to lead to concrete changes, we believe the Annual Rule of Law Report should be accompanied by:

- **Country-specific recommendations:** based on the evidence collected in each EU member state. Inspiration could be drawn from the European Semester. Across the years, this process was strengthened by tailor-made national recommendations and a tracking system of their implementation by the European Commission. A similar approach could be taken to strengthen the impact of the Mechanism. Recommendations should be framed within the

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<sup>5</sup> [Mission letter](#) of Ursula von der Leyen to Didier Reynders, EU Commissioner for Justice, September 2019

context of Member States' existing obligations under other intergovernmental bodies, such as Council of Europe commitments<sup>6</sup>, and could complement existing international efforts to support Member States in their response to addressing press freedom and the safety of journalists.

- **Using recommendations to strengthen Member States' capacity and EU competency:** Country-specific recommendations should be used as a foundation for all EU institutions to assess their capacity to defend press freedom and the safety of journalists, with a view to establishing, through all necessary policy, legislative, and budgetary measures, ways to remedy possible deficiencies at EU Member State level, and within the institutions themselves, and in turn provide a long-term, meaningful improvement to press freedom in the bloc.<sup>7</sup>
- **Sanctions for serious and systematic breaches of the rule of law:** Evidence collected through the Mechanism should be used to activate the future rule of law conditionality clause of the Multiannual Financial Framework 2021-2027, and lead to the potential suspension of EU structural funds to Member States or local/regional authorities.

### Recommendation 3

## Reflecting individuals, voices and diversity in the Annual Rule of Law Report

The need to take into account various sources of information is rightly acknowledged in the July 2019 Communication. A bottom-up approach is key to make the Annual Rule of Law Report meaningful, given the potential of the Mechanism to bring about positive change to the lives of millions of citizens. In this regard, the approach of the European Commission should be transparent and inclusive.

The targeted stakeholder consultation launched on 24 March 2020 gives the possibility to a wide range of actors, such as civil society organisations, to feed into the process, but is hardly accessible to those who are not acquainted with EU-level technical language. Reports produced by academic and civil society organisations can be strengthened by insights from journalists, judges and other rule of law defenders. Ensuring a broad capture of national research, opinions and evidence would endow the Mechanism with **greater credibility and recognition, and promote civil society inclusion** in Member States where the rule of law is threatened.

There is still time to make the content of the Annual Rule of Law Report inclusive of a diversity of sources, by setting out a **publicly-available communications plan** for engaging a range of stakeholders. This could include:

- Launching a **complementary public online consultation**, targeting journalists, judges and other individuals working or involved in rule of law related issues at the national and local levels. Such a consultation would allow individuals or bodies to easily submit relevant material, including statements, reports and opinions that would provide essential information and expertise. The Commission should also take measures to actively promote the complementary public online consultation to a wide, external audience.
- Making the March 2020 stakeholder consultation available **in all EU languages**,

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<sup>6</sup> [Council of Europe Venice Commission, Platform for the Protection of Journalism and Safety of Journalists, Recommendation CM/Rec\(2016\)4 on the protection of journalism and safety of journalists and other media actors](#)

<sup>7</sup> [Joint letter of press freedom organisations to the new European Commission](#), July 2019

- Consulting journalists, judges and other individuals working or involved in rule of law related issues during the European Commission **country visits**,
- Ensuring emblematic **individual cases** are considered during country visits, included in the report, and remedy in their cases is made a priority.
- Using the **connections** of European and national networks of journalists, judges and other rule of law defenders to gather insights about facts and individual cases.
- Complementing the findings of the 2020 Media Pluralism Monitor with already existing sources, such as the alerts and country responses of the [Council of Europe Platform for the Protection of Journalism and Safety of Journalists](#),

## Recommendation 4

### Ensuring the Annual Rule of Law Report effectively captures the challenges faced by journalists and the media sector

As previously stated, the findings of the first Annual Rule of Law Report are not only an opportunity to lead to concrete improvements at Member State-level. They can also inform upcoming initiatives such as the European Democracy Action Plan, or the Media Action Plan, and pave the way for stronger EU-level action to support an independent, pluralistic and sustainable media sector. To do so, the report must cover the wide range of challenges faced by journalists and the media sector.

Whilst some of these issues are already addressed in the March 2020 stakeholder consultation and the 2020 Media Pluralism Monitor, the following list gives an overview of these challenges. They are based on international and EU standards, such as the 2014 [EU Human Rights Guidelines on Freedom of Expression Online and Offline](#) and the 2016 [Council of Europe recommendation on the protection of journalism and safety of journalists and other media actors](#).

We believe the Annual Rule of Law report should **cover and assess the following areas**:

#### 1. Transparency of ownership and government interference

Adoption and enforcement of **rules governing transparency of media ownership**

- **Media capture by state actors**, including:
  - Degree of state control in private media outlets
  - Degree of state control in public service media
  - Transparent allocation of state advertising
  - Transparent allocation of state subsidies
- **Ownership by private actors**, including:
  - Degree of concentration of ownership by national private actors
  - Ownership rate by foreign actors

#### 2. An environment conducive to an online and offline independent and pluralistic media landscape

Adoption and enforcement of **rules protecting the independence of the media and pluralism**, as well as **freedom of expression and access to information**

**Sustainability of public and private media**, including:

- Legal mechanisms reinforcing financial self-sustainability of both public and private media
- Financial mechanisms reinforcing financial self-sustainability of both public and private media

Development and promotion of **self-regulatory initiatives and mechanisms**

**Powers and governance of media regulatory authorities and bodies**, including:

- Independence, enforcement powers and adequacy of resources of media authorities and bodies
- Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies
- Adoption and enforcement of **rules ensuring free and pluralistic reporting on elections** as well as equitable political party access to public service media during election campaigns
- **Status and role of independent organisations** in actively monitoring the situation of media freedom and pluralism in different countries
- **Impact of emergency measures taken in the context of the COVID-19 crisis** on press freedom and media pluralism

### 3. Framework for protection of journalists

- Adoption and implementation of a **comprehensive legislative frameworks and other rules enabling a online and offline safe environment for journalists and other media actors**, including:
  - Prevention measures
  - Provisions criminalising specific and serious attacks against journalists (arbitrary arrest, torture, threats to life and killing)
  - Effective redress mechanisms for victims and their families
  - Establishment of early-warning and rapid-response mechanisms
  - Adequate procedural guarantees
- Adoption, mainstreaming and implementation of **gender-sensitive approaches** to address violence against female journalists and other media actors, including:
  - Gender-sensitive legislation
  - Gender-disaggregated data collection
  - Awareness-raising
  - Protection of victims
  - Prosecution of perpetrators
- Establishment of **effective, independent and impartial investigations** into threats, killings, attacks, harassment, intimidation and ill-treatment of journalists and media workers
- Establishment of **special judicial or non-judicial inquiries into specific cases or independent specialised bodies** to conduct inquiries when investigations and prosecutions do not result in bringing to justice the perpetrators
- Development of **protocols and training programmes** for all state authorities who are responsible for fulfilling obligations concerning the protection of journalists and other media actors
- **Partnership with and supporting civil society and the media** for getting their inputs when developing legislative frameworks, promoting good practices, monitoring and reporting threats and violence and raising awareness
- **Impact of the COVID-19 crisis** on the safety of journalists

